

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGELO ZETA, ACCUSED-APPELLANT.

G.R. No. 178541. March 27, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision dated 30 June 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 02054,[1] affirming in toto the Decision[2] dated 29 November 2002 of the Quezon City Regional Trial Court (RTC), Branch 88, in Criminal Case No. Q-95-63787, finding accused-appellant Angelo Zeta and his wife, Petronilla Zeta (Petronilla), guilty of murder.

The facts are as follows:

On 6 November 1995, an Information[3] was filed before the RTC charging appellant and Petronilla of Murder, thus:

That on or about the 28[th] day of October 1995, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, with intent to kill, did then and there, willfully, unlawfully and feloniously with evident premeditation, treachery, assault, attack and employ personal violence upon the person of RAMON GARCIA y LOPEZ by then and there shooting the latter with the use of a .45 cal. pistol hitting him on the different parts of his body, thereby causing the instant and immediate cause of his death, to the damage and prejudice of the heirs of said RAMON GARCIA Y LOPEZ.

When arraigned on 20 December 1995, appellant and Petronilla, assisted by their respective counsels de parte, pleaded "Not Guilty" to the charge of murder.[4] Trial on the merits thereafter ensued.

The prosecution presented as witnesses Aleine Mercado (Aleine), Dr. Maria Cristina Freyra (Dr. Freyra), Police Inspector Solomon Segundo (Inspector Segundo), Rey Jude Naverra (Rey), Edwin Ronk (Edwin), Francisco Garcia (Francisco), SPO1 Carlos Villarin (SPO1 Villarin), and SPO2 Wakab Magundacan (SPO2 Magundacan). Their testimonies, taken together, bear the following:

On 28 October 1995, at around 12:00 midnight, Edwin, Rey and a certain Melvin Castillo (Melvin) had a drinking spree outside the house of Rey located at No. 30-B Tacio Street, La Loma, Quezon City. At about 2:00 in the morning of the same date, a car stopped in front of the three. Appellant was driving the car while Petronilla was seated beside him. Petronilla opened the car's window and asked Edwin if he knows Ramon and the latter's address at No. 25-C General Tinio Street, La Loma, Quezon City. Edwin replied that he did not know Ramon or his address. Thereafter, appellant and Petronilla left on board the car and proceeded to General Tinio Street, La Loma, Quezon City.[5]

At about 2:15 in the morning of the same date, the car boarded by appellant and Petronilla stopped in front of Ramon's house at No. 25-C General Tinio Street, La Loma, Quezon City. After parking nearby, appellant and Petronilla alighted from the car and proceeded to Ramon's house. Petronilla repeatedly called Ramon. Aleine

(niece of Cristina Mercado, Ramon's common-law wife) was awakened by the repeated calls and opened the door. Petronilla requested Aleine to call Ramon. Aleine told Petronilla that she would wake up Ramon who was then sleeping with Cristina at the second floor of the house. Aleine invited appellant and Petronilla inside the house but the two replied that they would just wait for Ramon outside. Aleine proceeded to the second floor of the house and knocked at the door of Ramon's room. Ramon woke up. Subsequently, Aleine went downstairs and proceeded to the dining table. While Ramon was walking down the stairs, appellant suddenly entered the house and shot Ramon several times on different parts of the body with a caliber .45 Llama pistol. Upon seeing appellant shooting Ramon, Aleine hid inside the restroom. When the gunshots ceased, Aleine went out of the restroom and saw Ramon sprawled and bloodied on the ground floor.[6]

Edwin, Rey and Melvin were still drinking when they heard the gunshots. They rushed to the direction of Ramon's house. When they were nearing Ramon's house, Petronilla suddenly stepped out of the main door of Ramon's house followed by appellant. Melvin uttered, "Mamamatay tao." Petronilla merely looked at them and entered the car. Appellant also proceeded inside the car and thereafter the car sped away.[7]

Subsequently, Aleine went out of the house and called for help. Edwin, Rey and Melvin approached her. They carried Ramon and placed him inside a vehicle owned by a neighbor. While they were on their way to the Chinese General Hospital, Ramon told Aleine that the one who shot him was "asawa ni Nellie na kapitbahay namin sa Las Piñas." Ramon died due to gunshot wounds while being operated on at the Chinese General Hospital. Thereafter, the police arrived at the crime scene and recovered several empty bullet shells and slugs.[8]

