

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RANDY ALABADO Y DAVID, ACCUSED-APPELLANT.

G.R. NO. 176267. September 03, 2007

Ponente: GARCIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-176267/>

GARCIA, J.:

On May 16, 2000, in the Regional Trial Court of Mandaluyong City, two separate Informations — one for Murder and the other for Frustrated Murder — were filed against herein appellant Randy Alabado y David. Respectively docketed in the said court as Criminal Cases No. MC-00-2508-H and No. MC-00-2509, both of which were raffled to Branch 24 thereof, the corresponding information alleges as follows:

In Criminal Case No. MC-00-2508-H:

That on or about the 10th day of May, 2000, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a stainless kitchen knife, with intent to kill, evident premeditation and treachery, did, then and there willfully, unlawfully and feloniously stab with the said knife one RICARDO AMPAYA Y MATEO alias "Totoy" on the (sic) different parts of his body, thereby inflicting upon the latter mortal wounds which directly caused his death.

CONTRARY TO LAW.[1]

In Criminal Case No. MC-00-2509:

That on or about the 10th day of May, 2000, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a stainless kitchen knife, with intent to kill, evident premeditation and treachery, did, then and there willfully, unlawfully and feloniously attack, assault and stab with the said knife one EVELYN AMPAYA Y DIZON on the (sic) different parts of her body, thereby inflicting upon the latter injuries which would ordinarily cause his (sic) death, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of cause or causes, independent of the will of the accused, that is, due to the timely and able medical attendance rendered to said EVELYN AMPAYA Y DIZON which prevented his (sic) death.

CONTRARY TO LAW.[2]

When arraigned with assistance of counsel, accused-appellant entered a common plea of "Not Guilty" in both cases. Thereafter a joint trial ensued.

On August 4, 2003, the trial court rendered its Joint Decision[3] in the two cases, the dispositive portion of which reads:

WHEREFORE, finding the accused guilty beyond reasonable doubt he is hereby sentenced as follows:

(a) In Criminal Case No. MC-00-2508-H, accused shall suffer the penalty of RECLUSION PERPETUA, to pay the heirs of Ricardo Ampaya the amount of P25,000.00 as actual damages, P50,000.00 as death indemnity,

P50,000.00 as moral damages and P20,000.00 as exemplary damages; and,

(b) In Criminal Case No. MC-00-2509, accused shall suffer the penalty of NINE (9) YEARS of prision mayor as minimum to FIFTEEN (15) YEARS of reclusion temporal medium as maximum and to pay the amount of P13,560.55 as actual damages.

SO ORDERED.

On appeal to the Court of Appeals (CA), whereat the recourse was docketed as CA-G.R. CR No. 00457, the appellate court, in its decision[4] of April 17, 2006, affirmed the trial court's judgment of conviction with modifications, disposing as follows:

- In Criminal Case No. MC-00-2508-H, accused-appellant Randy Alabado y David is found GUILTY beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, qualified by treachery, and is sentenced to suffer the penalty of reclusion perpetua and ordered to pay the heirs of the victim Ricardo Ampaya, the amounts of P25,000.00 as actual damages, P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages; and

- In Criminal Case No. MC-00-2509, accused-appellant Randy Alabado y David is found GUILTY beyond reasonable doubt of frustrated murder under Article 248 in relation to Article 6, first paragraph of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of nine (9) years of prision mayor, as minimum, to fifteen (15) years of reclusion temporal, as maximum. Accused-appellant is further ordered to pay the victim Evelyn Ampaya the amount of P40,000.00 as moral damages and P25,000.00 as temperate damages.

SO ORDERED.

Before us now in this petition for review, appellant questions the appellate court's decision, assigning the following errors in his quest for a reversal:

I

THE TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY AND IN FAILING TO CONSIDER INTOXICATION AS A MITIGATING CIRCUMSTANCE.

As the Court sees it, the main issue raised in this recourse is: Was appellant sufficiently and positively identified by the prosecution witnesses as the perpetrator of the gruesome crimes?

