PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO3 NOEL FELICIANO, ACCUSED-APPELLANT.

G.R. Nos. 127759-60. September 24, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For automatic review is the consolidated decision dated September 19, 1996,[1] of the Regional Trial Court of Isabela, Basilan, Branch 1, in Criminal Cases Nos. 2211-142, 2213-145, and 2214-146, finding appellant PO3 Noel Feliciano guilty of three counts of murder and sentencing him in Criminal Cases Nos. 2211-142 and 2213-145 to suffer the penalty of death and in Criminal Case No. 2214-146, to suffer the indeterminate penalty of imprisonment from twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months of reclusion temporal as maximum.

The Informations filed by the Provincial Prosecutor read:

In Criminal Case No. 2211- 142,

> That on or about the 29th day of September, 1994, and within the jurisdiction of this Honorable Court, viz., at the Isabela Police Station, Marketsite, Barangay, Municipality of Isabela, Province of Basilan, Philippines, the above-named accused, armed with a .38 Cal. revolver, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully, and feloniously assault, attack and shoot P/Inspector Edgardo L. Miguel with the said firearm, thereby inflicting gunshot wound on the chest of the latter, which caused his instantaneous death.
>
> Contrary to law.[2]

In Criminal Case No. 2213-145,

> That on or about the 29th day of September, 1994, and within the jurisdiction of this Honorable Court, viz., at the Isabela Police Station, Marketsite Barangay, Municipality of Isabela, Province of Basilan, Philippines, the above-named accused, armed with an Armalite (M16) rifle and a shot gun, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously shoot PO3 Roberto Arabejo with the use of said firearms, thereby inflicting multiple gunshot wounds on the different parts of the body of the latter, which caused his death.
>
> Contrary to law.[3]

In Criminal Case No. 2214-146,

> That on or about the 29th day of September, 1994, and within the jurisdiction of this Honorable Court, viz., at the Isabela Police Station, Marketsite Barangay, Municipality of Isabela, Province of Basilan, Philippines, the above-named accused, armed with an Armalite (M16) rifle and a shot gun, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and shoot SPO4 Santiago Miguel with the use of said firearms, thereby inflicting multiple gunshot wounds on

the different parts of the body of the latter, which caused his death.

Contrary to law.[4]

When arraigned, appellant pleaded not guilty to all the charges. A joint trial followed.

SPO3 RUPERTO HUPIDA was the first witness for the prosecution. He testified that on September 29, 1994, past midnight, after their patrol, appellant PO3 Noel Feliciano, SPO1 Danilo Lubaton, PO3 Wilfredo[5] Arguelles[6] and he returned to their station. As he was entering the radio room to prepare his beddings he heard SPO4 Santiago Miguel shouting at appellant, who was then sitting on a long bench near the traffic table. SPO4 Miguel was shouting invectives in Chavacano, "Coño voz nana voz, dao puerco y dao bata diutay vos ta llora, hende vos puede comigo."[7] (Vulva of your mother. You are like a pig and a small child crying. You cannot do that to me.) SPO4 Miguel grabbed his rifle and pointed it at appellant. Immediately, said SPO3 Hupida, he disarmed SPO4 Miguel. Meanwhile, P/Inspector Edgardo Miguel who heard the disturbance rushed in and disarmed appellant. The protagonists, however, continued their verbal tirade. P/Insp. Miguel then ordered SPO1 Danilo Lubaton and PO3 Roberto Arabejo to bring appellant home. When the two returned after a few minutes, Hupida remembered seeing P/Insp. Miguel go out of the office. After a few seconds Hupida heard a shot coming from outside the station. He looked out of the window and saw P/Insp. Miguel clutching his chest. He told SPO1 Lubaton to go out and check on P/Insp. Miguel. Lubaton rushed to P/Insp. Miguel. Hupida recalled that as he was on his way out, he saw appellant near the door of the station pointing a .38 caliber gun at him and Lubaton. Lubaton let go of P/Insp. Miguel and he and Hupida instinctively took cover behind a police car. After appellant entered the station, they helped P/Insp. Miguel who was still alive get into the patrol car. They again saw appellant pointing a rifle at them and they jumped back inside the patrol car. Appellant then aimed at the radio room. Hupida said that he heard four or five shots from an automatic M16 rifle, later discovered to be the M16 rifle issued to PO3 Arabejo who left it on top of the traffic desk during the confusion. Hupida added he borrowed a vehicle and reported the shooting to the Provincial Director of the Philippine National Police, who sent an alert team in a Hummer vehicle. In the station, Hupida saw appellant voluntarily surrendering to the Chief of Police. He was also told to check on the condition of P/Insp. Miguel and Arabejo at the Basilan Community Hospital. He later found out that the two died on arrival at the hospital.

