

PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. RITZ BARING MORENO, ACCUSED-APPELLANT.

G.R. No. 217889. March 14, 2018

Ponente: MARTIRES, J.

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MARTIRES, J.:

For resolution is the appeal of accused-appellant Ritz Baring Moreno seeking the reversal and setting aside of the 29 October 2014 Decision[1] rendered by the Court of Appeals (CA), Twentieth Division which affirmed, with modification as to the award of monetary damages, the 17 August 2012 Decision[2] of the Regional Trial Court (RTC), Branch 20, Cebu City, finding him guilty of Murder.

THE FACTS

The accused-appellant was charged with murder in an Information docketed as Crim. Case No. CBU-74770, viz:

That on or about the 3rd day of October 2005, at about 10:45 p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a .38 cal. revolver with deliberate intent, with intent to kill, and with treachery and evident premeditation, did then and there suddenly and unexpectedly shoot one KYLE KALES CAPSA y LOMIBAO hitting him on the vital part of his body, thereby inflicting upon him physical injuries as a consequence of said injuries, said KYLE KALES CAPSA y LOMIBAO died minutes later.

CONTRARY TO LAW.

When arraigned, the accused-appellant, with the assistance of counsel, pleaded not guilty; trial on the merits thereafter ensued.

Version of the Prosecution

The prosecution tried to prove its case against the accused-appellant through the testimony of Vicente Capsa (Vicente), Reanne Vincent Kerby Capsa (Reanne), and Atty. Rene Bautista (Atty. Bautista).

The testimony of SPO4 Alex Dacua (Dacua) of the Cebu City Police Office (CCPO) was dispensed with after the parties agreed to stipulate on the following: that the witness was assigned at the Criminal Investigation and Intelligence Bureau (CIIB) Homicide Section, CCPO, on 3 October 2005; that the witness responded to a shooting incident at the Capsa compound, Sitio Maharlika, Barangay Sambag II, Cebu City, where one Kyle Kales Capsa (Kyle), the victim, was shot and declared dead on arrival at the Vicente Sotto Memorial Hospital (VSMH); that there was a hot pursuit operation; that the accused voluntarily surrendered to Bobby Nalzar of DYSS Radio Station; that Bobby Nalzar turned over the accused who voluntarily surrendered to the police authorities at the CIIB; that the police officers voluntarily conducted a custodial investigation on the accused; that the accused voluntarily executed an extrajudicial confession before the police officers; that it was Insp. Monilar who typed the extrajudicial confession; that the accused was assisted by counsel Atty. Bautista; and that the witness saw Atty.

Bautista at the premises of the Homicide Section of CIIB.[3]

Likewise, the record custodian of the National Bureau of Investigation and Dr. Gil Macato were no longer called to the witness stand after the defense admitted the records of Kyle and the existence of Kyle's certificate of death[4] and the findings therein.[5]

The unrefuted facts established by the prosecution, in view of the manifestation of the accused-appellant that he would no longer present evidence on his behalf, were as follows:

On the night of 3 October 2005, Reanne, the younger brother of Kyle, had a fistfight with his cousin, Tyke Philip Lomibao (Tyke), after Tyke hit Reanne with a cue stick. Kyle, who saw the incident, sided with Reanne; thus, the fistfight continued, but neighbors were subsequently able to separate the three.[6]

At around 10:45 p.m. that same night, inside their compound, while Reanne and Kyle were discussing what happened earlier to Tyke, Ivan Sala (Sala) and Alexander Pala (Pala) passed by and looked at the Capsa brothers. Shortly, the accused-appellant arrived, positioned himself five meters away from Reanne and Kyle and fired at them twice with a .38 caliber revolver, the second shot hitting Kyle in the chest. The accused-appellant ran away because there were neighbors who saw him fire the shots. Since Reanne was still in shock after the shooting, a neighbor brought Kyle, then twenty-three years old and a nautical graduate, to the VSMH where he was pronounced dead on arrival.[7]

Vicente, the father of Reanne and Kyle, was awakened by his daughter-in-law informing him that Kyle was shot. Vicente proceeded to the VSMH where he was told that Kyle had already died.[8]

