

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODEL MAGBUHOS Y DIOLA ALIAS "BODIL";
ACCUSED-APPELLANT.**

G.R. No. 227865. November 07, 2018

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CAGUIOA, J:

This is an appeal[1] from the Decision[2] dated September 29, 2015 ("assailed Decision") of the Court of Appeals, Fifth (5th) Division (CA), in CA-G.R. CR-HC No. 05812, which affirmed with modification as to the award of damages, the Decision[3] dated July 17, 2012 of the Regional Trial Court of Rosario, Batangas, Fourth Judicial Region, Branch 87 (RTC), in Criminal Case No. R03-046, finding accused-appellant Rodel Magbuhos y Diola alias "Bodil" (Rodel) guilty beyond reasonable doubt of the crime of Murder defined and penalized by Article 248 of the Revised Penal Code (RPC).

The Facts

Rodel was charged with the crime of Murder under the following Information:

"That on or about the 6th day of October 2002, at about 1:30 o'clock in the afternoon, at Barangay Buhaynasapa, Municipality of San Juan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, armed with a fan knife (balisong), with intent to kill, with the qualifying circumstances of treachery and evident premeditation and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said fan knife, suddenly and without warning one Enrique E. Castillo, thereby inflicting upon the latter stab wound on his left chest, which directly cause his death.

CONTRARY TO LAW."[4]

Rodel pleaded not guilty to the offense charged.[5]

The prosecution presented as witnesses Angelito Yolola (Angelito) and Michael Castillo (Michael), the victim's nephew and son, respectively.[6]

Angelito testified that on October 6, 2002 at about 2 o'clock in the afternoon, he was at the billiard hall of his father and brother at Barangay Buhay na Sapa, San Juan, Batangas, when he saw Rodel approach his uncle, Enrique Castillo (Enrique), who was then sitting.[7] Angelito noticed that when Rodel arrived at the billiard hall, he was already under the influence of liquor as his body was swaying while walking towards the billiard hall.[8] Without saying a word, Rodel suddenly stabbed Enrique on his left chest.[9] Rodel then ran towards the south direction and left the billiard hall. Enrique was brought to a hospital in San Juan, Batangas but died on the way to the Villa Hospital in Lipa City where he was about to be transferred.[10]

Michael testified that at about 1:30 o'clock in the afternoon of October 6, 2002, he was watching billiard games at the billiard hall of his uncle Juanito Yolola (Juanito) at Brgy. Buhay Na Sapa, San Juan, Batangas.[11] There were a lot of people inside the billiard hall.[12] His father, Enrique, was also inside the billiard hall, seated at the

bamboo bench at the right side of the entrance, when Rodel approached his father and using a fan knife, stabbed his father once at the left chest.[13] Michael immediately attended to his father and noticed that Rodel had run away.[14] They brought his father to the San Juan District Hospital and they decided later on to transfer him to the Villa Hospital in Lipa City but he died on the way to said hospital.[15]

Rodel, on the other hand, raised self-defense. He testified that at 8:00 o'clock in the morning of October 6, 2002, he went to the house of his cousin Arnold Diola and had a drinking session with four other persons. From the said drinking session, he proceeded to the billiard hall owned by Juanito at more or less 12:00 o'clock in the afternoon. When he arrived at the billiard hall, there were many people playing, whose names he could not recall anymore. He seated near the billiard table, watched the game and fell asleep. He was awakened when Enrique tapped his chest telling him to leave because he was just causing disturbance inside the billiard hall. Rodel told Enrique that he would leave later as he was still feeling dizzy. Enrique stood up and boxed him. Enrique then drew a fan knife but was pacified by the people inside the billiard hall. While Enrique was uttering invectives, Rodel told the latter not to utter those words at him. Rodel then noticed that Enrique drew his fan knife and attempted to attack. Somebody from behind handed Rodel a fan knife but Rodel did not notice who gave it to him because there were many people inside the billiard hall and he was too drunk at that time. As soon as he got hold of the knife, and while Enrique was approaching him, Rodel was able to stab Enrique once in the chest. After hitting the victim, Rodel left the place and went home. He surrendered to Councilor Maring Umali of San Juan, Batangas and later on to the Police Station.[16]