It has been said that the identity of the accused is the first duty of the prosecution.[5] At the outset, we state that the prosecution had discharged the burden of identification.

As synthesized in the challenged decision of the appellate court, the prosecution's evidence tends to establish the following:

x x x May 10, 2000 was the birthday of Aries Ampaya and the entire Ampaya family was very busy the whole day preparing the foods and attending to their guests. The celebration continued until evening wherein Aries Ampaya held a drinking session with his relatives, friends, co-workers and their boarders at the terrace of their boarding house which is just beside the house where their family lives at 1025 Barangay Barangka Itaas, Mandaluyong City. Randy Alabado, one of the boarders of the Ampaya, was also present. In fact[,] he did errands for the group like preparing and getting their "pulitan." xxx About past 11:00 o'clock in the evening,

Randy Alabado left the group unnoticed xxx. Few minutes later, the sound of music coming from the stereo system in the main house xxx suddenly went off and after a while it went on again. This thing happened for sometime until Arnel, the brother-in-law of Aries Ampaya, came out of the main house terrified and shouting. Immediately, those who were drinking left their places and went inside the house of the Ampayas. Aurelio Torres, Jr. and Jam Rolando Tendencia, were among those who went in and when they reached the second floor, they saw Randy Alabado holding a knife while Edgar Ampaya was wrestling with him for the possession of the same. They helped Edgar and succeeded in taking the knife from Randy.

Unknown to them and even before Arnel went out, a terrible thing had already happened inside the house. According to Evelyn Ampaya[,] she was then already asleep when she suddenly woke up and noticed a man with his head bowed down seating (sic) on the headboard of the bed which she shared with her younger sister Joy xxx. Since the room was only being illuminated by the light from the living room and from the aquarium beside her window[,] she could not readily identify the person. Evelyn then stood up from her bed and went closer to the person and looked [at] him intently, and it was only then that she recognized him as Randy Alabado. She became terrified because he was holding a knife. Instinctively, she immediately got up from bed and ran to the living room but Randy chased her (sic) and caught up with her outside her room where he suddenly embraced and kissed her in the nape. She called the help of her father Ricardo Ampaya who was already asleep in his room but accused did not mind her xxx. Evelyn repeated her plea for help from her father and this prompted the accused to stab her several times hitting her on the chin, eyebrow, back, stomach, thigh and arms as she was parrying his stab blows. It was at this juncture that [Ricardo] came out from his room and rushed towards her xxx. She recalled her father shouting, "Randy, bakit mo ginaganyan ang anak ko." But Randy turned towards Ricardo and met him with a fatal stab blow on the chest rendering the victim immobilized which he followed up with several more stab blows (TSN, pp. 5-10, October 5, 2000).

Edgar Ampaya who was also sleeping at that time was awakened by a loud thud coming from the hallway xxx. He went out of his room xxx and he saw Randy Ampaya stabbing his father who was already slumped on the floor with his face down. Since he was behind Randy who was then on a bending downward forward position towards the fallen body of his father, Edgar immediately rushed to him, pulled him away from his father and wrestled with him for the possession of the knife. It was then when their neighbors and visitors arrived and helped them in pinning down the accused (TSN, pp. 3-7, May 22, 2001).

Immediately, Ricardo Ampaya and Evelyn Ampaya were rushed to the Mandaluyong Medical Center xxx. On the other hand, Randay (sic) Alabado was being held by Jam Rolando Tendencia and the barangay tanods. Ricardo Ampaya xxx died upon reaching the hospital while Evelyn Ampaya was attended by Dr. Jesus Quitillan.[6]

The rest of the prosecution's evidence are summed up in the Joint Decision of the trial court, thus:

Dr. Felimon Porciuncula, Jr., a medico-legal officer of the PNP Crime Laboratory xxx, made his own autopsy of Ricardo's remains on May 11, 2000. He executed Medico-Legal Report No. M-310-00 (Exh. B) xxx He concluded that the cause of the victim's death was hemorrhagic shock as [the] xxx result of multiple stab wounds on the trunk. xxx He opined that these wounds were caused by a single bladed knife (TSN, pp. 2-18, August 24, 2000).

