

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FILOMENO MAYINGQUE, GREGORIO MAYINGQUE, AND TORIBIO MAYINGQUE Y SANICO, DEFENDANTS-APPELLANTS.

G.R. No. 179709. July 06, 2010

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Appellants Toribio Mayingque alias Loloy (Toribio), Gregorio Mayingque alias Gorio (Gregorio), and Filomeno Mayingque alias Boy Roti (Filomeno) appeal the decision promulgated on June 15, 2007 by the Court of Appeals (CA)[1] affirming their conviction for murder that the Regional Trial Court (RTC), Branch 275, in Las Piñas City handed down, penalizing each with reclusion perpetua, and ordering them to pay P50,000.00 to the heirs of deceased Edgardo Sumalde Tusi (Edgardo), and P20,000.00 as burial expenses to the wife of Tusi.[2]

The appellants and one Edwin Macas (Edwin) were indicted for the murder of Edgardo under the amended information dated June 28, 1999,[3] charging them thus:

That on or about the 30[th] day of May, 1999, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, without justifiable motive with intent to kill and by means of treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously assault, attack and stab one EDGARDO SUMALDE TUSI, with deadly weapons (knife and bolo), hitting the victim on the different parts of his body, thereby inflicting upon the latter multiple mortal stab wounds, which directly caused his death.

CONTRARY TO LAW.

At arraignment, the appellants pleaded not guilty to the information, as amended. Edwin remained at large to this date.[4]

Evidence of the Prosecution

The Prosecution presented Salvacion Tusi (Salvacion), wife of Edgardo, the victim, who testified that she knew the appellants because they usually had their drinking sessions on Sundays at Edwin's place, which was beside her residence at Pedro Sabido Street, BF Resort Village, Las Piñas City; that in one such drinking session, Edgardo, annoyed by the noise made by the appellants and Edwin, was prompted to admonish them to tone down their voices; that the appellants and Edwin resented Edgardo's admonition;[5] that while she and Edgardo were resting in front of their house at around 5 pm on May 30, 1999, Toribio arrived and without saying anything stabbed Edgardo twice on his side; that she shouted for help, but her cousin Ruben Bernal could not do anything because Edwin, Filomeno and Gregorio had meanwhile joined Teofilo in assaulting Edgardo.[6]

Ruben Bernal and Jaime Bernal corroborated Salvacion's recollection of the assault on Edgardo. According to them, the appellants ganged up on Edgardo, with Teofilo wielding a kitchen knife with which he stabbed Edgardo

twice and Gregorio hacking Edgardo on the head with a bolo while Filomeno and Edwin restrained Edgardo. They heard Edwin tell the appellants to ensure that Edgardo was lifeless before leaving him.[7]

Dr. Romeo T. Salen, Medico Legal Officer of the Western Police District (now Manila Police District) Crime Laboratory, appeared in court in representation of Dr. Emmanuel L. Aranas, and brought the following documents: (a) Request for Examination on the Cadaver of the deceased transmitted by the Las Piñas Police and received by Dr. Aranas; (b) Certification of Identification and Consent for Autopsy signed by the brother of Edgardo; (c) Post Mortem Examination or Anatomical Sketch; (d) Medico Legal Report; and (e) Death Certificate of Edgardo prepared by Dr. Aranas.[8]

Dr. Salen explained that based on Dr. Aranas' written findings, Edgardo had sustained 12 wounds in the head, neck and chest, eight of which had been fatal.[9]

Evidence of the Defense

For the Defense, the three appellants and one Agustin Tano (Tano) were presented as witnesses.

Tano was on his way home in late afternoon of May 30, 1999 when he saw Edgardo punch and then hit Toribio with a lead pipe. He next saw Toribio retaliate by successively stabbing Edgardo with a knife. Tano added that the other accused were not present during the incident.[10]

Filomeno narrated that on the day of the incident, he left his house at 9:00 am to attend the birthday party of his nephew in Golden Gate, Moonwalk, Las Piñas City; that at 6:30 pm, his wife arrived at Golden Gate, and begged him not to go home yet because Toribio had been involved in a fight with Edgardo and in turn the family of Edgardo had threatened to retaliate against Toribio's relatives to avenge Edgardo's death; that he and his wife thus remained in Golden Gate from May 30, 1999 to July 28, 1999 out of fear that Edgardo's relatives might retaliate against him although he had nothing to do with Edgardo's death;[11] that it was when he visited Toribio in detention when a police officer invited him for questioning regarding his supposed involvement in the May 30, 1999 incident; and that he (Filomeno) was then immediately detained in the police station, but was later transferred to the Las Piñas City Jail without any investigation being conducted.[12]