At about 10:55 the following morning, SPO2 Magundacan received a report that a carnapped vehicle was parked along Lakandula Street, P. Tuazon Blvd., Quezon City. SPO2 Magundacan proceeded thereat and saw appellant about to board a car armed with a gun visibly tucked in his waist. SPO2 Magundacan approached appellant and asked him for a license and/or registration papers of the gun but appellant did not show any. SPO2 Magundacan also inquired from Petronilla, who was inside the car also armed with a gun tucked in her waist, if she had a license but Petronilla likewise failed to show any. Thus, SPO2 Magundacan brought appellant and Petronilla to Police Precinct 8, Project 4, Quezon City, for investigation. Subsequently, appellant and Petronilla, upon the request of the La Loma police, were turned over to the police station for investigation as regards the killing of Ramon. Appellant and Petronilla were thereafter charged with murder.[9]

The prosecution also adduced documentary and object evidence to buttress the testimonies of its witnesses, to wit: (1) death certificate of Ramon;[10] (2) sworn statement of Aleine;[11] (3) request for autopsy examination of Ramon's body;[12] (4) medico-legal report issued and signed by Dr. Freyra stating that Ramon died due to gunshot wounds;[13] (5) anatomical sketch of a human body signed by Dr. Freyra indicating the location of the gunshot wounds on Ramon's body;[14] (6) physical science report stating that a paraffin test was conducted on both hands of Ramon and they were found negative for gunpowder nitrates;[15] (7) handwritten sketch made by Edwin depicting the streets of Tacio and General Tinio;[16] (8) request for ballistic examination of the object evidence recovered from the crime scene;[17] (9) ballistic report issued and signed by Inspector Segundo stating that the bullet extracted from Ramon's body and other bullets recovered from the crime scene were similar to the bullets of the caliber .45 Llama pistol seized from appellant;[18] (10) certification from the Personnel Division of the Philippine Long Distance Telephone Company (PLDT) affirming that Ramon was its regular employee from 14 February 1981 up to 27 October 1995 and that he was receiving a monthly salary of P13,687.00 plus other benefits;[19] (11) summary of expenses and receipts for the wake of Ramon;[20] (12) joint affidavit of SPO2 Magundacan and a certain PO2 Ronald Zamora;[21] (13) photographs showing the spot where appellant and Petronilla stood while waiting for Ramon, the stairs where Ramon walked down shortly before he was shot several times by appellant, the area inside Ramon's house where appellant positioned himself while shooting at

Ramon, and the location where Ramon fell down after he was shot several times by appellant;[22] (14) nine empty shells and seven deformed slugs fired from a caliber .45 pistol which were recovered by SPO1 Villarin from the crime scene;[23] (15) a deformed slug fired from a caliber .45 pistol which was extracted from Ramon's body; (16) test bullets fired from the caliber .45 Llama pistol seized from appellant;[24] (17) the caliber .45 Llama pistol with Serial Number C-27854 seized from appellant;[25] and (18) a calling card recovered from Ramon with the print label "Cristine Rent A Car," "Angelo D. Zeta" and with telephone numbers and addresses.[26]

For its part, the defense presented the testimonies of appellant, Petronilla, and Annabelle Vergara (Annabelle) to refute the foregoing allegations. Their version of the incident is as follows:

On 27 October 1995, at about 10:00 in the evening, appellant, Petronilla and Annabelle (housemaid of the couple) were in the couple's house at Cainta, Rizal.[27] Later, appellant took Petronilla's caliber .38 pistol and went to his brother's (Jose Zeta, Jr.) house in Marikina arriving therein at around 12:00 midnight. Jose was out of the house so appellant waited for him. At about 2:30 in the morning of 28 October 1995, Jose arrived. Thereafter, appellant demanded from Jose the return of his three firearms, one of which is a caliber .45 pistol. Jose, however, handed only the caliber .45 pistol to appellant. Appellant berated Jose for refusing to return the two other firearms. Irrked, Jose drew a gun. Appellant also drew the caliber .45 pistol and shot Jose four times. Jose fell down on the ground. Afterwards, appellant left the house, took Jose's car which was parked near the house, and proceeded to Police Precinct 8, Project 4, Quezon City, where he waited for a certain Tony Tolentino whom he claims to be a policeman assigned at the Southern Police District. At about 9:00 in the morning of 28 October 1995, the policeman on duty at Precinct 8 informed appellant that the latter's car parked inside the precinct was a carnapped vehicle. The policemen searched the car and found several guns including the caliber .45 and the caliber .38. Appellant was thereupon detained and charged with illegal possession of firearms and carnapping.[28]

At about 10:00 in the morning of 28 October 1995, Petronilla received a telephone call informing her that appellant was at Police Precinct 8, Project 4, Quezon City. She immediately proceeded thereat and presented documents relative to her ownership and license of the caliber .38 seized from appellant. Thereafter, she went home at about 11:00 in the evening.[29]

