PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AUSENCIO COMILLO, JR., LUTGARDO COMILLO AND ROMULO ALTAR, ACCUSED-APPELLANTS.

G.R. No. 186538. November 25, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision, dated 24 June 2008, of the Court of Appeals in CA-G.R. CEB CR-HC No. 00503,[1] which affirmed with modification the Decision dated 6 August 2004, and Resolution dated 7 November 2005, of the Regional Trial Court (RTC), Branch 2, Eastern Samar, in Criminal Case No. 11111[2] finding accused-appellants Ausencio Comillo Jr., Lutgardo Comillo and Romulo Altar guilty of the crime of murder.

The facts borne by the records are as follows:

On 14 March 2000, an information[3] was filed with the RTC charging appellants with murder. The accusatory portion of the information reads:

> The undersigned accuses AUSENCIO COMILLO JR., ROMULO ALTAR and LUTGARDO COMILLO of Barangay 11, Llorente, Eastern Samar of the crime of MURDER committed as follows:
>
> That on December 18, 1999, at about 8:30 o'clock in the evening at Escalo Street, Barangay 11, Llorente, Eastern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with bladed weapons conspiring, confederating, and mutually helping one another and taking advantage of superior strength with intent to kill and with evident premeditation and treachery did then and there willfully, unlawfully and feloniously attack, assault, stab and wound PEDRO BARBO, which caused the direct death of said PEDRO BARBO, to the damage and prejudice of the heirs of the victim.

When arraigned on 13 December 2001, each of the appellants pleaded "Not guilty" to the charge.[4] Trial on the merits thereafter followed.

The prosecution presented as witnesses Joselito Bojocan, Marcos Borac, Luz Barbo, and Dr. Roy C. Cayago. Their testimonies, woven together, bare the following:

On 18 December 1999, at about 8:30 p.m., herein victim Pedro C. Barbo (Pedro) bought cigarettes from a store located on Escalo Street, Barangay 11, Llorente, Eastern Samar. While Pedro was walking on the said street on his way home, appellant Ausencio Comillo Jr. (Ausencio), the former's elder brother, appellant Lutgardo Comillo (Lutgardo), and Romulo Altar (Romulo) approached Pedro and asked the latter for cigarettes. Pedro gave all his cigarettes to appellants Ausencio and Lutgardo. As regards appellant Romulo, Pedro told him to wait as he would buy cigarettes in the nearby store. While Pedro was walking towards the store, appellant Ausencio suddenly embraced and held the shoulders of Pedro. At this juncture, appellants Romulo and Lutgardo went infront of Pedro. Appellant Romulo then hit Pedro on the forehead with a ukulele (small guitar). Afterwards, appellant Lutgardo stabbed Pedro on the left part of the stomach. Appellant Ausencio pushed Pedro to the ground and told

the latter, "You can go home now as you have already been stabbed." Appellants then immediately fled the scene.[5]

Subsequently, several persons rushed Pedro to a hospital where he was examined and treated by Dr. Roy C. Cayago (Dr. Cayago). While in the hospital, Pedro mentioned to his wife, Luz, the names Molong, Seksek and Lote as his assailants. Later, Pedro died due to the stab wound, which penetrated his intestine and blood vessel. Appellants were then charged with and arrested for the killing of Pedro.[6]

Joselito Bojocan (Joselito) and Marcos Borac (Marcos) witnessed the stabbing incident. Joselito was standing near a barbecue stall along Escola Street when he saw the gruesome act. He was six meters away from Pedro and appellants when the incident occurred. He was one of those who rushed Pedro to the hospital after the incident. On the other hand, Marcos was walking along Escalo Street when he witnessed the felony. He was ten meters away from Pedro and appellants when the crime transpired. Joselito and Marcos recognized Pedro and appellants on that tragic night, as the scene was well-lighted.[7]

The prosecution also submitted documentary and object evidence to bolster the testimonies of its witnesses, to wit: (1) affidavit of Joselito Bojocan (Exhibit A);[8] (2) affidavit of Marcos Borac (Exhibit B);[9] (3) affidavit of Luz Barbo (Exhibit C);[10] (4) supplemental affidavit of Luz Barbo (Exhibit D);[11] (5) death certificate of Pedro Barbo (Exhibit E);[12] (6) medical certificate of Pedro issued by Dr. Roy Cayago (Exhibit F);[13] and (7) anatomical sketch pertaining to the location of the stab wound in Pedro's body (Exhibit G).[14]

For its part, the defense adduced the testimonies of appellants and Irene Torilio to refute the foregoing accusation. No documentary or object evidence was proffered. In denying any liability, appellant Ausencio interposed alibi, while appellants Lutgardo and Romulo invoked self-defense and defense of a stranger, respectively.

