

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLAN GABRINO, ACCUSED-APPELLANT.

G.R. No. 189981. March 09, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal from the August 28, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB CR-H.C. No. 00731, which affirmed the April 3, 2007 Decision[2] in Criminal Case No. 1347 of the Regional Trial Court (RTC), Branch 10 in Abuyog, Leyte. The RTC convicted accused Allan Gabrino of murder.

The Facts

The charge against the accused stemmed from the following Information:

That on or about the 30[th] day of December, 1993 in the Municipality of La Paz, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did, then and there willfully, unlawfully and feloniously attack, assault and wound one JOSEPH BALANO with the use of bladed weapon locally known as pisaw which said accused had purposely provided himself, thereby causing and inflicting upon the said JOSEPH BALANO wounds on his body which caused his death shortly thereafter.

Contrary to law.[3]

On July 7, 2003, the arraignment was conducted. The accused, who was assisted by counsel, pleaded not guilty to the offense charge. A mandatory pre-trial conference was done on October 1, 2003. Thereafter, trial ensued.

During the trial, the prosecution offered the testimonies of Bartolome Custodio (Bartolome), laborer and a resident of Barangay Mag-aso, La Paz, Leyte; and Ismael Moreto (Ismael), farmer and a resident of Barangay Mohon, Tanauan, Leyte. On the other hand, the defense presented Nestor Sarile (Nestor), Municipal Planner of La Paz, Leyte and a resident of Barangay Mag-aso, La Paz, Leyte; and the accused as witnesses.

The Prosecution's Version of Facts

The first witness, Bartolome, testified that he is a resident of Barangay Mag-aso, La Paz, Leyte for more than 30 years and he knows the accused as they were classmate from Grade 1 to Grade 5. He also testified that on certain occasions, the accused would spend the night at their house. He stated that he likewise knows Joseph Balano (Balano), the deceased, as he was a former resident of Barangay Mag-aso, La Paz Leyte, but had to transfer to Barangay Cogon, Tanauan, Leyte because of an insurgency.[4]

He narrated that on December 30, 1993, he visited his uncle, Gorgonio Berones (Gorgonio) in Barangay Mag-aso, La Paz, Leyte with Balano. Upon arrival at the house of his uncle, he noticed that a certain Jom-jom and his friends, including the accused, were having a drinking session. Thirty minutes later, Jom-jom and his group left

the vicinity. Bartolome and Balano stayed for less than an hour at the house of Bartolome's uncle, and left thereafter. On their way home, however, somebody suddenly sprang out from behind the coconut tree and stabbed Balano. As there was a bright moonlight at the time, and because of the two-arms-length distance between them, Bartolome easily recognized the assailant to be the accused. He even testified that he tried to calm the accused down. Bartolome further stated that he saw the accused stab Balano once, after which Balano ran away while being pursued by the accused. He stated that he asked the people for help in transporting Balano to the hospital but the latter died on the way there.[5]

The second witness, Ismael, testified that on December 30, 1993, he was in Barangay Mag-aso, La Paz, Leyte, working with Balano for the processing of copra of Guadalupe Balano. That night, he stayed at the house of Bartolome in the same barangay. He stated that while he was already at Bartolome's house at about 10:30 in the evening, he could not sleep yet as Bartolome and Balano were still out of the house looking for a helper. He, therefore, decided to go out of the house and upon going outside, he saw the accused suddenly stab Balano once with a pisao (small bolo or knife).[6] Fearing for his life, Ismael instantly went back to Bartolome's house.[7]

The Defense's Version of Facts

Nestor, the first witness for the defense, stated that on December 30, 1993 at about 5 o'clock in the afternoon, he was in Sitio Siwala, Barangay Rizal, La Paz, Leyte, picking up passengers as a motorcycle driver for hire. Gorgonio was one of the passengers at that time who he brought to Barangay Mag-aso, La Paz, Leyte. When they arrived at the house of Gorgonio, the latter went inside to get money to pay for his fare. Consequently, Nestor waited in his tricycle outside of Gorgonio's house. During such time, Nestor saw four people going down the house: the accused, Jeffrey Erro (Jeffrey), Tap-ing Fernandez (Tap-ing), and Balano. According to Nestor's testimony, the accused went to the side of the house to urinate and while so doing, he saw Tap-ing throw something at the accused, which caused him to bleed, and then they ran away. Thereafter, Balano attacked the accused, and as they grappled, the former was stabbed by the latter on the chest. The accused ran away after the incident happened.[8]

