

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HESSON CALLAO Y MARCELINO AND JUNELLO AMAD, ACCUSED,*G.R. No. 228945. March 14, 2018*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-228945/>**CAGUIOA, J:**

This is an Appeal[1] under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated August 31, 2016 (assailed Decision) of the Court of Appeals, Eighteenth (18th) Division (CA) in CA-G.R. CEB-CR-HC No. 02007. The assailed Decision, affirmed with modification the Judgment[3] dated January 26, 2015 rendered by the Regional Trial Court of Bais City, Branch 45 (trial court), in Criminal Case No. 07-25-T, which found accused-appellant Hesson Callao y Marcelino (Hesson) guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code (RPC).

The accusatory portion of the Information[4] reads:

That on or about the 15th day of July, 2006 in the Municipality [of] Tayasan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously, by means of treachery, suddenly attack and strike the forehead of Fernando Adlawan with the use of an iron rod and thereafter, with the use of a knife, opened the stomach of the (sic) said Fernando Adlawan and took out his liver and throw (sic) it to the pig which ate it and proceeded to slice the flesh of the thigh of said victim and again throw (sic) the same to the pig which also ate it, which injuries caused the immediate death of victim Fernando Adlawan, to the damage and prejudice of his heirs.[5] (*Italics in the original*)

On February 14, 2007, when this case was filed, Hesson and fellow accused Junello Amad (Junello) were at large causing the case to be sent to archives.[6] On February 18, 2008, Hesson was arrested and the case was revived as to him.[7] On March 17, 2008, upon arraignment, Hesson entered a plea of "not guilty."[8]

The Facts**Version of the Prosecution:**

The prosecution presented its lone witness, Sario Joaquin (Sario), who testified that on July 15, 2006, he was at the flea market of Guinalaban, Tayasan, Negros Oriental together with his friends Hesson, Junello and one Remmy[9] Casello (Remmy). While in the market, Hesson and Junello discussed a plan to kill the victim, Fernando Adlawan (Fernando) as ordered by one Enrile Yosores (Enrile). Sario was not part of the planning and did not know why Enrile wanted to have Fernando killed.[10]

At 8:00 in the evening of the same day, Hesson, Junello, Remmy and Sario left the flea market and went to the house of Fernando.[11] Sario tagged along because Hesson threatened to kill him if he separated from the group.[12]

When the group reached Fernando's house, Junello, upon seeing Fernando, approached the latter and asked for a cigarette lighter. After Fernando gave Junello the lighter, the latter struck Fernando on the nape with a piece of

firewood. Junello then took a bolo and hacked Fernando's body on the side. Fernando lost consciousness[13] and as he laid motionless on the ground, Hesson stabbed him twice in the chest using a knife.[14] Hesson then sliced open Fernando's chest and took out the latter's heart using the same knife.[15] Junello followed and took out Fernando's liver using a bolo.[16]

Hesson and Junello then fed Fernando's organs to a nearby pig after which they cut Fernando's neck and sliced his body into pieces.[17] Thereafter, the two (2) accused left the crime scene, followed by Sario and Remmy.[18]

Sario was on the opposite side watching the incident. He and Remmy did not attempt to stop the two (2) accused or run away for fear that the latter would kill them.[19] Sario went home from the crime scene[20] and did not tell anyone about the incident because Hesson and Junello threatened to kill him if he did so.[21]

After the incident, Remmy was killed by Enrile during the town fiesta of Guinjalaban.[22]

The testimony of Florencio Adlawan, Fernando's father, was dispensed with after the defense admitted the accused's civil liability and the funeral expenses incurred by the family. Likewise, the testimony of Dr. Myrasol Zuniega, who examined the victim's body, was not presented because the defense admitted the existence of the death certificate[23] indicating that the immediate cause of death is internal hemorrhage and the underlying cause is multiple stab wounds.[24]

Version of the Defense:

Hesson put forth the defense of denial. He testified that he was resting in his house on the night of the incident when Fernando arrived and invited him to the latter's house.[25] While Hesson was cooking rice inside Fernando's house, he heard a loud sound from the yard so he looked through the window and saw Junello hacking Fernando on the chest.[26] Enrile approached and stabbed Fernando as the latter was lying on the ground.[27] Hesson then shouted, "what did you do to him[?]"[28] at which point Enrile remarked, "So this Hesson is here. We better also kill him because he might reveal this." [29] Scared, Flesson jumped through the window and ran towards a bushy area where he hid until morning.[30] Hesson denied that Sario was present during the incident[31] but admitted that Remmy was there.[32] He said he could not have stabbed the victim because the latter was the son of his godfather.[33]

