

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSENDO REBUCAN Y LAMSIN, ACCUSED-APPELLANT.

G.R. No. 182551. July 27, 2011

Ponente: LEONARDO-DE CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-182551/>

LEONARDO-DE CASTRO, J.:

Assailed before this Court is the Decision[1] dated August 21, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00282, which modified the Decision[2] dated November 3, 2003 of the Regional Trial Court (RTC) of Carigara, Leyte, Branch 13, in Criminal Case No. 4232. In the Decision of the Court of Appeals, the accused-appellant Rosendo Rebucan y Lamsin was adjudged guilty beyond reasonable doubt of two (2) separate counts of murder and was sentenced to suffer the penalty of reclusion perpetua for each count.

On January 23, 2003, the accused-appellant was charged with the crime of double murder in an Information, the accusatory portion of which reads:

That on or about the 6[th] day of November, 2002, in the Municipality of Carigara, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and wound FELIPE LAGERA Y OBERO, 65 years old and RANIL TAGPIS Y LAGERA, 1 year old, with the use of a long bolo (sundang) which the accused had provided himself for the purpose, thereby inflicting upon Felipe Lagera:

Hypovolemic shock, massive blood loss and multiple hacking wounds upon Ranil Tagpis:

Hypovolemic shock, massive blood loss and hacking wound, head[,] which wounds caused the death of Felipe Lagera y Obera and Ranil Tagpis y Lagera, immediately thereafter.[3]

When arraigned on February 10, 2003, the accused-appellant pleaded not guilty to the charge.[4] Trial, thereafter, ensued.

The prosecution presented as witnesses: (1) Dr. Ma. Bella V. Profetana, Municipal Health Officer of Carigara, Leyte; (2) Carmela Tagpis, the 5-year-old granddaughter of the victim Felipe Lagera and sister of the victim Ranil Tagpis, Jr.;[5] (3) Adoracion Lagera, the wife of Felipe Lagera; and (4) Alma Tagpis, the daughter of Felipe Lagera and mother of Ranil Tagpis, Jr.

Dr. Profetana testified that she conducted a post-mortem examination on the body of the victim Felipe Lagera on November 6, 2002. She stated that Felipe sustained three hacking wounds, the first of which was located at his right arm and was about 23x2x4 centimeters. The said wound was fatal and could have been caused by a sharp instrument such as a bolo. The second wound was located at Felipe's "nose maxillary area,"[6] measuring 13 centimeters, with an inverted C shape. The second wound was not fatal and could have been caused by a sharp-edged instrument like a bolo. The third wound was located at Felipe's left arm and was measured as 9x1x1.5 centimeters. The said wound was fatal and could have likewise been caused by a sharp-edged instrument.

Dr. Profetana concluded that the causes of death of Felipe were hypovolemic shock, massive blood loss and multiple hacking wounds. She also conducted a post-mortem examination on the body of Ranil Tagpis, Jr. on the aforementioned date. The results revealed that Ranil sustained a hacking wound at the "fronto-temporal area"[7] with a skull fracture. In the case of Ranil, the cause of death was "hypovolemic shock secondary to massive blood loss secondary to [the] hacking wound to the head." [8] The instrument that was most likely used was sharp-edged like a bolo.[9]

Carmela Tagpis testified as an eyewitness to the incident in question. She pointed to the accused-appellant as the "Bata Endong"[10] (Uncle Endong) who hacked her grandfather and brother. She stated that Ranil was hit in the forehead, while Felipe was hit on the face, the left shoulder and the right shoulder. After Felipe was hacked by the accused-appellant, the former was still able to walk outside of his house, to the direction of the coconut tree and thereafter fell to the ground. Carmela said that she saw that a long bolo was used in the killing of Felipe and Ranil. She related that Felipe also owned a bolo but he was not able to use the same when he was attacked. She was then inside the house with Felipe and her two younger brothers, Jericho and Bitoy (Ranil). She was sitting about four meters away when the hacking incident occurred indoors.[11]

On cross-examination, Carmela stated that at the time of the incident, she was playing with a toy camera inside the house and she was situated beside a chicken cage, near a bench. Felipe was also there near the bench and he was carrying Ranil in his right arm. When asked whether the accused-appellant came inside the house in a sudden manner, Carmela answered in the affirmative. She insisted that Ranil was indeed carried by Felipe when the accused-appellant entered the house. She said that no fight or altercation occurred between Felipe and the accused-appellant. After Felipe was hacked, he immediately ran outside of the house. Carmela and Jericho then ran to the back of the house.[12]

Adoracion Lagera testified that at 4:00 p.m. on November 6, 2002, she was at the house of a certain Justiniano Rance. After arriving there, she was fetched by a little boy who told her to go home because Felipe had been hacked. She ran towards the direction of her house. When she got there, she saw the lifeless body of Felipe sprawled on the ground. She then went inside the house and found her daughter, Alma Tagpis, cuddling the body of Ranil whose head was wounded. She told Alma to look for a motor vehicle to bring the child to the hospital. She also found out that the other two children, Carmela and Jericho, hid when they saw Felipe being hacked. When she asked them who went to their house, Carmela told her that it was the accused-appellant who entered their house and hacked the victims.[13]