Gregorio attested that on the date of the incident, he was taking care of his two-month old grandson, when his neighbor advised him to leave his house at once, because his son Toribio had been involved in a fight; that he entrusted his grandson to the care of his neighbor to go to Antipolo City, where his other son, Gregorio, Jr., was residing; that he stayed in Antipolo City for two months because of fear of Toribio's enemies in Las Piñas City; that when he returned to Las Piñas City on July 28, 1999 to fetch his wife and daughter,[13] policemen invited him for questioning; and that he was then detained for his alleged involvement in the killing of Edgardo.[14]

Toribio stated that he was proceeding on foot towards Edwin's place at around 5:00 pm on May 30, 1999, when he saw Edgardo, Ruben and Jaime drinking together; that the three hailed him and invited him to drink with them; that although he declined the offer initially, he relented after Edgardo got mad at him; that Edgardo then invited him to join them, but he declined the invitation and told them that he was going somewhere else; that his refusal irked Edgardo, who warned him not to be a toughie; that Edgardo stood up and attacked him with a lead pipe, hitting him in the left arm; that his injury left a scar of an inch on his left arm;[15] that he ran towards Edwin's place and stayed there for about 20 minutes; that leaving Edwin's house later on, he passed by the three, who were still drinking; that Edgardo spotted him, held him by the collar, and punched him; that Ruben and Jaime also hit him with a lead pipe and a wooden club (*dos por dos*), injuring his left chest; that he parried their blows until they reached the street, where he fell on a small table used for selling Indian mangoes; that he was able to pick up a small knife used for peeling the mangoes, and while he was about to stand up from a prostrate position, he stabbed

Edgardo on the head, neck and chest with the knife; that he did not report the incident to the police, and, instead, went home; that he did not anymore submit himself for medical attention, because his wounds were only slight; that he surrendered to the Antipolo City police authorities eight days later, upon learning that the other appellants had been implicated in Eduardo's death and were being hunted down by the police.[16]

Ruling of the RTC

In its January 30, 2006 decision,[17] the RTC found the appellants guilty of murder, and sentenced each to suffer reclusion perpetua, and to pay to the heirs of the deceased P50,000.00 and to the wife of the deceased P20,000.00 for the burial expenses.

The RTC supported the verdict with the following findings:

The self defense version of accused Toribio Mayingque is against the eye witness account of prosecution witnesses who told the Court that about 5:00 in the afternoon of 30[th] day of May, 1999 Salvacion Tusi and her husband, the victim herein, were resting in front of their house located at Pedro Sabido St. BF Resort Village, Las Piñas City, together with a cousin, Ruben Bernal.

Accused Toribio "Loloy" Mayingque arrived and without saying anything stabbed the victim two times. Salvacion shouted for help while her cousin Ruben Bernal was about to help her husband but Roly, Edwin Macas and Gregorio arrived and helped in the killing of the victim (TSN, p. 5, Sept. 6, 1999).

The four (4) continuously stabbed the victim with a bladed weapons (Ibid, p. 6). Three were positively identified in court as the perpetrators, to wit: accused Toribio, Gregorio and Filomeno, all surnamed Mayingque. Salvacion incurred expenses in the amount of P20,000.00 as a result of the death of the victim.

The reason why they stabbed and killed the victim was because they resented the admonition by the victim to them. Toribio, Filomeno and Gregorio always had a drinking spree in the place of Edwin Macas every Sunday and were very noisy. The victim asked them not to be noisy (Ibid, p. 9).

The multiple wounds suffered by the victim even belies a any pretension of self defense. The victim suffered 10 stab wounds and 2 incised wounds. In all, the victim suffered 12 wounds, to wit:

No. 1 Stab Wound, parietal region, measuring 4 by 0.5 cm right of the mid-sagittal line which is on the right part of the head measuring 4 x .5 cm which is a superficial wound because there was no other organ damaged and it is not a fatal injury. This is caused by a sharp bladed weapon and that he pointed injury No. 1 in the Anatomical Sketch;

No. 2 Stab Wound, parietal region, measuring 2.5 by 0.2 cm, 10 cm right of mid-sagittal line, he described that this wound is a superficial wound which is almost the same size of injury No. 1 which was likewise caused by a sharp bladed weapon;