Quite differently, the accused narrated that on December 30, 1993 at 5 o'clock in the afternoon, he was at the house of Gorgonio having a conversation with Leny Berones and Luna Berones. After an hour had passed, Gorgonio arrived with Nestor, Tap-ing, Balano and a certain Eddie who all came from the fiesta in Barangay Siwala. The accused stated that he went outside of the house to urinate when Tap-ing threw a stone at him, which hit him on the forehead and caused him to fall down. And when he saw Balano rushing towards him with an ice pick, he immediately stabbed him and then ran away.[9]

The Ruling of the Trial Court

After trial, the RTC convicted the accused. The dispositive portion of its April 3, 2007 Decision reads:

WHEREFORE, finding the accused [Allan] Gabrino guilty beyond reasonable doubt of the crime as [charged], this Court hereby sentences accused to suffer the penalty of RECLUSION PERPETUA, ordering the accused to indemnify the offended party the amount of Sixty Five Thousand Pesos (P65,000.00) and to pay the costs.

SO ORDERED.[10]

In finding for the prosecution and convicting the accused of murder under Article 248 of the Revised Penal Code (RPC), the RTC gave credence to the testimonies of the witnesses of the prosecution. The RTC found that treachery was employed by the accused in killing Balano. The RTC further held that the justifying circumstance of incomplete self-defense under Art. 11(1) of the RPC could not be applied in the present case as the element of unlawful aggression is absent.

The Ruling of the Appellate Court

On August 28, 2008, the CA affirmed the judgment of the RTC in toto. The dispositive portion of the CA Decision reads:

WHEREFORE, the herein appealed Decision convicting appellant Allan Gabrino of the crime of murder and imposing on him the penalty of reclusion perpetua and the payment to the victim's heirs of civil indemnity in the amount of P65,000.00 is hereby AFFIRMED in toto.

SO ORDERED.[11]

The Issues

Hence, this appeal is before Us, with accused-appellant maintaining that the trial court erred in convicting him of the crime of murder, despite the fact that his guilt was not proved beyond reasonable doubt. Accused-appellant also alleges that assuming that he could be made liable for Balano's death, the CA and the RTC erred in appreciating the qualifying circumstance of treachery. Another issue that he raises is the alleged existence of the mitigating circumstance of incomplete self-defense.

The Court's Ruling

We sustain the conviction of accused-appellant.

Factual findings of the RTC should be given credence and should therefore be respected

In the instant case, while both the prosecution and the defense agree on the date when the incident occurred and the fact that accused-appellant stabbed Balano, they conflict with the rest of the facts. It was, therefore, incumbent upon the RTC to appreciate the facts during trial and determine which information carries weight. And in doing so, the RTC gave credence to the testimonies of the prosecution's witnesses, with which the CA thereafter concurred. Accordingly, the RTC adopted the version of the prosecution as the correct factual finding.

We agree with the RTC's factual determination as affirmed by the CA.

We have held time and again that "the trial court's assessment of the credibility of a witness is entitled to great weight, sometimes even with finality." [12] As We have reiterated in the recent *People v. Combate*, where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, then We do not disturb and interfere with its assessment of the facts and the credibility of the witnesses. [13] This is clearly because the judge in the trial court was the one who personally heard the accused and the witnesses, and observed their demeanor as well as the manner in which they testified during trial. [14] Accordingly, the trial court, or more particularly, the RTC in this case, is in a better position to assess and weigh the evidence presented during trial.

In the present case, in giving weight to the prosecution's testimonies, there is not a slight indication that the RTC acted with grave abuse of discretion, or that it overlooked any material fact. In fact, no allegation to that effect ever came from the defense. There is, therefore, no reason to disturb the findings of fact made by the RTC and its assessment of the credibility of the witnesses. To reiterate this time-honored doctrine and well-entrenched principle, We quote from *People v. Robert Dinglasan*, thus:

In the matter of credibility of witnesses, we reiterate the familiar and well-entrenched rule that the factual findings of the trial court should be respected. The judge a quo was in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying. It is doctrinally settled that the evaluation of the testimony of the witnesses by the trial

court is received on appeal with the highest respect, because it had the direct opportunity to observe the witnesses on the stand and detect if they were telling the truth. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain facts of substance or value that if considered might affect the result of the case.[15] (Emphasis Ours.)

Treachery was committed by accused-appellant

Art. 248 of the RPC defines murder as follows:

ART. 248. Murder.³⁴Any 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 or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any 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. (Emphasis Ours.)