RTC Ruling

In its Decision dated July 17, 2012, the RTC found Rodel guilty of Murder, to wit:

WHEREFORE, in view of the foregoing, judgement is hereby rendered finding the accused Rodel Magbujos y Diola alias "Bodil", GUILTY beyond reasonable doubt of the crime of MURDER defined in and penalized by Article 248 of the Revised Penal Code as amended by Republic Act 7659 hereby imposes on said accused the penalty of RECLUSION PERPETUA, with all the accessory penalties of the law. Furthermore, the accused is ordered to pay the heirs of the deceased the amount of Seventy Five Thousand Pesos (Php75,000.00) as civil indemnity; Seventy Five Thousand Pesos (P75,000.00) as moral damages; Seventy Five Thousand Pesos (P75,000.00) as exemplary damages and, Twenty Five Thousand Pesos (P25,000.00) as temperate damages.

SO ORDERED.[17]

The RTC rejected Rodel's claim of self-defense for failing to substantiate it with clear and convincing proof. According to the RTC, Rodel failed to present any evidence of unlawful aggression on the part of the victim to prove that there was a justification for him to defend himself.

The RTC, however, failed to discuss the presence of treachery and evident premeditation, the two qualifying circumstances alleged in the Information.

CA Ruling

In the assailed Decision, the CA affirmed with modification the ruling of the RTC, to wit:

WHEREFORE, in view of the foregoing, the Decision dated July 17, 2012 of the Regional Trial Court of Rosario, Batangas, Branch 87, is hereby AFFIRMED with MODIFICATION. Accused-appellant Rodel Magbuhos y Diola is found GUILTY beyond reasonable doubt of Murder as defined in Article 248 of Revised Penal Code, as amended, and he is sentenced to suffer the penalty of Reclusion Perpetua. Accused-appellant is ORDERED to pay the heirs of the victim, Enrique Castillo the amount of: (a) P75,000.00 as civil indemnity for the death of said victim; (b) P50,000.00 as moral damages; and (c) P30,000.00 exemplary damages provided by the Civil Code in line with recent jurisprudence, with cost. In addition, all award for damages, shall bear

legal interest at the rate of six [percent] (6%) per annum from the date of finality of judgment until fully paid.

SO ORDERED.[18]

The CA held that the testimonies of the prosecution witnesses clearly established that Rodel was the one who killed Enrique. The CA also ruled that the killing of Enrique was attended by the qualifying circumstance of treachery because the assault was totally unexpected by the victim that the latter had no opportunity to defend himself, much less retaliate.[19]

Further, the CA agreed with the RTC that Rodel fell short of proving his claim that he acted in self-defense. Thus, the CA found no reason for disturbing the factual findings of the trial court as to the guilt of the accused.[20]

As regards the award of damages, the CA modified the same in consonance with the case of *People v. Lucero*. [21]

Hence, this appeal.

Issues

Whether the CA gravely erred in affirming Rodel's conviction for Murder despite clear and convincing proof that his action was justified under the circumstances of the case.

Granting, for the sake of argument, that Rodel may be held criminally liable, the CA gravely erred in qualifying the crime to Murder despite the absence of clear and convincing evidence supporting the presence of treachery or evident premeditation as alleged in the information.

Whether the award of exemplary damages should be modified to conform with prevailing jurisprudence.[22]

The Court's Ruling

The appeal is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight, except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.[23] This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.[24] 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.[25]

In the present case, Rodel was charged with Murder, qualified by treachery and evident premeditation. The RTC did not discuss the presence of the qualifying circumstances and yet found Rodel guilty of the crime of Murder. The CA, on the other hand, found that the qualifying circumstance of treachery was established.

After a careful review and scrutiny of the records, the Court holds that Rodel can only be convicted of Homicide, not Murder.

The accused failed to prove self-defense.