In the medical certificate (Exh. U) issued by Dr. Jesus Quitillan[,] he stated that he treated Evelyn Ampaya who was confined at the Mandaluyong Medical Center from May 11, 2000 to June 14, 2000. She sustained 13 stabbed (sic) wounds and 2 lacerated wounds xxx and these wounds would heal in 60 days barring complications. Since Dr. Quitillan xxx is now abroad the prosecution called Dr. Guillermo Amigo, Jr., xxx. He opined that the stabbed (sic) wounds were caused by a pointed bladed instrument and taking into account the extent and nature of the wounds which were fatal the victim would die. xxx (TSN, pp. 3-18, August 7, 2002).

Dr. Norlito Sibug, an eye-specialist and ophthalmologist of the Mandaluyong Medical Center[,] also treated the injuries sustained by the victim on her right eye-brow and right eye. Based on his examination and

ultrasound the victim lost her vision on her right eye because of a scar on the back of the same caused by severe bleeding due to injury (TSN, pp. 2-15, August 7, 2002).

Virginia Ampaya, wife of the deceased, was saddened by the untimely death of her husband. She incurred expenses amounting to P35,000.00 for the 7 day-wake and burial but she had only a receipt for P25,000.00 (Exh. O-1). She is asking for a P500,000.00 moral damages.

Evelyn Ampaya estimated her expenses including her damages in the amount of P150,160.00 (Exh. V). However, she was able to present only a receipt for P13,560.55 (Exhs. V-1 to V-73).

SPO Rafael Ranot, a police investigator of the Mandaluyong Police Station xxx undertook an investigation on the stabbing to death of Ricardo Ampaya and the wounding of Evelyn Ampaya. He went to the hospital immediately when he received the incident report xxx. He took the statement of Edgar Ampaya, Jam Rolando Tendencia, Aurelio Torres, Jr., and Evelyn Ampaya at her hospital bed. xxx. (TSN, pp. 2-10, July 3, 2001).[7]

For its part, the defense adduced in evidence the lone testimony of appellant himself.

Appellant testified that on May 10, 2000, he was at the house that he and his siblings were, for the past six years, renting from the Ampayas located just beside the Ampayas' home at 1025 MRT Track, Barangka Itaas, Mandaluyong City.[8] He claimed that around 6:30 p.m. of that fateful day, Aries Ampaya invited him to his (Aries') birthday party at the Ampayas' home where the guests were having a drinking session. At the kitchen of the Ampaya home, he helped out in the preparation of the pulutan (appetizer), in the course of which - so appellant claimed — he suddenly felt groggy and a change of body temperature. He began pacing back and forth. He recalled going to the sala where he sat for a while. It was during that time, so appellant continued, that he felt being hit on the head, whereupon he no longer had any recollection of succeeding events.[9] When he regained consciousness, he was already at the Criminal Investigation Division of the Mandaluyong Police Station. He admitted to having had too much to drink that night, albiet he was no longer into heavy drinking since 1998.[10]

In amplification of his first assigned error, appellant contends, in relation to his defense of denial, that the prosecution has not proved with moral certainty that it was he who committed the gruesome acts. He makes capital of the alleged conditions prevailing at the time that the crimes were committed, theorizing that, from Evelyn's own testimony that the main lights in her room (at around 11:45 p.m.) were out at the time and the only sources of illumination were those that came from the lighted aquarium beside the room window and some light filtering into the room from the sala, it would have been very difficult for Evelyn to have identified him as the "male seated at the headboard of the bed beside the bed occupied by her and her sister at the time,"[11] as the one who chased and attacked her moments later. Appellant thus argues:

Even during the time that she (Evelyn) allegedly ran out of the sala, her back was still towards her attacker so that when this person allegedly caught up with her, she testified to having been kissed on the nape, hence, her pursuer must have held her from behind. It was entirely probable that Evelyn, in her frantic state, never really had a good look at her supposed attacker, so as to inspire positive identification.[12]

Furthermore, appellant tags Evelyn's own account of how the culprit allegedly attacked her father as "sketchy," since the events testified to by her occurred when she was close to passing out, having already sustained stab wounds and lacerations on critical areas of her body. And as has been testified to earlier by Evelyn, her right eye had already been hit badly at the time, rendering debatable her vivid account of how the culprit attacked her father.

