

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WILSON LOPEZ, VICTORINO CRUZ @ BONG MADAYAG AND FELIPE
MAGLAYA, JR., ACCUSED-APPELLANTS.**

G.R. No. 176354. August 03, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

On appeal is the February 16, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. C.R.-H.C. No. 00527 which affirmed with modification the Decision[2] rendered by Branch 46 of the Regional Trial Court (RTC) of San Jose, Occidental Mindoro, finding appellants Wilson Lopez, Victorino Cruz alias "Bong Madayag" and Felipe Maglaya, Jr. guilty beyond reasonable doubt of the crime of murder.

On August 4, 1997, an Information[3] for the crime of murder was filed against appellants. The accusatory portion of the Information reads:

That on or about the 28[th] day of June, 1997 at around 7:40 in the evening, in Barangay Bagong Sikat, Municipality of San Jose, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with guns, with intent to kill and with treachery and abuse of superior strength, conspiring and confederating together with four others whose true names and identities are still unknown, did then and there willfully, unlawfully and feloniously, attack, assault and shoot with the said weapons one Melchor Tabora, Sr. thereby inflicting upon the latter serious wound which caused his untimely death.

CONTRARY TO LAW.

When arraigned, appellants, with the assistance of counsel, entered their respective pleas of not guilty.[4] Trial on the merits then ensued.

Based on the narration of witnesses, the facts are summed up as follows:

In the evening of June 28, 1997, between 7:30 to 8:00 p.m., four (4) armed men entered the Tabora compound in Barangay Bagong Sikat, San Jose, Occidental Mindoro. The security guards on duty, Jesus Cornejo and Johnny Baylosis, were having dinner at the buying station of the rice mill located within the compound when the armed men passed through the small door of the main gate. The intruders were wearing dark pants and jackets with dark bonnets covering their faces with opening holes for their eyes and mouth. The security guards noticed that one (1) of them was carrying an armalite rifle and another, a .45 caliber pistol.[5]

Upon entering the Tabora compound, two (2) men pointed their guns at the security guards and ordered them to lie face down. Their hands and feet were tied with a nylon cord, their mouths covered with masking tape, and their service firearms were confiscated. Then, the other two (2) men arrived and watched over the security guards. Before proceeding to the main house, one (1) of the intruders switched off the fluorescent light at the buying station. Shortly afterwards, the security guards heard a commotion coming from the kitchen. Col. Melchor Tabora

shouted "Guard! Guard!" and a few seconds later, a gun was fired. Witnesses Gregorio Reyno, Irene Barbosa, Mirasol Fernandez, Ronnie Cabangisan, Dina Dela Torre, Salvacion Cercidillo and Corazon Tabora, the widow of the late Col. Tabora, also heard the shouts of Col. Tabora, as well as the gunshot.[6]

Salvacion Cercidillo, a house helper of the Taboras, testified that she was at the compound's kitchen at around 8:00 p.m. of that fateful evening. Col. Tabora had just finished picking his teeth and was about to enter the main house when two (2) armed men wearing bonnets came and followed him. As Col. Tabora was retreating to the house, he closed the door leading to the main house where the housemaid was hiding, then exited through the opposite kitchen door. Col. Tabora proceeded outside toward the main gate. He called out "Guard! Guard!" as he kicked the two (2) men. Then, the witnesses heard a single gunshot.[7]

Soon after the gunshot was heard, witnesses Gregorio Reyno, Irene Barbosa and Ronnie Cabangisan saw four (4) men in dark pants and dark jackets, one (1) in camouflage, with their bonnets rolled up to their foreheads, coming out of the gate of the Tabora compound. They identified three (3) of the men as appellants Wilson Lopez, Victorino Cruz alias Bong Madayag, and Felipe Maglaya, Jr. The witnesses, together with Mirasol Fernandez, saw appellants and their unidentified companion walking fast along the concrete fence of the Tabora compound, with their bonnets rolled up to their foreheads. The four (4) men proceeded to the direction of Masagana A Street, passing by the Medalla School, the Camus residence, the Reyno Rice Mill, and the Parilla residence. The witnesses recognized Victorino Cruz alias Bong Madayag as the one (1) carrying a long firearm held parallel to his body. Witnesses Barbosa and Cabangisan identified Wilson Lopez as the one (1) in camouflage, while Mirasol Fernandez was able to recognize Felipe Maglaya, Jr.[8]