In this case, Rodel admits to stabbing Enrique but claims that his action was necessary to defend himself. An accused who pleads self-defense has the burden to prove, by clear and convincing evidence, that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[26] All three, including unlawful aggression, are important and indispensable. Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent

injury, upon a person." [27] Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated. [28]

In this case, the Court agrees with the courts a quo that Rodel failed to discharge his burden. Rodel failed to show by clear and convincing evidence that Enrique committed unlawful aggression by hurling invectives at him and attempting to stab him. Rodel's self-serving and uncorroborated claim pales in comparison to and loses probative value when compared to the positive testimony of the prosecution's witnesses, who identified the accused as the one who was armed with a fan knife and stabbed the victim. The Court, in *Dela Cruz v. People*, [29] ruled that the plea of self-defense cannot be justifiably entertained where it is uncorroborated by any separate competent evidence and is in itself extremely doubtful.

All told, the Court finds Rodel's evidence sorely lacking to establish self-defense.

Treachery and evident premeditation were not established beyond reasonable doubt.

It is established that qualifying circumstances must be proved with the same quantum of evidence as the crime itself, that is, beyond reasonable doubt. [30] Thus, for Rodel to be convicted of Murder, the prosecution must not only establish that he killed Enrique; it must also prove, beyond reasonable doubt, that the killing was attended by treachery or evident premeditation.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant. [31]

Further, in *People v. Caliao*, [32] the Court explained that:

Treachery cannot be appreciated from the mere fact that the attack was sudden and unexpected. The Court has held that "the circumstance that an attack was sudden and unexpected on the person assaulted did not constitute the element of *alevosia* necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself.

The Court has also ruled that when aid was easily available to the victim, such as when the attendant circumstances show that there were several eyewitnesses to the incident, including the victim's family, no treachery could be appreciated because if the accused indeed consciously adopted means to insure the facilitation of the crime, he could have chosen another place or time. [33] (Emphasis supplied and citations omitted)

Thus, in *Caliao*, the Court found accused therein guilty of homicide only, not Murder, because there was no showing that the accused consciously adopted the sudden attack against the victim. The Court, in not appreciating treachery, further noted that the assault was done "in a public market, in the afternoon, with the victim's family and other vendors nearby who could have foiled accused-appellant's actions." [34]

Similar to *Caliao*, the prosecution in this case also failed to prove that Rodel intentionally sought Enrique for the purpose of killing him or that Rodel carefully and deliberately planned the killing in a manner that would ensure his safety and success. To be sure, the testimonies of Angelito and Michael reveal that Rodel attacked the victim

in the place familiar to the latter and in the presence of at least four other people, two of whom are related to the victim. Under these circumstances, the Court finds it difficult to agree with the CA that Rodel deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to himself arising from the defense that the victim might offer. To reiterate, the victim was with at least four (4) other people, two of whom are his relatives, who could have helped him repel the attack. Thus, the Court fails to see how the mode of attack chosen by Rodel, who stabbed Enrique once on the chest, in a place familiar to the victim and in the presence of the latter's relatives, supposedly guaranteed the execution of the criminal act without risk on his end.

The Court further notes that the attack against Enrique was frontal. In *People v. Tugbo*,^[35] the Court held that treachery was not present because the attack was frontal, and hence, the victim had opportunity to defend himself. While a frontal attack, by itself, does not negate the existence of treachery, when the same is considered along with the other circumstances as previously discussed, it already creates a reasonable doubt in the existence of the qualifying circumstance. As earlier stated, treachery must be proven as fully and convincingly as the crime itself; and any doubt as to existence must be resolved in favor of the accused.^[36]

There is also no basis for the Court to appreciate the qualifying circumstance of evident premeditation. For evident premeditation to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.^[37] In other words, the prosecution must be able to show concrete evidence on how and when the plan to kill was hatched or how much time had elapsed before it was carried out.^[38]

In this case, evident premeditation was not established because the prosecution's evidence was limited to what transpired between 12:00 o'clock noon to 2:00 o'clock in the afternoon of October 6, 2002, when Rodel arrived in the billiard hall and stabbed Enrique. The prosecution, however, did not present any proof showing when and how Rodel planned and prepared to kill Enrique and the sufficient lapse of time between such determination and execution to allow Rodel to reflect upon the circumstance of his act.^[39] The fact that Rodel approached and stabbed the victim does not unequivocally establish that Rodel earlier devised a deliberate plot to murder Enrique.^[40] To qualify an offense, the circumstance must not merely be "premeditation" but must be "evident premeditation."^[41] Hence, absent a clear and positive proof of the overt act of planning the crime, mere presumptions and inferences thereon, no matter how logical and probable, would not be enough.^[42]

Proper penalty and award of damages.

