

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CASTOR BATIN, ACCUSED-APPELLANT.

*G.R. No. 177223. November 28, 2007*

Ponente: CHICO-NAZARIO, J.

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### CHICO-NAZARIO, J.:

We are reviewing herein the Decision[1] of the Court of Appeals dated 6 February 2007, in CA-G.R. CR HC No. 01396, affirming the Decision of the Regional Trial Court (RTC) of Quezon City, convicting father and son, Castor and Neil Batin, of the crime of murder. The conviction was for the killing of one Eugenio Refugio, who was shot in the afternoon of 21 October 1994, while he was leaning against a mango tree near his house on St. Peter Street, San Paolo Subdivision, Nagkakaisang Nayon, Novaliches, Quezon City.

The Information[2] against Castor and Neil Batin was filed by the Office of the City Prosecutor of Quezon City on 11 April 1995, alleging as follows:

That on or about the 21st day of October, 1994, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping each other, did, then and there, wilfully, unlawfully and feloniously, with intent to kill, with treachery, taking advantage of superior strength, and with evident premeditation, attack, assault and employ personal violence upon the person of one EUGENIO REFUGIO y ZOSA, by then and there shooting him with a handgun, hitting him on the right side of his stomach, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Eugenio Refugio y Zosa, in such amount as may be awarded under the provisions of the Civil Code.

Castor and Neil Batin entered pleas of not guilty.

The prosecution, presented as its witnesses Eusebio Farrales, Vilma Juadinez Rodriguez, Florante Baltazar, Josephine Refugio, PO3 Marifor Segundo and Police Inspector Solomon Segundo, offered the following version of the facts, as summarized by the trial court:

Eugenio's wife, Josephine Refugio, was with him when he was shot, facing him as he leaned against the mango tree and, in fact, had her arms resting on his shoulders. She recalled that before the shooting, she was at home at No. 4-A St. Peter Street that afternoon when, looking out of the window, she caught sight of Castor Batin washing his feet at a nearby faucet. Castor was angrily muttering, and she distinctly heard him say, among the other things he said: "Mga matatandang kunsintidor, dapat manahimik na." Then, being through with washing himself, Castor moved towards the street. Seeing this, she went down and also went to the street because of a feeling of uneasiness ("Para po akong kinakabahan, kasi, ganoon naman ang ginagawa nila lagi, eh, pag nalalasing"). Finding her husband leaning against the mango tree on the side of St. Peter Street, she went to him. She tried to talk Eugenio into going home with her because Castor was again into one of his wild ways ("Nagwawala na naman, daldal ng daldal"). As he was talking with Eugenio, she glanced to her left and saw Neil Batin standing at the gate to their (Batins') compound, looking towards her and her husband. A few moments later, Neil went to one of the parked cars, opened its door, and took a gun from inside. She next noticed Castor going towards Neil as the latter stood at the side of the car and shouting: "Huwag!" Castor

grabbed the gun from Neil. After the gun was taken from him, Neil just proceeded towards the right rear of the car. Castor followed Neil and handed the gun back to him.

When she shifted her glance from the Batins, Josephine heard Castor ordering his son: “Sige, banatan mo na.” Neil responded by drawing the gun from his waistline, raising and aiming it at her and her husband, and firing twice from his eye-level. Both Josephine and Eugenio fell to the ground, the former, backwards, and the latter landing on top of her. As they tried to get up, Eugenio uttered to her: “Nanay, may tama ako.” She then pulled her husband by the shoulder of his shirt so that she could take him to their house as he was already slumped to the right. She later rushed her husband to the Quezon City General Hospital, where he underwent surgery, but later expired.

Other eyewitnesses from the neighborhood were presented and they substantially corroborated her testimonial account.

One of them, Eusebio Farrales, a resident of No. 7 St. Paul Street, in relation to which St. Peter Street was perpendicular, recalled being at the barangay outpost near the corner of St. Peter Street and St. Paul Street between 3:00 and 3:30 pm of the afternoon of October 21, 1994 – engaged in the clearing of the debris of the recent typhoon – when he heard someone cursing and challenging to a fight. Walking towards St. Peter Street where the voice came, he saw that it was Castor. He also saw other neighbors, namely, Eugenio, Josephine, and Eugenio’s mother, Emilia Refugio. According to Farrales, Castor was moving aimlessly for around five minutes (“Walang direktion at pa-ikot ikot lang siya doon”) while cussing: “Putang ina ninyo, sino ang matapang lumabas.”