Appellant Ausencio testified that on 18 December 1999, at about 8:30 p.m., he was resting in bed inside his family's house located at Escalo Street, Barangay 11, Llorente, Eastern Samar, as he was then suffering from fever. Later that evening, appellant Romulo arrived at the house and picked up some clothes. Romulo disclosed to him that the former had injured a person, and, thereafter, left the house. Subsequently, on that same night, appellant Romulo returned to the house with appellant Ausencio (his elder brother), appellant Lutgardo, and Juaning Comillo (mother of appellants Ausencio and Lutgardo). Juaning told him that Pedro had made a commotion on Escalo Street and brandished a weapon.[15]

Appellant Lutgardo narrated that on the evening of 18 December 1999, he and appellant Romulo strolled along Escola Street, searching for houses at which to render Christmas carols. Appellant Romulo had a ukulele to be used in rendering carols. Pedro appeared from nowhere and tried to stab appellant Lutgardo with a knife, which the latter eluded. He and Pedro wrestled for possession of the knife. He shouted for help to appellant Romulo, who then responded by hitting Pedro with a ukulele. Appellant Lutgardo then got hold of the knife from Pedro and stabbed the latter. Later, he threw the knife in a nearby school campus.[16]

Appellant Romulo narrated that on the evening of 18 December 1999, he and appellant Lutgardo walked along Escola Street to look for houses where they could render Christmas carols. Pedro suddenly approached them and drew a knife. Pedro tried to stab appellant Lutgardo, but the latter evaded it. Pedro and appellant Lutgardo grappled for possession of the knife. At this point, appellant Lutgardo shouted to appellant Romulo for help. He responded by hitting Pedro with a ukulele on the right shoulder, which caused the latter to lose grip on the knife. Appellant Lutgardo then picked up the knife and stabbed Pedro on the body. Thereafter, he ran away from the scene.[17]

Irene Torilio (Irene), friend of Juaning, stated that on 18 December 1999, at about 8:30 p.m., she went to Juaning's

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house on Escalo Street, to invite her for Christmas carols. Irene saw appellant Ausencio inside the said house. While she and Juaning were about to leave the house, they saw Pedro on Escalo Street wielding a weapon and harassing appellants Romulo and Lutgardo. Juaning immediately approached appellant Lutgardo and escorted the latter inside the house. Appellant Romulo then hit Pedro with a ukulele.[18]

After trial, the RTC rendered a Decision convicting appellants of murder and imposing on each of them the death penalty. The trial court also ordered appellants to jointly pay the heirs of Pedro civil indemnity in the amount of P50,000.00.[19] Appellants filed a motion for reconsideration but this was denied.[20] The case was elevated to the Court of Appeals.

On 24 June 2008, the Court of Appeals promulgated its Decision affirming with modification the RTC Decision. The appellate court downgraded the penalty from death to reclusion perpetua. Further, in addition to the civil indemnity of P50,000.00, the appellate court also ordered appellants to jointly pay the heirs of Pedro moral damages amounting to P50,000.00 and exemplary damages in the amount of P25,000.00.[21] Appellants filed a Notice of Appeal on 7 July 2008.[22]

In their Brief,[23] appellants assigned the following errors:

> I.
>
> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF MURDER DESPITE THE FACT THAT THEIR INDIVIDUAL GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.
>
> II.
> ASSUMING ARGUENDO THAT ACCUSED-APPELLANTS COULD BE LIABLE FOR THE DEATH OF PEDRO BARBO, THE COURT A QUO ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY WHEN THE SAME WAS NOT PROVEN BEYOND REASONABLE DOUBT.[24]

In the main, appellants put in issue the credibility of Joselito and Marcos' testimonies. They contend that the testimonies of said witnesses did not establish their guilt for murder.[25]

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[26]

After carefully reviewing the evidence on record and applying the foregoing parameters to this case, we found no cogent reason to overturn the RTC's ruling finding the testimonies of Joselito and Marcos credible. As an eyewitness to the incident, Joselito positively identified appellant Ausencio as the one who embraced and held the shoulders of Pedro, and appellant Romulo as the person who hit Pedro with a ukelele. He also recognized appellant Lutgardo as the one who stabbed Pedro. He was merely six meters away from appellants and Pedro during the incident. In addition, the crime scene was well-lighted by lamp posts, which enabled him to recognize appellants and Pedro. Further, he was familiar with the faces of appellants because they were his acquaintances.[27] Joselito's direct account of how appellants helped one another in killing Pedro is candid and convincing, thus:

> Q:

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Where were you on December 18, 1999, at around 8:30 o'clock in the evening?