No. 3, stab wound, right orbital region, measuring 4 by 0.4 cm. 4 from the anterior midline, 6 cm deep, directed posterior wards and downwards, piercing the optic nerve and the adjacent soft tissues and muscles which means from front to back and it pierced the optic nerve which is responsible for the movement and for the eyes to see. Wound No. 3 is very damaging because it will cause blindness to the right eye and if the bleeding is profuse and if no medication is done, the patient could die. This is a fatal injury and is indicated in the Anatomical Sketch;

No. 4, Incised wound, right temporal region, measuring 5 by 0.7 cm, 8 cm anterior midline. This is an incised wound also a superficial injury caused by a sharp bladed instrument;

No. 5, Incised Wound, submental region, measuring 3 by 0.5 cm, 4 cm left of the anterior midline. This wound is located on the chin a superficial and non fatal injury and this injury is indicated in Exhibit "L" as injury No.

5;

No. 6, Stab wound, neck, measuring 1.5 by 1.5 cm, along the anterior midline, 7 cm deep, directed posterior wards, downwards, and lateral wards, piercing the upper lobe of the left lungs. This injury is located on the left side of the neck directed posterior ward or front to back and the upper lobe of the left lung was destroyed. This wound is fatal and caused the death of the victim. This injury is indicated in the Anatomical Sketch as Wound No. 6 and the injury was caused by sharp bladed instrument;

No. 7, Stab Wound, neck, measuring 3.5 by 1.5 cm, along the anterior midline, 7 cm deep, directed posterior wards, downwards and lateral wards, piercing the upper lobe of the left lung. This injury is located on the middle part of the neck and injured a major organ which is the lung and fatal, this is indicated in the Anatomical Sketch as Injury No. 7 and caused by a sharp bladed instrument;

No. 8, Stab Wound, left supraclavicular region, measuring 2.5 by 1.5 cm, 12 cm from the anterior midline, 5 cm deep, directed posterior wards, downwards and medial wards, piercing the upper lobe of the left lung. This wound is located at the clavicular which is the bone of the chest and directly behind the clavicular is the lungs and this injury is fatal and could cause the death of the victim and said injury is indicated in the Anatomical Sketch and the injury was caused by a sharp bladed instrument;

No. 9, Stab wound, left clavicular region, measuring 2 by 0.5 cm. 9 cm. From the anterior midline, 6 cm deep, directed poster wards, down wards and medial wards, passing thru the 1st left intercostals space, piercing the upper lobe of the left lung. This injury is located at the clavicular region and destroys the upper lobe of the left lung and this is a fatal wound caused by a bladed weapon. This injury is indicated in the Anatomical Sketch as Wound No. 9;

No. 10, Stab wound, left infraclavicular region, measuring 2 by 1 cm. 12 cm from the anterior midline, 10 cm deep, directed posterior wards, downwards and medialwards passing thru the 2nd left intercostals space, piercing the upper lobe of the left lung. This injury is located at the clavicular region directly behind is the lung and this injury is fatal caused by a bladed instrument and the same is indicated in the Anatomical Sketch as Wound No. 10.

No. 11. Stab wound, sternal region, measuring 3 by 0.6 cm. Along the anterior midline, 10 cm. Deep, directed posteriorwards, downwards and lateralwards, piercing the upper lobe of the right lung. This injury is on the external region so from the center to the outside it hits the upper lobe of the right lung and this is a fatal wound and also indicated as Injury No. 11 in the anatomical sketch.

No. 12, Stab wound, right mammary region, measuring 3 by 2.5, 4 cm from the anterior midline, directed posteriorwards, downwards and to the right, fracturing the 3rd right thoracic rib, piercing the pericardium and the right ventricle of the heart. This injury is located on the right chest directed posteriorwards, downwards and fractured the third right thoracic rib and hit the pericardium and the right ventricle of the heart on the middle and this wound was very fatal and caused by a sharp bladed instrument and this injury is likewise indicated in the Anatomical Sketch

According to Dr. Talen, the relative position of the assailant in inflicting wounds No. 7 to 10 most probably was facing the victim and the trajectory is directed downwards and the infliction came from above. Injury Nos. 1, 2, 4 and 5 were inflicted in any position. Wound No. 3 was inflicted from up to down. Multiple stab wounds, head, neck and chest caused of death of the victim.