On cross-examination, Hesson again recounted the incident but this time, he testified that he saw Junello hack Fernando in the chest,[34] once[35] after which Enrile hacked him on the left side of his body[36] twice.[37]

Hesson told no one about the incident because of fear.[38] He and his parents left their house and transferred to Lag-it one (1) day after the incident.[39] Upon further probing, though, Hesson testified that he and his family transferred six (6) months after the incident.[40] In the meantime that they stayed in Guinjalaban, no threats were received by him or his family.[41]

Hesson testified that he knew Remmy and Sario and that he was not friends with them but neither did they have any misunderstanding or quarrel.[42]

Ruling of the trial court

In the Judgment dated January 26, 2015, the trial court found Hesson guilty beyond reasonable doubt of the crime of Murder qualified by treachery. The trial court gave credence to the testimony of lone prosecution witness Sario, stating that he testified in a straightforward manner and categorically identified Hesson. Likewise, there is nothing that indicates any improper motive on Sario's part to falsely impute an offense as grave as murder to Hesson. The dispositive portion of the Judgment reads:

WHEREFORE, premises considered, the court finds accused HESSON CALLAO guilty beyond reasonable

doubt as principal for the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code and is accordingly sentenced to Reclusion Perpetua and to pay the cost.

Accused is also ordered to pay the amount of P15,000.00 as funeral expenses; P50,000.00 for loss of life and P50,000.00 [as] moral damages.

Considering that accused JUNELLO AMAD has remained at large[,] send this case as to him to the ARCHIVES and let there be issued an Alias Warrant of Arrest addressed to the Chief of Police, PNP, Tayasan, Negros Oriental; Provincial Director, PNP, Agan-an, Sibulan, Negros Oriental and to the Chief, NBI of Dumaguete, Bacolod, Cebu and Manila for the arrest of the said JUNELLO AMAD in the event he is sighted.

SO PROMULGATED in open Court this 26[th] day of January 2015 at Bais City, Philippines.[43] (*Italics in the original*)

Hesson appealed to the CA via Notice of Appeal.[44] Hesson filed his Brief[45] dated August 26, 2015, while the People, through the Office of the Solicitor General (OSG), filed its Brief[46] dated January 22, 2016. In a Resolution[47] dated June 15, 2016, the CA considered Hesson to have waived his right to file a Reply Brief.[48]

Ruling of the CA

In the assailed Decision, the CA affirmed the trial court's conviction with modification only as to the damages awarded, to wit:

WHEREFORE, the instant appeal is DENIED. The assailed Judgment dated January 26, 2015 of Branch 45 of the Regional Trial Court of Bais City in Crim. Case No. 07-25-T is hereby AFFIRMED with MODIFICATION. Civil indemnity and moral damages awarded to the heirs of Fernando Adlawan are INCREASED to P75,000.00 each. Exemplary damages are also AWARDED in the amount of P30,000.00. The grant of funeral expenses in the amount of P15,000.00 is RETAINED. The aggregate amount of the monetary awards stated herein shall earn interest at the rate of six percent (6%) per annum from the finality of this Decision until the same is fully paid.[49] (*Emphasis in the original*)

Hence, this Appeal.

In lieu of filing supplemental briefs, Hesson and plaintiff-appellee filed separate Manifestations dated July 18, 2017[50] and July 17, 2017,[51] respectively, foregoing their right to file the supplemental briefs and adopting the arguments in their respective Briefs filed before the CA.

Issues

In his Brief Hesson assigns the following errors:

The trial court gravely erred in convicting the accused based solely on uncorroborated testimony of the witness;[52]

The trial court gravely erred in making a finding of conspiracy to commit murder without proving the elements thereof beyond reasonable doubt;[53] and

The trial court inadvertently erred in failing to rule that the crime committed was not murder but an impossible crime.[54]

The Court's Ruling

The Appeal is totally without merit. The issues, being interrelated, shall be jointly discussed below.

The evidence sufficiently establishes Hesson's guilt beyond reasonable doubt for the crime of Murder.

The prosecution was able to adequately establish the guilt of Hesson of the crime charged.

First, the testimony of Sario, the lone witness for the prosecution, suffices to establish the culpability of Hesson for Murder qualified by treachery. Sario clearly narrated the details of the incident and positively identified Hesson as one of the assailants. In a simple, spontaneous and straightforward manner, Sario recounted the disturbing manner by which the victim was killed and his body violated, thus:

[Pros. Yuseff YC Ybañez][55] Did you arrive at the house of Fernando?