Responding to a call from security guard Jesus Cornejo, police operatives from the San Jose Municipal Police Station, led by Major Winston Ebersole, hurried to the Tabora residence. In the course of their investigation conducted at the crime scene, the police officers were able to recover the following: three (3) pieces yellow-orange nylon cord, measuring about one (1) yard each; one (1) blue colored bull cap marked "American Birkerreiner XII Volunteer"; one (1) piece soft leather black holster for a .45 caliber firearm; one (1) gray colored packing tape measuring approximately seven (7) inches long by two (2) inches wide; and one (1) piece caliber 5.56 mm empty cartridge found near the spot where Col. Tabora's dead body was found.[9]

Firearms Examiner Gerardo Umayao of the Philippine National Police Crime Laboratory, Region IV, Camp Vicente Lim, examined the caliber 5.56 mm empty cartridge, which was subjected to ballistic examination. His findings revealed that it was a cartridge from a caliber M-16 armalite rifle.[10]

Dr. Edwin P. Sulit, Medical Officer III of the San Jose District Hospital, conducted the post-mortem examination on the victim. He declared in the death certificate of the late Col. Tabora that the latter died of gunshot wounds. He also certified that there were two (2) wounds found on the body of the victim, to wit:

- (a) the entry wound which he described as "0.5 x 0.25cms. oval deformity (wound) with collar contusion, located 3.0 cms. above the nipple, 1.0 cm. medial to the nipple right chest xxx"; and
- (b) the exit wound which the doctor described as "0.75 cm x 0.5 cm. irregular deformity (wound) located at the back, left, posterior axillary line at the level of 10[th] ICS." [11]

On November 17, 2000, a decision was promulgated by the RTC, finding appellants guilty beyond reasonable doubt of murder, to wit:

WHEREFORE, in the light of all the foregoing, the Court finds the accused WILSON LOPEZ, VICTORINO CRUZ @ BONG MADAYAG and FELIPE MAGLAYA, JR., GUILTY BEYOND REASONABLE DOUBT, of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, and Section 6 of Republic Act No. 7659, otherwise known as the Death Penalty Law, and are hereby sentenced to suffer the

supreme penalty of DEATH.

The three (3) accused are hereby ordered to indemnify, jointly and severally, the heirs of MELCHOR TABORA SR. in the amount of SEVENTY FIVE THOUSAND PESOS (P75,000.00) and to furthermore pay said heirs the amount of ONE MILLION PESOS (P1,000,000.00) as moral damages.

The Provincial Warden is hereby directed to cause the immediate transfer of the three (3) accused from the Provincial Jail at Magbay, San Jose, Occidental Mindoro to the New Bilibid Prisons, Muntinlupa City, Metro Manila.

SO ORDERED.[12]

Initially, this case was brought to this Court for review and docketed as G.R. No. 146571. However, in a Resolution[13] dated October 12, 2004, the case was transferred to the CA for intermediate review, consistent with its ruling in *People v. Mateo*. [14]

On February 16, 2006, the appellate court rendered the assailed Decision affirming appellants' conviction but reduced the penalty from death to reclusion perpetua.

The dispositive portion of the Decision of the CA reads:

WHEREFORE, in view of the foregoing, we hereby AFFIRM the Regional Trial Court's decision convicting accused-appellants Wilson Lopez, Victorino Cruz alias Bong Madayag and Felipe Maglaya, Jr. of the crime of murder in Criminal Case No. R-4221 with the following MODIFICATIONS:

- In lieu of the death penalty which the RTC imposed, the accused-appellants are sentenced to suffer the penalty of reclusion perpetua.
- The appellants shall solidarily pay the heirs of Melchor Tabora, Sr. the sum of P50,000.00 as civil indemnity, P25,000.00 as temperate damages and P25,000.00 as exemplary damages.
- The trial court's award of [P1,000,000] as moral damages is reduced to P50,000.00

SO ORDERED.[15]

Hence, the present appeal.

