

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARLON DELIM, LEON DELIM, MANUEL DELIM ALIAS “BONG,” NORBERTO DELIM AND RONALD DELIM ALIAS “BONG,” ACCUSED, NORBERTO DELIM, AC...

G.R. No. 175942. September 13, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

On appeal to this Court is the Decision[1] dated July 28, 2006 of the Court of Appeals (CA) in CA-G.R. CR.-HC No. 02001, finding herein accused-appellant Norberto Delim guilty beyond reasonable doubt of the crime of Homicide. The decision affirmed with modifications an earlier decision of the Regional Trial Court (RTC) of Urdaneta City, Pangasinan, Branch 46, in its Criminal Case No. U-10059 which found appellant guilty of the more serious offense of Murder and sentenced him to the supreme penalty of death.

On account of the penalty of death imposed by the trial court, the case was directly elevated to this Court for automatic review in G.R. No. 153543. However, pursuant to our decision in *People v. Mateo*[2] modifying the pertinent provisions of the Revised Rules on Criminal Procedure insofar as direct appeals from the RTC to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment, the case was transferred to the CA for "appropriate action and disposition" per this Court's Resolution of January 17, 2006,[3] whereat it was docketed as CA-G.R. CR.-HC No. 02001. Following the CA's affirmance, albeit with modifications, of the trial court's decision, appellant is again with this Court via the present recourse pursuant to a Notice of Appeal[4] filed by him with the CA.

The Case

Marlon, Leon, Manuel @ "Bong," Norberto and Ronald @ "Bong," all surnamed Delim, were jointly indicted in the RTC of Urdaneta City, Pangasinan for the crime of Murder under an Information[5] which reads as follows:

That on or about January 23, 1999, in the evening at Brgy. Bila, Sison, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused armed with short firearms barged-in and entered the house of Modesto Delim and once inside with intent to kill, treachery, evident premeditation, conspiring with one another, did then and there, willfully, unlawfully and feloniously grab, hold, hogtie, gag with a piece of cloth, brought out and abduct Modesto Delim, accused Leon and Manuel Delim stayed in the house guarded and prevented the wife and son of Modesto Delim from helping the latter, thereafter with abuse of superior strength stabbed and killed said Modesto Delim, to the damage and prejudice of his heirs.

CONTRARY to Art. 248, Revised Penal Code, as amended by Republic Act No. 7659.

Since Marlon, Leon and Ronald were the only ones duly apprehended, said three accused stood trial for the crime. On January 14, 2000, the trial court rendered judgment finding the three guilty beyond reasonable doubt of the crime of Murder and sentenced them to suffer the death penalty. On January 28, 2003, this Court, on automatic

review, affirmed the decision of the trial court but with the modification that the three were only guilty of Homicide.[6] Marlon, Leon and Ronald are already serving their respective sentences at the New Bilibid Prisons, Muntinlupa City. The other accused, Manuel Delim, remained at-large up to the present, while herein accused-appellant Norberto Delim, then known as "Robert Delim," was subsequently arrested by the police authorities.

Subsequent to his arrest, Robert was arraigned under the same information for Murder. Assisted by counsel, he pleaded "Not guilty" to the charge. After a reinvestigation was conducted, the real name of Robert was found to be Norberto Delim. Accordingly, the Information was amended on July 10, 2001.[7] Thereafter, trial with respect to herein accused-appellant Norberto Delim ensued.

The Evidence

In the course of the proceedings, the prosecution proffered in evidence the testimonies of Rita Manalo and Randy Manalo, the victim's wife and son, respectively, and that of Dra. Ma. Fe Lagmay de Guzman, the Municipal Health Officer of Sison, Pangasinan, who conducted the autopsy on the body of the victim, plus the documents marked in the course of trial. For its part, the defense adduced in evidence the testimonies of appellant himself and those of his mother, Lucila Delim, and neighbors Emilio Lutan and Nora Ramos.