On 2 November 1995, Petronilla visited appellant at Precinct 8. During the visit, Aleine arrived at Precinct 8 and pointed to appellant and Petronilla. Subsequently, appellant and Petronilla were informed by the police that they were suspects in the killing of Ramon. Thereafter, they were charged with murder.[30]

After trial, the RTC rendered a Decision on 29 November 2002 convicting appellant and Petronilla of murder. It held that appellant and Petronilla conspired in killing Ramon. It also ruled that Ramon's killing was attended by the aggravating circumstances of evident premeditation and nocturnity. In conclusion, it imposed the death penalty on appellant while Petronilla was merely sentenced to reclusion perpetua "owing to her being a mother and her lesser degree of participation in the killing of Ramon." The fallo of the decision reads:

Accordingly, based on the evidence presented by the prosecution and the defense and finding both accused guilty beyond reasonable doubt of the crime of MURDER attended by the aggravating circumstances of evident premeditation and nocturnity without being offset by any mitigating circumstances, the accused Angelo Zeta is hereby sentenced to death by lethal injection. The wife and co-accused Petronilla Zeta, although a co-conspirator in the commission of the offense charged, is hereby sentenced to RECLUSION PERPETUA owing to her being a mother and her lesser degree of participation in the act of murder.

The accused Angelo Zeta and Petronilla Zeta are also sentenced to indemnify in SOLIDUM the heirs of the victim in the amount of P50,000.00 for the death of Ramon Garcia; P146,000.00 for the hospital and burial expenses; and P1,642,440.00 for the lost income of the deceased reckoned at 10 years of productive life, plus costs.

The .45 caliber Llama pistol with Serial Number C-27854 is confiscated in favor of the Government to be kept by the Philippine National Police as mandated by law.[31]

On 9 December 2002, the RTC issued an Order forwarding the records of the instant case to Us for automatic review because of the death penalty imposed on appellant.[32]

On 24 December 2002, Petronilla filed a Notice of Appeal with the RTC stating that she would appeal her conviction to this Court.[33]

On 28 April 2004, Petronilla, through counsel, filed a Motion to Withdraw Appeal before us[34] stating that:

After a thorough review of the available stenographic notes obtained by the close relatives of the accused-appellant from the Regional Trial Court, the undersigned counsel found out that there are no testimonial and/or documentary evidence presented before the lower Trial Court that could sufficiently serve as justifiable basis to warrant the reversal of the appealed decision rendered insofar as PETRONILLA ZETA is concerned.

Moreover, the undersigned counsel sustained serious physical injuries that render difficult to further handle the appeal that will require lengthy preparation of appellant's brief and other legal pleadings as may be required under the Rules of Court.

Consequently, after discussion with accused-appellant PETRONILLA ZETA, the undersigned counsel informed her that he is now constrained to withdraw his appearance in the above-entitled appealed case.

Upon being informed of the health predicament of the undersigned counsel and after being enlightened about the weakness of the appeal, accused-appellant PETRONILLA ZETA willfully and voluntarily decided to WITHDRAW the appeal and do hereby signify to the Honorable Court that she is no longer interested in the further prosecution of her appeal. She, likewise, has no objection to the withdrawal of the appearance of Atty. Alfredo E. Anasco, as her counsel in the above-entitled case.

WHEREFORE, it is respectfully prayed that the above-entitled appeal be ordered withdrawn and the MOTION TO WITHDRAW APPEAL be GRANTED, and the withdrawal of appearance of counsel be given due course.

On 28 September 2004, we issued a Resolution granting Petronilla's motion to withdraw appeal.[35]

On 22 November 2005, we issued a Resolution remanding the instant case to the Court of Appeals for proper disposition pursuant to our ruling in *People v. Mateo*. [36] On 30 June 2006, the Court of Appeals promulgated its Decision affirming in toto the Decision of the RTC. Thus:

Thus, after finding that the trial court's conclusions are supported by the evidence presented and in full accord with existing law and jurisprudence, We find no reason to set it aside.

WHEREFORE, based on the foregoing premises, the appeal is hereby DISMISSED. The November 29, 2002 Decision of the Regional Trial Court of Quezon City, Branch 88 in Criminal Case No. Q-95-63787 is AFFIRMED.[37]

Appellant elevated the present case before us on the following grounds:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT THE PROSECUTION WITNESSES DID NOT POSITIVELY IDENTIFY HIM;

II.