Alma Tagpis testified that at about 4:00 p.m. on November 6, 2002, she was in Brgy. Sogod, having their palay (unhusked rice grain) milled. Shortly thereafter, she went home and proceeded to the house of her father, Felipe, where she left her children. She then met a person looking for her mother who was about to tell the latter that Felipe was hacked. When she rushed to Felipe's house, she saw him lying in the grassy place, wounded and motionless. She asked Felipe who hacked him, but he was not able to answer anymore. She went inside the house and saw blood on the floor and the feet of her son Ranil. Thinking that the killer was still inside, she went to the back of the house and pulled a slot of board on the wall so she could get inside. Upon seeing the body of Ranil, she took him and ran towards the road. She was able to bring Ranil to the hospital, but the doctor already pronounced him dead. Her other two children, Carmela and Jericho, soon arrived at the hospital with the police. When she asked them who killed Felipe, Carmela answered that it was the accused-appellant.[14]

Thereafter, the prosecution formally offered the following documentary evidence, to wit: (1) Exhibit A - the Post-mortem Examination Report on Felipe;[15] (2) Exhibit B - the sketch of the human anatomy indicating the wounds sustained by Felipe;[16] (3) Exhibit C - the Certificate of Death of Felipe;[17] (4) Exhibit D - the Post-mortem Examination Report on Ranil;[18] (5) Exhibit E - the sketch of the human anatomy indicating the

wounds sustained by Ranil;[19] and (6) Exhibit F - the Certificate of Death of Ranil.[20]

The defense, on the other hand, presented the following witnesses, namely: (1) Raymond Rance, the stepson of the accused-appellant; (2) Renerio Arminal,[21] the barangay chairperson of Brgy. Canlampay, Carigara, Leyte; (3) Arnulfo Alberca, a member of the Philippine National Police (PNP) stationed at Carigara, Leyte; and (4) the accused-appellant Rosendo Rebucan y Lamsin.

Raymond Rance testified that his mother's name is Marites Rance. The accused-appellant is not his biological father but the former helped in providing for his basic needs. He narrated that on the night of July 18, 2002, he saw Felipe Lagera inside their house. Felipe placed himself on top of Raymond's mother, who was lying down. Raymond and his younger sister, Enda, were then sleeping beside their mother and they were awakened. His mother kept pushing Felipe away and she eventually succeeded in driving him out. In the evening of July 20, 2002, at about 11:00 p.m., Raymond recounted that he saw Felipe's son, Artemio alias Timboy, inside their house. Timboy was able to go upstairs and kept trying to place himself on top of Raymond's mother. The latter got mad and pushed Timboy away. She even pushed him down the stairs. The accused-appellant was working in Manila when the aforesaid incidents happened. Raymond said that his mother thereafter left for Manila. Subsequently, he saw the accused-appellant at the house of a certain Bernie, several days after the accused-appellant arrived in Leyte. He told the accused-appellant about the incidents involving Felipe and Timboy. On November 6, 2002, Raymond and the accused were already living in the same house. On the said date, the accused-appellant left their house after they had lunch and he told Raymond that he was going to call the latter's mother. Raymond testified that the accused-appellant is a good man and was supportive of his family. He also stated that the accused-appellant seldom drank liquor and even if he did get drunk, he did not cause any trouble.[22]

Renerio Arminal testified that on November 6, 2002, the accused-appellant surrendered to him. The latter came to him alone and told him that he (the accused-appellant) fought with Felipe Lagera. Arminal then ordered the human rights action officer, Ricky Irlandez, and the chief tanod, Pedro Oledan, to bring the accused-appellant to the police station. Afterwards, the police officers came to his place and he accompanied them to the house of Felipe.[23]

Arnulfo Alberca was likewise called upon to the witness stand to prove that the voluntary surrender of the accused-appellant was entered into the records of the police blotter. He was asked to read in open court the Police Blotter Entry No. 5885 dated November 6, 2002, which recorded the fact of voluntary surrender of the accused-appellant. His testimony was no longer presented, however, since the prosecution already admitted the contents of the blotter.[24]

The accused-appellant testified that he arrived in Carigara, Leyte from Manila on August 15, 2002. He went to the house of his elder brother, Hilario, to look for his children. There, he learned that his wife went to Manila and his brother was taking care of his two children and his stepson, Raymond. On November 2, 2002, he saw Raymond at the place of his friend, Bernie Donald. He asked Raymond why the latter's mother went to Manila and he was told that, while he was still in Manila, Felipe and Timboy Lagera went to their house and tried to place themselves on top of his wife. He then said that he harbored ill feelings towards the said men but he was able to control the same for the sake of his children. On November 6, 2002, at about 2:00 p.m., he went to the house of barangay chairperson Arminal to place a call to his wife who was in Manila. He was carrying a bolo at that time since he was using the same to cut cassava stems in his farm. When he talked to his wife, she confirmed that she was sexually molested by Felipe and Timboy. Thereafter, as the accused-appellant proceeded to go home, it rained heavily so he first sought shelter at the place of his friend, Enok. The latter was drinking gin and he was offered a drink. After staying there and drinking for half an hour, the accused-appellant decided to go home. Afterwards, he remembered that he had to buy kerosene so he went to the store of Felipe Lagera.[25]