A:

I was at the barbecue stand of Mano Alex, sir.

Q:

Where is that barbecue stand of certain Alex located?

A:

At Llorente, sir.

Q:

Can you please specify the barangay including the street where it is located?

A:

Barangay 11, sir.

Q:

Do you know the street?

A:

Reverse street, if one is from the direction of Borongan, the first street, sir.

Q:

Now, why were you at the barbecue stand of Alex?

A:

Because I serve as an errand boy of Mano Alex whenever there is a customer, sir.

Q:

And at that precise time 8:30 o'clock in the evening on December 18, 1999, will you please tell this Honorable Court, what have you observed while you were at the barbecue stand of Alex?

A:

What I observe was Pedro Barbo bought cigarettes from the store just across the barbecue stand, sir.

x x x x

Q:

After that what happened, if any?

A:

He was already on his way home, sir.

Q:

While he was already on his way home, can you tell before this Honorable Court what happened next?

A:

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He was met along the way by Ausencio Comillo, Romulo Altar and Lutgardo Comillo, sir.

Q:

After the three met Pedro Barbo, what happened?

A:

The trio asked for cigarettes from Pedro Barbo, sir.

Q:

Then, what happened there after Pedro Barbo was asked for a cigarette?

A:

Since at the time when Pedro Barbo was asked for cigarette by the three, he only had two cigarettes, Romulo Altar said that "where is my cigarette? Where is the cigarette for me?" sir.

Q:

Immediately after those exchange of words, what untoward incident, if any, had happened?

A:

Pedro Barbo asked permission saying "just calm [down], I will buy more cigarettes," sir.

Q:

While Pedro was going to buy cigarettes, x x x what happened thereafter?

A:

He was embraced by Ausencio Comillo, sir.

Q:

Who was embraced by Ausencio Comillo, if you know?

A:

Pedro Barbo, sir.

Q:

Do you mean to say this Pedring Barbo refers to Pedro Barbo?

A:

Yes, sir.

Q:

Will you, please, with our interpreter how Pedro was held or embraced by Ausencio Comillo?

A:

Yes, sir. (Witness demonstrating that Ausencio Comillo embraced Pedro Barbo from behind with his two arms).

Q:

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Now, when Pedro Barbo was in that position being embraced or held by Ausencio Comillo, will you please tell this Honorable Court what happened thereafter?

x x x x

A:

He was hit with a ukulili by Romulo Altar, sir.

Q:

Can you tell before this Honorable Court, whether he was hit?

A:

Yes sir. He was hit.

Q:

Will you please tell before this Honorable Court what part of his body was hit by this smashing blow?

A:

(Witness demonstrating and indicating his forehead).

Q:

After Pedro Barbo was hit by a ukulele by Romulo Altar, what happened thereafter?

A:

He was stabbed by Lutgardo Comillo, sir.

Q:

You said he was stabbed, what part of the body was stabbed of Pedro Barbo?

A:

On the right side part of his body, sir.

Q:

Will you please demonstrate before this honorable Court what do you mean by the right side part of his body?

A:

(Witness demonstrating that the victim was hit on the left, witness indicating on his left part of his abdomen).

Q:

Now, after Pedro Barbo was stabbed by Lutgardo Comillo, what happened to Pedro Barbo?

A:

He was pushed by Ausencio Comillo and the latter uttering the words, "now you can go home as you have already been stabbed," sir.

Q:

Now, after Pedro Barbo was pushed, what happened to said Pedro Barbo?

A:

The trio ran towards the direction of the river of Llorente, sir.[28]

Marcos's testimony, corroborating the foregoing testimony of Joselito, was also clear and reliable. Being an eyewitness to the incident, he pointed to appellant Ausencio as the one who held the shoulders of Pedro, and appellant Romulo as the person who hit Pedro on the head with a ukelele. He also identified appellant Lutgardo as the one who stabbed Pedro. His narration of the incident is truthful, to wit:

Q:

Mr. Borac, where were you on December 18, 1999, at around 8:30 o'clock in the evening?

A:

I was on Escalo Street, Llorente, Eastern Samar.