During cross-examination, Hupida added that appellant had returned to the station approximately ten minutes after being brought home after the altercation with SPO4 Miguel.[8] He categorically stated that he witnessed the killing of SPO4 Miguel and Arabejo.[9]

The second witness, SPO1 DANILO LUBATON, corroborated the entire story of Hupida and added that he, too, only heard a shot just before he looked out of the window and saw P/Insp. Miguel outside the station, clutching his chest. He also recounted that appellant surrendered to his uncle-in-law, SPO4 Dereng Maldan. On cross-examination, he added that during the verbal exchange between appellant and SPO4 Miguel, he heard SPO4 Miguel utter, " No mas boz man alboroto, ta durmi ya di aton hepe, ta respeta lang boz con Hupida con migo hende." (Do not be noisy, our chief is already sleeping, you only respect Hupida, but me you don't.)[10] He said he also heard SPO4 Miguel taunt appellant, "Daw bata voz ta llora."[11] (You cry like a baby.)

PO3 WILFRIDO ARGUELLES, the third prosecution witness, likewise confirmed the story of SPO3 Hupida and SPO1 Lubaton. He recalled hearing SPO4 Miguel saying, "Keep quiet, you only respect SPO3 Hupida, Inspector Miguel is already sleeping. You are a pig, you cry like a child."[12] When asked why SPO4 Miguel shouted at appellant to keep quiet, PO3 Arguelles answered that they were noisy.[13] He said he witnessed appellant point a gun at SPO4 Miguel during the confrontation.[14] He also added that when appellant returned to the station after the latter was sent home, appellant got hold of PO3 Arabejo's armalite and pointed it at him, although appellant let

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him leave after he explained that he was not at fault.[15] PO3 Arguelles recalled that he ran outside towards Post 4, beside the Catholic church. At about nine to ten meters away from the station, he again heard automatic rifle gunfire and looked back. He saw appellant with an M16 rifle.[16] Thereafter, he borrowed a motorcycle, went to Senior Inspector Bensali Jabarani and reported that a police officer had run amuck. They rushed back to the station. Arguelles said that he found his shotgun on the floor of the station with five spent bullets.

SPO4 VICENTE ALCAYRA, the fourth witness, testified that he was on-duty in the radio room when he overheard the heated argument between SPO4 Miguel and appellant. After a while, P/Insp. Miguel entered and handed him two armalite rifles to be turned over to the Chief of Police. Later, he saw Arabejo, Lubaton, and appellant leave the station in the police patrol car. At around 1:30 A.M., P/Insp. Miguel told him he was stepping outside to answer a call of nature. Suddenly, he heard gunfire. Then he heard P/Insp. Miguel shout, "I was hit!" He looked out of the window and saw P/Insp. Miguel. As he ran out of the radio room to go to P/Insp. Miguel, he met Arabejo and SPO4 Miguel who were rushing in. He tried to re-enter the radio room but the two had locked it, so he dashed to the comfort room where he heard more gunshots. When the gunshots stopped, he stepped out of the comfort room and heard the voice of SPO4 Dereng Maldan. He did not see appellant but he saw SPO4 Miguel already dead while Arabejo was still alive. He helped bring Arabejo and P/Insp. Miguel to the hospital. When he returned he found the service revolver of P/Insp. Miguel in the radio room and gave it to the investigator. During cross-examination, he revealed that appellant's house was within walking distance to the station and only around 100 to 200 meters away.[17]

DR. JOSEPH GUEVARRA, a government physician, testified that he attended to the bodies of P/Insp. Miguel and PO3 Arabejo upon their arrival at the Basilan Community Hospital emergency room on September 29, 1994, at around 1:50 A.M.; that he issued the death certificates for all three police officers; that the three died from cardio-respiratory arrest due to gunshot wounds or multiple gunshot wounds;[18] and that he also examined appellant and found him positive for alcohol.[19]

PO3 CELSO TAN SANCHEZ testified that when the incident started he was sleeping inside the Investigation Room. He recounted that he heard several gunshots coming from the adjacent radio room. He stood up and overheard appellant call SPO4 Miguel, "Tiaging." Then, he heard more shots and sensed that appellant was trying to open the door of the Investigation Room but was unable to. Appellant started shouting and calmed down only when his uncle-in-law, SPO4 Dereng Maldan, arrived. PO3 Sanchez said that after things settled down, he was assigned to investigate the incident. During his testimony he identified the firearms used during the shootings. They were: (a) one US caliber 5.56mm M16 rifle with Serial No.137439, issued to PO3 Roberto Arabejo; (b) one 12-gauge Armscor shotgun with Serial No.1051259, issued to PO3 Wilfredo Arguelles; and (c) one caliber .38 Squires Bingham revolver with Serial No. 955815, issued to appellant.[20] He also verified that the investigating team recovered ten fired .38 caliber cartridges, one .38 caliber misfired round, five 12-gauge cartridges, and forty-five 5.56mm spent rifle cartridges.