The accused-appellant further testified that when he reached the house of Felipe, the latter was feeding chickens. When Felipe asked him what was his business in going there, he confronted Felipe about the alleged sexual abuse of his wife. Felipe allegedly claimed that the accused-appellant had a bad purpose for being there and that the latter wanted to start a fight. Accused-appellant denied the accusation and responded that Felipe should not get angry, as it was he (Felipe) who committed a wrong against him and his wife. Felipe allegedly got mad and hurled the cover of a chicken cage at him, but he was able to parry it with his hand. The accused-appellant then drew his long bolo and hacked Felipe on the left side of the abdomen, as the latter was already turning and about to run to the house. He also went inside the house since Felipe might get hold of a weapon. When they were both inside and he was about to deliver a second hacking blow, Felipe held up and used the child Ranil as a shield. As the second hacking blow was delivered suddenly, he was not able to withdraw the same anymore such that the blow landed on Ranil. When he saw that he hit the child, he got angry and delivered a third hacking blow on Felipe, which landed on the right side of the latter's neck. Thereafter, Felipe ran outside. He followed Felipe and hacked him again, which blow hit the victim's upper left arm. At that time, Felipe was already on the yard of his house and was about to run towards the road. He then left and surrendered to the barangay chairperson.[26]

During his cross-examination, the accused-appellant said that he was a bit tipsy when he proceeded to Felipe's house, but he was not drunk. When Felipe ran inside the house after the first hacking blow, the accused-appellant stated that he had no intention to back out because he was thinking that the victim might get a gun and use the same against him. The accused-appellant also asserted that when he was about to deliver the second hacking blow, Felipe simultaneously took Ranil who was sitting on a sack and used him to shield the blow. There was a long bolo nearby but Felipe was not able to take hold of the same because the accused-appellant was chasing him. He admitted that he had a plan to kill Felipe but claimed that when he arrived at the latter's house on the day of the attack, he had no intention to kill him.[27]

The defense also presented the following documentary evidence: (1) Exhibit 1 - the Police Blotter Entry No. 5885 dated November 6, 2002;[28] and (2) Exhibit 2 - the Civil Marriage Contract of Rosendo Rebucan and Marites Rance.[29]

On November 3, 2003, the RTC rendered a decision, convicting the accused-appellant of the crime of double murder. The trial court elucidated thus:

[In view of] the vivid portrayal of Raymond on how [the wife of the accused] was sexually abused by the father and son Lagera, the accused hatched a decision to avenge his wife's sexual molestation. Days had passed, but this decision to kill Felipe did not wither, instead it became stronger, that on the 6[th] of November 2002, he armed himself with a sharp long bolo known as "sundang" and went to Brgy. Canlampay, Carigara, Leyte where the victim live[d]. Fueled by hatred and the spirit of London gin after consuming one bottle with his compadre "Enok", he decided to execute his evil deeds by going to the house of Felipe Lagera, in the guise of buying kerosene and once inside the house hacked and wounded the victim, Felipe Lagera who was then holding in his arm his grandson, one and half years 1 ½ old, Ramil Tagpis, Jr.

The manner by which the accused adopted in killing the victim, Felipe Lagera, and Ramil Tagpis, Jr. was a premeditated decision and executed with treachery.

x x x x

There is credence to the testimony of the minor eyewitness Carmela Tagpis that the victim, Felipe was holding in his arms her younger brother, Ramil Tagpis, Jr. inside his house, when the accused entered, and without any warning or provocation coming from the victim, the accused immediately delivered several hacking blows on the victim giving no regard to the innocent child in the arms of Lagera. With this precarious situation, the victim who was unarmed has no opportunity to put up his defense against the unlawful aggression of the

accused, moreso, to retaliate. Moreover, what defense could an innocent 1 1/2 years old Ramil Tagpis, Jr. put up against the armed and superior strength of the accused, but to leave his fate to God.

The circumstance that the attack was sudden and unexpected and the victims, unarmed, were caught totally unprepared to defend themselves qualifies the crime committed as murder. x x x.

After the incident, the accused Rosendo Rebucan immediately went to the house of Brgy. Chairman, Renerio Arcenal at sitio Palali, Brgy. Canlampay, Carigara, Leyte, to surrender, because he killed Felipe Lagera and Ramil Tagpis, Jr. The Brgy. Chairman instructed his Brgy. Human Rights Action Officer, Ricky Irlandez and his Chief Tanod, Pedro Oledan to bring Rosendo to the Police Authorities of Carigara, Leyte. This fact of voluntary surrender was corroborated by Police Officer Arnulfo Alberca, who presented to Court the police blotter, under entry No. 5885, dated November 6, 2002, of the PNP, Carigara, Leyte.

Clearly, the act of the accused in surrendering to the authorities showed his intent to submit himself unconditionally to them, to save the authorities from trouble and expenses that they would incur for his capture. For this reason, he has complied with the requisites of voluntary surrender as a mitigating circumstance[.] x x x.