The following day, when Vicente went to the police station to report the incident, he was told that the person who shot Kyle was the accused-appellant, upon Tyke's order. Vicente filed a complaint against Tyke, which was subsequently dismissed.[9] At the police station, the accused-appellant confessed to Reanne that it was Tyke who ordered him to shoot them.[10]

Atty. Bautista also went to the police station on 4 October 2005, upon the advice of Vice-Mayor Michael Rama, the Chairman of the Peace and Order Council, to observe and ascertain whether the investigation on the shooting of Kyle was above board. Because the accused-appellant had no counsel during the investigation, Atty. Bautista was asked to assist him. Present during the investigation, Atty. Bautista observed that the police neither coerced nor threatened the accused-appellant. He explained to the accused-appellant and his mother, Dolores Baring Moreno, the consequences of signing the sworn statement[11] executed at the police station.[12]

The Ruling of the RTC

The RTC held that the lone testimony of Reanne identifying the accused-appellant as the one who shot Kyle sufficed to convict. Considering that there was no evidence offered by the defense to refute the testimony of Reanne, his credibility as a witness stood on firm and solid ground. The RTC considered the following facts in appreciating the qualifying circumstance of treachery in this case, viz: no prior warning or indication as to the presence of the accused-appellant; there was no previous altercation between the accused-appellant and the Capsa siblings; and the accused-appellant and the Capsa siblings hardly knew each other. Additionally, the accused-appellant executed an extrajudicial confession freely and voluntarily. The RTC ruled that because the accused-appellant was criminally liable for the death of Kyle, he should also be held civilly liable.[13]

The RTC resolved the case as follows:

WHEREFORE, in view of the foregoing, the court finds accused RITZ BARING MORENO GUILTY beyond reasonable doubt of the crime of Murder, qualified by treachery, and hereby sentences him to a prison term of

Reclusion Perpetua.

Accused Ritz Baring Moreno is also hereby ordered to pay the heirs of Kyle Kales Lomibao Capsa the sum of P75,000.00 as civil indemnity ex delicto and moral damages of P50,000.00.

SO ORDERED.[14]

Aggrieved with the decision of the RTC, the accused-appellant appealed before the CA.

The Ruling of the CA

The CA found Reanne's testimony as credible considering the following: he was facing the gate where the accused-appellant was at the time of the incident; he was merely five meters away from the accused-appellant; and the face of the accused-appellant was visible even at night since the sodium light was very bright.[15]

The CA ruled that the RTC properly appreciated the qualifying circumstance of treachery in the killing of Kyle. In the same manner, the CA agreed with the finding of the RTC that evident premeditation was not established by the prosecution.[16]

The CA held that the RTC failed to appreciate the mitigating circumstance of accused-appellant's voluntary surrender, a fact which had been expressly stipulated on by the parties. The CA, however, found that the RTC imposed the correct penalty of reclusion perpetua upon the accused-appellant but ruled that there was a need to modify the monetary awards to the heirs of Kyle as follows: P50,000.00 as civil indemnity; P50,000.00 as moral damages; and P25,000.00 as temperate damages.[17]

The dispositive portion of the CA decision reads:

WHEREFORE, the appeal is DENIED. The August 17, 2012 Decision of the Regional Trial Court, Branch 20 of Cebu City in Crim. Case No. CBU-74770 is AFFIRMED WITH MODIFICATION that accused appellant Ritz Baring Moreno is ordered to pay the victim's heirs the following amounts: (a) P50,000.00 as civil indemnity ex delicto; (b) P50,000.00 as moral damages; and (c) P25,000.00 as temperate damages in lieu of actual damages.

SO ORDERED.[18]

ISSUE

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

OUR RULING

The appeal is partly meritorious.

The findings of the trial court relative to the credibility of witnesses are accorded respect.