Farrales stated that a white car and a white-and-yellow colored taxicab were parked on the side portion of the street fronting the gate to the compound of the Batins and near where Eugenio and Josephine stood. Emilia, the mother of Eugenio, then came towards him, but he advised her to seek assistance from the barangay tanod. After Emilia proceeded towards St. Paul Street to do so, Neil came out through the gate, opened the door of the white car, took out a gun from inside, and handed the gun to Castor, but the latter returned the gun to Neil. Upon getting back the gun, Neil reentered the yard through the gate.

Farrales asserted that in the meanwhile Eugenio remained leaning against the mango tree with Josephine facing him and her arms resting on his shoulders. They were in this position when Neil again came out through the gate a few moments later and proceeded to the right side of the car, still holding the handgun. From there, Neil fired twice at the Refugios. The Refugios both fell to the left of the mango tree. Farrales saw both Castor and Neil quickly enter the compound. At that point, Farrales decided to run home in order to summon Alfredo Dizon, his tenant, who was a police officer because he feared that the Batins might escape from the scene by car.

Farrales and Dizon lost no time in going to the place of the Batins. After Dizon talked with Castor at the gate of the latter’s compound, the latter entered the house of his nephew, Ricky Basilio, which was beside Castor’s own house. A few moments later, Castor came out of Basilio’s house to let Dizon in through the gate. It was about this time that the responding police officers arrived at the scene. The victim had been rushed to the hospital immediately.

Another neighbor, Vilma Juadines Rodriguez, resident of No. 7-A St. Peter Street, declared that while she was at home taking care of her baby at between 3:00 and 3:30 pm of October 21, 1994, she heard someone challenging others to a fight; that looking out of her window (“dungaw”), she saw that it was Boy Batin – Castor – and he was then walking about on St. Peter Street; that just then, her child cried, and so she went to him; that upon returning to the window to call her other child, she saw Castor hand over a handgun to Neil, and the latter thereafter entered through their gate; that she next saw Neil load bullets into the gun and then tucking it in his right waistline; that after loading, Neil went out to the street, went between the parked white car and yellow taxicab, aimed the gun at Eugenio and Josephine who were at the mango tree, and then asked Castor: “Tay, banatan ko na?”; that Castor replied: “Sige, anak, banatan mo na.” that, at that instant, Neil fired two

shots; that as she went down to get her other child upon hearing the gunshots, she heard Josephine say: “Tay, may tama ka”; that she later reentered her house; and that she knew that Eugenio died afterwards.

Although Eugenio was rushed to the Quezon City General Hospital right after the shooting and was operated on, he expired the next day. His remains were properly identified in writing by his brother, Tito Eugenio.[3]

The medico-legal officer of the PNP Crime Laboratory Service, Dr. Florante Baltazar, conducted an autopsy on Eugenio’s remains. In his Medico-Legal Report No. M-1715-94,[4] he indicated that Eugenio sustained one gunshot wound, which was, however, fatal, because “it went slightly upward, slightly anteriorward from the right to the left of the body, fracturing the right to [the] left [of the] thoracic region, lacerating the right lumbar region.” Dr. Baltazar made the certification as to the cause of death in the death certificate.[5]

Upon a written request[6] from the Novaliches Police Station, Quezon City, Police Inspector Solomon Segundo, Chief of the Firearms Identification Branch of the Central Crime Laboratory, Northern Police District Command, Quezon City, conducted the ballistics examination to ascertain whether or not the bullet recovered from the victim was fired from the specimen firearm submitted for examination. P/Insp. Segundo prepared Ballistics Report No. B-042-94,[7] wherein he certified that the bullet from the recovery box[8] and the bullet recovered from the victim’s body[9] were fired from the same specimen firearm.[10] This conclusion was arrived at after a test fire and a comparison under the bullet comparison microscope.

The defense, on the other hand, presented accused Neil Batin, Castor’s common-law wife Maricon Pantoja, and one Restituto Paller. Neil Batin’s testimony is summarized by the trial court as follows:

Neil substantially claimed that it was his responsibility to conduct his younger brothers to school and fetch them by car; that he also drove their taxicab; that it was about 7:00 o’clock in morning of October 21, 1994, while he was cleaning the family-owned taxicab, that he found a short gun (“de bola”) underneath it beside the right rear wheel; that he picked the gun and concealed it in the compartment of the taxicab; that he continued with his chore of cleaning; that as soon as he finished cleaning the taxicab, he drove the white Datsun car to Tondo to fetch his six-year old brother Mark, the son of his father with Maricon Pantoja; that Mark was a pupil at the Magat Salamat Elementary School in Tondo; that after picking up Mark, they drove to the house of his uncle, Domingo Batin, in Marulas, Valenzuela, to get his clothes from his cousin; that they arrived there at 11:00 am, and spent around two hours there; that from Marulas, they went home, arriving at St. Peter Street at around 2:30 pm; that he parked the car on the road in front of their fence; that he and Mark first entered the house to deposit Mark’s school things and later went outside to await the arrival of Mark’s mother; that his other brothers were outside; that Castor was also outside talking with a man whose name he did not know but whom he had seen thrice before as well as with Boy Iñigo in front of the latter’s house; that Iñigo’s house was 15 meters from their gate; that Pantoja soon arrived at around 2:45 pm; that he continued talking and playing with his brothers; and that at that point he decided to take the gun from the compartment of the taxicab – then parked around 2 ½ meters away from where he and his brothers were – and tucked it in his waistline.

Having thus tucked the gun, Neil went to stand at the right rear side of the Datsun car which was parked facing the mango tree (“halos magkatapat lang po”). Maricon came out to the street at that point to ask him about the time he had fetched Mark. It was while he was standing there with the others that, according to Neil, he suddenly felt the impulse of drawing the gun from his waistline (“Bigla kong naisipang bunutin ang baril”). He thus drew the gun and turned around, but, as he did so, he accidentally pulled the trigger, causing the gun to fire twice (“Tumalikod po ako, tapos nakalabit ko, pumutok ng dalawang beses”).

Neil admitted knowing the late Eugenio Refugio and his wife Josephine because they were his neighbors with only a high wall separating their houses; but denied seeing them that afternoon beside the mango tree.

At the sound of gunfire, Castor rushed towards Neil from where he was in front of Iñigo’s house, shouting twice to his son: “Huwag!” Pantoja, for her part, forced Neil to enter the compound, where she brought him

inside the house of his aunt. Neil concealed the gun in the ceiling of the aunt's house.

Neil said that he and his father did not grapple inside the Datsun car for possession of the gun; that his father did not wrest the gun from him; that he did not enter the compound to put bullets in the gun; that his father did not order him to shoot Eugenio; and that his father was not drunk and challenging others to a fight. He insisted that he and the Refugios, with whom he was acquainted since 1987, had no misunderstandings, for he even had shared drinks with the late Eugenio before October 21, 1994.[11]

As regards the testimonies of the defense's two other witnesses, the trial court could not make an intelligible narrative of the version of the facts presented by them, considering the contradictions it found in their testimonies. The trial court found glaring Maricon Pantoja's "self-contradiction" as to where she and the accused were when Eugenio was shot. During the trial, Maricon testified that she, Neil and Castor were outside their house when Neil drew the gun and accidentally fired. However, in her affidavit,[12] she alleged that they went outside their house upon hearing a gun explosion and saw "Eugenio Refugio alone holding his stomach x x x we have no any knowledge whether he was hit by a bullet." [13]

On 8 June 1998, the trial court rendered its Decision finding both accused guilty of murder, qualified by treachery, to wit:

WHEREFORE, judgment is hereby rendered finding the accused CASTOR BATIN and NEIL BATIN guilty beyond reasonable doubt of the crime of MURDER as defined and penalized under Art. 248, Revised Penal Code, as amended, and they are hereby each sentenced to suffer reclusion perpetua; and ordered to pay the heirs of EUGENIO REFUGIO, through his wife, JOSEPHINE REFUGIO, as follows:

- 1] P50,000.00, as death indemnity;
- 2] P61,500.00, as actual damages;
- 3] P500,000.00, as moral damages;
- 4] P307,920.00, as indemnity for lost of earning capacity; and
- 5] The costs of suit.[14]

Neil and Castor Batin filed an appeal with the Court of Appeals. However, on 13 November 2000, accused Neil Batin filed an Urgent Motion to Withdraw Appeal. The People interposed no objection to the Motion, which was granted.

On 6 February 2007, the Court of Appeals rendered the assailed Decision affirming, with modification, the Decision of the trial court, to wit:

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Quezon City, Metro Manila in Criminal Case No. Q-95-61003 is hereby AFFIRMED with MODIFICATION as to civil liabilities. With the exception of the award of moral damages which is reduced to P100,000.00 and the indemnity for loss of earning capacity which is increased to P723,840.00, the awards for death indemnity and actual damages are retained.[15]

Castor Batin now comes before this Court, assigning the following errors:

## I

THE HONORABLE COURT OF APPEALS AND THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT AS PRINCIPAL FOR INDUCEMENT FOR THE CRIME CHARGED.