From the circumstances obtaining, the mitigating circumstances of admission and voluntary surrender credited to the accused are not sufficient to offset the aggravating circumstances of: a) evident premeditation; b) treachery (alevosia); c) dwelling - the crime was committed at the house of the victim; d) intoxication - the accused fueled himself with the spirit of London gin prior to the commission of the crime; e) abuse of superior strength; and f) minority, in so far as the child victim, Ramil Tagpis, Jr. is concerned, pursuant to Article 63 of the Revised Penal Code as amended. x x x.

x x x x

In the mind of the Court, the prosecution has substantially established the quantum of evidence to prove the guilt of the accused beyond reasonable doubt.[30]

The RTC, thus, decreed:

WHEREFORE, premises considered, pursuant to Sec. 6, Art. 248 of the Revised Penal Code, as amended and further amended by R.A. 7659 (The Death Penalty Law), the Court found accused ROSENDO REBUCAN y LAMSIN, GUILTY beyond reasonable doubt of the crime of DOUBLE MURDER charged under the information and sentenced to suffer the maximum penalty of DEATH, and to pay civil indemnity to the heirs of Felipe Lagera and Ramil Tagpis, Jr. in the amount of Seventy-Five Thousand (P75,000.00) Pesos for each victim and moral damages in the amount of Seventy-Five Thousand (P75,000.00) Pesos to each; and

Pay the Cost.[31] (Emphases ours.)

The case was originally elevated to this Court on automatic review and the same was docketed as G.R. No. 161706.[32] The parties, thereafter, submitted their respective appeal briefs.[33] In our Resolution[34] dated July 19, 2005, we ordered the transfer of the case to the Court of Appeals for appropriate disposition, pursuant to our ruling in *People v. Mateo*. [35] Before the appellate court, the case was docketed as CA-G.R. CR.-H.C. No. 00282.

The Court of Appeals promulgated the assailed decision on August 21, 2007, modifying the judgment of the RTC. The appellate court adopted the position of the Office of the Solicitor General (OSG) that the felonious acts of the accused-appellant resulted in two separate crimes of murder as the evidence of the prosecution failed to prove the existence of a complex crime of double murder. The Court of Appeals subscribed to the findings of the RTC that the killing of Felipe Lagera was attended by the aggravating circumstances of treachery and evident premeditation. With respect to the ensuant mitigating circumstances, the Court of Appeals credited the circumstance of voluntary surrender in favor of the accused-appellant, but rejected the appreciation of

intoxication, immediate vindication of a grave offense and voluntary confession. As for the death of Ranil, the appellate court also ruled that the same was attended by the aggravating circumstance of treachery and the mitigating circumstance of voluntary surrender. Thus, the Court of Appeals disposed of the case as follows:

WHEREFORE, IN VIEW OF THE FOREGOING, the Decision appealed from is hereby MODIFIED. As modified, accused-appellant is hereby adjudged guilty beyond reasonable doubt for two (2) counts of murder for the deaths of Felipe Lagera and Ramil Tagpis, Jr., and is hereby sentenced to suffer the penalty of reclusion perpetua for each count of murder he has committed.

The award of civil indemnity is reduced to P50,000.00 for each victim; the award of moral damages is likewise reduced to P50,000.00 for each victim. Further, exemplary damages in the amount of P25,000.00 is awarded to the heirs of each victim.[36]

The accused-appellant filed a Notice of Appeal[37] of the above decision. In a Resolution[38] dated February 6, 2008, the Court of Appeals ordered that the records of the case be forwarded to this Court.

On June 18, 2008, we resolved to accept the appeal and required the parties to file their respective supplemental briefs, if they so desire, within thirty days from notice.[39] Thereafter, both parties manifested that they were adopting the briefs they filed before the Court of Appeals and will no longer file their respective supplemental briefs.[40]

The accused-appellant sets forth the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF MURDER.

II

THE COURT A QUO GRAVELY ERRED IN FAILING TO APPRECIATE THE MITIGATING CIRCUMSTANCE OF IMMEDIATE VINDICATION OF A GRAVE OFFENSE IN FAVOR OF THE ACCUSED-APPELLANT.

III

THE COURT A QUO GRAVELY ERRED IN FAILING TO APPRECIATE INTOXICATION AS A MITIGATING CIRCUMSTANCE IN FAVOR OF THE ACCUSED-APPELLANT.

IV

THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCES OF DWELLING, ABUSE OF SUPERIOR STRENGTH AND MINORITY.[41]

The accused-appellant admits to the killing of Felipe but denies that the crime was committed with treachery and evident premeditation. He argues that there is doubt as to the presence of treachery given that there was no eyewitness who categorically stated that the accused-appellant attacked the victims suddenly, thereby depriving them of the means to defend themselves. He brushed aside the testimony of Carmela Tagpis, insisting that she was not in a position to say that there was no altercation between him and Felipe, which could have put the latter on guard. The prosecution allegedly failed to prove that the accused-appellant intentionally waited for the time when Felipe would be defenseless before initiating the attack. The fact that he voluntarily surrendered to the barangay chairperson and the police and admitted the killings supposedly showed that it was not intentional and he did not consciously adopt the method of attack upon the two victims. The accused-appellant similarly rejects the finding of the RTC that there was evident premeditation on his part since the prosecution failed to prove that he

deliberately planned the killing of Felipe.