[Witness] Yes.

Q

When you arrived there, what happened then if any?

A

This Junello asked of a lighter from Fernando.

Q

Did this Fernando give the lighter to Junello?

A

Yes.

Q

After Fernando gave the lighter to Junello, what happened then?

A

This Junello struck with a piece of firewood.

Q

Where was Fernando hit?

A

(witness pointing at the nape).

Q

What happened to Fernando when he was hit at the nape?

A

After that he was hacked by Junello.

Q

And did you see where was Fernando hit when he was hacked by Junello?

A

At the side.

Q

What did Junello use in hacking Fernando?

A

Bolo.

Q

What happened to Fernando after he was hacked by Junello?

A

He was stabbed by Hesson.

Q

And who was stabbed by Hesson, Fernando or this Junello?

A

Fernando.

Q

And was Fernando hit by the stab of Hesson?

A

Yes.

Q

What was the position of Fernando when he was stabbed by Hesson?

A

He was lying on the ground faced (sic) up.

Q

How many times did Hesson stab Fernando?

A

Twice.

Q

And where was Fernando hit by the stab of Hesson?

A

On the chest.

Q

After that, what happened then, if any?

A

He took out the heart of Fernando.

Q

After taking out the heart of Fernando, what happened if any?

A

He also took the liver of Fernando.

Q

What did he do with the heart and the liver of Fernando?

A

He gave it to the pig.

Q

Did you know particularly who took the heart of Fernando?

A

It was Hesson.

Q

And what about the liver of Fernando, who took the liver of Fernando?

A

It was Junello.

Court:

Q

What did Hesson use in getting the heart of Fernando?

A

Knife.

Q

How about Junello?

A

He was using a bolo.

Q

Where were you at that time?

A

I was opposite in their location.

Q

You were watching then when they were taking the internal organ?

A

Yes.[56]

The Court has carefully and assiduously examined the testimony of Sario and has found no reason whatsoever to disturb the conclusion reached by the trial court that Sario's testimony was straightforward, guileless and very credible.

Second, Sario's testimony, although uncorroborated, can be relied upon. Well-settled is the principle that the testimony of a single witness, if straightforward and categorical, is sufficient to convict.[57] As clearly put by the Court in the case of *People v. Hillado*.^[58]

xxx Thus, the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner. Witnesses are to be weighed, not numbered. Evidence is assessed in terms of quality and not quantity. Therefore, it is not uncommon to reach a conclusion of guilt on the basis of the testimony of a lone witness. For although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number and conviction can still be had on the basis of the credible and positive testimony of a single witness. Corroborative evidence is deemed necessary "only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate." xxx^[59] (Emphasis supplied)

Moreover, the Certificate of Death of Fernando stating that he died of multiple stab wounds corroborates Sario's testimony.

Third, there is no showing that the lone witness Sario was motivated by ill-will which could have impelled him to falsely testify against Hesson. Hesson's own testimony points to the absence of such ill-motive, thus:

Q

What about you and Sario, are you friends or acquaintance?

A

We are not friends.

Q

Before July 15, 2006 do you have any quarrel or misunderstanding with Sario Joaquin?

A

No.

Q

What about your family and the family of Sario?

A

None.[60]

In the absence of proof to the contrary, the presumption is that the witness was not moved by ill-will and was untainted by bias, and thus worthy of belief and credence.[61]

Fourth, Hesson's immediate departure from the scene of the crime and successful effort to elude arrest until his apprehension almost two (2) years after is hardly consistent with his claim of innocence. Flight from the scene of

the crime and failure to immediately surrender militate against Hesson's contention of innocence "since an innocent person will not hesitate to take prompt and necessary action to exonerate himself of the crime imputed to him." [62]

Fifth, the Court finds no reason to disturb the findings of the trial court on the credibility of the witnesses, which findings were likewise affirmed by the CA. Indeed, there is no showing that said findings are tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. When it comes to credibility, the trial court's assessment deserves great weight, and may even be conclusive and binding, as it is in the best position to make such determination, being the one who has personally heard the accused and the witnesses. In *People v. Gabrino*, [63] the Court ruled:

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." 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. 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. 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.

xxx 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. (Emphasis Ours) [64] (Additional emphasis supplied)

Sixth, Hesson's defense of denial cannot prevail over Sario's positive identification of Hesson as one of the assailants. To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit. Greater weight is given to the categorical identification of the accused by the prosecution witness than to the accused's plain denial of participation in the commission of the crime. [65] In the instant case, Hesson failed to adduce evidence to support his denial and overcome the testimony of the prosecution witness. Denial, unsubstantiated by any credible evidence, deserves no weight in law. [66]

In sum, the prosecution more than sufficiently established the participation of Hesson in the crime charged.