We do not subscribe to appellant's arguments. Instead, we find, like the two courts below, that the prosecution's evidence is worthy of belief and the testimonies of its witnesses credible, which brings us a similar conclusion that appellant has been positively identified as the perpetrator of the crimes charged against him.

For one, we have carefully scrutinized the records and found nothing therein the existence of any ill-motive on the part of the principal prosecution witnesses to falsely impute upon appellant the commission of such a serious offense as murder and frustrated murder. Quite the contrary,

the evidence on hand even convinces us that these witnesses spoke for no other reason but to unfold the truth.

To begin with, appellant himself claims to be very close to Evelyn who was already engaged to be married to his brother Alexander.[13] Moreover, appellant had been the Ampayas' boarder for six years already.[14] Evelyn, no doubt, was well acquainted with appellant in a manner that is not only familiar, but likewise intimate and familial. As we held in *People v. Hilario*, [15] the fact that the witness had known the accused for five years, and was his neighbor in the community, makes them well acquainted with each other as to render credible the positive identification by the witness of the accused as the perpetrator of the offense.

Given the element of acquaintance, the Court believes that Evelyn had more than sufficiently recognized appellant from the conditions inside her room. We recall the evidence that when she was roused from sleep, Evelyn saw a "male seated at the headboard of the bed beside the bed occupied" by her and her sister. Light from the sala was filtering inside their room. It was but natural that Evelyn's curiosity was piqued at that moment because the circumstances she woke up to were far from usual: several alcohol drinking guests were in their home; she saw a male individual with head bowed down and seated at the headboard of the bed beside hers; and, being male, his intrusion into their privacy was just as well put into question. It was to be expected that Evelyn would strain to recognize who that person was, there being something unusual about his actions.

So it is that as testified to by Evelyn, she inched closer to see who it was sitting at the bed with head bowed down, and there saw appellant who was then holding a knife. Terrified, she ran out of the room only to be chased, embraced and stabbed by appellant. In her direct testimony, Evelyn declared:

Q. What did you do when you recognized him as Randy Alabado?

A. I feel very afraid because I saw him he was holding a knife. What I did was I got up from my bed and I run to the sala but he chased me and then he started kissing my nape. Then I shouted "Tay tulungan mo ako."

Q. What happened when he started kissing your nape?

A. He embraced me behind and poked the knife at the side of my neck, sir.

Q. And then?

A. When I shouted for help to my father what he did was he stabbed me, sir.

Q. How did you shout and asked help from your father?

A. I shouted "Tay tulungan mo ako!"

Q. How many times?

A. 2 times, sir.

Q. And then what did he do when you shouted for help?

A. He stabbed me here, sir.

[Witness is pointing to her left chin and upper right portion of her eyebrow].

Q. Where else?

A. "Sa likod, sa tiyan, sa hita. Eto pong kamay ko tinadtad niya ng saksak kasi po ginanyan ko sa dibdib ko kung di po patay na rin ako ngayon."

[Witness is pointing to her back, stomach and right thigh. Witness is also demonstrating how she placed her hand and arm in her chest.][16]

Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, witnesses do remember with a high degree of reliability the identities of criminals, and the time and manner they committed the crimes.[17] Evelyn was not merely physically attacked. An attempt upon her honor was made as well, and not merely by a stranger but by the brother of her fiancé no less. As such, an unwavering and categorical identification of her assailant was to be doubly expected. Experience shows that oftentimes a startling occurrence creates an indelible impression in the mind that can be recalled vividly.[18]

If Evelyn saw the appellant wielding a knife with the conditions then obtaining in her room, she might as well have identified him as the man holding the same. Surely, appellant was significantly more conspicuous and outstanding than the smaller knife in his hands. Even then, assuming Evelyn was unable to specifically identify him as the man sitting on the bed, appellant was certainly identified as her attacker in the sala. There could have been no other attacker, as the evidence shows there was but one assailant.