Time and again, this Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect.[19] The reviewing court is bound by the findings of the trial court, more so when the same is affirmed by the appellate court on appeal.[20] The justification for this ruling was discussed in *People v. Macaspac*[21] as follows:

It is settled that the assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor,

conduct, and attitude under grueling examination. These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its personal observations during the entire proceedings, the trial court can be expected to determine whose testimonies to accept and which witnesses to believe. Accordingly, the findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight were overlooked, misapprehended, or misinterpreted as to materially affect the disposition of the case.

In this case, the Court adopts the finding of the RTC and the CA that Rearme's testimony identifying the accused-appellant as the one responsible for the killing of Kyle was convincing and credible especially in the absence of evidence from the defense that would refute his testimony. The pertinent portions of Reanne's testimony are as follows:

Q. During that time that you were talking with your brother what happened?

A. At about 10:00 o'clock going to 11:00 o'clock RJ arrived.

Q. Who is this RJ?

A. Ritz Baring.

Q. Are you referring to Ritz Baring Moreno, the accused in this case?

A. Yes.

Q. Do you know him personally before or during the incident?

A. Yes because I have a "kumpare" who is his neighbor and also a classmate who is also his neighbor.

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Q. You said that this RJ Moreno arrived at your place, did he enter the gate of the compound?

A. At the door of the gate because we have no door it was broken and it is always open.

Q. If you are the person outside can you see the person inside that gate?

A. Yes.

Q. When you said that RJ Moreno entered and was in your gate at the door what happened?

A. He suddenly shoot us.

Q. You said shot us. Who are you referring to? You and?

A. Me and my brother.

Q. How many shots did you hear that time?

A. 2.

Q. To whom did RJ Moreno aimed and fired his firearm?

A. He shot me first because I was in front.

Q. Were you hit by the shot of RJ Moreno?

A. No.

Q. Was it the first shot or the second shot that was aimed at you?

A. The first shot.

Q. What happened to the second shot?

A. I noticed that my brother was hit.

Q. When RJ Moreno was at your gate and started shooting at you, did he say anything during that incident?

A. No, he just shoot us.

Q. You said that your brother was hit, where was your brother hit?

A. On the chest.

Q. How did you know that your brother was hit during that time?

A. He fell down.

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Q. After your brother fell down after he was shot, what happened to RJ Moreno?

A. He ran because there were neighbors who saw him.

Q. Was RJ Moreno alone at that time?

A. No, there were lookouts.

Q. Who were these persons who acted as lookouts?

A. Ivan Sala and Alexander.

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Q. How far was RJ Moreno when he shot you and your brother?

A. About 5 meters.

Q. Can you recall what was the firearm used by RJ Moreno. If you know?

A. Yes.

Q. Could you tell the court what kind of firearm [was used] and the color?

A. A .38 caliber firearm, grey.

Q. I recalled that this happened at 10:30 in the evening, were you able to see RJ Moreno considering that it was already night time?

A. I saw his face because the sodium light was very bright.

Q. Are you certain that it was RJ Moreno who shot you and your brother?

A. Yes.[22]

Likewise there is the sworn statement[23] of the accused-appellant taken at the police station on 4 October 2005, at 2:30 p.m., wherein he admitted, with the assistance of Atty. Bautista and his mother Dolores and after his constitutional rights were explained to him, that he shot Kyle twice. The sworn statement, which was signed by the accused-appellant and Atty. Bautista, pertinently provides:

QUESTION: DO YOU KNOW WHY YOU ARE HERE OR DO YOU KNOW WHY YOU ARE UNDER

INVESTIGATION?

ANSWER: YES, SIR. I'M HERE AFTER I VOLUNTARILY SURRENDERED TO MR. BOBBY NALZARO OF DYSS IN BRGY. BUSAY, CEBU CITY FOR MY SAFETY.

QUESTION: WHY ARE YOU ASKING FOR SAFETY?

ANSWER: BECAUSE OF THE CRIME I COMMITTED BY SHOOTING KYLE KALES CAPSA IN THE EVENING OF OCTOBER 3, 2005, INSIDE THEIR COMPOUND IN SITIO MAHARLIKA, BRGY. SAMBAG II, CEBU CITY.

QUESTION: CAN YOU REMEMBER WHAT TIME WHEN YOU SHOT KYLE KALES CAPSA?

