

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRITO ORDONA Y RENDON, ACCUSED-APPELLANT.

*G.R. No. 227863. September 20, 2017*

Ponente: LEONEN, J.

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### LEONEN, J.:

To qualify the killing of a person to the crime of murder, evident premeditation must be proven with reasonable certainty. Facts regarding "how and when the plan to kill was hatched"[1] are indispensable. The requirement of deliberate planning should not be based merely on inferences and presumptions but on clear evidence.

For this Court's resolution is an Ordinary Appeal from the June 1, 2015 Decision[2] of the Court of Appeals in CA-G.R. CR HC No. 06280, which affirmed the conviction of accused-appellant Pedrito Ordon y Rendon (Ordon) for the crime of murder.

In an Information, Ordon was charged of murder punished under Article 248 of the Revised Penal Code. The accusatory portion of the Information read:

That on or about the 1[st] day of January, 2005, in Quezon City, Philippines, the said accused, did then and there willfully, unlawfully and feloniously with intent to kill, taking advantage of superior strength, with evident premeditation and treachery, attack, assault and employ personal violence upon the person IRENEO A. HUBAY, by then and there stabbing him on the trunk with a bladed weapon thereby inflicting upon him serious and mortal wounds, which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Irene A. Hubay.

CONTRARY TO LAW.[3]

Ordon, assisted by counsel, pleaded not guilty during arraignment, Trial on the merits ensued.[4]

The prosecution presented three (3) witnesses, namely: (1) Samuel Cartagenas (Samuel); (2) Marissa Cartagenas (Marissa); and (3) PSI Dean Cabrera (PSI Cabrera). Their collective testimonies produced the prosecution's version of the incident.

Samuel personally knew Ordon and the victim, Irene A. Hubay (Hubay). Ordon was his neighbor while Hubay was a boarder of his mother.[5]

On the day of the alleged incident, Samuel and his wife Marissa were talking at the doorway of their house located along E. Rodriguez Avenue, Quezon City.[6] Samuel and Marissa saw Ordon loitering by the corner of their house. Ordon appeared to be waiting for someone. After some time, he left but returned five (5) minutes later.[7]

Meanwhile, Hubay emerged from the house,[8] holding some food.[9] Ordon approached Hubay with a stainless knife, called his attention by saying "Pare," and suddenly stabbed him in the left shoulder.[10] Samuel and Marissa stood two (2) feet away from them.[11]

Hubay managed to run away but Ordona gave chase and eventually caught up with him.[12] Despite Hubay's pleas for mercy, Ordona stabbed him[13] in the left torso.[14] Hubay's stab wounds proved to be fatal as he died immediately when he was brought to the hospital.[15]

PSI Cabrera, the representative of the Medico-Legal Officer who conducted the autopsy, testified that Hubay died of hemorrhage and shock from the second stab wound.[16]

The defense presented accused-appellant Ordona as its lone witness. Ordona testified that on the day of the alleged incident, he went to the house of his mother-in-law to fetch his wife. The house was located in the same barangay where the alleged incident took place. On his way there, he met a certain Cornelio de Leon who was running amok. This prevented him from reaching his destination.[17] After five (5) days, Ordona was arrested by the authorities. However, they failed to recover any bladed weapon from him.[18] Ordona denied knowledge of Hubay's identity.[19]

In its Decision[20] dated May 20, 2013, the Regional Trial Court found Ordona guilty beyond reasonable doubt of murder. Accordingly, he was sentenced to suffer the penalty of reclusion perpetua and ordered to pay damages to the heirs of Hubay. The dispositive portion of this Decision stated:

WHEREFORE, accused PEDRITO ORDONA y RENDON is hereby pronounced guilty beyond reasonable doubt of the crime of MURDER and sentenced to suffer the penalty of reclusion perpetua. Accused Ordona is further ordered to indemnify the Heirs of Ireneo Hubay the following: (a) P75,000.00 as civil indemnity; (b) P50,000.00 as moral damages; (c) P30,000.00 as exemplary damages and ([d]) interest on all damages awarded at the rate of 6% per annum from the date of finality of this judgment.