Q:

What were you then doing at Escalo Street, Llorente, Eastern Samar?

A:

I was walking, sir.

Q:

While you were walking, can you still recall any untoward incident that happened at that time?

A:

Yes sir, there was.

Q:

Will you please tell this Honorable Court, what was that untoward incident that you have witnessed?

A:

What I saw that night a person was being embraced by Pedro Barbo.

Q:

And who was that person that was being embraced?

A:

It was Ausencio Comillo holding or embracing Pedro Barbo.

Q:

Now, while Ausencio Comillo was holding Pedro Barbo, what other incident transpired at that time?

A:

I saw Romulo Altar got near the two and he smashed his ukulele on Pedro Barbo.

Q:

What part of the body of Pedro Barbo was smashed by the ukulele of Romulo Altar?

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A:

On the left side of his forehead.

Q:

Aside from that incident what happened next if you know?

A:

This Lutgardo Comillo stabbed Pedro Barbo.

Q:

What kind of instrument if you know that was used by Lutgardo Comillo in stabbing the late Pedro Barbo?

A:

It was a bladed weapon locally called depang.

Q:

What happened after the stabbing of Pedro Barbo?

A:

I saw Pedro Barbo was pushed.

Q:

Then what happened after Pedro Barbo was pushed by Ausencio Comillo?

A:

When Ausencio Comillo pushed the late Pedro Barbo, the latter fell and after Pedro Barbo fell to the ground, they ran away.[29]

The foregoing testimonies are consistent with the undisputed medical findings of Dr. Cayago. In his medical certificate for Pedro and in his court testimony, Dr. Cayago verified that Pedro died due to a stab wound in the stomach, which penetrated his intestine and blood vessel.[30]

Further, the said testimonies and medical findings jibe with the documentary evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of Joselito and Marcos to be credible. Both courts also found no ill motive on their part.

To rebut the overwhelming evidence for the prosecution, appellants interposed alibi, self-defense and defense of a stranger. Appellant Ausencio claimed he was lying in bed inside the house and was suffering from fever when the incident occurred. On the other hand, appellant Lutgardo alleged that he merely protected his life when he stabbed Pedro. For his part, appellant Romulo explained that he hit Pedro with a ukulele to help his friend, appellant Lutgardo, who was then being attacked by Pedro with a knife.

Alibi is the weakest of all defenses, for it is facile to contrive and difficult to prove. The defense of alibi must be proved by the accused with clear and convincing evidence. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[31]

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Appellant Ausencio claimed he was inside his house located at Escalo St. when the incident occurred in front of his house.[32] Being very near the crime scene, it was not physically impossible for him to be there during the incident. He also averred that he had a fever during the incident. Nonetheless, aside from this self-serving assertion, no medical certificate or other plausible proof was adduced to bolster such allegation.

It is true that Irene Torilio corroborated the foregoing testimony of appellant Ausencio. However, it should be noted that she is the comadre and close friend of appellants Ausencio and Lutgardo's mother.[33] We have held that testimonies of relatives and friends of the accused which corroborate the accused's alibi are suspect and should be received with caution because of perceived bias.[34] In addition, the RTC, the Court of Appeals, and this Court found the testimonies of Joselito and Marcos identifying appellants as the authors of the crime to be more credible than those of appellant Ausencio and Irene. Joselito and Marcos were disinterested witnesses, and no ill motive on their part was shown when they testified against appellants. It is settled that the positive and categorical identification of the accused, without any showing of ill motive on the part of the eyewitnesses testifying on the crime, prevails over alibi.[35]

Regarding appellant Lutgardo's plea of self-defense, it is axiomatic that when an accused pleads self-defense, he thereby admits authorship of the crime. Accordingly, the burden of evidence is shifted to the accused who must then prove with clear and convincing proof the following elements of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself. Although all three elements must concur, self-defense must firstly rest on proof of unlawful aggression on the part of the victim. If no unlawful aggression attributed to the victim is established, there can be no self-defense, whether complete or incomplete. Unlawful aggression is a condition sine qua non for the justifying circumstance of self-defense to apply.[36]

As an element of self-defense, unlawful aggression refers to an assault or attack, or a threat thereof in an imminent and immediate manner, which places the defendant's life in actual peril. There is an unlawful aggression on the part of the victim when he puts in actual or imminent danger the life, limb, or right of the person invoking self-defense. There must be actual physical force or actual use of a weapon. To constitute unlawful aggression, the person attacked must be confronted by a real threat on his life and limb; and the peril sought to be avoided must be imminent and actual, not merely imaginary.[37]