In its Brief, the People, thru the Office of the Solicitor General, presents the prosecution's version of the incident, to wit:

On January 23, 1999, at around six-thirty in the evening, the victim, Modesto Delim, his wife Rita Manalo, son, Randy Manalo, and two young grandchildren, were about to take their supper in their house at Brgy. Bila, Sison, Pangasinan, when suddenly, appellant Norbert Delim, together with co-accused Marlon Delim and Ronald Delim, barged into their house carrying short firearms. While Modesto was seated at the dinner table, Marlon poked a gun at him, and then appellant and Ronald dragged him out of the house. Randy saw the group which abducted his father who was then taken to Brgy. Paldit, Sison, Pangasinan. Shortly, appellant's co-accused Leon Delim and Manuel Delim, who were also armed with short firearms, appeared and guarded the front door of the house to prevent Rita and Randy from following the victim. Leon and Manuel left the house at around seven o'clock in the morning of the next day.

On January 27, 1999, four days after Modesto's abduction, his lifeless and decomposing body with several stab wounds and a gunshot wound in the head was discovered in a grassy area at the housing project in Brgy. Paldit.[8]

The testimony of Dra. Ma. Fe Lagmay de Guzman, given on August 16, 1999 during the trial of the other three (3) accused (Marlon, Leon and Ronald), was adopted by the prosecution without objection from the appellant. Said witness' testimony showed that the victim (1) suffered from five gunshot wounds, inflamed penis and scrotum and seven stab wounds; (2) died of multiple gunshot wounds; and (3) autopsy was conducted four days after the victim died.

In defense, herein appellant denied the charge against him and averred that on the date of the alleged commission of the crime, he was in Villa Paz, Naguilian, Isabela where his family had transferred from Bila, Sison, Pangasinan in the year 1986. According to him, he worked at the farm on that day of January 23, 1999, and later in the afternoon of the same day, he, together with some companions, walked home and arrived at their house at eight o'clock in the evening. Though admitting that one of his co-accused, Marlon, is his brother, appellant denied any relation with the victim Modesto Delim despite their having the same surname. He completely denied knowing Modesto's wife, Rita, and son, Randy. Lastly, appellant declared that since his family moved to Isabela in 1986, he had been to Pangasinan only once and that was in 1997.

Lucila Delim, mother of appellant, corroborated her son's testimony and added that the trip by buses from Sison, Pangasinan to Naguilian, Isabela is every 30 minutes. Nora Ramos and Emilio Lutan, appellant's neighbors at Villa Paz, Naguilian, Isabela both attested to appellant's presence thereat on January 23, 1999, the former having seen appellant at about ten o'clock in the evening of said day and at six o'clock the following morning, while the latter claiming to have been with the appellant at the farm the whole day of January 23, 1999.

The trial and appellate court's decisions

In a decision[9] dated April 29, 2002, the trial court, basing its judgment purely on circumstantial evidence and appreciating the qualifying circumstance of treachery, adjudged appellant guilty beyond reasonable doubt of murder and sentenced him to suffer the death penalty. Dispositively, the decision states:

WHEREFORE, JUDGMENT OF CONVICTION beyond reasonable doubt is hereby rendered against Norberto Delim the commission of Murder, a crime defined and penalized under Article 248 of the Revised Penal Code as amended by R.A. 7659 and the Court sentences him to suffer the penalty of DEATH, to be implemented in the manner as provided for by law; the Court likewise orders the accused to jointly and solidarily (with accused Ronald, Marlon and Leon all surnamed Delim), to pay civil indemnity of P50,000.00; to indemnify the heirs of Modesto Delim the sum of P75,000.00 as moral damages; and P25,000.00 as exemplary damages as stated in the decision of this Court against accused Ronald Delim, Marlon Delim and Leon Delim dated January 14, 2000.

The Branch Clerk of Court is hereby ordered to transmit the entire records of this case to the Honorable Supreme Court and to prepare the mitimus fifteen (15) days from date of promulgation.