On March 14, 2007, this Court accepted the appeal and directed the parties to file their respective supplemental briefs. On June 18, 2007, the Office of the Solicitor General, for the appellee, manifested that it is adopting its Brief before the appellate court as its supplemental brief. Appellants, for their part, failed to file their supplemental brief despite the extension given to them. Thus, they are deemed to have adopted their brief before the appellate court.

In their brief,[16] appellants assigned the following errors allegedly committed by the trial court:

I

THE TRIAL COURT COMMITTED A SERIOUS AND GRAVE REVERSIBLE ERROR IN HOLDING THE HEREIN ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE ABSENCE OF EVIDENCE BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT COMMITTED A SERIOUS AND GRAVE REVERSIBLE ERROR IN NOT ACQUITTING THE HEREIN ACCUSED-APPELLANTS OF THE CRIME CHARGED.

III

THE TRIAL COURT COMMITTED A SERIOUS AND GRAVE REVERSIBLE ERROR IN HOLDING THAT TREACHERY ATTENDED THE KILLING OF THE LATE COL. TABORA.

IV

THE TRIAL COURT COMMITTED A SERIOUS AND GRAVE REVERSIBLE ERROR IN HOLDING THAT ABUSE OF SUPERIOR STRENGTH ATTENDED THE KILLING OF THE LATE COL. TABORA.

V

THE TRIAL COURT COMMITTED A SERIOUS AND GRAVE REVERSIBLE ERROR IN ORDERING THE HEREIN ACCUSED-APPELLANTS TO INDEMNIFY JOINTLY AND SEVERALLY THE HEIRS OF THE LATE MELCHOR TABORA, SR. IN THE AMOUNT OF SEVENTY-FIVE THOUSAND PESOS (P75,000.00).

VI

THE TRIAL COURT COMMITTED A SERIOUS AND GRAVE REVERSIBLE ERROR IN ORDERING THE HEREIN ACCUSED-APPELLANTS TO PAY THE HEIRS OF THE LATE MELCHOR TABORA, SR. THE AMOUNT OF ONE MILLION PESOS (P1,000,000.00) AS MORAL DAMAGES.[17]

Essentially, appellants submit that the prosecution failed to prove their guilt beyond reasonable doubt. They argue that the prosecution witnesses failed to positively identify them as the culprits of the crime. They also contend that there was total absence of evidence to show that they attacked and killed the victim. They insist that the prosecution failed to show that they were inside the Tabora compound on the date and time in question. Thus, they implore us to acquit them.

The appeal has no merit.

After a thorough evaluation and scrutiny of the evidence on record, we arrive at the conclusion that the guilt of appellants of the crime charged was established beyond reasonable doubt.

Well settled is the doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction. In fact, in some instances, such findings are even accorded finality. This is so because the assignment of value to a witness' testimony is essentially the domain of the trial court, not to mention that it is the trial judge who has the direct opportunity to observe the demeanor of a witness on the stand, thus providing him unique facility in determining whether or not to accord credence to the testimony or whether the witness is telling the truth or not.[18]

In the present case, both the RTC and the CA found the testimonies of the prosecution witnesses to be convincing. Witnesses Cornejo and Baylosis, the security guards on duty, narrated that the armed men who entered the Tabora compound were wearing dark pants and jackets with dark bonnets. They were armed with an armalite rifle and a .45 caliber pistol. Two (2) men went to the kitchen of the Tabora residence and the guards heard a commotion. Col. Tabora shouted "Guard! Guard!" and a single gunshot was heard. Meanwhile, in her testimony, Cercidillo stated that Col. Tabora was about to enter the main house when two (2) armed men wearing bonnets arrived, pointing their guns at him. Col. Tabora called out "Guard! Guard!" as he kicked the two (2) men. She also heard the gunshot. Likewise, witnesses Gregorio Reyno, Irene Barbosa and Ronnie Cabangisan affirmed that they saw four (4) men wearing dark pants and dark jackets with their bonnets rolled up to their foreheads, coming out of the