We likewise accord credibility to Evelyn when she identified appellant to be her father's assailant. Be it remembered that at the time appellant attacked the father, Evelyn had already positively identified him as the knife wielder in her bedroom and her attacker in the living room. From the steady stream of events that unfolded interminably from the time she was roused from her sleep up to the time appellant began attacking her father, Evelyn was the object of appellant's ire, so much so that when the father saw his hapless daughter in the grip of a knife-wielding intruder, the father exclaimed: "Randy, bakit mo ginaganyan ang anak ko." And as appellant charged upon the father, it was but in accord with human nature for daughter Evelyn to try to remain conscious to be able to come to the aid of her father in any manner she could, even just to identify his attacker. Indeed, Evelyn's identification of appellant draws strength from the rule that family members who have witnessed the killing of their loved ones usually strive, at the very least, to remember the faces of the assailants.[19] A relative will naturally be

interested in identifying the malefactors to secure their conviction to obtain justice for the death of a beloved.[20]

Appellant takes issue as well with the testimony of witness Joy Ampaya, a sister of Evelyn, who testified that she saw how appellant returned to stab Evelyn after his knifing rampage with their father, Ricardo.[21] Appellant claims inconsistency in the sisters' testimonies since, according to him, Evelyn never testified that he went back to stab her once more after the violent episode with the father. We do not see, however, how this seeming inconsistency could affect the case against appellant. Joy's testimony is merely corroborating, and is not the sole determinant of appellant's guilt or innocence under the premises. Besides, minor inconsistencies between the testimonies of Evelyn and Joy should be ignored, appellant having been positively identified by both as the malefactor. It does not matter in this case that appellant, in his stabbing rampage, turned from one victim to another, and then back again.

Moreover, daughters and father, all three of them, named appellant as the violent intruder on that fateful night. They could never have been mistaken in identifying him, what with the reality that appellant had been a boarder of the Ampayas for the past six years immediately prior to that violent episode and a brother no less of Evelyn's fiancé.

In his bid to downplay the testimony of Edgar Ampaya, another sibling of Evelyn, appellant alleged that Edgar never witnessed the attack on his father, Ricardo.

We are not convinced. Appellant's effort to discredit Edgar cannot be sustained in the light of the latter's categorical testimony that he came upon appellant while the latter was in the act of stabbing Ricardo and that, upon seeing this, he grabbed appellant and afterwards wrested with him, with the help of other guests, for the possession of the knife.[22] Edgar would have not risked his life against an armed assailant were not his father

truly attacked by appellant.

The Court joins the trial court's assessment of the credibility and candor of Edgar's testimony. The legal aphorism is that factual findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of their probative weight are given high respect if not conclusive effect, unless it ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case.[23] We find none in this case. The trial court is in the best position to ascertain and measure the sincerity and spontaneity of witnesses through its actual observation of the witnesses' manner of testifying, demeanor and behavior while in the witness box.[24]

As to the testimonies of other witnesses, specifically those of Jam Rolando Tendencia and Aurelio Torres, Jr., neighbors of the victims, we find no reason to deviate from the trial court's findings as well. On the contrary, their testimonies, together with those of Evelyn as well as those of the other witnesses, tend to show appellant's possession of the single-bladed knife[25] used — and which was later found to match the nature and character of the wounds inflicted upon the victims.[26] The wounds sustained eloquently speak for themselves.[27]

All told, we are sufficiently convinced that the testimonies of the principal prosecution witnesses sufficiently establish appellant's guilt beyond moral certainty of doubt. We find the absence of ill motive on their part to testify falsely against him. Indeed, appellant's own declaration that Evelyn was engaged to his brother Alexander makes the Ampaya siblings' testimonies all the more credible. Naturally, they would not wish to drive a wedge between their sister and the Alabados. Neither would it be valid to say that Evelyn would wish a dreadful fate for her fiancé's brother by indulging in falsehood. We simply see no reason for the Ampayas to fabricate a serious charge against appellant. For sure, given the reality that appellant is their boarder for the past six years and the brother of the fiancé' of Evelyn, we cannot devine any explanation other than the considerations of truth why they should point their accusing fingers on appellant.