The Jail Warden, Bureau of Jail Management and Penology, Urdaneta City, is hereby ordered to transmit the person of Norberto Delim to the New Bilibid Prisons, Muntinlupa City, fifteen (15) days from receipt of this decision.

Let an Alias Warrant of Arrest be issued for the apprehension of accused Manuel Delim. In the meantime, let the case against him be ARCHIVED.

SO ORDERED.

As earlier stated, when directly elevated to this Court for automatic review in view of the penalty imposed, the case was transferred to the CA for appropriate action and disposition, whereat it was docketed as CA-G.R. CR.-HC No. 02001.

In its decision dated July 28, 2006, the CA partially granted the appeal as it ruled that while appellant's guilt was duly proved, nonetheless, it was only for the crime of homicide since the qualifying circumstance of treachery was not attendant at the time the victim was killed. We quote the fallo of the CA decision:

WHEREFORE, the Appeal is partially GRANTED. The assailed decision of the RTC, Br. 46 of Urdaneta City is hereby modified in that appellant Norberto Delim is found guilty of homicide as defined in and penalized by Article 249 of the Revised Penal Code and is meted the indeterminate penalty of 10 years and 1 day of prison mayor in its maximum period as minimum to 14 years, 8 months and 1 day of reclusion temporal in its medium period as maximum, there being no modifying circumstances in the commission of the crime.

Accused is ordered to pay the heirs of the victim in the amount of P50,000.00 by way of civil indemnity, the amount of P50,000.00 by way of moral damages and the amount of P25,000.00 as exemplary damages.

SO ORDERED.[10]

The case is again with us in view of the Notice of Appeal interposed by appellant from the CA decision.

In its Resolution^[11] of February 26, 2007, the Court accepted the appeal and required the parties to file their respective supplemental briefs, if they so desire. In their respective Manifestations,^[12] the parties waived the filing of supplemental briefs and instead merely adopted the Briefs^[13] they have earlier respectively filed with this Court before the case was transferred to the CA.

In his Brief, appellant asks this Court to consider the following: (1) whether the circumstantial evidence presented was sufficient for conviction; (2) whether conspiracy was sufficiently established; and (3) whether his guilt was proved beyond reasonable doubt.

The appeal must fail.

Conviction in a criminal case does not entail absolute certainty; what is required only is that degree of proof which, after an examination of the entire records of the case, produces in an unprejudiced mind moral certainty of the culpability of the accused.^[14]

At the outset, we may well emphasize that direct evidence of the commission of a crime is not the only basis on which a court draws its finding of guilt, because established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction.^[15] Indeed, rules on evidence and principles in jurisprudence sustain the conviction of an accused through circumstantial evidence, defined as that which "indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established."^[16] Resort thereto is essential when the lack of direct testimony would result in setting a felon free.^[17] It is not a weaker form of evidence vis-a-vis direct evidence.^[18] Cases have recognized that in its effect upon the courts, circumstantial evidence may surpass direct evidence in weight and probative force.^[19]

Section 4, Rule 133 of the Rules of Court states that circumstantial evidence suffices to convict if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused. ^[20]

After a careful review of the records of this case, we find that, when viewed as a whole, the circumstantial evidence proved by the prosecution points unerringly to the culpability of appellant Norberto Delim as one of the persons responsible for the killing of the victim, Modesto Delim. Indeed, the combination of the circumstances which comprised such evidence forms an unbroken chain that points to appellant as one of the perpetrators of the crime.

First, the forcible abduction of the victim from his house with the use of short firearms by the appellant together with Marlon Delim and Ronald Delim on January 23, 1999 at about eight o'clock in the evening. Second, right after the victim was taken out of the house, appellant's two other co-accused, Manuel Delim and Leon Delim, armed with short firearms, guarded and prevented household members from getting out until the following morning of January 24, 1999. And third, four days after the abduction, the victim's dead body was found with multiple gunshot wounds.

The circumstance of abduction was duly established by the testimony of the victim's son, Randy Manalo, to wit:

Q

While taking your supper that time, do you recall if there was anything unusual that happened at that time?