Tabora compound. Three (3) of the men were positively identified by the witnesses as appellants Wilson Lopez, Victorino Cruz and Felipe Maglaya, Jr. Taken in their entirety, we find the testimonies of the prosecution witnesses to be credible and consistent with each other, and therefore, must be given full faith and credence.

Although no one (1) witnessed the actual killing of Col. Tabora, this Court should emphasize that direct evidence is not the sole means of establishing guilt beyond reasonable doubt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction. Indeed, rules on evidence and principles in jurisprudence have long recognized that the accused may be convicted through circumstantial evidence.[19]

Section 4 of Rule 133 of the Rules of Court provides:

SEC. 4. Circumstantial evidence, when sufficient.â”€ Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proved must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with the accused's innocence.[20] The circumstantial evidence must exclude the possibility that some other person has committed the offense.

Here, the appellate court considered the following circumstances to establish an unbroken chain of events pointing to the logical conclusion that appellants killed the victim:

- Security guard Jesus Cornejo testified that the four-armed men who entered the compound were wearing dark clothings and bonnets over their faces. One of the men was carrying an Armalite rifle while another had a .45 caliber pistol.
- The housemaid Salvacion Cercidillo saw two armed men wearing black bonnets approach and point their guns at the victim who called the guards and kicked the armed men.
- The prosecution witnesses inside the compound (Cornejo, Cercidillo and Mrs. Tabora) and outside the compound (Reyno, Barbosa, Fernandez and Cabangisan) heard the victim shout the words, "Guardia, guardia" followed by a lone gunshot.
- Cornejo testified that after the gunshot, the four armed men left through the compound's gate.
- A few minutes after the commotion inside the compound and after the gunshot, prosecution witnesses Reyno, Barbosa, Fernandez and Cabangisan saw four men leave the Tabora compound.
- Reyno identified accused-appellants Wilson Lopez, Victorino Cruz and Felipe Maglaya, Jr. as three of the men who went out of the compound. Victorino Cruz was carrying a long firearm.
- Barbosa identified accused-appellants Wilson Lopez and Felipe Maglaya, [Jr.] as two of the men who exited the compound.
- Fernandez identified accused-appellant Felipe Maglaya, Jr. as one of the men who went out of the compound.

- Cabangisan identified accused-appellants Wilson Lopez, Victorino Cruz and Felipe Maglaya, Jr. as three of the men who went out of the compound. Victorino Cruz was carrying a long firearm.
- Police investigation revealed that the cal. 5.67 mm empty cartridge found at the scene of the crime was fired from an M-16 armalite rifle.
- Dr. Sulit testified that the victim sustained two wounds, with the first wound located on the right side of the chest (entry point of the bullet) and the second wound located at the back (the exit wound). He said that a gunshot caused the wounds and the hematoma surrounding the wounds.[21]

Thus, while no one (1) directly saw appellants shoot the victim, the Court is satisfied that the circumstantial evidence in this case constituted an unbroken chain that leads to the logical conclusion that appellants were guilty of the murder of Col. Tabora. The combination of the circumstances is such as to leave no reasonable doubt as to their guilt; hence, appellants' conviction based on circumstantial evidence is justified.

Appellants advance the defense of alibi. To bolster their claim of alibi, appellant Wilson Lopez denied having gone to the place of the late Col. Tabora in the evening of June 28, 1997. He claimed that on said date, he was at the house of his employer Unison Madayag, with a boy named Nonoy and a cousin of Madayag named Neneng. According to Lopez, he only learned of the death of Col. Tabora the following morning when he noticed several vehicles parked in front of the victim's house. Meanwhile, appellant Felipe Maglaya, Jr. asserted that he was working in Darasa, Tanauan, Batangas and only came back to San Jose on August 9, 1997. For his part, appellant Victorino Cruz maintained that on June 28, 1997, he was in Manila with his mother to secure their passports. They also went to the U.S. Embassy to get some papers and returned to Mindoro only on July 31, 1997.