With the removal of the qualifying circumstances of treachery and evident premeditation, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the RPC is reclusion temporal, which ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, accused is to be sentenced to an indeterminate penalty whose minimum shall be within the range of prision mayor (the penalty next lower in degree which ranges from six (6) years and one (1) day to twelve (12) years) and whose maximum shall be within the range of reclusion temporal.

There being the mitigating circumstance of voluntary surrender which was not controverted in this case, the penalty in its minimum period should be applied. Hence, an indeterminate sentence of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum, should be imposed.^[43]

Finally, in view of the Court's ruling in *People v. Jugueta*,^[44] the damages awarded in the questioned Decision are hereby modified that Rodel is ordered to pay the heirs of the victim P50,000.00 as civil indemnity and

P50,000.00 as moral damages.

WHEREFORE, in view of the foregoing, the appeal is hereby PARTIALLY GRANTED. The Court DECLARES accused-appellant Rodel Magbuhos y Diola GUILTY of HOMICIDE, for which he is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum. He is further ordered to pay the heirs of Enrique Castillo the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity, and Fifty Thousand Pesos (P50,000.00) as moral damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio, Senior Associate Justice, (Chairperson), Perlas-Bernabe, Tijam,[**] and A. Reyes, Jr., JJ., concur.

[*] Spelled as "Magbujos" in some parts of the CA rollo.

[**] Designated additional Member per Special Order No. 2587-P dated October 31, 2018.

[1] CA rollo, pp. 154-156.

[2] Rollo, pp. 2-23. Penned by Associate Justice Stephen C. Cruz with Associate Justices Jose C. Reyes, Jr. (now a Member of this Court) and Ramon Paul L. Hernando (now a Member of this Court), concurring.

[3] CA rollo, pp. 71-81. Penned by Presiding Judge Marie Manalang-Austria.

[4] Rollo, p. 3.

[5] CA rollo, p. 72.

[6] Rollo, p.3.

[7] Id. at 4.

[8] Id.

[9] Id.

[10] Id.

[11] Id. at 4-5.

[12] Id. at 5.

[13] Id.

[14] Id.

[15] Id.

[16] Id. at 6-7.

[17] CA rollo, p. 81.

[18] Id. at 22-23.

[19] Id. at 17-18.

- [20] Id. at 21.
- [21] Id. at 22; 651 Phil. 251 (2010).
- [22] See id. at 57-58.
- [23] People v. Duran, Jr., G.R. No. 215748, November 20, 2017, p. 14.
- [24] Id. at 14-15.
- [25] Ramos v. People, 803 Phil. 775, 783 (2017).
- [26] Guevarra v. People, 126 Phil. 183, 194 (2014).
- [27] People v. Dolorido, 654 Phil. 467, 475 (2011).
- [28] SPO2 Nacnac v. People, 685 Phil. 223, 229 (2012).
- [29] 747 Phil. 376, 388 (2014).
- [30] People v. Bisio, 448 Phil. 591, 601 (2003).
- [31] People v. Duran, Jr., supra note 23, at 11, citing People v. Dulin, 762 Phil. 24, 40 (2015).
- [32] G.R. No. 226392, July 23, 2018.
- [33] Id. at 7.
- [34] Id. at 8.
- [35] 273 Phil. 346, 352 (1991).
- [36] People v. Latag, 465 Phil. 683, 695 (2004).
- [37] Dorado v. People, 796 Phil. 233, 254 (2016).
- [38] People v. Bisio, supra note 30, at 602.
- [39] See Dorado v. People, supra note 37, at 254-255.
- [40] Id. at 255.
- [41] People v. Ordon, G.R. No. 227863, September 20, 2017, p. 7, citing People v. Abadies, 436 Phil. 98, 106 (2002).
- [42] People v. Almendras, 423 Phil. 1035, 1044-1045 (2001).
- [43] People v. Duavis, 678 Phil. 166 (2011); People v. Santillan, G.R. No. 227878, August 9, 2017, 837 SCRA 71, 87.
- [44] 783 Phil. 806 (2016).

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