ANSWER: PAST 10:00 IN THE EVENING OF OCTOBER 3, 2005.

QUESTION: WHY DID YOU SHOOT HIM?

ANSWER: BECAUSE OF HIS COUSIN (TYKE) WHO PULLED ME TOWARDS THE COMPOUND AND IN THE PROCESS TYKE INSTRUCTED ME TO SHOOT KYLE KALES CAPSA.

QUESTION: WHY DID TYKE INSTRUCT YOU TO SHOOT KYLE KALES CAPSA?

ANSWER: BECAUSE KYLE KALES CAPSA AND TYKE WERE QUARRELING.

QUESTION: WHY WERE YOU THE ONE INSTRUCTED BY TYKE TO SHOOT KYLE KALES CAPSA AND WHY DO YOU HAVE A FIREARM?

ANSWER: I DON'T KNOW WHY I WAS THE ONE ORDERED BY HIM TO SHOOT CAPSA AND WHILE NEARING IN THE COMPOUND ONE OF MY FRIENDS, ALEXANDER PALA ALIAS "SANDER" LET ME BORROW HIS FIREARM A CAL .38 REVOLVER.

QUESTION: AFTER ALEXANDER PALA HANDED HIS FIREARM TO YOU, WHAT HAPPENED NEXT?

ANSWER: TOGETHER WITH ALEXANDER PALA AND EVAN SALA WE DIRECTLY WENT TO THE COMPOUND AND WHILE THEY WERE OUTSIDE ACTING AS BACKUP AND WHILE I WAS IN THE GATE, I SAW KYLE KALES CAPSA WHO WAS STANDING WITH THE OTHER PERSONS AND THEN I SHOT HIM TWO (2) TIMES AND IMMEDIATELY THEREAFTER I RAN AWAY TOGETHER WITH ALEXANDER PALA AND EVAN SALA.

QUESTION: WHERE DID YOU GO AS WELL AS YOUR COMPANIONS ALEXANDER PALA AND EVAN SALA?

ANSWER: I DO NOT KNOW WHERE THEY WENT BUT FOR ME I HID IN ONE OF MY NEIGHBORS/RELATIVES.

QUESTION: WHERE IS NOW THE FIREARM THAT YOU USED IN SHOOTING THE VICTIM?

ANSWER: I WAS ABLE TO THROW IT AWAY.

QUESTION: BY THE WAY, WHO WERE WITH YOU WHEN YOU SURRENDERED TO MR. BOBBY NALZARO xxx.

ANSWER: WITH ME WERE MY MOTHER AND MY TWO AUNTIES, ROWENA POSADAS AND CORAZON BARING.

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INVESTIGATOR: ARE YOU WILLING TO SIGN THE STATEMENT OF YOURS CONSISTING OF THREE (3) PAGES INCLUDING THIS ONE IN YOUR OWN FREE WILL AND VOLITION, FREE OF ANY INFLUENCE, THREATS, OR INTIMIDATION OR ANY CONSIDERATION WHATSOEVER?

ANSWER: YES, SIR.[24] (emphasis supplied)

To cast doubt on the identity of the person who shot Kyle, the accused-appellant asserted that Reanne could not have seen who shot Kyle as Reanne had run away for his safety after the first shot.[25]

The assertion of the accused-appellant expectedly dwindles into nothing in view of the credible and categorical testimony of Reanne identifying the accused-appellant as the one who shot Kyle, coupled with the admission of the accused-appellant that he indeed shot Kyle twice. Reanne explained that he was able to clearly see that it was the accused-appellant who shot Kyle because of the sodium light that illuminated the place. Moreover, the records do not show that Reanne had any ill motive in identifying the accused-appellant as the one responsible for the death of Kyle; hence, the well-settled rule that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption that he was not so actuated and his testimony is entitled to full faith and credit,[26] truly finds meaning in this case.