For a person to be convicted of the offense of murder, the prosecution must prove that: (1) the offender killed the victim; and (2) that the killing was committed with any of the attendant circumstances under Art. 248 of the RPC, such as treachery. Particularly, *People v. Leozar Dela Cruz* enumerates the elements of murder, thus:

- That a person was killed.
- That the accused killed him.
- That the killing was attended by any of the qualifying circumstances mentioned in Art. 248.
- The killing is not parricide or infanticide.[16]

In this case, it is undoubted that accused-appellant was the person who stabbed Balano and caused his death.[17] And this killing is neither parricide nor infanticide. The question, therefore, to be resolved in this case is whether the killing was attended by treachery that would justify accused-appellant's conviction of murder.

Treachery exists when "the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make." [18] What is important in ascertaining the existence of treachery is the fact that the attack was made swiftly, deliberately, unexpectedly, and without a warning, thus affording the unsuspecting victim no chance to resist or escape the attack.[19] In *People v. Lobino*, We held that a sudden attack against an unarmed victim constitutes treachery.[20]

In this case, it is clear accused-appellant employed treachery in stabbing and killing Balano.

Relevant to the finding of treachery is the testimony of Bartolome, to wit:

Q:

Will you please tell this Honorable Court what was that unusual incident that happen? [sic]

A:

While we were on our way home, we have no knowledge that there was somebody who was waylaying us on the road.

Q:

What happen [sic] on that road?

A:

He suddenly emanate [sic] coming from the coconut tree and immediately lounge [sic] at Joseph Balano and stabbed him.

Q:

Whom are you referring to [w]ho emanate [sic] from the coconut tree and immediately stab Joseph Balano?

A:

Allan Gabrino.

Q:

How far was the place of incident to the house of Gorgonio Berones?

A:

Less than twenty (20) meters from the place of incident.

Q:

Since it was nighttime, how were you able to identify Allan Gabrino as the one who stabbed Joseph Balano?

A:

Because during that night, there was a moon and my distance to Joseph Balano was only two arms length, I was near him and he was ahead of me and I saw that he was stabbed and I even pacified Allan Gabrino.

Q:

You mean you pacified Allan Gabrino?

A:

Yes, Sir.

Q:

How did you pacify him?

A:

I said don't do that Lan. He did not heed because he had already finished stabbing.

Q:

When you said Lan, it is the name of Allan?

A:

Yes, Sir.

Q:

How many times did you see the accused stab the victim Joseph Balano?

A:

I only saw once.[21] (Emphasis Ours.)

From the foregoing testimony, it is clear that accused-appellant deliberately hid behind the coconut tree at nighttime, surprising the victim, Balano, by his swift attack and immediate lunging at him. Obviously, the unsuspecting Balano did not have the opportunity to resist the attack when accused-appellant, without warning, suddenly sprang out from behind the coconut tree and stabbed him. This undoubtedly constitutes treachery. The fact that Balano was able to run after he was stabbed by accused-appellant does not negate the fact the treachery was committed. As We held in *Lobino*, that the victim was still able to run after the first blow does not obliterate the treachery that was employed against him.[22] Clearly therefore, the RTC and the CA did not err in finding that treachery was committed. Accordingly, accused-appellant's conviction of murder is proper.

Evident premeditation was not established as an aggravating circumstance

According to Art. 14(3) of the RPC, an offense is aggravated when it is committed with evident premeditation. Evident premeditation is present when the following requisites concur:

- (1) the time when the offender determined to commit the crime;
- (2) an act manifestly indicating that the culprit has clung to his determination; and
- (3) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.[23]

In this case, evident premeditation was not established. First, there is showing, much less an indication, that accused-appellant had taken advantage of a sufficient time to carefully plan the killing of Balano; or that a considerable time has lapsed enough for accused-appellant to reflect upon the consequences of his act but nevertheless clung to his predetermined and well-crafted plan. The prosecution was only able to establish the fact of accused-appellant's sudden stabbing of Balano after he hid behind the coconut tree. This fact only successfully establishes the qualifying circumstance of treachery but not the aggravating circumstance of evident premeditation.

In appreciating the aggravating circumstance of evident premeditation, it is indispensable that the fact of planning the crime be established.[24] Particularly, "[i]t is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out." [25] Accordingly, when there is no evidence showing how and when the accused planned to killing and how much time elapsed before it was carried out, evident premeditation cannot prosper.[26] In this case, the prosecution failed to establish how and when the plan to kill Balano was devised. As this has not been clearly shown, consequently, evident premeditation cannot be appreciated as an aggravating circumstance.