However, this Court has time and again, held that to be believed, an alibi must be supported by the most convincing evidence, as it is an inherently weak argument that can be easily fabricated to suit the ends of those who seek its recourse.[22] Alibi must be supported by credible corroboration from disinterested witnesses, otherwise it is fatal to the accused. Further, for alibi to prosper, appellants must prove not only that they were somewhere else when the crime was committed, but also that it was physically impossible for them to have been at the scene of the crime or within its immediate vicinity.[23] In the present case, appellants' alibi was corroborated by their relatives and friends who may not have been impartial witnesses. They likewise failed to show that it was physically impossible for them to have been at the scene of the crime at the time of its commission.

Moreover, the alibi resorted to by appellants is worthless in the face of the categorical testimony and positive identification by the prosecution witnesses, who did not have any reason to falsely testify against appellants. Admittedly, the witnesses for the prosecution had no grudge against appellants. Appellants failed to show that the witnesses were actuated by ill motive to testify falsely against them. Where there is no showing of any improper motive on the part of the prosecution witness to testify falsely against an accused, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence.[24]

Jurisprudence teems with pronouncements that between the categorical statements of the prosecution witnesses, on the one hand, and the bare denial of appellants, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative one, especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable, but also because they are easily fabricated and concocted.[25]

As regards the qualifying circumstance of treachery, appellants contend that the prosecution failed to present any evidence to show that the gunmen consciously and deliberately adopted the execution of the crime committed. We

however agree with the trial court in appreciating treachery as a qualifying circumstance. As we have consistently ruled, 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 to ensure its execution without risk to himself arising from the defense that the offended party might make. Two conditions must concur for treachery to exist, namely, (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate and (b) the means or method of execution was deliberately and consciously adopted.[26]

In the case at bar, the attack on the victim was deliberate, sudden and unexpected. Appellants, who were armed, surreptitiously and without warning, entered the Tabora compound and hogtied the security guards. Two (2) of them guarded the security guards to ensure that they could not aid the victim while one (1) switched off the light at the post to prevent discovery. Thereafter, two (2) of the armed men went after the victim. The victim who was unarmed, alone and confident in the security of his guarded home, was definitely not in the position to defend himself against his assailants. Contrary to appellants' contention, treachery may still be appreciated even when the victim was immediately forewarned of the danger to his person. What is decisive is that the execution of the attack made it possible for the victim to defend himself or to retaliate. The number of the accused, their use of weapons (an M-16 armalite rifle and a .45 caliber gun) against the unarmed victim, the previous attack and neutralization of the guards, and the timing of the attack preclude the possibility of any defense by the victim. These circumstances indicate that appellants employed means and methods which tended directly and specially to ensure the execution of the offense without risk to themselves arising from the defense that the victims might make. Hence, treachery was correctly appreciated by the trial court.

Under Article 248[27] of the Revised Penal Code, as amended, the penalty imposed for the crime of murder is reclusion perpetua to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellants is reclusion perpetua, pursuant to Article 63, paragraph 2, of the said Code.

A word on the award of damages.

When death occurs due to a crime, the following may be recovered: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[28] In murder, the grant of civil indemnity, which has been fixed by jurisprudence at P50,000.00, requires no proof other than the fact of death as a result of the crime and proof of an accused's responsibility therefor.[29] Thus, the civil indemnity of P50,000.00 awarded to the heirs of the victim is in order.