The accused-appellant proffers the defense that, granting that he fired the shot on that fateful night, the shot was nevertheless aimed at Reanne who earlier that day had a fight with Tyke. The accused-appellant argues that Kyle merely intervened during the fight between Tyke and Reanne, and that it was Reanne who Tyke was really after.[27]

The defense offered by the accused-appellant fails to convince. The fact that the fight was between Reanne and Tyke becomes immaterial in this case since records firmly confirm that the accused-appellant aimed his shot at Kyle, and that the accused-appellant successfully hit Kyle which caused his death. It is significant to note that the accused-appellant trenchantly maintained in his sworn statement taken before the police station that Tyke's alleged instruction was for him to shoot Kyle and, as he himself admitted, he indeed shot Kyle twice. Granting for the sake of argument therefore that the accused-appellant was merely following the instruction of Tyke, then it logically follows that his target was no other than Kyle.

In the same vein, the absence of any motive on the part of the accused-appellant to kill Kyle is irrelevant in this case since motive is not even an element of murder. The Court had ruled in *People v. Buenafe*[28] that, as a general rule, proof of motive for the commission of the offense charged does not show guilt; and the absence of proof of such motive does not establish the innocence of accused for the crime charged such as murder. The Court further held in *Buenafe*, viz:

xxx motive is irrelevant when the accused has been positively identified by an eye witness. Intent is not synonymous with motive. Motive alone is not a proof and is hardly ever an essential element of a crime.

The prosecution was not able to prove beyond reasonable doubt that the offense committed by the accused-appellant was murder.

The Court is aware that jurisprudence instructs it to rigidly review the records of the case since the appeal confers upon it full jurisdiction over the case, viz:

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[29]

In view of this legal teaching, the Court has meticulously examined the records of this case and found that there were substantial facts that both the RTC and the CA had overlooked and which, if considered, may affect the outcome of the case.

The accused-appellant was charged with murder which, under Article (Art.) 248[30] of the Revised Penal Code (RPC), is committed by any person who, not falling within the provisions of Art. 246[31] of the same Code, shall kill another with treachery, taking advantage of superior strength, with the aid of armed men, employing means to weaken the defense; or employing means or persons to insure or afford impunity.

The qualifying circumstances of treachery and evident premeditation were alleged in the information. The RTC and the CA, however, found that only the qualifying circumstance of treachery attended the killing of Kyle.

a. Treachery

Treachery is present when the offender commits any of the crimes against a 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.[32] For the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender.[33] Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder.[34] The evidence of showing treachery must be as conclusive as the fact of killing itself and its existence cannot be presumed.[35]

On the first requisite, the legal teaching must be stressed that the essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow.[36]

The records will confirm that neither Kyle nor Reanne had a misunderstanding nor had engaged in a fight with the accused-appellant, thus negating any provocation on the part of the Capsa siblings. Indeed, prior to the shooting, Reanne and Kyle were merely talking inside the Capsa compound when the accused-appellant suddenly appeared. Since Kyle's back was towards the gate of the compound he did not see that the accused-appellant, who was then armed, was already at the gate and about five meters away from him. Reanne, on the one hand, was facing the gate; thus, with the accused-appellant firing the first shot, Reanne was able to seek cover. It was unfortunate for Kyle who, unaware where the first shot came from, failed to avoid the trajectory of the second shot which hit him in the chest and caused his death.

In *Escamilla v. People*,[37] the Court ruled that the evidence to prove intent to kill may consist of, inter alia, the means used; the nature, location and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of, or immediately after the killing of the victim.[38] The fact that the accused-appellant used a gun and successively fired twice at Kyle and hit his chest proved accused-appellant's intent to kill his victim. In murder or homicide, the offender must have the intent to kill. If there is no intent to kill on the part of the offender, he or she is liable only for physical injuries.[39]

On the second requisite, jurisprudence maintains that "treachery as a qualifying circumstance must be deliberately sought to ensure the safety of the accused from the defensive acts of the victim. Unexpectedness of the attack does not always equate to treachery." [40] There must be evidence to show that the accused deliberately or consciously adopted the means of execution to ensure its success.[41]

The fact is underscored that the prosecution adopted as its Exh. "B" the sworn statement of the accused-appellant taken at the police station. The sworn statement provided the details on what happened right before the accused-appellant shot Kyle. In comparison, the highlight of the testimony of the prosecution's main witness Reanne, centered on the actual shooting of Kyle.