The foregoing 12 injuries of the victim belie the self defense of accused Toribio Mayingque. The multiple injuries of the victim support the claim of conspiracy by the prosecution. Dr. Salen told the Court that the different sizes of the wounds show that indeed more than one assailant inflicted the wounds and more than one instrument used (TSN, pp. 32-33, Feb. 14, 2001). Moreover, all three have been positively identified in court as the perpetrators. Thus, the Court can not accept the denial and alibi by the other two co-accused, namely:

Gregorio Mayingque and Filomeno Mayingque.

It is clear from the testimonies of prosecution witnesses that the accused treacherously attacked the victim. They suddenly assaulted the victim. As held: "it is necessary to show that the aggressors cooperated in such a way as to secure advantage from their superiority in strength. (People v. Casey, see note 63, supra at 34 [1981] citing People v. Elizaga, 86 Phil. 365.) There must be proof of the relative physical strength of the aggressors and the assaulted party or proof that the accused simultaneously assaulted the deceased." (People v. Casey, see note 63, supra at 34 [1981] citing People v. Bustos, et al., 51 Phil. 385; People vs. Rubia, et al., 52 Phil. 172, 176 [1928].)" (G.R. Nos. 120394-97, January 16, 2001, People vs. Danilo Pablo, Et Al.)[18]

Ruling of the CA

Through its decision dated June 15, 2007,[19] the CA affirmed the RTC, giving the following ratiocination:

The appeal is bereft of merit.

The testimonies of Salvacion, Ruben, and Jaime positively pointing to accused-appellant Loloy as the one who stabbed Tusi twice with a kitchen knife along with accused-appellants Gorio as the one who hacked Tusi on the head with a bolo and Boy Roti, as the one who held Tusi while the latter was being hacked, which are bolstered by the medico legal findings that eight (8) out of twelve (12) stabs and incise wounds sustained by Tusi are fatal wounds, belie accused-appellant Loloy's assertion of self defense.

Another factor which militates against accused-appellant Loloy's claim of self defense are the facts that he confessed his guilt in the course of his testimony before the lower court when he stated that he surrendered to the Antipolo City Police authorities because he was conscience stricken by the fact that he allegedly violated the penal and the divine laws when he stabbed Tusi successively to get even with the latter, Ruben, and Jaime who were allegedly hitting him with a lead pipe and wooden club, which is tantamount to retaliation rather than self defense; that he did not submit the injuries on his left arm and chest to medical examination to at least clearly and convincingly substantiate the alleged unlawful aggression on his person by Tusi, and that he pleaded not guilty during the arraignment because his counsel advised him to do so, but deep inside his conscience, he felt guilty as charged.

xxx when the accused invokes self-defense, it becomes incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself. xxx

xxx

Moreover, the nature, number and location of the wounds sustained by the victim belie the assertion of self-defense since the gravity of the said wounds is indicative of a determined effort to kill and not just defend. The number of wounds was established by the physical evidence, which is a mute manifestation of truth and ranks high in the hierarchy of trustworthy evidence. xxx

The distance between accused-appellant Boy Roti's alleged whereabouts on May 30, 1999 and the crime scene could be negotiated in thirty (30) minutes by a tricycle ride so much so that it was physically possible for him to be present at the scene of the incident at that precise time. Aside from his wife Lolita who started giving her direct testimony, but subsequently died, accused-appellant Boy Roti could have presented his sister, Lina Mayingque, a certain Roberto Entosa, and his sister-in-law (hipag) as witnesses to prove that he was in Golden Gate, Moonwalk, Las Piñas City all the time, and to disprove the prosecution's claim of his presence in BF Resort Village where Tusi was stabbed to death on May 30, 1999. However, he did not do so. If accused-appellant Boy Roti's fear that the family of Tusi would retaliate for being a brother of accused-appellant Loloy to avenge Tusi's death, even though he had nothing to do with it, is true, he should have reported the matter to the police authorities rather than hide at his sister's house in Moonwalk until his apprehension on July 28, 1999.

Accused-appellant Gorio's alleged act of fleeing for safety from Las Piñas City to Antipolo City in order to allegedly avoid involvement in a neighborhood fight involving his son accused-appellant Loloy, entrusting his two (2)-month old grandchild to the care of a neighbor who was not that familiar to him, leaving his wife and daughter behind in Las Piñas City exposed to the purported wrath of the family of Tusi, and leaving his son, accused-appellant Loloy, to fight his alleged aggressors without doing anything to protect his son, are incredible, and contrary to human nature and experience. His conduct could no less than be construed as an implied admission of guilt.