Incomplete self-defense cannot be made

as a justifying circumstance, because the element of unlawful aggression is absent

Accused-appellant's claim of incomplete self-defense cannot prosper. Art. 69 in relation to Art. 11 of the RPC explains when incomplete self-defense is permissible as a privileged mitigating circumstance, thus:

ART. 69. Penalty to be imposed when the crime committed is not wholly excusable.³⁴A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in articles 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.

ART. 11. Justifying circumstances.³⁴The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances occur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

In order that incomplete self-defense could prosper as a privileged mitigating circumstance, unlawful aggression must exist. In *People v. Manulit*,^[27] *People v. Mortera*,^[28] and *Mendoza v. People*,^[29] We reiterated the well-settled rule that unlawful aggression is an indispensable requisite in appreciating an incomplete self-defense. It is any one of the two other elements of self-defense that could be wanting in an incomplete self-defense, i.e., reasonable necessity of the means to employed to prevent or repel it; or lack of sufficient provocation on the part of the person defending himself; but it can never be unlawful aggression.^[30]

Unlawful aggression is defined as "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It presupposes actual, sudden, unexpected or imminent danger--not merely threatening and intimidating action. It is present only when the one attacked faces real and immediate threat to one's life."^[31]

In granting the privileged mitigating circumstance of incomplete self-defense, the burden to prove the elements during trial is incumbent upon the accused.^[32] It, therefore, follows that accused-appellant must prove before the RTC that there was indeed an unlawful aggression on the part of the victim, Balano.

In this case, accused-appellant failed to demonstrate the existence of unlawful aggression that would warrant an incomplete self-defense. As properly pointed out by the RTC, the testimony of accused-appellant on cross-examination establishes this failure, thus:

Q:

According to you, it was Tap-ing Fernandez who threw stone to you, is that correct?

WITNESS

A:

Yes, sir.

Q:

And you were hit on your forehead, is that correct?

A:

No, sir, on the top of my head.

COURT INTERPRETER

Witness pointing to the top of his head.

FISCAL MOTALLA

Q:

And you became groggy according to you, is that correct?

A:

Yes, sir.

Q:

And you fell to the ground.

A:

No, sir.

Q:

So you did not fall to the ground, is that what you mean?

A:

No, sir, I felt groggy.

Q:

You said you saw the victim approached [sic] you with an ice pick, is that correct?

A:

Yes, sir.

Q:

And you immediately stabbed him?

A:

Yes, sir.

Q:

Meaning, he was not able to stab you because you immediately stabbed him, is that correct?

A:

Yes, sir.

Q:

But according to you, when the victim, was hit he went to a nearby coconut tree and stabbed the coconut tree, is that correct?

A:

Yes, sir.

Q:

And you were just two-arms length away from him, is that correct?

A:

Yes, sir.

Q:

He did not thrust towards you, he was only stabbing the coconut tree, is that correct?

A:

He did not thrust towards me.

Q:

He only kept on stabbing the coconut tree, is that correct?

A:

Yes, sir.

Q:

Despite the fact that you were near to him?

A:

Yes, sir.

Q:

And he was already wounded by you when he was stabbing the coconut tree?

A:

He was already wounded.[33]

From the foregoing testimony of accused-appellant himself, it is clear that there was no unlawful aggression on the part of Balano that would justify accused-appellant to stab him. To justify an incomplete self-defense, the unlawful aggression must come from the victim himself against the person who resorted to self-defense.[34] In this case, if there was any, the unlawful aggression came from Tap-ing, who was the one who threw a stone and hit accused-appellant. The mere fact that Balano was alleged to be approaching accused-appellant with an ice pick does not constitute a real and imminent threat to one's life sufficient to create an unlawful aggression. Unlawful aggression requires more than that. In *People v. Arnante*, as it is here, the "mere perception of an impending attack is not sufficient to constitute unlawful aggression." [35] In this case, there was not even any attempt on the part of Balano to strike or stab accused-appellant. If at all and assuming to be true, Balano's demeanor could be deemed as an intimidating attitude that is certainly short of the imminence that could give rise to the existence of unlawful aggression.[36] What is more, it was not him, but Tap-ing who had previously hit accused-appellant.