Inconsistencies in the prosecution's witness' accounts of what had transpired, if any, were only minor and do not necessarily impair the essential integrity of the People's evidence as a whole.[28] Errorless testimonies can hardly be expected especially when a witness is recounting details of a harrowing experience. As long as the mass of testimony jibes on material points, the slight clashing statements dilute neither the witnesses' credibility nor the veracity of their testimonies. For sure, such inconsistencies on minor details would even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed.[29]

Appellant's evidence is predicated upon pure denial/alibi, as opposed to that of the prosecution's which is based on categorical eyewitness' accounts. Insisting to have been hit on the head, appellant would claim he had remained unconscious as the violent incident unfolded, regained consciousness only at the Mandaluyong City police station after the bloody incidents occurred. He further acknowledged having, on that fateful night, one drink too many.

Appellant's gratuitous assertion of being unconscious has very little to commend itself. His position places him on much too convenient ground to ward off any and all accusations against him without so much of an explanation; it is plain denial, pure and simple. We cannot accept this stance. In *People v. Gaspar*,[30] we rejected the convenient excuse of "losing consciousness" as a defense. Therein, we held:

RODRIGO postulates that he was unconscious, hence unaware of the circumstances that led to Jimmy's demise. In effect, he denies his presence at the scene of the crime and his participation thereof. His evidentiary bases include the attestations of (1) three defense witnesses who claimed to have seen Jimmy struck RODRIGO with a bolo from behind and (2) six other defense witnesses who like the first three witnesses beheld RODRIGO lying on the ground face down. The trial court however, did not believe that RODRIGO was unconscious. So do we. But the trial court failed to categorically make a factual finding that Jimmy hacked RODRIGO, and yet paradoxically, referred to said episode as a mitigating circumstance of immediate

vindication of a grave offense. This Court however, oppugns the veracity of this version of the defense.

The unassailed expert testimony of Dr. Valdez on the nature and extent of RODRIGO's wounds revealed that: RODRIGO's wounds were but superficial, slight, and insignificant which required no special medical attention or hospitalization and hence, they could not have caused RODRIGO to lose consciousness x x x[31]

Here, appellant, instead of explaining and clarifying his defense, made much of his alleged unconsciousness. Unfortunately, other than his own self-serving claim, appellant did not present other convincing evidence to prove that indeed a hard blow on his head rendered him unconscious. If ever a blow on his head was delivered, it must have been dealt on him after his stabbing rampage against Evelyn and Ricardo and while wrestling with Edgar for the possession of the fatal knife, at which juncture some of the quests joined the affray to disarm him.

The hard reality is that appellant's physical presence at the locus criminis is undisputed; hence, his defense of alibi crumbles like a deck of cards. Accounts by credible and honest witnesses all point to him as the assailant of both Evelyn and Ricardo. He was found in possession of the knife that caused both victims' wounds and the ultimate death of Ricardo. In fact, that knife even had to be forcefully wrested from his very own hands.[32]

Positive testimony prevails over the defense of alibi. Denials and alibis, unsubstantiated by clear and convincing evidence, are negative and self-serving which deserve no weight in law and cannot be given greater evidentiary weight over testimonies of credible witnesses who testified on affirmative matters. Between the positive declaration of the prosecution witnesses and the negative uncorroborated assertions of appellant, the former deserves more credence.[33] The appellate court was thus correct in saying that it was for the trial judge to determine whom to believe among the testifying witnesses. Having found no reason to deviate from the trial court's findings of fact, we grant those findings the respect they deserve.