## II

THE HONORABLE COURT OF APPEALS AND THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TRACHERY.[16]

Castor Batin prays that the Decision of the Court of Appeals be reversed and set aside and a new one entered acquitting him of the crime charged. In the alternative, he prays that he be held liable for the crime of homicide only, arguing that the qualifying circumstance of treachery was not sufficiently stated in the Information.

Whether there was conspiracy in  
the killing of Eugenio Refugio

It is evident from Castor's Supplemental Brief and all his other issuances after the withdrawal of Neil's appeal that he had already discarded Neil's theory of accidental shooting. Instead, his arguments are geared toward his distancing himself from the act of Neil in shooting Eugenio Refugio.

We cannot, however, dispose of the discussion of Neil's theory of accidental shooting. As Neil's testimony had been the only evidence presented by the defense to rebut the prosecution's evidence concerning the acts of Castor during the incident, we should carefully scrutinize Neil's testimony to determine his credibility.

Neil claims that while his back was still turned against the Refugios, he suddenly felt the impulse to draw the gun from his waistline. He drew the gun, turned around with the gun in hand, and accidentally fired it twice without aiming it at anyone.

As held by the trial court, this account is plainly far-fetched and incredible. As observed by the trial court,

The revolver involved herein was a mechanical firearm which belonged to the so-called double-action type of guns. This type has a firing mechanism which permits two methods of firing – the first is by manually cocking or retracting the hammer and then pressing the trigger to release the hammer; the second is by applying continuous pressure on the trigger in order to cock the hammer and then releasing the trigger. The drop of the hammer by either method propels the firing pin forward so that its other end strikes the primer cap to explode the propellant charge inside the shell which then forces out the bullet through the gun barrel. From the nature of the firing mechanism of Exhibit O, and there being no evidence showing that the hammer was manually cocked before the gun fired, it was absolutely physically impossible for the gun to fire accidentally.

In order to determine for himself how much pressure was necessary to cock the hammer into firing position, the undersigned presiding judge personally tested the trigger pull of Exhibit O. Even assuming that the passage of time from the date of the shooting caused some change on the efficiency of the firing mechanism, such change can only show up by way of a weakening of the hammer spring. Nonetheless, it was not surprising for the undersigned presiding judge to find heavy resistance at each trigger pull, such that he exerted some force to cock the hammer. This actual testing easily validated the conclusion that firing the gun accidentally and unintentionally was impossible.[17]

Neil's claim that he accidentally fired the gun twice in quick succession is, thus, even more incredible. Given the difficulty of pulling the trigger to cock the hammer into firing position, it is inconceivable how the gun could have been fired by Neil twice in quick succession except by a deliberate and intentional pulling of the trigger.

Given the physical attributes and condition of the gun involved in the case at bar, the testimony of Eusebio Farrales is likewise observed to be much more credible than that of Neil. Whereas Neil claims that he accidentally fired the gun twice using only one hand, Eusebio Farrales testified that Neil fired at the Refugios while holding the gun with both hands and from a standing position.

While the maxim *falsus in uno falsus in omnibus* is not an absolute rule of law and is in fact rarely applied in

modern jurisprudence,[18] Neil's credibility has been severely tarnished by the foregoing portion of his testimony. Thus, we should likewise take with a grain of salt the following parts of his testimony which tend to refute the account of the prosecution concerning the acts of Castor during the incident: (1) that Neil and Castor did not grapple inside the Datsun car for possession of the gun; (2) that Castor did not wrest the gun from him; (3) that Neil did not enter the compound to put bullets in the gun; (4) that Castor did not order Neil to shoot Eugenio; and (5) that Castor was not drunk and challenging others to a fight.

As stated above, Castor has already discarded Neil's theory of accidental shooting and, instead, focuses on distancing himself from the act of Neil in shooting Eugenio Refugio. Castor's principal defense in this appeal is that the conviction of a person as a principal by inducement requires (1) that the inducement be made with the intention of procuring the commission of the crime; and (2) that such inducement be the determining cause of the commission by the material executor.[19]

Castor claims that there is no conclusive proof that he participated in the shooting, and that "(h)is alleged utterance of the words 'Sige, banatan mo na'" cannot be considered as the moving cause of the shooting. According to Castor, if he had wanted his son to shoot Eusebio Refugio, he would not have shouted "Huwag" and struggled for possession of the gun.

We are not persuaded.