The accused-appellant maintains that at the time of the incident, he was still unable to control his anger as he just recently discovered that his wife was sexually abused by Felipe and the latter's son, Timboy. He also avers that he was a bit intoxicated when the crime took place so that he was not in total control of himself. He claims that he is not a habitual drinker and that he merely consumed the alcohol prior to the incident in order to appease his friend. He likewise argues that the aggravating circumstance of dwelling should not have been appreciated inasmuch as the same was not alleged in the information. Moreover, the aggravating circumstance of abuse of superior strength cannot be appreciated since he did not deliberately harm or attack Ranil Tagpis, Jr. and the death of the latter was accidental. The accused-appellant prays that he should only be found guilty of the crime of homicide with the mitigating circumstances of voluntary surrender, immediate vindication of a grave offense and intoxication.

The appeal lacks merit.

Basic is the rule that in order to affirm the conviction of an accused person, the prosecution must establish his guilt beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.[42] Ultimately, what the law simply requires is that any proof against the accused must survive the test of reason for it is only when the conscience is satisfied that the perpetrator of the crime is the person on trial should there be a judgment of conviction.[43] A finding of guilt must rest on the strength of the prosecution's own evidence, not on the weakness or even absence of evidence for the defense.[44]

In the instant case, the evidence of the prosecution established the fact that the killings of Felipe and Ranil were attended by treachery, thus qualifying the same to murder.

According to Article 248[45] of the Revised Penal Code, as amended, any person who shall kill another shall be guilty of murder if the same was committed with the attendant circumstance of treachery, among other things, and that the situation does not fall within the provisions of Article 246.[46] There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[47] The essence of treachery is a deliberate and sudden attack, offering an unarmed and unsuspecting victim no chance to resist or to escape. There is treachery even if the attack is frontal if it is sudden and unexpected, with the victims having no opportunity to repel it or defend themselves, for what is decisive in treachery is that the execution of the attack made it impossible for the victims to defend themselves or to retaliate.[48]

In the case at bar, the RTC gave more weight to the testimony of Carmela Tagpis in establishing the presence of treachery in the manner with which the accused-appellant carried out the violent killings of Felipe and Ranil. In this regard, we reiterate the established doctrine articulated in *People v. De Guzman*[49] that:

In the resolution of the factual issues, the court relies heavily on the trial court for its evaluation of the witnesses and their credibility. Having the opportunity to observe them on the stand, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court.
x x x.[50]

Moreover, we have oftentimes ruled that the Court will not interfere with the judgment of the trial court in determining the credibility of witnesses unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.[51]

Carmela testified as follows:

PROS. TORREVILLAS:

Q:

Do you have a brother named Ranil Tagpis, Jr?

A:

Yes sir.

Q:

Where is he now?

A:

He is dead.

Q:

Do you know the circumstance of his death?

A:

Yes sir.

Q:

Why did he die?

A:

Because he was hacked by Bata Endong.

Q:

Do you know also your grandfather Felipe Lagera, Jr?

A:

Yes sir.

Q:

Where is he now?

A:

He is dead also.

Q:

Why did he die?

A:

Because he was hacked by Bata Endong.

Q:

Is the person your Bata Endong here in the court room who hacked your brother and your grandfather?

A:

Yes sir.

COURT INTERPRETER:

Witness pointing to a person when asked of his name identified himself as Rosendo Rebucan.

x x x x

Q:

What instrument did the accused use in killing your [brother and] your grandfather?

A:

Long bolo, sundang.

Q:

Were you able to see that long bolo?

A:

Yes sir.

x x x x

Q:

Was your grandfather armed that time?

A:

He has his own bolo but he placed it on the holder of the long bolo.

Q:

Was that long bolo used by your grandfather?

A:

No sir.

x x x x

Q:

How far were you to the incident, when this hacking incident happened?

A:

(witness indicating a distance of about 4 meters).

x x x x

COURT:

Cross.

ATTY. DICO:

Q:

You stated awhile ago that your brother Jericho, Bitoy [Ranil] and you and your papo Felipe were at the house of your papo Felipe?

A:

Yes sir.

Q:

You mean to say that there were no other persons present in that house other than you four (4)?

A:

Yes sir.

x x x x

Q:

So, you were playing that toy camera inside the room of your papo Felipe?

A:

No sir, I was playing then at the side of the chicken cage.

Q:

Is that chicken cage was inside or outside the house of your papo Felipe's house?

A:

Inside the house of my grandfather.

x x x x

Q:

Was your brother Ranil carried by your grandfather Felipe?

A:

Yes sir.

He was carried by his right arm.

Q:

So, you mean to say that your uncle Endo went inside, it was so sudden?

A:

Yes sir.

Q:

Because it was sudden, you were not able to do anything, what did you do?

