

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO ORTIZ, JR. Y LOPES, ACCUSED-APPELLANT.

G.R. No. 188704. July 07, 2010

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-188704/>

MENDOZA, J.:

This is an appeal[1] from the April 29, 2009 Decision of the Court of Appeals (CA),[2] in CA-G.R. CR No. 31164, affirming the June 7, 2007 Decision of the Regional Trial Court, Branch 18, Manila (RTC) which found accused Pedro Ortiz, Jr., guilty beyond reasonable doubt of the crime of Murder for the killing of one Loreto Cruz.

Accused Pedro Ortiz, Jr., along with his nephew, Jojo Ortiz, was charged with murder for the killing of Loreto Cruz in two (2) consolidated cases before the Regional Trial Court, Manila, Branch 18. The accusatory portions of the two (2) Informations read:

Criminal Case No. 03-215663
(People v. Jojo Ortiz y Quitada)

"That on or about June 22, 2003, in the City of Manila, Philippines, the said accused, conspiring and confederating with one another whose true name, identity and present whereabouts are still unknown and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified by treachery and evident premeditation, attack, assault and use personal violence upon the person of one LORETO CRUZ Y CRUZ, by then and there suddenly shooting the latter with a .38 revolver bearing Serial No. 47970 with trademarks Armscor on the right cheek, thereby inflicting upon said LORETO CRUZ Y CRUZ mortal gunshot wound which was the direct and immediate cause of his death thereafter.

Contrary to law."

Criminal Case No. 03-219216
(People v. Pedro Ortiz)

"That on or about June 22, 2003, in the City of Manila, Philippines the said accused conspiring and confederating with one JOJO ORTIZ Y GUTABA, who was already charged with the same offense before the Regional Trial Court of Manila docketed as Criminal Case No. 03-215663, and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified by treachery and evident premeditation, attack, assault and use personal violence upon the person of one LORETO CRUZ Y CRUZ, by then and there suddenly shooting the latter with a .38 caliber revolver bearing Serial No. 47970 with trademarks Armscor on the right cheek, thereby inflicting upon said LORETO CRUZ Y CRUZ, a mortal gunshot wound which was the direct and immediate cause of his death thereafter.

Contrary to law."[3]

As culled from the evidentiary records, it appears that on June 22, 2003, between 9:00 and 10:00 o'clock in the evening, Loreto Cruz, an Executive Officer of Barangay 597, Zone 59, Guadalcanal St., Sta. Mesa, Manila,

together with Barangay Tanod Angelito de Guzman and Kagawad Gil Bactol, was watching television inside the barangay hall. Without anyone noticing him, accused Pedro Ortiz, Jr. entered the hall and called out, "Ex-O!" When Loreto Cruz turned, the accused shot him with a .38 caliber revolver. The bullet hit the left side of his face. Upon realizing what happened, Tanod de Guzman tried to wrest the gun from the accused. In their struggle, another shot was fired hitting a table nearby. Kagawad Villena then grabbed the accused who called out for his nephew, Jojo Ortiz. Responding to his call, Jojo, with a samurai, uttered, "Bitiwan mo yan, para wala tayong problema." Kagawad Villena let go of the accused. Wasting no time, the accused and his nephew fled from the scene. Thereafter, Loreto Cruz was rushed to Our Lady of Lourdes Hospital where he expired. The accused and his nephew, Jojo, were later apprehended and criminally charged with murder.

Although the accused pleaded not guilty during the arraignment, he admitted killing Loreto Cruz in the course of the trial because he was not satisfied with the way the victim dealt with his sons' case. According to the accused, his sons were merely playing "kara y kruz" but were detained for illegal drug use. As the Executive Officer, the victim promised that his sons would be released from detention after three to four months. Five months passed and his sons remained in jail. On his part, Jojo Ortiz denied any participation in the commission of the crime and only admitted the fact that he helped his uncle when he saw him being grabbed by the barangay officials.

On June 7, 2007, the RTC found the accused guilty of the crime charged but acquitted co-accused Jojo Ortiz.[4] The RTC did not consider evident premeditation but appreciated treachery as a qualifying circumstance because of the manner by which the killing was executed. It wrote: "the victim was killed frontally and in a sudden and unexpected manner. Although, accused Pedro Ortiz narrated that he shot the victim after the latter sneered at him, the nature and location of the wound and the manner of the shooting deprived the victim opportunity to put up a defense." [5]

In acquitting Jojo Ortiz, the RTC ruled that "Pedro Ortiz shot the victim alone. The killing was carried out without the participation of Jojo Ortiz who did not personally hit or harm the victim. Nothing in the testimonies conveyed a coordinated action, concerted purpose or community of design to commit the criminal act." [6] Thus, the decretal portion of the RTC Decision reads:

"WHEREFORE, the court finds accused Pedro Ortiz guilty beyond reasonable doubt of murder. He is sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of Loreto Cruz the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages. Accused Jojo Ortiz is acquitted of the crime charged.