ANNABELLA MIGUEL, widow of P/Insp. Edgardo Miguel, testified that her husband was the sole breadwinner in their family with three children. She also claimed that she spent P28,000.00 for the coffin of her husband, evidenced by a receipt from the Basilan Memorial Chapel, P25,000.00 more or less for expenses during the vigil and prayer nights, P28,000.00 for the burial, P25,000.00 for the last prayer night or the Ultimo, and P20,000.00 for the tomb.[21]

ESTER M. ABAYON, widow of SPO4 Santiago Miguel, testified that she and her husband had been married for 24 years; that they have three children; and that she had incurred a total of P25,000.00 expenses to bury her husband.[22]

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MA. SOCORRO ARABEJO, widow of SPO1 Roberto Arabejo, testified that she spent P25,000.00 for the coffin and interment of her husband, P5,000.00 for his tomb, and P25,000.00 during the wake and last night of prayers.[23]

ALET VIRTUCIO, Head of the Crime Laboratory and Ballistics, PNP, in Sotero, Cebu City, testified that sometime in February 1995, he received a request for ballistics examination on pieces of firearms and ammunitions from the PNP Crime Laboratory in Region 9 in Zamboanga.[24] The ballistics tests showed that the .38 caliber rounds found at the crime scene were fired from the Squires Bingham caliber .38 revolver with Serial No. 955815, while the shotgun cartridges were fired from the 12-gauge Armscor shotgun with Serial No. 1051259. All of the spent rifle rounds were fired from the M16 assault rifle with Serial No. 137439.[25]

SPO1 RODOLFO V. GRAFIA, of the laboratory unit in Zamboanga City, was tasked to mark the empty bullet shells, slugs, cartridges and firearms recovered at the crime scene. In his testimony, he identified these objects and admitted that he was the custodian of these pieces of evidence.

DR. ROSSANA PARAGUYA, a rural health physician of the Basilan Integrated Provincial Health Office, performed a post-mortem examination on the bodies of the three victims. She reported that: (1) P/Insp. Miguel sustained two fatal gunshot wounds in the center of his chest; (2) SPO4 Miguel sustained multiple gunshot wounds, with at least ten entry wounds and six exit wounds in various portions of his body; and (3) PO3 Arabejo suffered four gunshot wounds in different parts of his body.[26]

DR. RODOLFO M. VALMORIA, Chief Medico Legal Officer of the PNP Crime Laboratory of Regional Command No. IX, testified that he conducted an autopsy on the cadaver of P/Insp. Edgardo Miguel after a request to exhume the body of the deceased was allowed. He said that he recovered two slugs from a .38 caliber revolver embedded in the lungs of the deceased. He also described the result of the ballistics tests on the slugs and compared them with the slugs from the three firearms recovered from the scene of the shooting.[27]

SPO3 ARMANDO UDIN PELAEZ, one of the investigators, testified that he took pictures of the door and the room where SPO4 Miguel and PO3 Arabejo were found dead. He described in detail the holes and bullet marks on the windows and walls in the photographs of the room which he himself took.

For the defense, the first witness was appellant PO3 NOEL FELICIANO himself. He recounted that on the early hours of September 29, 1994, as he made preparations to sleep on a long bench near the traffic desk, SPO4 Santiago Miguel came out of the toilet, kicked his foot, and angrily shouted at him demanding why he was noisy. Appellant protested he was not, but SPO4 Miguel started cursing him repeatedly with such invectives as "Baboy voz." (You are a pig.), "Coño voz nana voz." (Vulva of your mother.), "Torpe vos." (You are a fool.), "Mangco vos." (Deformed arm.), "Butot vos." (Big stomach.), "Ichura puerco vos." (You look like a pig.), "Bueno con vos man training ole." (It would be good for you to re-train.), and "Nusirbi nada vos de pulis." (You are a useless policeman.).[28] Appellant claims that he kept quiet.