A:

I then cried at that time.

x x x x

Q:

But you are sure that when your uncle Endo entered as you said that your brother Ramil was carried by your papo Felipe?

A:

Yes sir.

Q:

Did your uncle Endo and your papo Felipe fight or was there an altercation?

A:

No sir.[52]

As can be gleaned from the above testimony, Carmela firmly and categorically pointed to the accused-appellant as the person who entered the house of Felipe. She clearly stated that the attack was not preceded by any fight or altercation between the accused-appellant and Felipe. Without any provocation, the accused-appellant suddenly delivered fatal hacking blows to Felipe. The abruptness of the unexpected assault rendered Felipe defenseless and deprived him of any opportunity to repel the attack and retaliate. As Felipe was carrying his grandson Ranil, the child unfortunately suffered the same fatal end as that of his grandfather. In the killing of Ranil, the trial court likewise correctly appreciated the existence of treachery. The said circumstance may be properly considered, even when the victim of the attack was not the one whom the defendant intended to kill, if it appears from the evidence that neither of the two persons could in any manner put up defense against the attack or become aware of it.[53] Furthermore, the killing of a child is characterized by treachery even if the manner of assault is not shown. For the weakness of the victim due to his tender years results in the absence of any danger to the accused.[54]

Although the accused-appellant painted a contrasting picture on the matter, i.e., that the attack was preceded by a fight between him and Felipe, the Court is less inclined to be persuaded by the accused-appellant's version of the events in question. Indeed, the Court has ruled that the testimony of children of sound mind is "more correct and truthful than that of older persons" and that "children of sound mind are likely to be more observant of incidents which take place within their view than older persons, and their testimonies are likely more correct in detail than that of older persons." [55] In the instant case, Carmela was cross-examined by the defense counsel but she remained steadfast and consistent in her statements. Thus, the Court fails to see any reason to distrust the testimony of Carmela.

Incidentally, the testimony of the accused-appellant not only contradicts that of Carmela, but some portions thereof do not also conform to the documentary evidence admitted by the trial court. The testimony of Dr. Profetana and the sketch of the human anatomy of Felipe, which was marked as Exhibit B for the prosecution, stated that Felipe sustained three hacking wounds that were found on his right arm, at his "nose maxillary area" [56] and on his left arm. On the other hand, the accused-appellant testified that he delivered four hacking blows on Felipe, the three of which landed on the left side of the victim's abdomen, the right side of his neck and on his upper left arm. When confronted on the said apparently conflicting statements, the accused-appellant did not offer any explanation.[57]

Therefore, on the strength of the evidence of the prosecution, we sustain the ruling of the RTC and the Court of

Appeals that the circumstance of treachery qualified the killings of Felipe and Ranil to murder.

The Court finds erroneous, however, the trial court's and the Court of Appeals' appreciation of the aggravating circumstance of evident premeditation. For evident premeditation to aggravate a crime, there must be proof, as clear as the evidence of the crime itself, of the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he clung to his determination; and (3) sufficient lapse of time, between determination and execution, to allow himself to reflect upon the consequences of his act.[58] It is not enough that evident premeditation is suspected or surmised, but criminal intent must be evidenced by notorious outward acts evidencing determination to commit the crime. In order to be considered an aggravation of the offense, the circumstance must not merely be "premeditation"; it must be "evident premeditation." [59] In the case at bar, the evidence of the prosecution failed to establish any of the elements of evident premeditation since the testimonies they presented pertained to the period of the actual commission of the crime and the events that occurred thereafter. The prosecution failed to adduce any evidence that tended to establish the exact moment when the accused-appellant devised a plan to kill Felipe, that the latter clung to his determination to carry out the plan and that a sufficient time had lapsed before he carried out his plan.

Likewise, the trial court erred in appreciating the aggravating circumstances of abuse of superior strength, dwelling, minority and intoxication. When the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter.[60] On the other hand, dwelling, minority and intoxication cannot be appreciated as aggravating circumstances in the instant case considering that the same were not alleged and/or specified in the information that was filed on January 23, 2003. Under the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, a generic aggravating circumstance will not be appreciated by the Court unless alleged in the information. This requirement is laid down in Sections 8 and 9 of Rule 110, to wit:

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.

With regard to the conflicting rulings of the RTC and the Court of Appeals vis-à-vis the nature of crimes committed, we agree with the appellate court that the accused-appellant should be held liable for two (2) separate counts of murder, not the complex crime of double murder.