Hesson is liable for Murder, not for an impossible crime.

Without admitting his guilt, Hesson argues that he should only be convicted of committing an impossible crime. Allegedly, he cannot be held liable for Murder because it was legally impossible for him to kill Fernando as the latter was already dead when Hesson stabbed him.

The Court is not convinced.

Impossible crime is defined and penalized under paragraph 2, Article 4 in relation to Article 59, both of the RPC to wit:

ART. 4. Criminal liability. - Criminal liability shall be incurred:

x x x x

2. By any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate to ineffectual means.

x x x x

ART. 59. Penalty to be imposed in case of failure to commit the crime because the means employed or the aims sought are impossible. - When the person intending to commit an offense has already performed the acts for the execution of the same but nevertheless the crime was not produced by reason of the fact that the act intended was by its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate to produce the result desired by him, the court, having in mind the social danger and the degree of criminality shown by the offender, shall impose upon him the penalty of *arresto mayor* or a fine from 200 to 500 pesos. (Emphasis supplied; italics in the original)

Thus, the requisites of an impossible crime are: (1) that the act performed would be an offense against persons or property; (2) that the act was done with evil intent; and (3) that its accomplishment was inherently impossible, or the means employed was either inadequate or ineffectual.[67]

The third element, inherent impossibility of accomplishing the crime, was explained more clearly by the Court in the case of *Intod v. Court of Appeals*[68] in this wise:

Under this article, the act performed by the offender cannot produce an offense against persons or property because: (1) the commission of the offense is inherently impossible of accomplishment; or (2) the means employed is either (a) inadequate or (b) ineffectual.

That the offense cannot be produced because the commission of the offense is inherently impossible of accomplishment is the focus of this petition. To be impossible under this clause, the act intended by the offender must be by its nature one impossible of accomplishment. There must be either (1) legal impossibility, or (2) physical impossibility of accomplishing the intended act in order to qualify the act as an impossible crime.

Legal impossibility occurs where the intended acts, even if completed, would not amount to a crime. xxx

x x x x

The impossibility of killing a person already dead falls in this category.

On the other hand, factual impossibility occurs when extraneous circumstances unknown to the actor or beyond his control prevent the consummation of the intended crime. xxx[69] (Emphasis supplied)

To support his theory that what was committed was an impossible crime, Hesson cites the following testimony of Sario:

Q

And it was followed by the stab using a bolo?[70]

A

Yes.

Q

And he was hit at the side of the body?

Q

Yes.

Q

And you saw Fernando did not move anymore with that blow?

A

Not anymore.

Q

And you think that he is already dead?

A

Yes.

Q

About how many minutes when Hesson delivered the stabbing blow?

A

About five (5) minutes.

Q

So five minutes after he is motionless. You testified that Hesson stab (sic) Fernando and he was already dead when Flesson stabbed Fernando, right?

A

Yes.[71]

The Court agrees with the CA and the People: the victim's fact of death before he was stabbed by Hesson was not sufficiently established by the defense. While Sario testified that he thought Fernando was already dead after he was hacked by Junello because the former was already lying on the ground motionless, this statement cannot sufficiently support the conclusion that, indeed, Fernando was already dead when Hesson stabbed him. Sario's opinion of Fernando's death was arrived at by merely looking at the latter's body. No other act was done to ascertain this, such as checking of Fernando's pulse, heartbeat or breathing.

Likewise, considering that Sario was in the middle of a surely stressful and frightful event, he cannot be expected to have focused enough and be fit to determine if Fernando was indeed dead when Sario thought he was. In other words, Sario's opinion of Fernando's death at that point in time could have easily been just an erroneous estimation coming from a very flustered witness.

More importantly, even assuming that it was Junello who killed Fernando and that the latter was already dead when he was stabbed by Hesson, Hesson is still liable for murder because of the clear presence of conspiracy between Hesson and Junello. As such, Junello's acts are likewise, legally, Hesson's acts.