For alibi to prosper, it is not enough for accused-appellants Loloy and Gorio to prove that they were somewhere else when the crime was committed. They must likewise prove that they could not have been physically present at the scene of the crime or its immediate vicinity at the time of its commission. Positive identification where categorical and consistent and not attended by any showing of ill motive on the part of eyewitnesses on the matter prevails over alibi and denial.

On the other hand, Tano's testimony was incongruent with the testimonies of the other defense witnesses as regards the actual date of the occurrence of the offense, and the identity of Tusi. Said testimony cast doubt on his credibility as an eyewitness and it fails to overcome the evidence for the prosecution clearly and convincingly.

The testimony of Dr. Salen as regards the Anatomical Sketch, and Medico Legal Report, among other things, prepared by Dr. Aranas falls under the exception to the hearsay rule because the said sketch and report are entries in official records made by Dr. Aranas in the performance of his duty as a Medico Legal Officer of the WPD Crime Laboratory. Dr. Aranas had personal knowledge of the facts stated by him the said sketch and report relative to the nature and number of wounds sustained by Tusi because he was the one who performed the autopsy on the cadaver of Tusi. Dr. Salen acquired such facts from the sketch and report made by his predecessor, Dr. Aranas, who had a legal duty to turn over the same to him as his successor. Such entries were duly entered in a regular manner in the official records, hence, the entries in said sketch and report are prima facie evidence of the facts therein stated and are admissible under Section 44, Rule 130 of the Rules of Court.

As an officer having legal custody of the said sketch and report, Dr. Salen attested that the copies presented in the lower court were the original ones prepared by Dr. Aranas.

The findings on the wounds sustained by Tusi as found on the medico legal report was written in a technical language which is not well understood by the lower court, and said matter required the special knowledge, skill, experience or training possessed by Dr. Salen as a Medico Legal Officer of the WPD Crime Laboratory to give to the lower court the meaning of the technical language used, particularly, whether or not the wounds described therein were fatal. Hence, the lower court could receive in evidence Dr. Salen's interpretation of Dr. Aranas' findings.

The testimony of an expert witness is not indispensable to a successful prosecution for murder. While the autopsy report of a medico legal expert in cases of murder, or homicide, is preferably accepted to show the extent of the injuries suffered by the victim, it is not the only competent evidence to prove the injuries and the fact of death. The testimonies of credible witnesses are equally admissible regarding such injuries and the surrounding circumstances thereof.

On the non-offer of evidence, notwithstanding the fact that the medical legal report and the anatomical sketch were not formally offered, they are nonetheless, admissible because -

x x x Evidence not formally offered can be considered by the court as long as they have been properly identified by testimony duly recorded and they have themselves been incorporated in the records of the case. All the documentary and object evidence in this case were properly identified, presented and marked as

exhibits in court x x x. Even without their formal offer, therefore, the prosecution can still establish the case because witnesses properly identified those exhibits, and their testimonies are record. Furthermore, appellant's counsel had cross-examined the prosecution witnesses who testified on the exhibits.

In this case, the counsel of accused-appellants Loloy, Gorio, and Boy Roti had the opportunity to cross-examine Dr. Salen, but did not do so, insisting that the latter is not qualified as a medico legal expert, and that his testimony is hearsay.

Records show that Edgardo Tusi was not in a position to put up any kind of defense considering the fact that he was seated and resting underneath a tree in front of his house immediately before accused-appellant Loloy suddenly appeared and stabbed him twice with a kitchen knife.

There is treachery when the offender commits any of the crimes against persons, employing means and method or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked.

The participation of accused-appellants Gorio and Boy Roti in killing Tusi was shown when accused-appellant Gorio subsequently hacked Tusi on the head with a bolo, while accused-appellant Boy Roti assisted by holding Tusi right after the stabbing by accused-appellant Loloy to especially ensure the stabbing and hacking without risk to themselves.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. In the absence of direct proof of conspiracy, it may be deduced from the mode, method and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such point to a joint purpose and design, concerted action and community of interest.

Hence, the lower court correctly held that treachery and conspiracy attended the killing of Tusi.

Even if the voluntary surrender of accused-appellant Loloy to the Antipolo City Police would be appreciated, he would still be punished by reclusion perpetua, which is an indivisible penalty with a fixed duration, under Article 248 of the Revised Penal Code because the pertinent portion of Article 63 of the said Code provides that:

In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

Hence, the lower court correctly sentenced accused-appellants Loloy, Gorio, and Boy Roti to suffer the penalty of reclusion perpetua.[20]

Hence, this appeal, in which the appellants urge that the CA committed the following errors, namely:

I

THE COURT A QUO GRAVELY ERRED IN NOT GIVING CREDENCE TO ACCUSED-APPELLANT TORIBIO MAYINGQUE'S THEORY OF SELF-DEFENSE.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANTS CONSPIRED TO COMMIT THE CRIME OF MURDER

III

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO HEARSAY EVIDENCE WHICH

BECAME THE BASIS FOR THE CONVICTION OF THE ACCUSED-APPELLANTS.