SO ORDERED.[21]

Ordona appealed the Decision of the Regional Trial Court. In his Brief,[22] he alleged that there were material inconsistencies in the testimonies of the prosecution's witnesses.[23] Ordona argued, in the alternative, that assuming he may be held criminally liable, the trial court erred in appreciating the qualifying circumstances of evident premeditation and treachery.[24] Treachery cannot be appreciated as a qualifying circumstance because the purported attack was not sudden or unexpected. Ordona pointed out that he called Hubay's attention before approaching him. Hubay "was aware of the imminent danger to his life." [25] Evident premeditation cannot likewise be appreciated as a qualifying circumstance because the prosecution failed to establish an overt act indicating his resolution to kill Hubay.[26]

In its Brief,[27] the Office of the Solicitor General, on behalf of the People of the Philippines, asserted that the alleged inconsistencies in the testimonies of the prosecution's witnesses neither pertain to nor involve the elements of murder.[28] The Office of the Solicitor General added that evident premeditation attended the commission of the crime.[29] Ordona's behavior clearly established his deliberate plan to kill Hubay.[30] There was also treachery because the attack was sudden and unexpected.[31]

In its Decision[32] dated June 1, 2015, the Court of Appeals affirmed the Decision of the Regional Trial Court in toto.

The Court of Appeals found the testimony of the prosecution's witnesses "credible, competent, and sufficient" to prove the treacherous killing of Bubay.[33] The alleged inconsistencies were only minor, which did not negate the commission of the crime.[34] The Court of Appeals agreed with the trial court that evident premeditation and treachery were both present in the commission of the crime.[35] Ordona's behavior established that "he was intentionally waiting for his victim to show up[.]"[36]

On July 9, 2015, Ordona filed his Notice of Appeal,[37] which was given due course by the Court of Appeals in

its Resolution[38] dated July 27, 2015.

On November 17, 2016, the Court of Appeals elevated the records of the case to this Court.[39]

In its Resolution[40] dated January 16, 2017, this Court noted the records forwarded by the Court of Appeals and required the parties to submit their supplemental briefs if they so desired. However, both parties manifested that they would no longer file supplemental briefs.[41]

The sole issue for this Court's resolution is whether or not accused-appellant Pedrito Ordon is guilty beyond reasonable doubt of murder.

This Court affirms accused-appellant Pedrito Ordon's conviction.

The determination of the credibility of witnesses is a function best left to the trial courts.[44] Generally, their findings and conclusions on this matter are given great respect and weight.[45] There are only a few instances when the trial court's findings and conclusions may be disregarded. The party seeking the exception must be able to allege and prove that the trial court either erred in appreciating the fact and circumstances of the case or made unsound inferences from the facts established.[46]

In the present case, accused-appellant alleged that there were material inconsistencies in the testimonies of the prosecution's main witnesses. According to him, Marissa did not testify that she saw him leave the house for a few minutes. In addition, Samuel and Marissa presented different accounts on how the crime scene was illuminated.[47]

Accused-appellant's assertion is unmeritorious. The alleged inconsistencies were only minor. They do not relate to the essential elements of the crime of murder. Slight variances in the testimony of witnesses, especially if immaterial to the crime charged, do not affect a witness' credibility.[48] What is material in this case is the act of stabbing. That the second witness did not see accused-appellant momentarily leave the place of the commission of the crime does not negate Hubay's killing. Also, both witnesses testified that the place was well-lit for them to see the incident.[49] Regardless of the source of illumination, both witnesses saw accused appellant stab Hubay twice.