We also sustain the award of P50,000.00 as moral damages to the heirs of the victim in view of the latter's violent death. These do not require allegation and proof of the emotional sufferings of the heirs.[30] Finally, the award in the amount of P25,000.00, as temperate damages and the amount of exemplary damages are also in order considering that the crime was attended by the qualifying circumstance of treachery.[31] The amount of exemplary damages, however, must be increased to P30,000.00 pursuant to prevailing jurisprudence.[32]

WHEREFORE, the appeal is DISMISSED. The assailed Decision of the Court of Appeals in CA-G.R. C.R.-H.C. No. 00527 is AFFIRMED with MODIFICATION. The amount of exemplary damages is increased to P30,000.00.

SO ORDERED.

Carpio Morales, (Chairperson), Peralta,[*] Bersamin, and Abad,[**] JJ., concur.

[*] Designated additional member per Raffle of July 1, 2010 in view of the recusal of Associate Justice Arturo D.

Brion who penned the assailed Decision.

[**] Designated additional member per Special Order No. 843 dated May 17, 2010.

[1] Penned by Associate Justice Arturo D. Brion (now a member of this Court), with Associate Justices Bienvenido L. Reyes and Mariflor P. Punzalan Castillo concurring; rollo, pp. 3-32.

[2] CA rollo, pp. 47-110. Penned by Judge Ernesto P. Pagayatan.

[3] Records, p. 1.

[4] Id. at 42.

[5] TSN, September 3, 1997 (Afternoon session), pp. 4-5; TSN, September 4, 1997, pp. 11-12.

[6] TSN, August 8, 1997, pp. 9-10; TSN, August 11, 1997, pp. 14-15 and pp. 52-53; TSN, September 3, 1997 (Afternoon session), pp. 5-7; TSN, September 4, 1997, pp. 4-12; TSN, September 3, 1997 (Morning session), pp. 4-5; TSN, March 18, 1998, pp. 7, 12; TSN, October 10, 1997, pp. 18, 23, 35-38.

[7] TSN, September 4, 1997, pp. 4-12.

[8] TSN, August 8, 1997, pp. 11-13, 23-24 and 32-37; TSN, August 11, 1997, pp. 16-19; TSN, September 2, 1997, pp. 25-27; TSN, September 3, 1997 (Morning session), pp. 7-12.

[9] TSN, October 6, 1997, pp. 17-20; records, p. 194.

[10] TSN, November 20, 1997, pp. 9-10.

[11] TSN, October 6, 1997, pp. 4-7, 12-14; records, p. 193.

[12] CA rollo, pp. 109-110.

[13] Id. at 301.

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

[15] Rollo, p. 31.

[16] CA rollo, pp. 131-183.

[17] Id. at 135-136.

[18] *Lascano v. People*, G.R. No. 166241, September 7, 2007, 532 SCRA 515, 523-524.

[19] *People v. Murcia*, G.R. No. 182460, March 9, 2010, p. 8.

[20] *Aoas v. People*, G.R. No. 155339, March 3, 2008, 547 SCRA 311, 318.

[21] Rollo, pp. 22-23.

[22] *People v. Cantere*, 363 Phil. 468, 479 (1999).

[23] *People v. Delim*, G.R. No. 175942, September 13, 2007, 533 SCRA 366, 379.

[24] See *Velasco v. People*, G.R. No. 166479, February 28, 2006, 483 SCRA 649, 668; *People v. Nicolas*, G.R. No. 137782, April 1, 2003, 400 SCRA 217, 224.

[25] *People v. Baniega*, 427 Phil. 405, 418 (2002); see *People v. Ramos*, G.R. No. 125898, April 14, 2004, 427 SCRA 207.

[26] *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 474.

[27] 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:

1. With treachery, x x x.

[28] *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 699.

[29] *People v. Manchu*, G.R. No. 181901, November 28, 2008, 572 SCRA 753, 765.

[30] *People v. Tolentino*, supra at 700; see *People v. Balais*, G.R. No. 173242, September 17, 2008, 565 SCR 555, 571.

[31] *People v. Tolentino*, supra at 701.

[32] *People v. Gutierrez*, G.R. No. 188602, February 4, 2010, p. 11.

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