In the instant case, there was no unlawful aggression on the part of Pedro that justified appellant Lutgardo's act of stabbing him. There was no actual or imminent danger on appellant Lutgardo's life when he came face to face with Pedro. As narrated by eyewitnesses Joselito and Marcos, Pedro was just walking on the road to buy cigarettes and was not provoking appellant Lutgardo into a fight. It was appellant Lutgardo who approached and stabbed Pedro even when the latter was already held around the shoulders by appellant Ausencio and hit with a ukulele by appellant Romulo. In short, appellant Lutgardo, as well as appellants Ausencio and Romulo, were the unlawful aggressors. As earlier stated, we have found the testimonies of Joselito and Marcos to be credible, as they testified in a clear and consistent manner during the trial despite grueling cross-examination of the defense.

Even if this Court were to adopt appellant Lutgardo's version of the incident, the result or conclusion would be the same.

Appellant Lutgardo testified that he and Pedro grappled for possession of the knife during the incident. He shouted for help to appellant Romulo, who then came to his aid by hitting Pedro with a ukulele. This enabled appellant Lutgardo to snatch the knife from Pedro and to eventually stab the latter with it.[38] It appears from the foregoing that the alleged unlawful aggression on the part of Pedro ceased to exist when appellant Lutgardo seized the knife from the former, as there was no more actual danger on appellant Lutgardo's life. The latter then

had no justifiable reason to stab Pedro in the stomach. In valid self-defense, the aggression still exists when the aggressor is killed or injured by the person making a defense. Thus, when the unlawful aggression ceases to exist, the person defending has no more right to kill or even injure the aggressor.[39]

The second element of self-defense requires that the means employed by the person defending himself must be reasonably necessary to prevent or repel the unlawful aggression of the victim. The reasonableness of the means employed may take into account the weapons, the physical condition of the parties and other circumstances showing that there is a rational equivalence between the means of attack and the defense.[40]

In the case at bar, there was no reason or necessity for appellant Lutgardo to stab Pedro with a knife. Pedro was merely walking on the road and did not attack or place in danger the life of appellant Lutgardo during the incident. Granting, arguendo, that appellant Lutgardo's version of the incident was true, his act of stabbing Pedro would not also be a reasonable and necessary means of repelling the aggression allegedly initiated by Pedro. Appellant Lutgardo stated that he wrested the knife from Pedro during the incident. Hence, there was no more reason or necessity for him to subsequently stab Pedro, as there was no more peril to his life. Further, he could have simply disabled Pedro with the help of appellant Romulo by pinning Pedro on the ground, or he could have run away and called the police or neighbors for help. In short, appellant Lutgardo had other less harmful options than to stab Pedro in the stomach. The stab wound proved to be fatal, as it penetrated the intestine and large blood vessel of Pedro. Indeed, appellant Lutgardo's act failed to pass the test of reasonableness of the means employed in preventing or repelling an unlawful aggression.

As we earlier found, appellant Lutgardo stabbed Pedro without any prior provocation from the latter. Hence, the element of lack of sufficient provocation on the part of the person making the defense is also wanting in the present case.

Self-defense is a weak defense because, as experience has demonstrated, it is easy to fabricate and difficult to prove. Thus, for this defense to prosper, the accused must proved with clear and convincing evidence the elements of self-defense. He must rely on the strength of his own evidence and not on the weakness of that of the prosecution. Even if the evidence of the prosecution is weak, it cannot be disbelieved if the accused admitted responsibility for the crime charged.[41] In the case before us, appellant Lutgardo failed to prove with plausible evidence all the elements of self-defense. Hence, his plea of self-defense must fail.

With respect to appellant Romulo's invocation of defense of a stranger, three elements must be established: (1) there was unlawful aggression on the part of the victim; (2) there was reasonable necessity of the means employed to prevent or repel it; and (3) the person defending was not induced by revenge, resentment or other evil motive.[42] As in the case of self-defense, unlawful aggression is also a primordial and indispensable element in defense of a stranger.[43] Since we have earlier discerned no unlawful aggression on the part of Pedro, appellant Romulo's reliance on defense of a stranger is unavailing.