The crime of murder committed when a person is killed under any of the circumstances enumerated in Article 248 of the Revised Penal Code, thus:

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 perpetua, to death if committed with any of the following attendant circumstances:

- 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;
- In consideration of a price, reward, or promise;
- 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;
- 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;
- With evident premeditation;
- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

For evident premeditation to qualify the killing of a person to the crime of murder, the following must be established by the prosecution "with equal certainty as the criminal act itself"[50]:

(a)

the time when the offender determined to commit the crime;

(b)

an act manifestly indicating that the offender clung to his determination; and

(c)

a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[51]

It is indispensable for the prosecution to establish "how and when the plan to kill was hatched or how much time had elapsed before it was carried out." [52] In *People v. Abadies*, [53] this Court underscored this requirement, thus:

Evident premeditation must be based on external facts which are evident, not merely suspected, which indicate deliberate planning. There must be direct evidence showing a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to kill the victim. Criminal intent must be evidenced by notorious outward acts evidencing a determination to commit the crime. In order to be considered an aggravation of the offense, the circumstance must not merely be "premeditation" but must be "evident premeditation."

The date and, if possible, the time when the malefactor determined to commit the crime is essential, because the lapse of time for the purpose of the third requisite is computed from such date and time.[54] (Emphasis supplied, citations omitted)

In this regard, evident premeditation cannot be appreciated as a qualifying circumstance in the present case. The prosecution failed to establish the time when accused-appellant resolved to kill Hubay. There is no evidence on record to show the moment accused-appellant hatched his plan. In *People v. Borbon*: [55]

[Evident premeditation] must be based on external acts which must be notorious, manifest and evident-not merely suspecting-indicating deliberate planning. - Evident premeditation like other circumstances that would qualify a killing as murder, must be established by clear and positive evidence showing the planning and preparation stages prior to the killing. Without such evidence, mere presumptions and inferences, no matter how logical and probable, will not suffice.

It is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out.[56] (Emphasis supplied, citations omitted)

Accused-appellant's act of lurking outside the house can hardly be considered as an overt act indicating his resolution to kill Hubay.

However, accused-appellant is still liable for murder. The killing was attended with the qualifying circumstance of treachery.

The essence of treachery, as stated in *Abadies*, is "the swift and unexpected attack on the unarmed victim without the slightest provocation on his part." [57] Two (2) requisites must be established by the prosecution, namely: "(1) that at the time of the attack, the victim was not in a position to defend himself [or herself], and (2) that the offender consciously adopted the particular means, method or form of attack employed by him [or her]." [58]

Both elements are present in this case. Hubay, who was then unarmed, was casually outside of his residence when accused-appellant suddenly stabbed him. There was no opportunity for Hubay to retaliate or to parry accused-appellant's attack. The facts also establish that accused-appellant consciously and deliberately adopted the mode of attack. Accused-appellant lurked outside Hubay's residence and waited for him to appear. When Hubay emerged from the house, accused-appellant called him "Pare" while walking towards him with a bladed weapon and immediately stabbed him.[59] Although the attack was frontal, it was done suddenly and unexpectedly. A frontal attack, when made suddenly, leaving the victim without any means of defense, is treacherous.[60] The second stabbing also indicates treachery. At that time, Hubay was already wounded and was unprepared to put up a defense.

Accused-appellant's conviction for the crime of murder is affirmed. However, this Court modifies the award of civil indemnity, moral damages, and exemplary damages to P100,00.00 each, in accordance with *People v. Jugueta*,[61] where this Court clarified that "when the crime proven is consummated and the penalty imposed is death but reduced to reclusion perpetua because of [Republic Act No.] 9346 the civil indemnity and moral damages that should be awarded will each be P100,000.00 and another P100,000.00 for exemplary damages." [62]

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CR HC No. 06280 is AFFIRMED with MODIFICATION. Accused-appellant Pedrito Ordon y Rendon is found GUILTY beyond reasonable doubt of murder and is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole.