Appellant further testified that SPO4 Miguel, apparently piqued by appellant's refusal to be perturbed, grabbed his M16 assault rifle from his table, cocked it and poked it at appellant's head. The tip of the rifle's barrel hit appellant's temple. Appellant said he "blacked out", stood up and was about to grab his rifle, when SPO4 Miguel repeated, "Coño vos nana vos. Mata yo con vos." (Vulva of your mother, I will kill you.")[29] P/Insp. Miguel suddenly appeared and immediately grabbed appellant's rifle while SPO3 Hupida disarmed SPO4 Miguel. P/Insp. Miguel then ordered appellant to go home. SPO1 Lubaton and PO3 Arabejo, who had earlier returned, drove appellant to his house near the police station. Appellant recounted that upon reaching home, he hurriedly got his .38 caliber Squires Bingham revolver and bullets. As he went downstairs, he met his uncle-in-law, SPO4 Dereng Maldan, who, sensing that something was wrong since he appeared distraught and weeping, tried to wrestle the

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handgun from him. Unable to control his anger, he said, he shoved Maldan out of his way and ran towards the front door. His mother and sister blocked the door to stop him from leaving the house, but he managed to leave through the back door and reach the police station in ten minutes.[30]

He recounted that as soon as he entered the PNP compound, he saw a man just outside the station building. He fired at this man, hitting him twice in the chest. He soon realized he mistook P/Insp. Edgardo Miguel for SPO4 Santiago Miguel, since both were tall and thin.[31] He ran inside the police station. He met SPO3 Hupida, SPO1 Lubaton, and PO3 Arguelles who were rushing out in response to the gunfire. He paid them no attention.[32] He remembered catching a glimpse of SPO4 Miguel running inside the radio room and closing the door. Instantaneously, he fired his .38 caliber revolver at SPO4 Miguel, using all the rounds left in the chamber of his handgun.[33] He then grabbed the M16 rifle near him and fired at the radio room. When he ran out of ammunition he took another armalite and fired again at the radio room. He then reloaded his revolver and resumed firing at the radio room where SPO4 Santiago Miguel, the object of his rage, was.[34] He then snatched the 12-gauge shotgun nearby and aimed at the radio room anew. He recalled that when he ran out of ammunition he kicked open the door of the radio room. Inside, he saw SPO4 Miguel and PO3 Arabejo already dead. Upon seeing Arabejo, he said he broke down in tears because SPO3 Arabejo was innocent and was his good friend.[35] A few minutes later, appellant's uncle-in-law, SPO4 Maldan, arrived. Appellant surrendered to SPO4 Maldan who turned him over to the Isabela PNP Station Commander.

Appellant explained that he did not intend to kill P/Insp. Miguel nor PO3 Arabejo. He said he mistook P/Insp. Miguel, who was outside, for SPO4 Miguel because of the darkness[36] and because of the similarity of their build.[37] Appellant stated that he did not know that PO3 Arabejo, his close friend, was inside the radio room when he fired at it.[38] Neither did he intend to kill Arabejo. Appellant pleaded passion and obfuscation for the killing of SPO4 Miguel because SPO4 Miguel insulted and poked an assault rifle at his head.[39]

SPO4 DERENG MALDAN, the second witness called by the defense, testified on July 25, 1995, and August 8, 1996. When he first testified, he essentially corroborated the testimonies of prosecution witnesses on the firearms that appellant used, confirmed the position of SPO4 Miguel and P/Insp. Miguel's bodies, and claimed PO3 Arabejo was still alive and was crying for help when he entered the radio room. He also narrated how he helped bring P/Insp. Miguel and PO3 Arabejo to the hospital.

The second time, he testified that upon his arrival at the station, appellant voluntarily handed him a shotgun. He took it and advised appellant to sit down and take a rest. When the latter did, he left appellant to the custody of another policeman. Maldan later on turned in appellant to the station commander.[40]

On September 19, 1996, the trial court rendered its consolidated decision finding appellant guilty beyond reasonable doubt for the murders of his three fellow police officers and sentencing him as follows:

> a) In Criminal Case No. 2214-146 for Murder of SPO4 Santiago Miguel by taking into consideration the mitigating circumstances of passion and obfuscation and the provision of the Indeterminate Sentence Law, hereby sentences said accused, Noel Feliciano, to suffer the penalty of TWELVE (12) YEARS and ONE (1) DAY as minimum to FOURTEEN (14) YEARS and EIGHT (8) MONTHS as maximum which is the minimum period of Reclusion Temporal.
>
> And to indemnify the heirs of SPO4 Santiago Miguel the sum of Fifty-Five Thousand (P55,000.00) Pesos as actual damages. In this case, no moral damages could be awarded to the heirs because the herein victim, SPO4 Santiago Miguel, has contributed to the cause which led the accused to commit these heinous crimes.
>
> b) In Criminal Case No. 2213-145 for the Murder of PO3 Roberto Arabejo, by taking into consideration the aggravating circumstances of evident premeditation and the generic aggravating circumstance of treachery,