IV

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANTS ARE GUILTY, THE COURT A QUO, GRAVELY ERRED IN FAILING TO APPRECIATE THE CIRCUMSTANCE OF VOLUNTARY SURRENDER, INCOMPLETE SELF-DEFENSE AND IN FINDING THAT THE CRIME WAS ATTENDED BY TREACHERY.

On June 25, 2008, Gregorio manifested in writing that he was withdrawing his appeal upon the advice and assistance of his counsel, because he intended to apply for executive clemency by reason of his advanced age of 78 years.[21]

On July 16, 2008, the Court allowed Gregorio's withdrawal of appeal, and considered the judgment final and executory as to him.[22]

Ruling

The appeal has no merit.

I

The appellants would have the Court review the CA's affirmance of their conviction by attacking the appellate court's supposed failure to accord credence to Toribio's plea of self-defense, and by assailing the appellate court's appreciation of the evidence.

The Court cannot accept the appellants' urging.

To begin with, it is fundamental that the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect.[23] Such determination made by the trial court proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination,[24] thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.[25]

In view of the foregoing, we sustain the CA's affirmance of the conviction. We have not been shown any fact or circumstance of weight and influence that the CA and the RTC overlooked that, if considered, should affect the outcome of the case.

Secondly, the essential elements of self-defense are: (a) unlawful aggression; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.[26] By invoking self-defense, the accused must prove by clear and convincing evidence the elements of self-defense.[27] The rule consistently adhered to in this jurisdiction is that when the accused admitted that he was the author of the death of the victim and his defense was anchored on self-defense, it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court.[28] The rationale for this requirement is that the accused, having admitted the felonious wounding or killing of his adversary, is to be held criminally liable for the crime unless he establishes to the satisfaction of the court the fact of self-defense. Thereby, however, the burden to prove guilt beyond reasonable doubt is not lifted from the shoulders of the State, which carries it until the end of the proceedings. In other words, only the onus probandi has shifted to him, because self-defense is an affirmative allegation that must be established with certainty by sufficient and satisfactory proof.[29] He must now discharge the burden by relying on the strength of his own evidence, not on the weakness of that of the

Prosecution, for, even if the Prosecution's evidence is weak, it cannot be disbelieved in view of the accused's admission of the killing.[30]

Both the trial court and the CA rejected Teofilo's plea of self-defense. We hold that they did so correctly. Teofilos's evidence on self-defense was not persuasive enough, and lacked credibility. Simply stated, such evidence did not prevail over the clear showing by Salvacion and the Bernals that Teofilo and his co-conspirators had ganged up on Edgardo with a knife (Teofilo) and bolo (Gregorio) while the other two had held Edgardo to render him defenseless. Indeed, we agree with the conclusion of both lower courts that the plea of self-defense was belied by the number (12) and the different sizes of the wounds inflicted on Edgardo. The presence of a large number of wounds on the victim's body negated self-defense, and indicated, instead, a determined effort to kill the victim.[31]

Toribio did not convincingly establish, first of all, that there was unlawful aggression against him. His claim that Edgardo and the Bernals had attacked him with a lead pipe and wooden club, which impelled him to stab Edgardo, became implausible to the lower courts, and to us, too, because Toribio did not even submit himself to any medical attention. He should have done so, if, truly, he had sustained injuries at the hands of the victim and his group. At any rate, the question as to who between the accused and the victim was the unlawful aggressor was a question of fact best addressed to and left with the trial court for determination based on the evidence on record.[32]

Thirdly, the CA did not err in affirming the conviction of Filomeno, whose main plea consisted of alibi. Filomeno's alibi would place him in Golden Gate, Moonwalk, Las Piñas City, at the time of the commission of the crime. The CA rejected such alibi by indicating that the distance between Golden Gate, Moonwalk, Las Piñas City and Pedro Sabido Street, BF Resort Village, Las Piñas City where the crime was committed could be negotiated through a 30-minute tricycle ride, which did not render impossible for Filomeno to be in the place of the crime when it was committed. The CA also cited the abject failure of Filomeno, or other witnesses to credibly establish his being in Golden Gate, Moonwalk, Las Piñas City in the entire time from the morning of May 30, 1999 till after the commission of the crime, as well as to disprove the State's positive showing that he was present in the place of the crime when it was committed.