In his sworn statement, the accused-appellant recounted that he was merely pulled by Tyke towards the Capsa compound and thereafter instructed to shoot Kyle. The accused-appellant was not aware of Tyke's was reason for choosing him to shoot Kyle. As the accused-appellant came near, he borrowed Alexander Pala's gun, and when he spotted Kyle, he shot him twice.

The accused-appellant's narration of the facts confirmed that the attack he made on Kyle was not preconceived nor deliberately adopted; or that he reflected on the means, method, or form of the attack to secure his unfair advantage. The accused-appellant acted on impulse or at the spur of the moment, i.e., there was simply a directive from Tyke to kill Kyle. For sure, Kyle was not even armed when he was on his way to the Capsa compound as he merely borrowed Pala's gun. To reiterate, it was simply regrettable that at the time the accused-appellant arrived at the compound, Kyle's back was towards the gate and so was not able to see his assailant.

"The unexpectedness of an attack cannot be the sole basis of a finding of treachery even if the attack was intended to kill another as long as the victim's position was merely accidental. The means adopted must have been a result of a determination to ensure success in committing the crime"[42] which was unmistakably absent in this case. It would be well to note that the existence of treachery should be based on clear and convincing evidence. Such evidence must be as conclusive as the fact of killing itself and its existence cannot be presumed.[43]

b. Evident premeditation

On evident premeditation, in order that this qualifying circumstance may be appreciated, the following requisites must be present, viz: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.[44]

It is emphasized that the essence of this circumstance of evident premeditation is that the execution of the criminal act be preceded by cool thought and reflection upon the resolve to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[45] Noteworthy, the prosecution failed to show the lapse of time when the accused-appellant had intended to kill Kyle to the point of his actual commission thereof, and which period of time would have allowed the accused-appellant to contemplate on the outcome of his crime. It cannot be disputed, therefore, that the qualifying circumstance of evident premeditation had not been securely established through the prosecution's evidence.

In a catena of cases, evident premeditation had been amply discussed as follows:

xxx The qualifying circumstance of premeditation can be satisfactorily established only if it could be proved that the defendant had ample and sufficient time to allow his conscience to overcome the determination of his will, if he had so desired, after meditation and reflection, following his plan to commit the crime. (United States v. Abaigar, 2 Phil., 417; United States v. Gil, 13 Phil., 530.) In other words, the qualifying circumstance of premeditation can be taken into account only when there had been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act. (United States v. Cunanan, 37 Phil. 777.) But when the determination to commit the crime was immediately followed by execution, the circumstance of premeditation cannot be legally considered. (United States v. Blanco, 18 Phil. 206.) xxx[46]

Considering the absence of the qualifying circumstance of treachery or evident premeditation, the crime

committed is Homicide, defined in Article 249[47] of the Revised Penal Code, and not murder.

The proper penalty to be Imposed upon the accused-appellant

The CA was correct in appreciating the mitigating circumstance of voluntary surrender which requisites are as follows: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary.[48]

The joint affidavit executed by Dacua and the three other members of the CCPO stated that PSupt. Pablo Labra, Chief of the Criminal Investigation Division, surrendered the accused-appellant to the CCPO after he voluntarily surrendered to Nalzar. The fact of the accused-appellant's voluntary surrender was affirmed by him in the sworn statement he gave before the police. The accused-appellant's voluntary surrender was spontaneous indicating his intent to unconditionally submit himself to the authorities, either because he acknowledged his guilt or he wished to save them the trouble and expenses necessary for his search and capture.[49]

Art. 249 of the RPC provides that the imposable penalty for homicide is reclusion temporal. In view of the appreciation of the mitigating circumstance of voluntary surrender, the penalty to be imposed, pursuant to Art. 64(2)[50] of the RPC, is the minimum period of reclusion temporal, that is, from 12 years and one day to 14 years and eight months. The range of the indeterminate penalty under the Indeterminate Sentence Law is prison mayor in any of its periods, as minimum, to the minimum period of reclusion temporal minimum, as maximum. Accordingly, the indeterminate penalty of eight years and one day of prison mayor, as minimum, to 14 years of reclusion temporal, as maximum,[51] shall be imposed upon the accused-appellant.