THE TRIAL COURT ERRED IN DISREGARDING THE DEFENSE OF DENIAL AND ALIBI

INTERPOSED BY THE ACCUSED-APPELLANT;

III.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HIS GUILT WAS UNDER A SHADOW OF DOUBT.[38]

Apropos the first issue, appellant claims that although Edwin and Rey positively identified Petronilla as the one who asked them about Ramon and his address shortly before the incident occurred, the two, nevertheless, failed to identify appellant as Petronilla's companion during the said questioning. He also argues that Aleine's testimony identifying him as the one who shot Ramon during the incident is not morally certain because Aleine narrated that she saw only the side portion of his face and the color of the shirt he wore during the incident.[39]

It appears that Edwin and Rey did not actually see appellant shoot Ramon during the incident. Nonetheless, Aleine saw appellant shoot Ramon on that fateful night. Her positive identification of appellant and direct account of the shooting incident is clear, thus:

ATTY. A. OLIVETTI (DIRECT EXAMINATION)

Q. Aleine Mercado, are you the same Aleine Mercado who is listed as one of the witnesses in this case?

WITNESS

A. Yes, sir.

Q. Do you know the accused in this case?

A. Yes, sir.

Q. If they are inside the courtroom, will you identify them?

A. Yes, sir.

Q.

Will you please look around and point before the Honorable Court the person of the accused in this case?

A. Yes, sir. That man wearing yellow T-shirt and that lady who is also wearing yellow shirt. (witness pointing to a man who when asked of his name identified himself as Angelo Zeta and to a lady beside Angelo Zeta who when asked of her name identified herself as Petronilla Zeta.)

x x x

Q. On October 28, 1995, at about 2:15 in the morning, do you remember if there was an unusual incident that happened?

A.

Yes, sir.

Q. Will you please tell the Court briefly what that unusual incident was?

A. Tito Ramon Garcia was shot, Sir.

Q. And who is this Tito Ramon Garcia that you are talking about?

A. He is the live-in partner of my aunt Cristy.

Q. A while ago you mentioned that you have been living with your auntie and Tito Ramon Garcia in Gen. Tinio, La Loma, Quezon City. Will you please describe before the Honorable Court the residence or your house at that time where you were living with your auntie and Tito Ramon Garcia?

A. It is a small house we were living in. It has a mezzanine and it measures 4 x 3 meters, sir.

x x x x

Q. Do you know the person who shot your Tito Ramon Garcia?

A. Yes, sir.

Q.

Will you please tell the Honorable Court the name of the person who shot Ramon Garcia?

A. Angelo Zeta.

Q. Where in particular did Mr. Angelo Zeta shot Mr. Ramon Garcia?

A. Inside our house, sir.

Q. And how was he able to enter your house?

A. Our door then was opened, sir.

Q. Why was your door opened at that time?

A. I heard a woman calling for my Tito Ramon and so I opened the door, sir.

Q. What time was this Madam Witness?

A. 2:15.

Q. 2:15 in the afternoon?

A. 2:15 in the morning, your honor.

x x x x

ATTY. A. OLIVETTI

Q. And who was that woman that you saw was outside calling Mr. Ramon Garcia?

A. Petronilla Zeta, sir.

Q. When you opened the door and you saw this woman, what happened between you and her?

A. She asked me if a certain Ramon Garcia was there.

Q. What was your reply?

A. I told her he was sleeping. He was upstairs.

Q. And what did the woman do after that if she did anything?

A. She told me to call for my Tito Ramon.

Q.

What did you do after she asked you to call Mr. Ramon Garcia?

A. I told her to enter before I call my Tito Ramon but they answered that they will remain outside.

Q. And so after they refused to enter the house, what did you do as they were asking you to call Mr. Ramon Garcia?

A.

I told them to wait and then I went upstairs.

Q. What did you do upstairs?

A. I knocked at the door to wake up my Tito Ramon.

x x x x

Q. And was your Tito Ramon able to wake up?

A. When I felt that they were awakened, I went downstairs.

Q. Where in particular downstairs did you go?

A. Near our dining table, sir.

Q. How long was it from the door? How far was it from the door?

A. Two-arms-length, sir, or "dalawang dipa," sir.

Q. And what happened as you stood by downstairs?

A. While Tito Ramon was going down, sir, Angelo Zeta suddenly entered our house and immediately shot him several times.

Q. How far were you from Mr. Angelo Zeta when you saw him?

I withdraw that.

How far were you from Mr. Angelo Zeta when you saw him suddenly entered the house and shot Mr. Ramon Garcia?

A. Less than one meter, sir.

x x x x.