Alibi is an inherently weak and unreliable defense, because it is easy to fabricate and difficult to disprove.[33] To establish alibi, the accused must prove: (a) that he was actually in another place at the time of the perpetration of the crime; and (b) that it was physically impossible for him to be at the scene of the crime when the crime was perpetrated.[34] Physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where the crime was committed, as well as to the facility of access between the two places.[35]

II

Penalties and Damages

As the consequence of the foregoing conclusion, the appellants are found guilty of murder, and accordingly punished with reclusion perpetua pursuant to Article 248 of the Revised Penal Code.[36]

There is a need to correct the award of damages.

The CA did not state whether the amount of P50,000.00 was for death indemnity or moral damages. Nonetheless, the CA should have awarded both damages, considering that they were of different kinds.[37] For death indemnity, the amount of P50,000.00 is fixed pursuant to the current judicial policy on the matter,[38] without the need of any evidence or proof of damages.[39] Likewise, the mental anguish of the surviving family should be

assuaged by the award of appropriate and reasonable moral damages.[40] Although the surviving family's mental anguish is not ever quantifiable with mathematical precision, the Court must nonetheless determine the amount to which the heirs of the deceased are entitled. In this case, the Court holds that the amount of P50,000.00 is reasonable, which, pursuant to prevailing jurisprudence,[41] is awarded even in the absence of any allegation and proof of the heirs' emotional suffering, simply because human nature and experience have shown that:

xxx a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them.[42]

The Civil Code provides that exemplary damages may be imposed in criminal cases as part of the civil liability "when the crime was committed with one or more aggravating circumstances." [43] The Civil Code allows such damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." [44] In this regard, the CA and the RTC committed the plain error of failing to recognize the right of the heirs of the victim to exemplary damages by virtue of the attendance of treachery. The plain error, even if not assigned in this appeal, demands immediate rectification as a matter of law due to the killing being attended by treachery.

That treachery, being an attendant circumstance, was inseparable from murder did not matter. As well explained in *People v. Catubig*: [45]

The term "aggravating circumstances" used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.

Accordingly, P30,000.00 is awarded as exemplary damages. We hold that true exemplarity will not be served by a lesser amount.

Lastly, the Court retains the award of P20,000.00 for burial expenses, as the CA and RTC fixed, considering that the appellants have not assailed such amount. There can be no question that burial expenses were the reasonable consequence of the criminal act of the accused.

WHEREFORE, appellants TORIBIO MAYINGQUE and FILOMENO MAYINGQUE are found GUILTY beyond reasonable doubt of the crime of MURDER, and each is sentenced to suffer reclusion perpetua.

The appellants are ordered to pay to the heirs of Edgardo Tusi P50,000.00 as civil indemnity, P50,000.00 as moral damages, P30,000.00 as actual damages, and P20,000.00 as burial expenses.

Costs of suit to be paid by the appellants.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Abad,[*] and Villarama, Jr., JJ., concur.

[*] Additional member as per Special Order No. 843 dated May 17, 2010.

[1] Rollo, pp. 2-21.

[2] CA Rollo, pp. 13-21.

[3] Original Records, p. 3

[4] CA Rollo, p. 18.

[5] TSN September 6, 1999, p. 9.

[6] Id., pp. 4-6.

[7] TSN December 6, 1999, p. 12; September 1, 2000, pp. 8-18.

[8] TSN, February 14, 2001, pp. 4-6.

[9] Id., pp. 14-33.

[10] TSN, December 4, 2003, pp. 5-11.

[11] TSN, October 12, 2004, pp. 5-11.

[12] TSN, May 12, 2005, p. 12.

[13] TSN, August 11, 2005, pp. 11-21.

[14] Id., pp. 4-10.

[15] TSN, November 3, 2005, pp. 3-7.

[16] Id., pp. 7-12.

[17] Original Records, pp. 259-267.

[18] Original Records, pp. 265-267

[19] CA rollo, pp. 102-120; the decision was penned by Justice Remedios A. Salazar-Fernando, and concurred in by Justice Rosalinda Asuncion-Vicente and Justice Enrico A. Lanzas (retired).

[20] Id., pp. 113-120.

[21] Rollo, pp. 65-69.

[22] Id., p.71; the entry of judgment was made on October 3, 2008, rollo, pp. 73-74.