A

When we were about to eat three armed men entered our house.

Q

Do you know these three armed men who entered your house?

A

Yes, sir.

Q

Who are they, name them one by one?

A

Marlon Delim, Robert Delim and Ronald Delim.

xxx xxx xxx

Q

xxx What kind of arm were they carrying at that time?

A

Short handgun, (sic) sir.

Q

When these three armed persons whom you have mentioned, armed with short firearms, what did they do then when they entered your house?

A

They took my father, sir.

Q

Who took your father?

A

Marlon Delim, Robert Delim, and Ronald Delim, sir.

xxx xxx xxx

Q

How did they get your father?

A

They poked a gun and brought him outside the house, sir.[21]

Q

What is the name of Norberto Delim, has he another name?

A

The name that they called him in our place is Robert, madam.

xxx xxx xxx

Q

His name given to the Honorable Court was Norberto and you said Robert entered your house that evening. This Norberto and Robert is the same who entered that evening of your house on January 23, 1999?

A

Yes, sir.

Q

How did these three (3) enter your house that evening of January 23, 1999?

A

They entered thru the door, sir.

Q

In other words, before they enter (sic) your house, your door was already open, is that correct?

A

Yes sir.

Q

When these three (3) including Robert Delim entered your house, what happened next after that?

A

They forcibly took hold of my father and brought out, sir.

Q

You said your father was forcibly took (sic) how did they forcibly take your father?

A

They took hold of him, pulled him outside the house, sir.

Q

Who pulled your father outside your House?

A

Marlon, Ronald, and Robert, sir.[22]

The second circumstance was likewise established by Randy's testimony, viz:

Q

What did you do after that when these three (3) pulled your father Modesto Delim outside your house?

A

When my father was pulled outside from the house, Leon Delim and Manuel Delim were with arms, sir.

Q

What kind of arms were they holding?

A

Short firearms, sir.[23]

Q

After bringing your father out from your house, what transpired next?

A

Manuel Delim and Leon Delim said "Stay in your house," and guarded us.

xxx xxx xxx

Q

When your father was pulled out from your house by these three persons, what did you and your mother do while these three persons were taking out of your house?

A

We did not do anything because Manuel and Leon Delim guarded us.

COURT

Where, in your house?

A

Yes, sir.

xxx xxx xxx

COURT

Why do you know that they were guarding you?

A

Because they were at the door, sir?

Q

What was their appearance that time when these two persons were guarding you, these Leon and Manuel?

A

They were armed, sir.

Q

What do you mean by armed?

A

They have gun, sir.

Q

What kind of firearm?

A

Short firearm, sir.[24]

Notably, another witness, the victim's wife, Rita Manalo, corroborated Randy's afore-quoted testimony.[25]

As for the victim dying of multiple gunshot wounds which were all fatal, the Autopsy Report[26] and the testimony of the municipal health officer[27] who conducted the autopsy duly proved such circumstance.

In light of the aforementioned evidence, the collapse of appellant's defenses, i.e., denial and alibi, is inevitable. More so, in the face of the categorical and positive identification of appellant by the two (2) prosecution witnesses, both of whom saw appellant up close, as one of the three (3) malefactors who forcibly abducted and dragged the victim out of the house on that fateful night of January 23, 1999. For sure, alibi cannot be given greater evidentiary value than the testimonies of credible witnesses who testify on affirmative matters.[28] Positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.[29]

Besides, basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime.[30]

Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[31]

Here, appellant argues that he was nowhere near the crime scene on the night of January 23, 1999. But even assuming that the distance between Naguilian, Isabela where appellant allegedly was, and Sison, Pangasinan where the crime took place, can be negotiated in eight (8) hours as asserted by the appellant, still, it was not physically impossible for him to be at the locus criminis at the time of the killing, for, as admitted by his mother, Lucila Delim, the bus trips to and from said places are every thirty (30) minutes.

Notwithstanding the foregoing established facts, appellant insists on his innocence, claiming that conspiracy was not established by clear and convincing evidence.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.[32] It may be proved by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose.[33] Hence, common design is the essence of conspiracy.