Q. Where was Petronilla Zeta at that time that the shooting occurred?

A. She was outside the door, sir.

x x x x

Q. What did you do as you were standing and while Mr. Angelo Zeta was shooting Mr. Ramon Garcia inside the house?

A. When I heard two shots, I run to the C.R. or comfort room.

Q. As you were in the C.R., what happened?

A. I heard successive shots, sir.

Q. How long did you stay in the C.R.?

A. Until the shots had stopped Until the firing had stopped, sir.

Q. And you sensed that the firing had stopped, what did you do?

A. I slowly opened the door to take a look if Angelo Zeta and companion were still there.

Q. And what did you see?

A. They were no longer there, sir.

Q. And you saw that they have guns, what did you do?

A. I went out of the C.R. and I returned to the place where I was before where I was previously standing.

Q.

And what did you see when you reached that portion that you are talking about?

A.

I saw Tito Ramon lying frustrate and blooded.

Q And what did you do when you see (sic) him on that particular condition?

A. I peeped at the door to find out if Angelo Zeta and companion were still there.

Q. And what did you see?

A. They were no longer there.

Q. And what did you do after that?

A. I knocked at the door of the owner of the house to ask for help.[40]

It should be emphasized that the testimony of a single witness, if positive and credible, as in the case of Aleine, is sufficient to support a conviction even in the charge of murder.[41]

Appellant's argument that Aleine's testimony identifying him as the one who shot Ramon is not morally certain because she saw only the side portion of his face and the color of the shirt he wore during the incident, deserves scant consideration. A person can still be properly identified and recognized even by merely looking at the side portion of his face. To be sure, Aleine recognized and identified appellant in the police line-up and during trial as the one who shot Ramon. Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, witnesses can remember with a high degree of reliability the identity of criminals at any given time.[42] A startling or frightful experience creates an indelible impression in the mind that can be recalled vividly.[43] It bears stressing that Aleine was less than one meter away from appellant when the latter shot Ramon. The crime scene was also well-lighted during the incident because there was a fluorescent bulb inside the house.[44]

The testimonies of Aleine and of the other prosecution witnesses are in harmony with the documentary and object evidence submitted by the prosecution. The RTC and the Court of Appeals found their testimonies to be credible and trustworthy. The rule is that the findings of the trial court, its calibration of the testimonies of the witnesses

and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[45]

Anent the second and third issues, appellant contends that his conviction is unwarranted based on the following reasons: (1) the prosecution failed to establish any possible motive for the appellant to kill Ramon; (2) there is an inconsistency in the testimony of the prosecution witnesses regarding the type and color of the car boarded by appellant and Petronilla before and after the incident. Edwin testified that appellant and Petronilla left the scene on board a gold-colored Mitsubishi Lancer; while SPO2 Magundacan narrated that he apprehended appellant while the latter was about to board a blue Toyota Corona Macho; (3) Jose could have been the one who fatally shot Ramon and appellant could have been mistakenly identified as Jose because they have the same physical appearance and facial features; (4) if appellant was indeed the one who shot Ramon, he could have immediately confessed such crime to the police just like what he did after killing Jose; and (5) there is no proof that appellant is the husband of a certain "Mely." Ramon's dying declaration to Aleine was that it was the husband of "Mely," his former neighbor in Las Pinas, who shot him. Further, Petronilla's nickname could either be "Nellie" or "Nelia" and not "Mely" as referred to by Ramon.[46]

Lack of motive does not preclude conviction when the crime and the participation of the accused in the crime are definitely shown, particularly when we consider that it is a matter of judicial knowledge that persons have killed or committed serious offenses for no reason at all. Motive gains importance only when the identity of the culprit is doubtful.[47] Where a reliable eyewitness has fully and satisfactorily identified the accused as the perpetrator of the felony, motive becomes immaterial to the successful prosecution of a criminal case.[48] It is obvious from the records that Aleine positively and categorically identified appellant as the person who shot Ramon during the incident. Her testimony was corroborated on relevant points by Edwin and Rey.

There is no inconsistency in the testimonies of the prosecution witnesses regarding the car boarded by appellant and Petronilla in leaving the crime scene and, subsequently, at the time they were apprehended. Edwin testified that appellant and Petronilla left the scene after the incident which was between 2:15 and 2:30 in the morning on board a gold-colored Mitsubishi Lancer.[49] SPO2 Magundacan told the court that he apprehended appellant at around 10:55 in the morning of the same day while the latter was about to board a blue Toyota Corona Macho.[50] In his affidavit attached to the records, Jan Ryan Zeta, son of Jose, narrated that Jose was shot by appellant at about 4:00 in the morning of the same date.[51] Appellant admitted that after shooting Jose on the early morning of 28 October 1995, he took the latter's Toyota Corona Macho and left.[52] Thus, it is probable that after leaving the crime scene at La Loma on board a gold Mitsubishi Lancer at about 2:15 or 2:30 in the morning, appellant and Petronilla then proceeded to Marikina and took Jose's blue Toyota Corona Macho. This explains why the car of appellant and Petronilla used in leaving the crime scene was different from that which they used at the time of their apprehension.