Appellants, nonetheless, maintain that the prosecution failed to prove conspiracy among them in killing Pedro.[44]

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons agree to commit a felony and decided to commit it. Conspiracy exists where the participants perform specific acts that indicate unity of purpose in accomplishing the same unlawful object.[45] The presence of conspiracy is implied where the separate acts committed, taken collectively, emanate from a concerted and associated action.[46]

It is clear from the testimonies of Joselito and Marcos that appellants were of one mind in killing Pedro, as shown by their well-connected overt acts during the incident, to wit: (1) appellants altogether approached Pedro; (2)

appellant Ausencio suddenly embraced and held the shoulders of Pedro; (3) appellants Romulo and Lutgardo went in front of Pedro; (3) appellant Romulo hit Pedro on the forehead with a ukulele; (4) appellant Lutgardo stabbed Pedro in the left part of the stomach; (5) appellant Ausencio pushed Pedro to the ground and told the latter, "You can go home now as you have already been stabbed"; and (6) appellants altogether fled the scene. No other logical conclusion would follow from appellants' concerted action, except that they had a common purpose in accomplishing the same felonious act. Conspiracy having been established, appellants are liable as co-principals regardless of their participation.[47]

Appellants assert there was no treachery in the killing of Pedro which would qualify the crime as murder.[48]

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 any defensive or retaliatory act which the victim might make.[49] The essence of treachery is a deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack. Two essential elements are required in order that treachery can be appreciated: (1) The employment of means, methods or manner of execution that would ensure the offender's safety from any retaliatory act on the part of the offended party who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of means, methods or manner of execution. Pedro's shoulders were restrained by appellant Ausencio. Then, he was hit by appellant Romulo with a ukulele. These acts facilitated the stabbing of Pedro by appellant Lutgardo. Verily, the manner in which Pedro was restrained and assaulted was deliberately and consciously adopted by appellants to prevent him from retaliating or escaping and, ultimately, to ensure his death.

We have observed that the aggravating circumstances of evident premeditation and abuse of superior strength were also alleged in the information. It is a rule of evidence that an aggravating circumstance must be proven as clearly as the crime itself.[53]

For evident premeditation to be appreciated as an aggravating circumstance, the following elements must be present: (1) the time when the offender was determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his resolve; and (3) a sufficient interval of time between the determination or conception and the execution of the crime to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of the will if he desired to hearken to its warning.[54]

In the instant case, no proof was adduced to prove the foregoing elements. Thus, the RTC and the Court of Appeals were correct in disregarding evident premeditation.

The RTC and the Court of Appeals also properly disregarded the aggravating circumstance of abuse of superior strength because it is absorbed and inherent in treachery.[55] As such, it cannot be separately appreciated as an independent aggravating circumstance.[56]

Appellants argue that if their respective defenses cannot be considered, they are still entitled to the following mitigating circumstances: (1) no intention to commit so grave a wrong as that committed; (2) sufficient provocation on the part of the offended party; and (3) having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.[57]

Under Article 13(3) of the Revised Penal Code, a person's criminal liability may be mitigated if the offender had no intention to commit so grave a wrong as that committed. This mitigating circumstance is obtaining when there is a notable disparity between the means employed by the accused to commit a wrong and the resulting crime committed. The intention of the accused at the time of the commission of the crime is manifested from the

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weapon used, the mode of attack employed and the injury sustained by the victim.[58] Appellant Lutgardo used a 12-inch knife, which is a lethal weapon, in stabbing Pedro.[59] He directed the knife at and landed it on Pedro's stomach, which proved to be fatal, as it seriously damaged Pedro's intestine and blood vessel and eventually led to his death. Appellant Ausencio held the shoulders of Pedro, while appellant Romulo hit the victim with a ukulele to neutralize his resistance and to facilitate the fatal stabbing. Appellants' attack on Pedro was sudden and deliberate. These concerted acts of appellants eloquently demonstrated their intent to kill him. Thus, the mitigating circumstance of lack of intent to commit so grave a wrong as that committed cannot be considered in favor of appellants.

Likewise, appellants are not entitled to the mitigating circumstance of sufficient provocation or threat on the part of the offended party, which must have immediately preceded the crime as provided in Article 13(4) of the Revised Penal Code. Before the same can be appreciated, the following elements must concur: (1) that the provocation or threat must be sufficient or proportionate to the crime committed and adequate to arouse one to its commission; (2) that the provocation or threat must originate from the offended party; and (3) that the provocation must be immediate to the commission of the crime by the person provoked.[60]

Pedro did not in any way provoke appellants into a fight on that fateful night. There was no argument or physical struggle that ensued between them shortly before appellants helped one another in killing Pedro. Pedro, in fact, tried to avoid a fight or misunderstanding with appellants by agreeing to buy them cigarettes at his own expense. Unfortunately, when Pedro was on his way to buy cigarettes for appellants, the latter suddenly assaulted him. Clearly, the mitigating circumstance of sufficient provocation or threat on the part of the offended party which immediately preceded the crime, is lacking in the present case.