On the treachery angle, appellant would have the Court disregard as unreliable Evelyn's testimony on the matter. As appellant argues, at the time the alleged treacherous attack against Ricardo occurred, Evelyn was already seriously injured, with an injury to her right eye to boot, and unable to observe what had actually occurred to Ricardo. Appellant adds that since Ricardo was even able to call out his (appellant's) attention to what was transpiring before he was attacked, the evidence would negate the existence of treachery.

Time and again, we have held that the attack on the victim who has just awakened or roused from sleep is one attended by treachery.[34] There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. There is treachery if the victim, when killed, was sleeping or had just awakened, because in such situation, the victim was in no position to put up any form of defense.[35] These must have explained the multiple stab wounds found on the body of Ricardo and the person of Evelyn.

It has been established in this case that when the successive attacks were made, the victims (Evelyn and Ricardo) have just been roused from sleep as a result of the appellant's incursion. They were caught in a position where they could not repel any attack upon their very persons. As aptly observed by the appellate court:

Records of this case show that both of accused-appellant's victims were in their respective bedrooms sleeping prior to the attack. Ricardo and her daughter, Evelyn, were thus not given the option to defend themselves against the sudden and unexpected aggression of accused-appellant, whom they have known and trusted for years prior to the incident. They had no idea and could not have foreseen the deadly assault upon their persons.[36]

Appellant's mere unexpected and unauthorized intrusion into the room of Evelyn while the latter was asleep already constituted treachery.[37]

Lest it be overlooked, Evelyn was brutally attacked from behind, as she was shouting for help and attempting to flee from the lustful and violent appellant. And the attack on the newly-awaken Ricardo was made when the latter came out from his room to check on the commotion. Given the prevailing circumstances at the time, Ricardo could not have readily prepared himself against the sudden and unexpected onslaught by his boarder for six years and whose brother was betrothed to his own daughter.

As a final consideration, intoxication, as correctly held by the appellate court, is not mitigating in the present case. Appellant has not proved it to be so, and is antithetical to his defense of denial/alibi. Since he has claimed to be unconscious when the brutal incidents happened, he could not properly claim intoxication as a mitigating circumstance. For sure, appellant never claimed to have become unconscious because of intoxication.

Intoxication or drunkenness is mitigating if not habitual nor intentional, and it must be indubitably proved (Art. 15, Revised Penal Code; *People v. Camano*, 115 SCRA 688 [1982]). Accused-appellant is not entitled to the mitigating circumstance of intoxication merely on the declaration of the prosecution witness that appellant was drunk (Exh. D, Original Record, page 151). Accused-appellant must prove that such intoxication is not habitual nor intentional. This he failed to do, for the reason that the accused-appellant's defense was that of alibi.[38]

The penalty for murder is reclusion perpetua to death under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, which act took effect on December 31, 1993.[39] Since there are no aggravating or mitigating circumstances, appellant should suffer the lesser penalty of reclusion perpetua for the murder of Ricardo Ampaya.

For the crime committed against Evelyn Ampaya, which we affirm to be frustrated murder under Art. 250 of the Revised Penal Code, as amended, the same is punishable by the penalty one degree lower than that prescribed for the crime of consummated murder, which is reclusion temporal, with a range of from 12 years and 1 day to 20 years. The maximum of the indeterminate penalty should be taken from reclusion temporal, which is the penalty for the crime taking into account any modifying circumstance in the commission of the crime. The minimum of the indeterminate penalty shall be taken from the full range of prision mayor which is one degree lower than reclusion temporal. Since there is no modifying circumstance in the commission of frustrated murder, the sentence imposed by the trial court, as affirmed by the appellate court, which is nine (9) years of prision mayor as minimum, to fifteen (15) years of reclusion temporal as maximum, is within the foregoing range.