Accused-appellant's own testimony also negates any intention on the part of Balano to cause him any harm. As he testified, even after he stabbed Balano, the latter never retaliated and struck back. Instead, he stabbed the coconut tree notwithstanding the fact that accused-appellant was within his reach. Certainly, nothing in the facts indicate any circumstance that could justify the stabbing and the ultimate taking of Balano's life. Accordingly, as We are not convinced that there was an unlawful aggression in this case on the part of the victim, Balano, an incomplete self-defense is wanting and accused-appellant's offense, therefore, cannot be mitigated.

Accused is liable for damages and interest

The penalty of murder under Art. 248 of the RPC is reclusion perpetua to death. Considering that the offense committed in this case is murder and there being neither aggravating nor mitigating circumstances, the RTC was correct in imposing the lesser penalty of reclusion perpetua.[37]

It is now settled that as a general rule, the Court awards civil indemnity, as well as moral and exemplary damages.[38] And We have held in *People v. Combate* that "when the circumstances surrounding the crime call for the imposition of reclusion perpetua only, the Court has ruled that the proper amounts should be PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages." [39]

Accordingly, We increase the PhP 65,000 damages awarded by the RTC and affirmed by the CA as follows: PhP 50,000 in civil indemnity, PhP 50,000 in moral damages, and PhP 30,000 in exemplary damages, with an interest of six percent (6%) per annum,[40] in line with Our current jurisprudence.

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. CEB CR-H.C. No. 00731 finding accused-appellant Allan Gabrino guilty of the crime charged is AFFIRMED with MODIFICATION. As modified, the ruling of the trial court should read as follows:

WHEREFORE, finding the accused, Allan Gabrino, guilty beyond reasonable doubt of the crime of MURDER, this Court hereby sentences accused to suffer the penalty of RECLUSION PERPETUA and is ordered to indemnify the heirs of the late Joseph Balano the sum of PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, PhP 30,000 as exemplary damages, and interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 3-11. Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Amy C. Lazaro-Javier and Edgardo L. Delos Santos.

[2] CA rollo, pp. 37-43. Penned by Judge Buenaventura A. Pajaron.

[3] Id. at 37.

[4] Id. at 38.

[5] Id.

[6] Id.

[7] Id. at 39.

[8] Id.

[9] Id.

[10] Id. at 43.

[11] Rollo, p. 11.

[12] People v. Combate, G.R. No. 189301, December 15, 2010.

[13] Id.; citing People v. Gado, 358 Phil. 956 (1998).

[14] People v. Agudez, G.R. Nos. 138386-87, May 20, 2004, 428 SCRA 692, 705.

[15] G.R. No. 101312, January 28, 1997, 267 SCRA 26, 39.

[16] People v. Dela Cruz, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 746.

[17] CA rollo, p. 30.

[18] People v. Dela Cruz, supra note 16; citing People v. Amazan, G.R. Nos. 136251 & 138606-07, January 16, 2001, 349 SCRA 218, 233 & People v. Bato, G.R. No. 127843, December 15, 2000, 348 SCRA 253, 261.

[19] Id.; citing People v. Albarido, G.R. No. 102367, October 25, 2001, 368 SCRA 194, 208 & People v. Francisco, G.R. No. 130490, June 19, 2000, 333 SCRA 725, 746.

[20] G.R. No. 123071, October 28, 1999, 317 SCRA 606, 615.

[21] CA rollo, p. 40.

[22] Supra note 20.

[23] People v. Borbon, G.R. No. 143085, March 10, 2004, 425 SCRA 178, 188.

[24] Id. at 189 & 192.

[25] Id.

[26] Id.

[27] G.R. No. 192581, November 17, 2010; citing People v. Catbagan, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 540.

[28] G.R. No. 188104, April 23, 2010, 619 SCRA 448, 462.

[29] G.R. No. 139759, January 14, 2005, 448 SCRA 158, 161.

[30] Id.

[31] People v. Manulit, supra note 27.

[32] Mendoza v. People, supra note 29, at 162.

[33] CA rollo, p. 42.

[34] People v. Manulit, supra note 27.

[35] G.R. No. 148724, October 15, 2002, 391 SCRA 155, 161.

[36] People v. Lopez, G.R. No. 177302, April 16, 2009, 585 SCRA 529, 539.

[37] See People v. Lobino, supra note 20, at 616.

[38] *People v. Combate*, supra note 12.

[39] *Id.*; citing *People v. Sanchez*, G.R. No. 131116, August 27, 1999, 313 SCRA 254.

[40] *Id.*

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