Hesson, however, challenges the trial court's finding of conspiracy, arguing that the elements of the same were not established with proof beyond reasonable doubt.

The argument is untenable.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt.[72] The essence of conspiracy is the unity of action and purpose.[73] Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is common purpose to commit the crime.[74]

In this case, conspiracy is evident from the series of acts of accused Hesson and Junello, which, when taken together, reveal a commonality and unity of criminal design. The Court quotes, in agreement, the brief narration of events by the CA which clearly shows unity of criminal action and purpose between the two accused:

xxx First, Amad and Callao hatched the plan to kill Fernando in the flea market; thereafter, they went to Fernando's house in Colasisi. Amad pretended to borrow a lighter from Fernando who, after handing out a lighter, was unknowingly struck on the nape. Then, Amad hacked Fernando. After Fernando fell on the ground, Callao jumped in and stabbed Fernando's chest with a knife. Thereafter, Callao sliced open Fernando's chest and took out his heart. Amad then took his turn and sliced up Fernando's body to take out his liver. All these acts clearly reveal conspiracy. Amad and Callao committed what they agreed to do - to kill Fernando.[75]

With conspiracy attending, collective liability attaches to the conspirators Hesson and Junello and the Court shall not speculate on the extent of their individual participation in the Murder. Hesson's defense of impossible crime is thus completely unavailing. As extensively explained by the Court in the landmark case of *People v. Peralta*[76]:

Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law the act of one is the act of all. The foregoing rule is anchored on the sound principle that "when two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contributes to the wrong-doing is in law responsible for the whole, the same as though performed by himself alone." Although it is axiomatic that no one is liable for acts other than his own, "when two or more persons agree or conspire to commit a crime, each is responsible for all the acts of the others, done in furtherance of the agreement or conspiracy." The imposition of collective liability upon the conspirators is clearly explained in one case where this Court held that

"... it is impossible to graduate the separate liability of each (conspirator) without taking into consideration the close and inseparable relation of each of them with the criminal act, for the commission of which they all acted by common agreement. . . The crime must therefore in view of the solidarity of the act and intent which existed between the . . . accused, be regarded as the act of the band or party created by them, and they are all equally responsible. . ."

Verily, the moment it is established that the malefactors conspired and confederated in the commission of the felony proved, collective liability of the accused conspirators attaches by reason of the conspiracy, and the court shall not speculate nor even investigate as to the actual degree of participation of each of the perpetrators present at the scene of the crime.[77] (Emphasis supplied; italics in the original)

The Court, therefore, sustains the findings of the trial court, as affirmed by the CA, that Hesson is guilty beyond reasonable doubt for the killing of Fernando. Treachery was proven by the prosecution and the same qualifies the killing to Murder under Article 248[78] of the RPC, the elements of which are: (1) that a person was killed; (2) that the accused killed him; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is not parricide or infanticide.

On the qualifying circumstance of treachery, the same was established. The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim. It is deemed present in the commission of the crime, when two conditions concur, namely, that the means, methods, and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and that such means, methods, and forms of execution were deliberately and consciously adopted by the accused without danger to his person.[79] In this case, Fernando was unarmed and totally unaware of the imminent danger to his life. Junello asked for a lighter deliberately to catch Fernando off guard. When Fernando handed the lighter, he was suddenly hacked and thereafter stabbed to death. Fernando had no foreboding of any danger, threat or harm upon his life at the time and occasion that he was attacked. Treachery was attendant not only because of the suddenness of the attack but likewise due to the absence of opportunity to repel the same.

Thus, considering all the foregoing, Hesson's conviction of the crime of murder must stand.

Under Article 248 of the RPC, the penalty for the crime of Murder qualified by treachery is reclusion perpetua to death. As there were no aggravating or mitigating circumstances that attended the commission of the crime, the Court affirms the penalty of reclusion perpetua imposed by the trial court and affirmed by the CA.[80]

Finally, with respect to the award of damages, the Court affirms and finds correct and in accordance with prevailing jurisprudence,[81] the amounts adjudged by the CA, to wit: (1) civil indemnity at Seventy Five Thousand Pesos (P75,000.00); (2) moral damages at Seventy Five Thousand Pesos (P75,000.00); (3) exemplary damages at Thirty Thousand Pesos (P30,000.00); and funeral expenses at the parties' stipulated amount of Fifteen Thousand Pesos (P15,000.00). 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.