Appellant's theory of alibi that it was physically impossible for him to be at the crime scene in La Loma when the incident occurred because he was in Marikina, and that Jose could have been the one who fatally shot Ramon is flimsy and cannot prevail over the positive and credible testimony of Aleine. Appellant was mistakenly identified as Jose because they have the same physical appearance and facial feature. In addition, the empty bullet shells and slugs recovered from the crime scene were found to have the same characteristics as those of the bullets of appellant's caliber .45 Llama pistol. Further, there is no testimonial or documentary proof showing that it was Jose who shot Ramon. Appellant himself testified that he met Jose in the latter's house in Marikina at about 2:30 in the morning of 28 October 1995. On the other hand, the shooting of Ramon at La Loma, Quezon City occurred at

about 2:15 in the morning of the same date. Hence, it was impossible for Jose to be at La Loma, Quezon City and to have shot Ramon at such time and place.

It is insignificant whether Petronilla was referred to by Ramon in his dying declaration as "Mely" or "Nellie." As correctly observed by the Court of Appeals, Ramon sustained twelve gunshot wounds and was catching his breath when he uttered the name or nickname of Petronilla as the wife of appellant. Thus, understandably, he could not have spoken clearly in such a difficult situation. Moreover, Ramon referred to "Nellie" or "Mely" as his former neighbor in Las Piñas. Likewise, appellant and Petronilla admitted that Ramon was their former neighbor in Las Piñas.[53]

We now go to the propriety of the penalty imposed and the damages awarded by the RTC which the Court of Appeals affirmed.

The RTC held that the killing of Ramon qualifies as murder because of the presence of the aggravating circumstances of evident premeditation and nighttime or nocturnity. It is a rule of evidence that aggravating circumstances must be proven as clearly as the crime itself.[54]

Evident premeditation qualifies the killing of a person to murder if the following elements are present: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit clung to his resolve; and (3) a sufficient interval of time between the determination or conception and the execution of the crime to allow him to reflect upon the consequence of his act and to allow his conscience to overcome the resolution of his will if he desired to hearken to its warning.[55]

The first two elements of evident premeditation are present in the case at bar.

The time manifesting Petronilla and appellant's determination to kill Ramon was when they, at about 2:00 in the morning of 28 October 1995, repeatedly asked Edwin about Ramon and the latter's address, and when they subsequently proceeded to the house of Ramon.

The fact that appellant and Petronilla waited for Ramon, and appellant's subsequent act of shooting him at around 2:15-2:30 in the morning of 28 October 1995 indicate that they had clung to their determination to kill Ramon.

The third element of evident premeditation, however, is lacking in the instant case. The span of thirty minutes or half an hour from the time appellant and Petronilla showed their determination to kill Ramon (2:00 in the morning of 28 October 1995) up to the time appellant shot to death Ramon (2:15-2:30 in the morning of 28 October 1995) could not have afforded them full opportunity for meditation and reflection on the consequences of the crime they committed.[56] We have held that the lapse of thirty minutes between the determination to commit a crime and the execution thereof is insufficient for a full meditation on the consequences of the act.[57]

The essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection on the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. To justify the inference of deliberate premeditation, there must be a period sufficient in a judicial sense to afford full opportunity for meditation and reflection and to allow the conscience of the actor to overcome the resolution of his will if he desires to hearken to its warning. Where no sufficient lapse of time is appreciable from the determination to commit the crime until its execution, evident premeditation cannot be appreciated.[58]

Nonetheless, we find that treachery attended the killing of Ramon.

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 any defensive or retaliatory act which the victim might make.[59] The essence of treachery is a

deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack. Two essential elements are required in order that treachery can be appreciated: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any retaliatory act on the part of the offended party who has, thus, no opportunity for self-defense or retaliation; and (2) a deliberate or conscious choice of means, methods or manner of execution. Further, this aggravating circumstance must be alleged in the information and duly proven.[60]

In the case at bar, treachery was alleged in the information and all its elements were duly established by the prosecution.