First of all, the theory presented by the prosecution in both the Information and in their arguments before the courts is not Castor's being a principal by inducement, but rather his being a co-conspirator. If conspiracy is proven, the act of one is the act of all. As stated above, the widow, Josephine Refugio, and the neighbors -- Eusebio Farrales and Vilma Juadinez Rodriguez -- testified to the fact that Castor handed the gun to Neil and urged the latter to fire at the Refugio spouses. The trial court, whose assessment of the credibility of witnesses deserves great respect, since it had the important opportunity to observe first-hand the expression and demeanor of the witnesses at the trial,[20] found these witnesses credible, thus:

From its careful and thorough evaluation of the record, the Court finds that Castor and Neil conspired in shooting Eugenio. This finding is inexorable because the testimonies of the Prosecution witnesses -- that Castor returned the gun back to Neil; that he instigated Neil to shoot by shouting: "Sige, banatan mo na"; and that Neil then fired his gun twice -- were credible and sufficed to prove Castor's indispensable cooperation in the killing of Eugenio. Accordingly, Castor was as much liable criminally for the death of Eugenio as Neil, the direct participant in the killing, was.

The reliability of witnesses Farrales and Rodriguez, for one, cannot be doubted. Being the neighbors of both the Batins and the Refugios, their claim of witnessing the events that culminated into the shooting of Eugenio was unassailable. The accused, in fact, could not provide any reason or motive for them to testify against the Batins unless it was upon the truth.[21]

While Castor was indeed heard to have shouted "Huwag," this cannot be considered as reliable evidence that he tried to dissuade Neil from firing the gun. It was established by credible testimony that he handed back the gun to Neil and urged him to shoot the Refugio spouses. Josephine Refugio plainly stated on cross-examination that Castor shouted "Huwag" while inside the car grappling for possession of the gun, and not when Neil was aiming the gun at the spouses. Thus:

(Atty. Siobal Cross-examining)

Q The second time around that you saw him was when he moved towards the right rear of the car?

A I did not remove my sight at Neil Batin as he moved towards this car, sir.

Q

Also, without moving your glance or gaze at Neil Batin, you saw him proceed to the right rear portion of the car and open the right rear door of said car, is it not?

A Yes, sir.

Q And without also removing your gaze or sight at Neil Batin, you saw him open and get a gun inside the car?

A

I saw Neil Batin opened the right rear door, as if he is putting all his body inside the car, when Mang Boy took hold of Neil, they were grappling for possession of the gun, and raised it above, and that was the time when my husband saw the gun raised, and I also saw the gun.

Court

So they were both inside the car, their arms were both inside the car and the gun was inside the car when you and your husband saw this particular scene?

A Yes, your Honor.

Atty. Siobal

So you saw Castor Batin and Neil Batin grappling for the gun when they were inside the car?

A Yes, sir, and then Castor Batin shouted “huwag.”

Q And at that time they were grappling for the gun inside the car and Castor Batin shouted “huwag,” after that, you and your husband saw the gun atop the roof of the car, is that what you want to convey to the Court?

A The gun was still inside the car, only we saw it through the glass window, sir.

Q And what happened after that?

A

Neil Batin got out of the car, followed by Castor Batin and then Castor gave the gun to Neil, and after receiving the gun, Neil placed the gun at his waist, sir.

Q

You said Neil Batin got out of the car ahead of Castor Batin, where did Neil Batin go or proceed, to what direction?

A He proceeded to that place labeled as Exhibit G-7, sir.

Q

And you said Castor Batin followed Neil Batin to the place where he proceeded here at Exhibit G-7?

A Yes, sir

Q Of course, when Neil Batin got out of the car ahead, his back, he must have turned his back from you?

A He was sidewise in relation to me, sir.

Q How about Castor Batin, when he got out of the car, he must have turned his back from you?

A Yes, sir.

Q And where was Castor Batin facing when you said he gave the gun to Neil Batin?

A He was facing Neil, sir.[22]

As concluded by the trial court, the circumstances surrounding Castor's utterance of "Huwag!" shows beyond doubt that Castor shouted the same, not to stop Neil from firing the gun, but to force him to leave the use of the gun to Castor. These circumstances only confirm the conspiracy between the Batins in committing the crime: after the Batins grappled for the gun and Castor shouted "Huwag," Castor finally decided to give the gun to Neil – a crystal-clear expression of the agreement of the Batins concerning the commission of a felony.

Conspiracy may also be deduced from the acts of the appellants before, during, and after the commission of the crime which are indicative of a joint purpose, concerted action, and concurrence of sentiments.[23] Prosecution witnesses Josephine Refugio and Eusebio Farrales positively indicated in their testimonies that prior to the shooting of Eugenio Refugio, Castor was drunk, was openly challenging others to a fight, and was uttering angry words. It was at this juncture that witnesses saw Neil retrieve his gun from the parked car, after which Castor grabbed the gun from his son, grappled with it, returned it to his son, and ordered the latter to shoot the Refugios.