[23] *People v. Darilay*, G.R. Nos. 139751-52, January 26, 2004, 421 SCRA 45.

[24] *Gulmatico v. People*, G.R. No. 146296, October 15, 2007, 536 SCRA 82.

[25] *People v. De Guzman*, G.R. No. 177569, November 28, 2007, 539 SCRA 306; *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537; *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219; *Perez v. People*, G.R. No. 150443, January 20, 2006, 479 SCRA 209; *People v. Tonog, Jr.*, G.R. No. 144497,

June 29, 2004, 433 SCRA 13; *People v. Genita, Jr.*, G.R. No. 126171, March 11, 2004, 425 SCRA 343; *People v. Pacheco*, G.R. No. 142887, March 2, 2004, 424 SCRA 164; *People v. Abolidor*, G.R. No. 147231, February 18, 2004, 423 SCRA 260; *People v. Santiago*, G.R. Nos. 137542-43, January 20, 2004, 420 SCRA 248; *People v. Librando*, G.R. No. 132251, July 6, 2000, 335 SCRA 232; *People v. Alarcon*, G.R. Nos. 133191-93, July 11, 2000, 335 SCRA 457.

[26] Art. 11 (1), Revised Penal Code.

[27] *People v. Calabroso*, G.R. No. 126368, September 14, 2000, 340 SCRA 332, 338.

[28] *People v. Camacho*, G.R. No. 138629, June 20, 2001, 359 SCRA 200; *People v. Quiño*, G.R. No. 105580, May 17, 1994, 232 SCRA 400; *People v. Capisonda*, 1 Phil. 575 (1902); *People v. Baguio*, 43 Phil. 683 (1922); *People v. Silang Cruz*, 53 Phil. 625 (1929); *People v. Gutierrez*, 53 Phil. 609 (1929); *People v. Embalido*, 58 Phil. 152 (1933); *People v. Dorico*, G.R. No. 31568, November 29, 1973, 54 SCRA 172; *People v. Boholst-Caballero*, G.R. No. L-23249, November 25, 1974, 61 SCRA 180.

[29] *People v. Gelera*, G. R. No. 121377, August 15, 1997, 277 SCRA 450.

[30] *People v. Molina*, G.R. No. 59436, August 28, 1992, 213 SCRA 52; *People v. Alapide*, G.R. No. 104276, September 20, 1994, 236 SCRA 555; *People v. Albarico*, G.R. Nos. 108596-97, November 17, 1994, 238 SCRA 203; *People v. Camahalan*, G.R. No. 114032, February 22, 1995, 241 SCRA 558.

[31] *People v. Domingo*, G.R. No. 131817, August 8, 2001, 362 SCRA 338, 343; *People v. Rivero*, G.R. No. 112721, March 15, 1995, 242 SCRA 354; *People v. Nuestro*, G.R. No. 111288, January 18, 1995, 240 SCRA 221.

[32] *Garcia v. People*, G.R. No. 144699, March 10, 2004, 425 SCRA 221.

[33] *People v. Batidor*, G.R. No. 126027, February 18, 1999, 303 SCRA 335.

[34] *People v. Saban*, G.R. No. 110559, November 24, 1999, 319 SCRA 36, *People v. Reduca*, G.R. Nos. 126094-95, January 21, 1999, 301 SCRA 516, 534.

[35] *People v. De Labajan*, G.R. Nos. 129968-69, October 27, 1999, 317 SCRA 566, 575.

[36] 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:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
- In consideration of a price, reward, or promise.
- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
- With evident premeditation.
- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[37] *Heirs of Castro v. Raymundo Bustos*, L-25913, February 28, 1969, 27 SCRA 327.

[38] *Id.*

[39] Article 2206, Civil Code:

Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. 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; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

[40] Article 2206, (3), in relation to Article 2217 and Article 2219, Civil Code, and Article 107, Revised Penal Code.

[41] *People v. Berondo*, G.R. No. 177827, March 30, 2009, 582 SCRA 547; *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 456-457; *People v. Osianas*, G.R. No. 182548, September 30, 2008, 567 SCRA 319, 340; *People v. Buduhan*, G.R. No. 178196, August 6, 2008, 561 SCRA 337, 367-368; *People v. Salva*, G.R. No. 132351, January 10, 2002, 373 SCRA 55, 69.

[42] *People v. Panado*, G.R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

[43] Article 2230, Civil Code.

[44] Article 2229, Civil Code.

[45] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

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