Following the jurisprudence laid down by the Court in *People v. Jugueta*,[52] the accused-appellant shall be held liable for civil indemnity of P50,000.00; moral damages of P50,000.00; and temperate damages of P50,000.00.[53] In addition, interest at the rate of six percent (6%) per annum shall be imposed on all monetary awards from date of finality of this decision until fully paid.[54]

WHEREFORE, the accused-appellant Ritz Baring Moreno is hereby found GUILTY beyond reasonable doubt of the crime of Homicide, and is sentenced to suffer the indeterminate penalty of eight years and one day of prison mayor, as minimum, to 14 years of reclusion temporal, as maximum; and to pay the heirs of Kyle Kales Capsa civil indemnity of P50,000.00; moral damages of P50,000.00; and temperate damages of P50,000.00. In addition, interest at the rate of six percent (6%) per annum shall be imposed on all monetary awards from the date of finality of this decision until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and Gesmundo, JJ., concur.

[1] Rollo, pp. 4-12; penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga-Jacob.

[2] Records, pp. 71-78; penned by Judge Bienvenido R. Saniel, Jr.

[3] Id. at 50.

[4] Id. at 13; Exh. "A."

[5] Id. at 58.

[6] TSN, 18 February 2009, pp. 4-5; TSN, 20 February 2009, pp. 8-9.

[7] TSN, 18 February 2009, pp. 4-10.

[8] TSN, 3 September 2008, pp. 7-8.

[9] Id. at 8-13.

[10] TSN, 18 February 2009, pp. 13-14.

[11] Records, p. 6; Exh. "B."

[12] TSN, 4 November 2009, pp. 4-10.

[13] Records, pp. 77-78.

[14] Id. at 78.

[15] Rollo, p. 9.

[16] Id. at 9-10.

[17] Id. at 11-12.

[18] Id. at 12.

[19] People v. Dayaday, G.R. No. 213224, 17 January 2017.

[20] Nieva v. People, G.R. No. 188751, 16 November 2016.

[21] G.R. No. 198954, 22 February 2017.

[22] TSN, 18 February 2009, pp. 6-10.

[23] Records, pp. 6-8; Exh. "B."

[24] Id. at 7-8.

[25] CA rollo, p. 18.

[26] People v. Maglente, G.R. No. 201445, 27 November 2013.

[27] CA rollo, p. 18.

[28] G.R. No. 212930, 3 August 2016.

[29] Ramos v. People, G.R. No. 218466, 23 January 2017.

[30] Article 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 temporal in its maximum period 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 street car or locomotive, 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 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.

[31] 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.

[32] People v. Sibbu, G.R. No. 214757, 29 March 2017.

[33] People v. Bugarin, G.R. No. 224900, 15 March 2017.

[34] People v. Macaspac, supra note 21.

[35] People v. Bugarin, supra note 33.

[36] Id.

[37] 705 Phil. 188 (2013).

[38] Id. at 196-197.

[39] Cirera v. People, 739 Phil. 25, 39 (2014).

[40] Id. at 28.

[41] People v. Oloverio, 756 Phil. 435, 449 (2015).

[42] Cirera v. People, supra note 39 at 45.

[43] People v. Bugarin, supra note 33.

[44] People v. Macaspac, supra note 21.

[45] Id.

[46] Id.

[47] Art. 249. Homicide. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[48] De Vera v. De Vera, 602 Phil. 877, 886 (2009).

[49] People v. Placer, 719 Phil. 268, 282 (2013).

[50] Art. 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

- xxx

- When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.

- xxx

[51] *People v. Placer*, supra note 49 at 282-283.

[52] 783 Phil. 806(2016).

[53] *Id.* at 856.

[54] *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, 716 Phil. 267, 283 (2013).

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