Secondly, even if we pursue the theory that the defense is trying to stir us to, the results would be the same. Castor's argument is that "(h)is alleged utterance of the words 'Sige, banatan mo na' cannot be considered as the moving cause of the shooting and, therefore, he cannot be considered a principal by inducement.

Inducement may be by acts of command, advice or through influence or agreement for consideration. The words of advice or the influence must have actually moved the hands of the principal by direct participation. We have held that words of command of a father may induce his son to commit a crime. In *People v. Tamayo*, [24] we held that the moral influence of the words of the father may determine the course of conduct of a son in cases in which the same words coming from a stranger would make no impression.

There is no doubt in our minds that Castor's words were the determining cause of the commission of the crime. As stated above, Vilma Juadines Rodriguez testified that the eighteen-year-old Neil Batin asked his father before shooting: "Tay, banatan ko na?" Neil Batin was clearly seeking the consent of his father before proceeding with the act, and it was Castor's words "Sige, banatan mo na"[25] that sealed Eugenio Refugio's fate.

Whether treachery was specifically  
alleged in the Information

There is treachery when the offender commits any of the crimes against a person, 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 which the offended party might make.[26]

According to the trial court, treachery was attendant in the killing of Eugenio because Castor ordered Neil to fire at Eugenio after they clearly saw that he was still leaning against the mango tree and being restrained by Josephine who had her arms on his shoulders. Thereby, "the accused insured their safety from any defensive or retaliatory act of Eugenio who, in that position of helplessness and unpreparedness, obviously had no opportunity to defend himself or to retaliate even if he wanted to. The accused thus consciously used the firearm to assault from a distance, all the more to enhance the chances of killing the victim without risk to themselves." [27]

Castor does not refute the above findings of the trial court that treachery was sufficiently proven during the trial. All that Castor claims before us is that the qualifying circumstance of treachery was not specifically alleged in the Information. The Information filed against the Batins states that "the accused, conspiring together, confederating with and mutually helping each other, did, then and there, wilfully, unlawfully and feloniously, with intent to kill, with treachery, taking advantage of superior strength, and with evident premeditation, attack, assault and employ

personal violence upon the person of one EUGENIO REFUGIO y ZOSA, by then and there shooting him with a handgun, hitting him on the right side of his stomach, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death.”[28] Castor claims that this charge does not allege the specific treacherous acts of the accused. According to Castor, the allegation therein that the accused “with treachery x x x, attack, assault and employ personal violence” is a mere conclusion of law by the one who drafted the said Information. Hence, it did not satisfy the test of sufficiency of Information as provided in Sections 8 and 9 of Rule 110 of the Rules of Court.

Sections 8 and 9 of Rule 110 provides:

SEC. 8. Designation of the offense.—The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

SEC. 9. Cause of the accusation.—The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

Pertinently, we have held in *Balitaan v. Court of First Instance of Batangas*[29] that the main purpose of requiring the various elements of a crime to be set forth in an Information is to enable the accused to suitably prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense. We added in said case that

[I]t is often difficult to say what is a matter of evidence, as distinguished from facts necessary to be stated in order to render the information sufficiently certain to identify the offense. As a general rule, matters of evidence, as distinguished from facts essential to the description of the offense, need not be averred. For instance, it is not necessary to show on the face of an information for forgery in what manner a person is to be defrauded, as that is a matter of evidence at the trial.

We hold that the allegation of treachery in the Information is sufficient. Jurisprudence is replete with cases wherein we found the allegation of treachery sufficient without any further explanation as to the circumstances surrounding it. Here are some of the cases:

In *People v. Lab-eo*,[30] Wilson Lab-eo was indicted for murder under the following Information:

That on or about October 21, 1996, at the Barangay Hall, Poblacion, Tadian, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with the use of a sharp knife, did then and there willfully, unlawfully and feloniously attack, assault, strike and stab Segundina Cay-no with a well-honed and pointed knife and thereby inflicting a mortal stab wound upon the victim as reflected in that medico-legal certificate, to wit:

Stab wound infrascapular area left, penetrating with massive hemathorax, which caused the death of the victim thereafter.

That the aggravating circumstances of evident premeditation, treachery, abuse of superior strength and craft attended the commission of the offense.