Appellants cannot also avail themselves of the mitigating circumstance of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation stated in Article 13(6) of the Revised Penal Code. The following essential requirements must be present: (1) there was an act that was both unlawful and sufficient to produce such condition (passion or obfuscation) of the mind; and (2) such act was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might have recovered his normal equanimity.[61]

In the case at bar, there was no unlawful and sufficient act on Pedro's part which sufficiently provoked passion or obfuscation on appellants' side. As repeatedly stated, Pedro was innocently walking on the road to buy cigarettes for appellants when the latter viciously attacked him for no reason at all. Thus, the mitigating circumstance of passion or obfuscation is unavailing.

We shall now determine the propriety of the penalties imposed by the Court of Appeals on appellants.

Article 248 of the Revised Penal Code states that murder is punishable by reclusion perpetua to death. Article 63 of the same Code provides that if the penalty is composed of two indivisible penalties, as in the instant case, and there are no aggravating or mitigating circumstances, the lesser penalty shall be applied. Since there is no mitigating or aggravating circumstance in the present case, and treachery cannot be considered as an aggravating circumstance as it is already considered a qualifying circumstance, the lesser penalty of reclusion perpetua should be imposed.[62] Hence, the Court of Appeals acted accordingly in sentencing each of the appellants to reclusion perpetua.

The award of civil indemnity for the death of Pedro in the amount of P50,000.00 and moral damages amounting to P50,000.00 was proper, since they are mandatory in murder cases without need of proof and allegation other than the death of the victim.[63]

The Court of Appeals awarded to the heirs of Pedro Barbo the amount of P25,000.00 as exemplary damages, since the qualifying circumstance of treachery was firmly established.[64] We agree with the award, except that we increase the same to P30,000.00 pursuant to current jurisprudence.[65]

The Court of Appeals was correct in refusing to award actual damages in favor of Pedro's heirs. To be entitled to actual damages, the amount of loss must not only be capable of proof but must actually be proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable of the actual amount thereof, such as receipts or other documents to support the claim.[66] In the case before us, no receipt or supporting document pertaining to the amount of hospital, funeral and burial expenses for Pedro was submitted. Hence, actual damages are not recoverable. Nonetheless, under Article 2224 of the Civil Code, temperate damages "may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty." It cannot be denied that the heirs of Pedro suffered pecuniary loss due to Pedro's hospital, funeral and burial expenses, although the amount thereof was not determined with certitude. Accordingly, in lieu of actual damages, the heirs of Pedro are entitled to temperate damages in the amount of P25,000.00.[67]

Similarly, indemnification for Pedro's loss of earning capacity cannot be awarded. The general rule is that documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity. As an exception, damages may be awarded in the absence of documentary evidence, provided there is testimony that the victim was either (1) self-employed and earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily wage worker earning less than the minimum wage under current labor laws.[68] In the instant case, neither of the two exceptions applied. Luz testified that Pedro was earning an amount of not less than P350.00 per day as a carpenter. The earning of Pedro was above the minimum wage set by labor laws in his workplace at the time of his death.[69] This being the case, the general rule of requiring documentary evidence of his earning capacity finds application. Unfortunately for Pedro's heirs, no such proof was presented at all. The non-awarding of damages for loss of earning capacity by the Court of Appeals is therefore proper.

The penalty of reclusion perpetua is imposed on each of the appellants and they are jointly and severally liable for the aforementioned damages.

WHEREFORE, after due deliberation, the Decision of the Court of Appeals, dated 24 June 2008, in CA-G.R. CEB CR-HC No. 00503, is hereby AFFIRMED with the following MODIFICATIONS: (1) the award of exemplary damages is increased to P30,000.00; and (2) temperate damages in the amount of P25,000.00, in lieu of actual damages, is hereby awarded to the heirs of Pedro.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

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[1] Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Francisco P. Acosta and Florito S. Macalino concurring; rollo, pp. 2-14.

[2] Penned by Presiding Judge Arnulfo O. Bugtas; CA rollo, pp. 32-51.

[3] Records, p. 5.

[4] Id. at 64-67.

[5] TSN, 8 August 2001 and 4 September 2001.