We likewise affirm the appellate court's findings with respect to the appellant's civil liability in the two cases. The grant of P25,000.00 as temperate damages to Evelyn Ampaya is in accord with our ruling in *People v. Abrazaldo*[40] as amplified and modified in *People v. Villanueva*,[41] that when the actual damages proven by receipts during the trial amount to less than P25,000, as in this case, the award of temperate damages for P25,000 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds P25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.

WHEREFORE, the assailed decision of the CA in CA-G.R. CR No. 00457 is AFFIRMED in all respects.

Costs against the accused-appellant.

SO ORDERED.

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

- [1] Rollo, p. 13.
- [2] Id. at 15.
- [3] Id. at 34-46.
- [4] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Edgardo P. Cruz and Sesinando E. Villon, concurring; id. at 168-169.
- [5] *People v. Delmendo*, G.R. No. L-32146, November 23, 1981, 109 SCRA 350.
- [6] Rollo, pp. 106-109.
- [7] Id. at 109-111.
- [8] TSN, December 11, 2002.
- [9] Id.
- [10] Id.; Accused-Appellant's Brief, pp.6-7; rollo, pp. 69-70.
- [11] TSN, October 5, 2000, p. 4.
- [12] Accused-Appellant's Brief in the Supreme Court, p. 8; rollo, p. 71.
- [13] TSN, December 11, 2002.
- [14] Supra note 5.
- [15] G.R. No. 114268, May 31, 1995, 244 SCRA 633.
- [16] TSN, October 5, 2000.
- [17] *People v. Caabay*, G.R. Nos. 129961-62, August 25, 2003, 409 SCRA 486.
- [18] *People v. Umadhay*, G.R. No. 119544, August 3, 1998, 293 SCRA 545.
- [19] *People v. Baltazar*, G.R. No. 143126, July 31, 2003, 407 SCRA 542 citing *People v. Peralta*, G.R. No. 131637, March 1, 2001, 353 SCRA 329; *People v. Lovedorial*, G.R. No. 139340, January 17, 2001, 349 SCRA 402.
- [20] *People v. Aquinde*, G.R. No. 133733, August 29, 2003, 410 SCRA 162.
- [21] TSN, July 10, 2001.
- [22] TSN, May 22, 2001.
- [23] *People v. Cajurao*, G.R. No. 122767, January 20, 2004, 420 SCRA 207.
- [24] *People v. Simon*, G.R. No. 130531, May 27, 2004, 429 SCRA 330.
- [25] Exhibit "I."
- [26] Exhibits "B," "C," "D," "E," "P," "Q," and "R"; TSN, August 24, 2000 and April 24, 2002.
- [27] *People v. Gutierrez*, G.R. No. 142905, March 18, 2002, 379 SCRA 395.
- [28] See *People v. Villablanca*, G.R. No. 89662, October 1, 1999, 316 SCRA 13.
- [29] *Antonio v. Court of Appeals*, G.R. No. 100513, June 13, 1997, 273 SCRA 328.

[30] G.R. No. 131479, November 19, 1999, 318 SCRA 649.

[31] Id. at 664.

[32] TSN, May 22, 2001.

[33] People v. Parcia, G.R. No. 141136, January 28, 2002, 374 SCRA 714.

[34] People v. Abolidor, G.R. No. 147231, February 18, 2004, 423 SCRA 260; People v. Delmindo, G.R. No. 146810, May 27, 2004, 429 SCRA 546; People v. Fernandez, G.R. No. 134762, July 23, 2002, 385 SCRA 38.

[35] See People v. Abolidor, *supra*.

[36] Rollo, pp. 163-164.

[37] See People v. Gaspar, *supra* at 672.

[38] People v. Ventura, G.R. No. 90015, April 10, 1992, 208 SCRA 55.

[39] Echegaray v. Secretary of Justice, G.R. No. 132601, October 12, 1998, 297 SCRA 754.

[40] G.R. No. 124392, February 7, 2003, 397 SCRA 137.

[41] G.R. No. 139177, August 11, 2003, 408 SCRA 571.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.