SO ORDERED." [7]

The accused appealed to the Court of Appeals and assigned the following errors:

"I

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER." [8]

The accused argued that the RTC erred in appreciating the element of treachery as an aggravating circumstance. He insisted that the victim knew all along that there was a threat to his life but chose to ignore it. [9] He likewise stressed that the presence of three Barangay tanods outside the barangay hall did not render Loreto Cruz totally defenseless from any possible attack against his life. [10]

In its Brief,[11] the Office of the Solicitor General (OSG) countered that there was treachery because of the suddenness of the attack while the victim was watching television. It wrote: "Even if Cruz was aware of the accused's threat against him, the suddenness of the attack deprived him of any real chance to defend himself or to retaliate. The weapon used and the nature of the injury inflicted, which pertained to the lone gunshot fatally wounding the victim, clearly shows that accused deliberately and consciously adopted the particular mode of attack to ensure the commission of the offense with impunity." [12] The OSG likewise prayed that exemplary and temperate damages be added to the award of damages.[13]

On April 29, 2009, the Court of Appeals agreed that there was treachery and affirmed the ruling. It pointed out that the accused, with a firearm in hand, barged into the Barangay hall, called out "Ex-O," and suddenly shot the victim at close range, evident of his intent to ensure the success of his attack with no risk to himself. The CA also added that while it is true that the accused called Loreto Cruz "Ex-O" as he shot the latter, "he did so only to make sure that the person he would shoot was his intended target and not to afford his victim a chance to defend himself." [14]

Hence, this appeal.

The only issue before this Court is whether or not the accused employed treachery or alevosia so as to qualify the killing of one Loreto Cruz to murder.

The Court rules in the affirmative.

Article 14, paragraph 16 of the Revised Penal Code provides that "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." The essence of treachery is the sudden and unexpected attack by the aggressors on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the part of the victims.[15]

In this case, the accused purposely sought the unsuspecting victim with intent to inflict a mortal wound on him. He shouted "Ex-O" just in time for the victim to turn towards his line of fire. When the victim faced him, the accused instantly pulled the trigger hitting him on the left side of his face. The way it was executed made it impossible for the victim to respond or defend himself. He just had no opportunity to repel the sudden attack, rendering him completely helpless.

The accused argues that there could not have been any treachery because the victim knew the threat to his life. The Court has consistently held that treachery can still be appreciated even though the victim was forewarned of the danger[16] because what is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.[17] In this case, although it is true that the victim knew that the accused had a grudge against him, he never had any inkling that he would actually be attacked that night. In fact, records reveal that the victim was preoccupied with watching television with his back turned against the accused when the latter suddenly barged into the barangay hall. Accused, moreover, used a firearm to easily neutralize the victim, which was undeniably a swift and effective way to achieve his purpose. Lastly, but significantly, the accused aimed for the face of the victim ensuring that the bullet would penetrate it and damage his brain.

It is likewise true that the victim was with two other barangay officials at the time of the shooting. It should be emphasized though that these two barangay officials were also watching television and were also caught by surprise. The accused had already shot the victim before they could even react.

These acts are distinctly indicative of the treacherous means employed by the accused to guarantee the

consummation of his criminal plan. Thus, as treachery attended the killing of Loreto Cruz, such circumstance qualified the killing as murder, punishable under paragraph 1 of Article 248 of the Revised Penal Code. [18]

When death results due to a crime, recovery of these awards are allowed: (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.[19]

The RTC only awarded P50,000.00 as civil indemnity and another P50,000.00 as moral damages. The Court deems it proper to award exemplary damages in the amount of P30,000.00 following precedents.[20] "Under Article 2230 of the Civil Code, exemplary damages may be awarded in criminal cases when the crime was committed with one or more aggravating circumstances, in this case, treachery. This is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct. The imposition of exemplary damages is also justified under Article 2229 of the Civil Code in order to set an example for the public good." [21]

The Court likewise grants P25,000.00 as temperate damages in keeping with current jurisprudence allowing it where the funeral and burial expenses spent for the victim cannot be fully substantiated or there is no proof of actual damages.[22]

WHEREFORE, the April 29, 2009 Decision of the Court of Appeals in CA-G.R. CR No. 31164 is hereby **AFFIRMED** with **MODIFICATION** in that the accused is further ordered to pay P30,000.00 as exemplary damages and P25,000.00 as temperate damages.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ. , concur.

[1] Rollo, pp. 23-25.

[2] Id. at 2-22, Penned by Associate Justice Remedios Salazar-Fernando with Associate Justices Magdangal De Leon and Ramon Garcia concurring.

[3] CA rollo, pp. 34-35.

[4] Id. at 34-64.

[5] Id. at 62.

[6] Id. at 63.

[7] Id. at 64.

[8] Id. at 81.

[9] Id. at 88.

[10] Id. at 89.

[11] Id. at 123-139.

[12] Id. at 133.

[13] Id. at 135-136.

[14] Rollo, p. 19.

[15] *People v. De Guzman*, G.R. No. 169082, August 17, 2007, 530 SCRA 631, 638.

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

[17] *People v. Mara*, G.R. No. 184050, May 8, 2009, 587 SCRA 839.

[18] 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; x x x

[19] *People v. Gutierrez*, G.R. No. 188602, February 04, 2010 citing *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 699.

[20] *People v. Mortera*, G.R. 188104, April 23, 2010 citing *People v. Antonio Dalisay y Destresa*, G.R. No. 188106, November 25, 2009, 605 SCRA 807; and *People v. Elmer Peralta y Hidalgo*, G.R. No. 187531, October 16, 2009, 604 SCRA 285.

[21] *People v. Angeles*, G.R. No. 177134, August 14, 2009, 596 SCRA 304, 313.

[22] *People v. Se*, G.R. No. 152966, March 17, 2004, 425 SCRA 725.

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.