The accused in this case argued that the Information above, while captioned as “Murder,” only charged him with homicide as written. This Court found nothing wrong with the Information, and ruled that the Information sufficiently charged the accused with murder, not even considering the absence of an explanation of the treachery

stated therein, thus:

The fact that the qualifying circumstances were recited in the second paragraph and not in the first paragraph of the Information, as commonly done, is a matter of form or style for which the prosecution should not be faulted. That the Provincial Prosecutor decided to write the Information differently did not impair its sufficiency. Nothing in the law prohibits the prosecutor from adopting such a form or style. As long as the requirements of the law are observed, the Information will pass judicial scrutiny.

x x x x

The test of sufficiency of Information is whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly. The rule is that qualifying circumstances must be properly pleaded in the Information in order not to violate the accused's constitutional right to be properly informed of the nature and cause of the accusation against him. The purpose is to allow the accused to fully prepare for his defense, precluding surprises during the trial. Significantly, the appellant never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him because of the style or form adopted in the Information.[31]

This Court went on to affirm the conviction of the accused therein with murder qualified by treachery.

The allegation in the Information of treachery as a qualifying circumstance was similarly assailed in *People v. Opuran*,[32] wherein the charge was as follows:

Criminal Case No. 4693

That on or about November 19, 1998, at nighttime, at Km. 1, South Road, Municipality of Catbalogan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, said accused, with deliberate intent to kill and treachery, did, then and there willfully, unlawfully, and feloniously attack, assault and stab Demetrio Patrimonio, Jr., with the use of a bladed weapon (5" long from tip to handle with scabbard), thereby inflicting upon the victim fatal stab wounds on the back of his body, which wounds resulted to his instantaneous death.

All contrary to law, and with attendant qualifying circumstance of treachery.

This Court again rejected the argument of the defense by finding the allegation of treachery sufficient, and later on finding the accused therein guilty of murder qualified by treachery:

We do not find merit in appellant's contention that he cannot be convicted of murder for the death of Demetrio, Jr. because treachery was not alleged with "specificity" as a qualifying circumstance in the information. Such contention is belied by the information itself, which alleged: "All contrary to law, and with the attendant qualifying circumstance of treachery." In any event, even after the recent amendments to the Rules of Criminal Procedure, qualifying circumstances need not be preceded by descriptive words such as qualifying or qualified by to properly qualify an offense.[33]

Finally, the following constitutes the Information in *People v. Bajar*[34]:

That on or about the 16[th] day of August 1999, at about 8:00 o'clock in the evening, at sitio Mohon, Barangay Mambayaan, Municipality of Balingasag, Province of Misamis Oriental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused, then armed with a sharp bolo, with intent to kill, and with evident premeditation, and treachery, did then and there willfully, unlawfully and feloniously stab one 85 year old Aquilio Tiwanak, accused's father-in-law, hitting him on the different parts of his body, which caused his instantaneous death, to the damage and prejudice of the heirs of Aquilio Tiwanak in such amounts as may be allowed by law.

The aggravating circumstances of dwelling, taking advantage of superior strength, disregard of the respect due

the victim on account of his age, habitual intoxication and relationship attended the commission of the crime.

CONTRARY to Article 248 of the Revised Penal Code, in relation [to] Article 14, paragraph 3 and 15, and Article 15 of the Revised Penal Code.

Like in the previous two cases, this Court found the Information to have sufficiently alleged treachery as a qualifying circumstance. Evidentiary facts need not be alleged in the information because these are matters of defense. Informations need only state the ultimate facts; the reasons therefor could be proved during the trial.[35]

Whether the civil liabilities of the accused were correctly awarded by the lower courts

The trial court ordered the accused, Neil and Castor Batin, to pay the heirs of Eugenio Refugio in the following amounts:

- 1) P50,000.00, as death indemnity;
- 2) P61,500.00, as actual damages;
- 3) P500,000.00, as moral damages;
- 4) P307,920.00, as indemnity for loss of earning capacity; and
- 5) the costs of suit.[36]

Jurisprudence pegs the death indemnity in the above amount (P50,000.00) pursuant to the current judicial policy on the matter. No proof thereof is required. The P61,500.00 in actual damages consists of the expenses incurred by the family of Eugenio Refugio, which Josephine Refugio testified to and was summarized in Exhibit H:[37] (1) P25,000.00 for medicines, surgery and other expenses for the hospitalization and emergency treatment;[38] (2) P20,000.00 for funeral expenses, inclusive of the costs of coffin, funeral services, and expenses during the wake;[39] and (3) P6,500.00 as for burial expenses.

The Court of Appeals also modified the trial court's computation of the indemnity for loss of earning capacity. The trial court, finding the work of Eugenio Refugio to be hazardous, reduced his life expectancy to 20 years.