It has been established that Ramon, still groggy after having been awakened by Aleine, was walking down the stairs when appellant suddenly shot him. The suddenness and unexpectedness of the appellant's attack rendered Ramon defenseless and without means of escape. Appellant admitted that he was a member of a gun club and was proficient in using his caliber .45 Llama pistol.[61] In fact, he was good at shooting a moving target during his practice.[62] He also stated that he owned five firearms.[63] Evidently, appellant took advantage of his experience and skill in practice shooting and in guns to exact the death of Ramon. There is no doubt that appellant's use of a caliber .45 Llama pistol, as well as his act of positioning himself in a shooting stance and of shooting Ramon several times on the chest area and on other parts of body, were obviously adopted by him to prevent Ramon from retaliating or escaping. Considering that Ramon was unarmed, groggy from sleep, and was casually walking down narrow stairs unmindful of the danger that lurked behind, there was absolutely no way for him to defend himself or escape.

As regards the appreciation by the RTC of the aggravating circumstance of nocturnity, it should be underscored that nocturnity or nighttime is, by and of itself, not an aggravating circumstance. It becomes so only when (1) it was especially sought by the offender; or (2) it was taken advantage of by him; or (3) it facilitated the commission of the crime by ensuring the offender's immunity from capture.[64]

Although the crime in the instant case was committed between 2:15 and 2:30 in the morning, no evidence was presented showing that nighttime was especially and purposely sought by appellant to facilitate the commission of the crime, or that it was availed of for the purpose of impunity. Moreover, the crime scene was well-lighted by a fluorescent bulb. We have held that nocturnity is not aggravating where the place of the commission of the crime was well-illuminated.[65]

Even if we were to assume that nocturnity was present in the case at bar, this cannot still be appreciated in view of the presence of treachery that attended the killing of Ramon. Nighttime cannot be considered an aggravating circumstance separate from treachery, since nighttime is absorbed in treachery.[66]

Accordingly, the death penalty imposed by the RTC on appellant should be modified. Article 248 of the Revised Penal Code states that murder is punishable by reclusion perpetua to death. Article 63 of the same Code provides that if the penalty is composed of two indivisible penalties, as in the instant case, and there are no aggravating or mitigating circumstances, the lesser penalty shall be applied. Since there is no mitigating or aggravating circumstance in the instant case, and treachery cannot be considered as an aggravating circumstance as it was already considered as a qualifying circumstance, the lesser penalty of reclusion perpetua should be imposed.[67]

The award of damages and its corresponding amount rendered by the RTC should also be modified in line with current jurisprudence.

In addition to the civil indemnity of P50,000.00 for Ramon's death, the award of moral damages amounting to P50,000.00 is also proper since it is mandatory in murder cases, without need of proof and allegation other than

the death of the victim.[68]

The heirs of Ramon are also entitled to exemplary damages in the amount of P25,000.00, since the qualifying circumstance of treachery was firmly established.[69]

The amount of actual damages should be reduced from P146,000.00 to P115,473.00 per computation of the official receipts attached to the records.[70]

The heirs of Ramon should also be indemnified for loss of earning capacity pursuant to Article 2206 of the New Civil Code.[71] Consistent with our previous decisions,[72] the formula for the indemnification of loss of earning capacity is:

Net Earning Capacity = Life Expectancy x Gross Annual Income (GAI) - Living Expenses

= $\frac{2}{3}$ (80 - age of deceased) x (GAI - 50% of GAI).

Ramon's death certificate states that he was 37 years old at the time of his demise.[73] A certification from Ramon's employer, Philippine Long Distance Telephone Company, shows that Ramon was earning an annual gross income of P164,244.00.[74]

Applying the above-stated formula, the indemnity for the loss of earning capacity of Ramon is P2,354,163.99, computed as follows:

Net Earning Capacity = $\frac{2}{3}$ (43) x (P164,244.00 - P82,122.00)

= 28.66 x P82,122.00

= P2,354,163.99

WHEREFORE, after due deliberation, the Decision of the Court of Appeals dated 30 June 2006 in CA-G.R. CR-H.C. No. 02054 is hereby AFFIRMED with the following MODIFICATIONS: (1) the penalty of death imposed on appellant is lowered to reclusion perpetua; (2) appellant is ordered to pay the heirs of Ramon Garcia the amounts of P50,000.00 as moral damages and P25,000.00 as exemplary damages; (3) the award of actual damages is reduced to P115,473.00; and (4) the indemnity for Ramon's loss of earning capacity is increased to P2,354,163.99. The award of civil indemnity in the amount of P50,000.00 is maintained.

Appellant's caliber .45 Llama pistol with Serial Number C-27854 is hereby confiscated in favor of the Government.

SO ORDERED.

Puno, C.J., (Chairperson), Quisumbing, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.
Ynares-santiago, J., on official leave.

* On official leave under the Court's Wellness Program.

[1] Penned by Associate Justice Elvi John S. Asuncion with Associate Justices Jose C. Mendoza and Arturo G. Tayag, concurring; rollo, pp. 3-10.