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[6] TSN, 5 September 2001 and 28 November 2001.

[7] TSN, 8 August 2001.

[8] Records, pp. 21-23.

[9] Id. at 12-13.

[10] Id. at 14-16.

[11] Id. at 24-26.

[12] Id. at 18.

[13] Id. at 19.

[14] Id. at 109.

[15] TSN, 17 April 2002.

[16] TSN, 13 January 2004.

[17] TSN, 14 May 2004.

[18] TSN, 7 March 2002.

[19] Rollo, p. 51.

[20] Records, pp. 376-394.

[21] Rollo, p. 13.

[22] Id. at 15.

[23] CA rollo, pp. 17-31.

[24] Id. at 19.

[25] Id. at 26.

[26] People v. Goleas, G.R. No. 181467, 6 August 2008, 561 SCRA 380, 387; People v. Guevarra, G.R. No. 182192, 29 October 2008, 570 SCRA 288, 302; People v. Galido, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 513.

[27] TSN, 8 August 2001.

[28] TSN, 8 August 2001, pp. 3-7.

[29] TSN, 4 September 2001, pp. 2-4.

[30] TSN, 28 November 2001.

[31] People v. Guevarra, supra note 26; Mendoza v. People, G.R. No. 173551, 4 October 2007, 534 SCRA 668, 693.

[32] TSN, 17 April 2002, pp. 12-13.

[33] Id. at 8.

[34] People v. De Guzman, G.R. No. 173197, 24 April 2007, 522 SCRA 207, 217; People v. Barcenal, G.R. No.

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175925, 17 August 2007, 530 SCRA 706, 724; Tadeja v. People, G.R. No. 145336, 21 July 2006, 496 SCRA 157, 167.

[35] People v. Bon, G.R. No. 166401, 30 October 2006, 506 SCRA 168, 186.

[36] Mahawan v. People, G.R. No. 176609, 18 December 2008, 574 SCRA 737, 746.

[37] Id.

[38] TSN, 13 January 2004.

[39] People v. Annibong, 451 Phil. 117, 127 (2003).

[40] People v. De Guzman, supra note 34; People v. Barcenal, supra note 34; Tadeja v. People, supra note 34.

[41] Id.

[42] People v. Diego, 424 Phil. 743, 751 (2002).

[43] Id.

[44] CA rollo, p. 29.

[45] Acejas III v. People, G.R. No. 156643, 27 June 2006, 493 SCRA 292, 322.

[46] Nierva v. People, G.R. No. 153133, 26 September 2006, 503 SCRA 114, 127.

[47] People v. Rodas, G.R. No. 175881, 28 August 2007, 531 SCRA 554, 567.

[48] CA rollo, pp. 27-29.

[49] Paragraph 16, Article 14 of the Revised Penal Code.

[50] Velasco v. People, G.R. No. 166479, 28 February 2006, 483 SCRA 649, 669-670.

[51] RULES OF COURT, Rule 110, Sections 8 and 9.

[52] TSN, 8 August 2001, p. 7.

[53] People v. Discalsota, 430 Phil. 406, 416 (2002).

[54] People v. Goleas, supra note 26.

[55] People v. Pirame, 384 Phil. 286, 300 (2000).

[56] Id.

[57] CA rollo, pp. 29-30.

[58] People v. Gonzales, Jr., 411 Phil. 893, 922 (2001).

[59] TSN, 14 May 2004, p. 4.

[60] People v. Beltran, Jr., G.R. No. 168051, 27 September 2006, 503 SCRA 715, 738.

[61] LUIS B. REYES, THE REVISED PENAL CODE, BOOK ONE, p. 276, citing People v. Alanguilang, 52 Phil. 663, 665 (1929); People v. Ulita, 108 Phil. 730, 743 (1960); People v. Gravino, 207 Phil. 107, 118 (1983).

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

[63] People v. Ducabo, G.R. No. 175594, 28 September 2007, 534 SCRA 458, 473.

[64] Id. at 476-477.

[65] People v. Gidoc, G.R. No. 185162, 24 April 2009.

[66] People v. Jakosalem, 428 Phil. 299, 311 (2002).

[67] People v. Oco, 458 Phil. 815, 855 (2003); People v. Solamillo, 452 Phil. 261, 281 (2003).

[68] People v. Mallari, 452 Phil. 210, 225 (2003).

[69] Under Wage Order No. RB VIII-07 which took effect on 1 January 1998, the minimum wage at the time of the incident was P149.00 per day.

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