This modification is in accord with our ruling in *Pleyto v. Lomboy*.<sup>[40]</sup> Pleyto offers the following computation for the award for loss of earning capacity:

$$\begin{aligned} \text{Net Earning} &= \frac{2}{3} \times (80 - \text{Age at death}) \times (\text{Gross Annual} \\ &\text{Capacity} \\ &\text{time of death}) \\ &\text{Income} - \text{Reasonable} \\ &\text{\& Necessary Living} \\ &\text{Expenses}) \end{aligned}$$

Eugenio Refugio, who was 31 years old at the time of his death, had a daily income of P145.00. The Court of Appeals multiplied this amount by 26 working days to get Eugenio Refugio's monthly income of P3,770.00. The Court of Appeals thus applied the Pleyto formula as follows:

$$\begin{aligned} \text{Net Earning} &= \frac{2}{3} \times (80 - 31) \times [(P3770 \times 12) - (P3770 \times 12)] \\ &\text{Capacity} \end{aligned}$$

Net Earning =  $2/3 \times (49) \times [(P45,240) - (P22,620)]$

Capacity

Net Earning =  $32 \times [P22,620]$

Capacity

Net Earning = P723,840[41]

Capacity

Lastly, the Court of Appeals found the award of P500,000.00 as moral damages to be excessive, and instead fixed the amount at P100,000.00. In accord with prevailing jurisprudence, however, we further reduce this amount to P50,000.00.[42]

WHEREFORE, the Decision of the Court of Appeals affirming with modification the conviction of accused-appellant Castor Batin for murder is AFFIRMED with FURTHER MODIFICATION as to the amount of the moral damages, which is hereby reduced to P50,000.00.

**SO ORDERED.**

Ynares-Santiago, (Chairperson), Austria-Martinez, Corona, and Nachura, JJ., concur.

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok with then Presiding Justice Ruben T. Reyes (now Associate Justice of this Court) and Associate Justice Mariano C. del Castillo, concurring. Rollo, pp. 14-20.

[2] CA rollo, pp. 9-10.

[3] Id. at 35-38.

[4] Records, p. 227.

[5] Id. at 231.

[6] Id. at 275.

[7] Id. at 277.

[8] Id.

[9] Id.

[10] Id.

[11] CA rollo, pp. 39-41.

[12] Records, p. 15.

[13] Id.

[14] Id. at 54-55.

[15] Id. at 276.

[16] Rollo, pp. 25-26.

- [17] CA rollo, p. 44.
- [18] *People v. Paredes*, 332 Phil. 633, 638-639 (1996).
- [19] *People v. Kiichi Omine*, 61 Phil. 609, 613-614 (1935).
- [20] *People v. Arcilla*, 326 Phil. 774, 788 (1996); *People v. Viñas, Sr.*, 315 Phil. 491, 497-498 (1995).
- [21] CA rollo, p. 45.
- [22] TSN, 4 August 1995, pp. 15, 17-29.
- [23] *People v. Constantino*, 327 Phil. 278, 294 (1996); *People v. De Leon*, 315 Phil. 584, 594 (1995); *People v. Bayrante*, G.R. No. 92508, 4 August 1994, 235 SCRA 19, 29.
- [24] 44 Phil. 38, 57 (1922), cited in Luis B. Reyes, *Revised Penal Code: Criminal Law* (1993 ed.), Vol. I, p. 524.
- [25] Josephine Refugio testified that she heard Castor say, “Sige, banatan mo na.” Vilma Juadines Rodriguez testified that the words were, “Sige, anak, banatan mo na.”
- [26] Article 14(16), Revised Penal Code.
- [27] Rollo, p. 50.
- [28] *Id.* at 10.
- [29] G.R. No. L-38544, 30 July 1982, 115 SCRA 729, 740.
- [30] 424 Phil. 482, 489 (2002).
- [31] *Id.* at 495-497.
- [32] G.R. Nos. 147674-75, 17 March 2004, 425 SCRA 654, 659.
- [33] *Id.* at 672.
- [34] 460 Phil. 683, 688 (2003).
- [35] *Socrates v. Sandiganbayan*, 324 Phil. 151, 172 (1996); *Gallego v. Sandiganbayan*, G.R. No. L-57841, 30 July 1982, 115 SCRA 793, 797.
- [36] CA rollo, pp. 54-55.
- [37] Records, p. 233.
- [38] *Id.* at 236-255.
- [39] *Id.* at 234.
- [40] G.R. No. 148737, 16 June 2004, 432 SCRA 329, 341.
- [41] Rollo, p. 19.
- [42] *Pleyto v. Lomboy*, *supra* note 40 at 342.

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