[2] Penned by Judge Abednego O. Adre; CA rollo, pp. 23-55.

[3] Records, p. 1.

- [4] Id. at 62-63.
- [5] TSN, 25 March 1996, pp. 11-24.
- [6] TSN, 21 February 1996, pp. 13-58.
- [7] TSN, 25 March 1996, pp. 26-34.
- [8] TSN, 24 September 1996, pp. 3-24.
- [9] TSN, 28 July 1997, pp. 3-30.
- [10] Folder of Exhibits, Exhibit E.
- [11] Id., Exhibits F & G.
- [12] Id., Exhibit H.
- [13] Id., Exhibit J; TSN, 11 March 1996, p. 56.
- [14] Id., Exhibit K.
- [15] Id., Exhibit L.
- [16] Id., Exhibit N.
- [17] Id., Exhibit O.
- [18] Id., Exhibit V.
- [19] Id., Exhibit F.
- [20] Id., Exhibits Y and Z.
- [21] Id., Exhibit FF.
- [22] Id., Exhibit A, B, C and D.
- [23] Id., Exhibit P.
- [24] Id., Exhibit Q.
- [25] Id., Exhibit T.
- [26] Id., Exhibit BB.
- [27] TSN, 30 September 1996, p. 4.
- [28] TSN, 31 March 1997, pp. 8-53.
- [29] TSN, 27 January 1997, pp. 5-7.
- [30] Id. at 7-10.
- [31] Id. at 55.
- [32] Records, p. 283.
- [33] Id. at 288.
- [34] CA rollo, pp. 75-77.

- [35] Id. at 82.
- [36] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [37] Rollo, p. 10.
- [38] CA rollo, p. 98.
- [39] Id. at 103-107.
- [40] TSN, 21 February 1996, pp. 9-59.
- [41] *Mendoza v. People*, G.R. No. 173551, 4 October 2007, 534 SCRA 668, 690.
- [42] *People v. Porras*, 413 Phil. 563, 587 (2001).
- [43] *People v. Punsalan*, 421 Phil. 1058, 1069 (2001).
- [44] TSN, 21 February 1996, p. 31; TSN, 5 March 1996, p. 21.
- [45] *Mendoza v. People*, supra note 41.
- [46] CA rollo, pp. 107-111.
- [47] *Velasco v. People*, G.R. No. 166479, 28 February 2006, 483 SCRA 649, 667.
- [48] *People v. Ducabo*, G.R. No. 175594, 28 September 2007, 534 SCRA 458, 473.
- [49] TSN, 31 March 1997, pp. 27-34.
- [50] TSN, 28 July 1997, p. 11.
- [51] Folder of Exhibits, p. 2.
- [52] TSN, 31 March 1997, pp. 32-34.
- [53] TSN, 27 January 1997, p. 8. TSN, 8 April 1997, p. 7.
- [54] *People v. Discalsota*, 430 Phil. 407, 416-417 (2002).
- [55] *Mendoza v. People*, supra note 41.
- [56] *People v. Discalsota*, supra note 54.
- [57] *People v. Rabanillo*, 367 Phil. 114, 126-127 (1999).
- [58] *People v. Discalsota*, supra note 54.
- [59] Paragraph 16, Article 14 of the Revised Penal Code.
- [60] *Velasco v. People*, supra note 47.
- [61] TSN, 8 April 1997, pp. 19-23.
- [62] Id. at 23-26.
- [63] Id. at 26 and 58-59.
- [64] *People v. Abrazaldo*, 445 Phil. 109, 124 (2003).
- [65] *People v. Rosario*, 316 Phil. 810, 825-826 (1995).

[66] *People v. Espiritu*, G.R. No. 80406, November 20, 1990, 191 SCRA 503, 507; *People v. Remollo*, 208 Phil. 196, 203 (1983); *People v. Tesarra*, G.R. No. 85531, December 10, 1990, 192 SCRA 266, 273.

[67] *People v. Guzman*, G.R. No. 169246, 26 January 2007, 513 SCRA 156, 178.

[68] *People v. Ducabo*, *supra* note 48.

[69] *Id.*

[70] Folder of Exhibits.

[71] Article 2206: The amount of damages for death caused by a crime or quasi-delict shall be x x x in addition:
(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter x x x.

[72] *People v. Batin*, G.R. No. 177223, 28 November 2007; *Manaban v. Court of Appeals*, G.R. No. 150723, 11 July 2006, 494 SCRA 503, 525.

[73] Folder of Exhibits, Exhibit E.

[74] *Id.*, Exhibit X.

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