Here, as found by the trial and appellate courts, appellant acted in concert with his other co-accused Marlon, Ronald, Manuel and Leon to achieve a common criminal design. Indeed, conspiracy among said accused could easily be deduced from their presence and actual participation in the commission of the crime. As aptly stated by the trial court:

In this case, while there was no previous agreement between accused Norberto Delim and all other accused to kill the victim, the simultaneous acts of accused Marlon, Ronald and Norberto Delim in forcibly taking hold and bringing out the victim from his house and the use of Manuel and Leon Delim as guards to watch the wife and son and other members of the household showed unity of purpose. The concerted action of all the afore-named accused against the victim, Modesto Delim, made them co-principals by direct participation, and therefore conspiracy is proved.[34]

In any event, this Court, in *People v. Delim*, [35] already ruled as to the existence of conspiracy among appellant's co-accused, Marlon, Ronald and Leon, all surnamed Delim. We held therein:

In the case at bar, Marlon, Ronald and Leon arrived together in the house of Modesto, each armed with a handgun. Marlon and Ronald barged into said house while Leon stood guard by the door thereof. After Marlon and Ronald had left with Modesto in tow, Leon stood by the door and warned Randy and Rita not to leave the house. Leon stood guard by the door of the house until 7:00 a.m. of January 24, 1999 when he left the house. The overt acts of all the malefactors were so synchronized and executed with precision evincing a preconceived plan or design of all the malefactors to achieve a common purpose, namely the killing of Modesto. Irrefragably, the tasks assigned to Leon in the commission of the crime were (a) to act as a lookout; (b) to ensure that Rita and Randy remain in their house to prevent them from seeking assistance from police authorities and their relatives before their mission to kill Modesto shall have been a *fait accompli* as well as the escape of Marlon and Roland. Patently, Leon, a lookout for the group, is guilty of the killing of Modesto. Leon may not have been at the *situs criminis* when Modesto was killed by Marlon and Roland nevertheless he is a principal by direct participation. If part of a crime has been committed in one place and part in another, each person concerned in the commission of either part is liable as principal. No matter how wide may be the separation of the conspirators, if they are all engaged in a common plan for the execution of a felony and all take their part in furtherance of the common design, all are liable as principals. Actual presence is not necessary if there is a direct connection between the actor and the crime.

Conspiracy having been established, the act of one, therefore, is the act of all and everyone of the conspirators, appellant included, is guilty with the others in equal degree.

The sufficiency of the circumstantial evidence having been established and the existence of conspiracy duly proved, appellant's exact criminal responsibility must now be determined.

Pertinently, as defined by Article 248 of the Revised Penal Code, the crime of Murder is committed by a person who kills another with treachery. Treachery exists when the offender commits a crime against persons, employing means, methods or forms in the execution thereof which tend directly and specifically to ensure its execution, without risk to himself arising from any defense or retaliatory act which the victim might make.[36]

Under the facts of this case, no one actually saw how the killing was perpetrated. No evidence, whether direct or circumstantial, was presented to establish that there had been the qualifying circumstance of treachery in the commission of the crime. Indeed, a review of the trial court's decision reveals that the trial judge discussed the presence of treachery during the abduction of the victim but was silent as to its presence at the time of the killing. Ergo, treachery, which must be proven positively, cannot be appreciated in this case so as to elevate the killing to murder.

We, thus, concur with the following observations of the CA:

We subscribe to appellee's stand that appellant should be convicted and sentenced only for the crime of homicide and not murder since the qualifying circumstance of treachery was not proved. The circumstance allegedly pointed out as implying treachery had reference to victim Modesto Delim's forcible abduction by Marlon, Ronald and by appellant Norberto Delim and not when he was killed. For treachery to be correctly appreciated, the following elements must be shown: (1) that the means of execution employed prevented the victim from defending himself or retaliating and (2) it was deliberately and consciously adopted.