Moreover, he is ordered to pay the heirs of Ireneo A. Hubay the amounts of P100,000.00 as civil indemnity, P100,000.00 as moral damages, and P100,000.00 as exemplary damages. In line with current jurisprudence, interest at the rate of six percent (6%) per annum should be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[63]

**SO ORDERED.**

Velasco, Jr., Bersamin, Martires, and Gesmundo, JJ., concur.

November 29, 2017

**NOTICE OF JUDGMENT**

Sirs / Mesdames:

Please take notice that on September 20, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 29, 2017 at 2:20 p.m.

Very truly yours,

(SGD)

**WILFREDO V. LAPITAN**

Division Clerk of Court

- [1] *People v. Borbon*, 469 Phil. 132, 145 (2004) (Per J. Callejo, Sr., Second Division).
- [2] Rollo, pp. 2-10. The Decision was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy of the Fourteenth Division, Court of Appeals, Manila.
- [3] *Id.* at 3.
- [4] *Id.*
- [5] CA rollo, p. 40.
- [6] Rollo, pp. 3-4.
- [7] *Id.*
- [8] *Id.*
- [9] CA rollo, p. 41.
- [10] Rollo, p. 4.
- [11] *Id.*
- [12] *Id.*
- [13] *Id.*
- [14] *Id.* at 5.
- [15] *Id.*
- [16] CA rollo, pp. 42-43.
- [17] Rollo, p. 5.
- [18] *Id.*
- [19] *Id.*
- [20] CA rollo, pp. 39-48. The Decision, docketed as Criminal Case No. Q-05-131859, was penned by Presiding Judge Madonna C. Echiverri of Branch 81, Regional Trial Court, Quezon City.
- [21] *Id.* at 48.
- [22] *Id.* at 25-38.
- [23] *Id.* at 31-33.
- [24] *Id.* at 33-36.
- [25] *Id.* at 34.
- [26] *Id.* at 34-36.
- [27] *Id.* at 53-66.
- [28] *Id.* at 60-61.
- [29] *Id.* at 63.

[30] Id.

[31] Id.

[32] Rollo, pp. 2-10. The Decision was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy of the Fourteenth Division, Court of Appeals, Manila.

[33] Id. at 7.

[34] Id.

[35] Id. at 8-9.

[36] Id. at 9.

[37] Id. at 11-14.

[38] CA rollo, p. 92.

[39] Rollo, p. 1.

[40] Id. at 17-18.

[41] Id. at 19-22, Office of the Solicitor General's Manifestation and rollo, pp. 24-28, accused-appellant's Manifestation.

[44] *People v. Acuram*, 284-A Phil. 756, 765 (1994) [Per J. Romero, Third Division].

[45] Id.

[46] Id.

[47] CA rollo, pp. 31-32.

[48] *People v. Rabutin*, 338 Phil. 705, 713 (1997) [Per J. Melo, Third Division].

[49] Rollo, pp. 4-5.

[50] *People v. Abadies*, 436 Phil. 98, 105 (2002) [Per J. Ynares-Santiago, En Banc].

[51] *People v. Balleras*, 432 Phil. 1018, 1026 (2002) [Per J. Sandoval-Gutierrez, En Banc].

[52] *People v. Borbon*, 469 Phil. 132, 145 (2004) [Per J. Callejo, Sr., Second Division].

[53] 436 Phil. 98 (2002) [Per J. Ynares-Santiago, En Banc].

[54] Id. at 106.

[55] 469 Phil. 132 (2004) [Per J. Callejo, Sr., Second Division].

[56] Id. at 145.

[57] *People v. Abadies*, 469 Phil. 132, 105 (2002) [Per J. Callejo, Sr., Second Division].

[58] Id.

[59] Rollo, p. 4.

[60] *People v. Ablao*, 299 Phil. 276, 280 (1994) [Per J. Padilla, Second Division].

[61] G.R. No. 202124, April 5, 2016  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2016/april2016/202124.pdf>> 27 [Per J. Peralta, En Banc].

[62] Id. at 27.

[63] See *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 281-283 (2013) [Per J. Peralta, En Banc].

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