Article 48 of the Revised Penal Code provides that "[w]hen a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." There are, thus, two kinds of complex crimes. The first is known as compound crime, or when a single act constitutes two or more grave or less grave felonies. The second is known as complex crime proper, or when an offense is a necessary means for committing the other.[61]

The Court finds that there is a paucity of evidence to prove that the instant case falls under any of the two classes of complex crimes. The evidence of the prosecution failed to clearly and indubitably establish the fact that Felipe and Ranil were killed by a single fatal hacking blow from the accused-appellant. The eyewitness testimony of Carmela did not contain any detail as to this material fact. To a greater degree, it was neither proven that the

murder of Felipe was committed as a necessary means for committing and/or facilitating the murder of Ranil and vice versa. As the factual milieu of the case at bar excludes the application of Article 48 of the Revised Penal Code, the accused-appellant should be made liable for two separate and distinct acts of murder. In the past, when two crimes have been improperly designated as a complex crime, this Court has affirmed the conviction of the accused for the component crimes separately instead of the complex crime.[62]

In the determination of the penalty to be imposed on the accused-appellant, we uphold the trial court's ruling that the mitigating circumstance of voluntary surrender should be appreciated. For voluntary surrender to mitigate criminal liability, the following elements must concur: (1) the offender has not been actually arrested; (2) the offender surrenders himself to a person in authority or to the latter's agent; and (3) the surrender is voluntary.[63] To be sufficient, the surrender must be spontaneous and made in a manner clearly indicating the intent of the accused to surrender unconditionally, either because they acknowledge their guilt or wish to save the authorities the trouble and the expense that will necessarily be incurred in searching for and capturing them.[64] The accused-appellant has duly established in this case that, after the attack on Felipe and Ranil, he surrendered unconditionally to the barangay chairperson and to the police on his own volition and before he was actually arrested. The prosecution also admitted this circumstance of voluntary surrender during trial.

We reject, however, the accused-appellant's contention that the trial court erred in failing to appreciate the mitigating circumstances of intoxication and immediate vindication of a grave offense.

The third paragraph of Article 15 of the Revised Penal Code provides that the intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance. The Court finds that the accused-appellant is not entitled to the mitigating circumstance of intoxication since his own testimony failed to substantiate his claim of drunkenness during the incident in question. During his cross-examination, the accused-appellant himself positively stated that he was only a bit tipsy but not drunk when he proceeded to the house of Felipe.[65] He cannot, therefore, be allowed to make a contrary assertion on appeal and pray for the mitigation of the crimes he committed on the basis thereof.

As regards the mitigating circumstance of immediate vindication of a grave offense, the same cannot likewise be appreciated in the instant case. Article 13, paragraph 5 of the Revised Penal Code requires that the act be "committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees." The established rule is that there can be no immediate vindication of a grave offense when the accused had sufficient time to recover his equanimity.[66] In the case at bar, the accused-appellant points to the alleged attempt of Felipe and Timboy Lagera on the virtue of his wife as the grave offense for which he sought immediate vindication. He testified that he learned of the same from his stepson, Raymond, on November 2, 2002. Four days thereafter, on November 6, 2002, the accused-appellant carried out the attack that led to the deaths of Felipe and Ranil. To our mind, a period of four days was sufficient enough a time within which the accused-appellant could have regained his composure and self-control. Thus, the said mitigating circumstance cannot be credited in favor of the accused-appellant.

Article 248 of the Revised Penal Code, as amended, prescribes the penalty of reclusion perpetua to death for the crime of murder. In this case, apart from the qualifying circumstance of treachery, the prosecution failed to prove the existence of any other aggravating circumstance in both the murders of Felipe and Ranil. On the other hand, as the presence of the lone mitigating circumstance of voluntary surrender was properly established in both instances, Article 63, paragraph 3 of the Revised Penal Code[67] mandates that the proper penalty to be imposed

on the accused-appellant is reclusion perpetua for each of the two counts of murder.

Anent the award of damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[68]

The RTC awarded in favor of the heirs of Felipe and Ranil the amounts of P75,000.00 as civil indemnity and P75,000.00 as moral damages for each set of heirs. The Court of Appeals, on the other hand, reduced the aforesaid amounts to P50,000.00 and further awarded the amount of P25,000.00 as exemplary damages to the heirs of the victim.

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[69] Similarly, moral damages may be awarded by the court for the mental anguish suffered by the heirs of the victim by reason of the latter's death. The purpose for making such an award is not to enrich the heirs of the victim but to compensate them for injuries to their feelings.[70] The award of exemplary damages, on the other hand, is provided under Articles 2229-2230 of the Civil Code, viz:

Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

In *People v. Dalisay*,[71] the Court clarified that "[b]eing corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award." [72]

Thus, we affirm the Court of Appeals' award of P50,000.00 as civil indemnity and P50,000.00 as moral damages. The award of exemplary damages is, however, increased to P30,000.00 in accordance with the prevailing jurisprudence. As held in *People v. Combate*,[73] when the circumstances surrounding the crime call for the imposition of reclusion perpetua only, the proper amounts that should be awarded are P50,000.00 as civil indemnity, P50,000.00 as moral damages and P30,000.00 as exemplary damages.

In lieu of actual or compensatory damages, the Court further orders the award of P25,000.00 temperate damages to the heirs of the two victims in this case. The award of P25,000.00 for temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss, although the exact amount was not proven.[74]

WHEREFORE, the Court hereby AFFIRMS with MODIFICATION the Decision dated August 21, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00282. The accused-appellant Rosendo Rebucan y Lamsin is found GUILTY of two (2) counts of murder for the deaths of Felipe Lagera and Ranil Tagpis, Jr. and is hereby sentenced to suffer the penalty of reclusion perpetua for each count. The accused-appellant is further ordered to indemnify the respective heirs of the victims Felipe Lagera and Ranil Tagpis, Jr. the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P30,000.00 as exemplary damages and P25,000.00 as temperate damages for each victim, plus legal interest on all damages awarded at the rate of 6% from the date of the finality of this decision. No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 4-28; penned by Associate Justice Francisco P. Acosta with Associate Justices Agustin S. Dizon and Stephen C. Cruz, concurring.