In the case at bar, there was no evidence showing that victim Modesto Delim was defenseless before and at the time he was killed. The fact of dragging and forcibly abducting the victim cannot imply that he was killed with treachery.[37]

Furthermore, in the aforesaid case of *People v. Delim*,[38] this Court made the following ratiocination:

xxx Although the victim may have been defenseless at the time he was seized but there is no evidence as to the particulars of how he was assaulted and killed, treachery cannot be appreciated against the accused. In this case, the victim was defenseless when seized by Marlon and Ronald. However, the prosecution failed to present any witness or conclusive evidence that Modesto was defenseless immediately before and when he was attacked and killed. It cannot be presumed that although he was defenseless when he was seized, the victim was in the same situation when he was attacked, shot and stabbed by the malefactors. xxx

The qualifying circumstance of treachery not having been appreciated then against appellant's co-accused Marlon, Ronald and Leon Delim, said circumstance cannot now be appreciated against appellant. Verily, absent any qualifying circumstance, appellant can be convicted only of homicide defined and penalized by Article 249 of the Revised Penal Code.[39]

In sum, we find appellant's guilt for the crime of homicide to have been proven beyond reasonable doubt.

Thus, the CA correctly meted on appellant the indeterminate penalty of 10 years and 1 day of prision mayor in its maximum period as minimum to 14 years, 8 months and 1 day of reclusion temporal in its medium period as maximum, there being no modifying circumstance in the commission of the crime. Likewise proper are the awards of civil indemnity and moral damages in the amount of P50,000.00 each, as well as exemplary damages in the amount of P25,000.00.

WHEREFORE, the appealed decision of the Court of Appeals in CA-G.R. CR.-HC No. 02001 is hereby AFFIRMED in all respects.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices Marina L. Buzon and Regalado E. Maambong; SC Rollo, pp. 3-15.

[2] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[3] CA Rollo, p. 148.

[4] CA Rollo, p. 178.

[5] Id. at 10-11.

[6] *People v. Delim*, G.R. No. 142773, January 28, 2003, 396 SCRA 386.

[7] Original Records, p. 43.

[8] People's Brief; CA Rollo, pp. 121-122.

[9] Id. at 20-32.

[10] SC Rollo, pp. 14-15.

[11] Id. at 16.

[12] Id. at 17-18 & 19-21.

[13] Accused-Appellant's Brief, CA Rollo, pp. 77-90 & People's Brief, CA Rollo, pp. 116-136.

[14] *People v. Jose Casitas, Jr.*, G.R. No. 137404, February 14, 2003, 397 SCRA 382.

[15] *People v. June Ignas*, G.R. Nos. 140514-15, September 30, 2003, 412 SCRA 311.

[16] *People v. Ferdinand Matito*, G.R. No. 144405, February 24, 2004, 423 SCRA 617.

[17] Id.

[18] *People v. Felixminia*, G.R. No. 125333, March 20, 2002, 379 SCRA 567.

[19] Id.

[20] Supra note 14.

[21] Original Records, TSN, August 18, 1999, pp. 4-5.

[22] Original Records, TSN, October 15, 2001, pp. 5-6.

[23] Id. at 7.

[24] Original Records, TSN, August 18, 1999, pp. 6-7.

[25] See TSN, November 19, 2001, pp. 4-6.

[26] Original Records, Exhibits "A" — "A-1."

[27] TSN, August 16, 1999, Exhibit "C."

[28] Supra note 14.

[29] Id.

[30] Supra note 15.

[31] Id.

[32] People v. Melchor Rafael, et al., G.R. No. 123176, October 13, 2000, 343 SCRA 97.

[33] Preferred Home Specialties, Inc. v. CA, G.R. No. 163593, December 16, 2005, 478 SCRA 378.

[34] CA Rollo, p. 31.

[35] Supra note 6.

[36] People v. Narciso Ramos, G.R. No. 135204, April 14, 2004, 427 SCRA 299.

[37] SC Rollo, p. 11.

[38] Supra note 6.

[39] Art. 249. Homicide. Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

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