WHEREFORE, premises considered, the instant Appeal is DISMISSED for lack of merit. The Decision dated August 31, 2016 of the Court of Appeals, Eighteenth (18[th]) Division in CA-G.R. CEB-CR-HC. No. 02007, finding accused-appellant Hesson Callao y Marcelino guilty beyond reasonable doubt of the crime of Murder is hereby AFFIRMED.

SO ORDERED.

Carpio,[*] Acting C. J., (Chairperson), Peralta, Perlas-Bernabe, and Reyes, Jr., JJ., concur.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[1] Rollo, pp. 16-18.

[2] Id. at 4-15. Penned by Associate Justice Germano Francisco D. Legaspi with Executive Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap concurring.

[3] CA rollo, pp. 44-49. Penned by Executive Judge Candelario V. Gonzalez.

[4] Records, pp. 2-3.

[5] Id. at 2.

[6] CA rollo, p. 44.

[7] Id.

[8] Id.

[9] Spelled as "Remie" in some parts of the CA rollo.

[10] CA rollo, pp. 45-46.

[11] Id. at 45.

[12] Id.

[13] Id.

[14] Id.

[15] TSN, May 5, 2009, p. 7.

[16] Id.

[17] Id. at 8.

[18] Id.

[19] Id. at 7-8.

[20] Id. at 8-9.

[21] Id. at 9.

[22] Id.

[23] Rollo, p. 6.

[24] Records, p. 10.

[25] TSN, July 19, 2010, pp. 3-4.

[26] Id. at 4-5.

[27] Id. at 6.

[28] Id.

[29] Id. at 7.

[30] Rollo, p. 6.

[31] CA rollo, p. 46.

[32] Id.

[33] Rollo, p. 6.

[34] TSN, July 19, 2010, p. 11.

[35] Id. at 12.

[36] Id. at 11-12.

[37] Id. at 12.

[38] Id. at 13.

[39] Id.

[40] Id. at 14.

[41] Id. at 15.

[42] CA rollo, p. 47.

[43] Id. at 49.

[44] Records, p. 77.

[45] CA rollo, pp. 27-43.

[46] Id. at 69-92.

[47] Id. at 93.

[48] Id. at 93-94.

[49] Rollo, p. 14.

[50] Id. at 35-38.

[51] Id. at 32-34.

[52] CA rollo, p. 33.

[53] Id. at 36.

[54] Id. at 37.

[55] Counsel for the Government. TSN, May 5, 2009, p. 1.

[56] TSN, May 5, 2009, pp. 5-7.

[57] *People v. Navarro*, 357 Phil. 1010 (1998); *People v. Pat Cruz*, 348 Phil. 539, 547 (1998); *People v. Hayahay*, 345 Phil. 69, 81 (1997).

[58] 367 Phil. 29 (1999).

[59] Id. at 45.

[60] TSN, July 19, 2010, p. 16.

[61] *People v. Jalbonian*, 713 Phil. 93, 104 (2013), citing *People v. Manulit*, 649 Phil. 715, 726 (2010).

[62] Id., citing *People v. Agacer*, 678 Phil. 704, 724 (2011).

[63] 660 Phil. 485 (2011).

[64] Id. at 493-494, citing *People v. Combate*, 653 Phil. 487, 499 (2010); *People v. Agudez*, 472 Phil. 761, 776 (2004); and *People v. Dinglasan*, 334 Phil. 691, 704 (1997).

[65] *People v. Diaz*, 612 Phil. 692, 719 (2009).

[66] Id. at 720.

[67] *Jacinto v. People*, 610 Phil. 100, 109 (2009); emphasis supplied.

[68] 289 Phil. 485(1992).

[69] Id. at 490-491.

[70] Referring to the alleged initial hacking by accused Junello.

[71] TSN, May 5, 2009, p. 12.

[72] Quidet v. People, 632 Phil. 1, 11 (2010).

[73] People v. Jesalva, G.R. No. 227306, June 19, 2017, p. 4.

[74] People v. Campos, 668 Phil. 315, 330 (2011).

[75] Rollo, p. 13.

[76] 134 Phil. 703 (1968).

[77] Id. at 718-719.

[78] ART. 248. Murder. - Any person who, not falling within the provisions of article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
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, or 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. (Emphasis supplied)

[79] People v. Dela Cruz, 626 Phil. 631, 639-640 (2010).

[80] Art. 63 (2) of the RPC states that when the law prescribes 2 indivisible penalties, and there are neither mitigating nor aggravating circumstances attending, the lesser penalty shall be applied.

[81] People v. Roxas, 780 Phil. 874, 887-888 (2016).

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