[2] CA rollo, pp. 69-83; penned by Presiding Judge Crisostomo L. Garrido.

[3] Records, p. 1.

[4] Id. at 17.

[5] Also referred to as Ramil Tagpis, Jr. and Ranel Tagpis, Jr. in other parts of the records.

[6] TSN, February 18, 2003, p. 5.

[7] Id. at 8.

[8] Id.

[9] Id. at 3-9.

[10] TSN, February 24, 2003, p. 3.

[11] Id. at 3-5.

[12] Id. at 6-9.

[13] TSN, March 4, 2003, pp. 3-5.

[14] TSN, March 21, 2003, pp. 3-6.

[15] Records, Folder of Exhibits, p. 1.

[16] Id. at 2.

[17] Id. at 3.

[18] Id. at 4.

[19] Id. at 5.

[20] Id. at 6.

[21] Also referred to as Reinerio Arminal, Penerio Arminal and Renerio Arcenal in other parts of the records.

[22] TSN, April 9, 2003, pp. 4-15.

[23] TSN, June 24, 2003, pp. 3-4.

[24] TSN, July 21, 2003, p. 3.

[25] TSN, July 31, 2003, pp. 2-11.

[26] Id. at 11-16.

[27] TSN, August 1, 2003, pp. 27-32.

[28] Records, Folder of Exhibits, pp. 7-8.

[29] Id. at 9.

[30] CA rollo, pp. 80-83.

[31] Id. at 83.

[32] Id. at 35.

[33] Id. at 50-68 and 116-156.

[34] Rollo, p. 3.

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

[36] Rollo, pp. 27-28.

[37] Id. at 29.

[38] Id. at 32-33; penned by Associate Justice Francisco P. Acosta with Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier, concurring.

[39] Id. at 35.

[40] Id. at 36-37 and 39-42.

[41] Id. at 52-53.

[42] Rules of Court, Rule 133, Section 2.

[43] *People v. De La Cruz*, 358 Phil. 513, 519 (1998).

[44] *People v. Reyes and Llaguno*, 349 Phil. 39, 58 (1998).

[45] The entire provision states:

Art. 248. Murder. -- Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death, if committed with any of the following attendant circumstances:

1. With treachery, 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;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment of 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;
4. 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;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (As amended by Republic Act No. 7659.)

[46] Art. 246. Parricide. -- Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death. (As amended by Republic Act No. 7659.)

[47] Revised Penal Code, Article 14, par. 16, as amended.

[48] *People v. Badriago*, G.R. No. 183566, May 8, 2009, 587 SCRA 820, 833.

[49] G.R. No. 76742, August 7, 1990, 188 SCRA 407.

[50] *Id.* at 410-411.

[51] *People v. Gutierrez*, 393 Phil. 863, 874 (2000).

[52] TSN, February 24, 2003, pp. 3-9.

[53] *People v. Iligan and Basao*, 369 Phil. 1005, 1038 (1999).

[54] *People v. Cabarrubias*, G.R. Nos. 94709-10, June 15, 1993, 223 SCRA 363, 369.

[55] *People v. Bisda*, 454 Phil. 194, 224 (2003).

[56] TSN, February 18, 2003, p. 5.

[57] TSN, August 1, 2003, p. 29.

[58] *People v. Cual*, 384 Phil. 361, 380 (2000).

[59] *People v. Torejas*, 150 Phil. 179, 195-196 (1972).

[60] *People v. Caballero*, 448 Phil. 514, 536 (2003).

[61] *People v. Gaffud, Jr.*, G.R. No. 168050, September 19, 2008, 566 SCRA 76, 88.

[62] See *People v. Pantoja*, 134 Phil. 453, 455-456 (1968); *People v. Tilos*, 141 Phil. 428, 431 (1969); *People v. Bermas*, 369 Phil. 191, 237-238 (1999); *People v. Latupan*, 412 Phil. 477, 487-488 (2001).

[63] *Ladiana v. People*, 441 Phil. 733, 756-757 (2002).

[64] *Id.*

[65] TSN, August 1, 2003, p. 27.

[66] *People v. Palabrica*, 409 Phil. 618, 630 (2001).

[67] Art. 63. Rules for the application of indivisible penalties. -- 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.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x

3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

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

[69] *People v. Lusabio, Jr.*, G.R. No. 186119, October 27, 2009, 604 SCRA 565, 592.

[70] *People v. Flores*, 466 Phil. 683, 696 (2004).

[71] G.R. No. 188106, November 25, 2009, 605 SCRA 807.

[72] *Id.* at 820.

[73] G.R. No. 189301, December 15, 2010. See also *People v. Sabella*, G.R. No. 183092, May 30, 2011.

[74] *People v. Lusabio, Jr.*, *supra* note 69 at 593.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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