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> hereby sentences the accused, Noel Feliciano, to suffer the extreme penalty of Death.
>
> And to indemnify the heirs of PO3 Roberto Arabejo the amount of Fifty Thousand (P50,000.00) Pesos as actual damages and another amount of Two Hundred Fifty Thousand (P250,000.00) Pesos as moral damages.
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> c) In Criminal Case No. 2211-142 for the Murder of P/Inspector Edgardo Miguel, by taking into consideration the aggravating circumstances of evident premeditation and the generic aggravating circumstances of treachery and disregard on the respect due to the offended party, the immediate superior officer of the accused and his Commanding Officer at the PNP, Isabela Police Station at the time of the commission of the crime, hereby sentences the accused, Noel Feliciano, to suffer the extreme penalty of Death.
>
> And to indemnify the heirs of the late P/Inspector Edgardo Miguel the amount of Seventy-Eight Thousand (P78,000.00) Pesos as actual damages and another amount of Five Hundred Thousand (P500,000.00) Pesos as moral damages.
>
> xxx
>
> Let these Judgments be done, as IT IS SO ORDERED.[41]

By reason of the two death sentences imposed upon appellant, the consolidated decision is now before this Court for automatic review.

In his brief, appellant assigns the following as sole error:

> THE LOWER COURT ERRED IN RULING THAT THE KILLING OF POL/INSP. EDGARDO MIGUEL AND PO3 ROBERTO ARABEJO WERE ATTENDED WITH TREACHERY AND EVIDENT PREMEDITATION, WHICH RESPECTIVELY QUALIFY THEM TO MURDER WITH THE CORRESPONDING PENALTY OF DEATH.[42]

We shall now consider the following issues: (1) Was the killing of both police officers by appellant attended by the qualifying circumstances of treachery and evident premeditation? (2) Is the imposition of the death penalty on appellant for each killing appropriate?

On the question of treachery , appellant contends that the trial court erred in finding that alevosia qualified the fatal shooting of P/Insp. Miguel into murder. He avers that the prosecution failed to prove that appellant deliberately shot P/Insp. Miguel while the latter was relieving himself, thus ensuring that the victim would be unable to defend himself. Appellant insists that his shooting of P/Insp. Miguel was a simple case of mistaken identity.

Appellant also avers that the trial court erred in considering that the killing of PO3 Roberto Arabejo was likewise characterized by treachery. Appellant points out that it was shown during the trial that he did not know that Arabejo was inside the radio room when he fired at it after SPO4 Santiago Miguel closed the door. Hence, there was no intention at all on his part to kill Arabejo. The latter was accidentally shot when appellant fired at the radio room. Nowhere in the records is there a showing that appellant deliberately, suddenly and unexpectedly attacked Arabejo, thus leaving him no opportunity to defend himself.[43]

For the State, the Office of the Solicitor General argues that treachery was present in the killing of P/Insp. Miguel. The OSG points out that after appellant was ordered to go home by P/Insp. Miguel following an altercation between appellant and SPO4 Miguel, appellant returned to the police station armed with his service revolver. The OSG submits that the sudden and unexpected attack by appellant upon an unsuspecting person who was answering the call of nature, mistaken as SPO4 Miguel, constitutes treachery[44].

The Solicitor General likewise submits that the killing of PO3 Arabejo was also attended by treachery. The OSG

contends that the suddenness of the attack on PO3 Arabejo as he rushed to the radio room, and the fact that the victim was unarmed and defenseless, clearly showed that appellant directly employed means to ensure the success of his attack without any risk from any defense that the victim could put up.[45]

The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the assailant,[46] depriving his victim of any chance to defend himself or repel the aggression, thereby insuring its commission without risk to the aggressor and without any provocation on the part of the victim.

As observed by the OSG, the police officers inside the Isabela police station believed that appellant had gone home after his verbal tussle with SPO4 Miguel. He was not expected to go back to the police station. However, he returned some ten minutes later, armed with a .38 caliber revolver, and at once shot P/Insp. Miguel who was then outside, mistaking him for SPO4 Miguel since the two had the same build. There is, without doubt, treachery in the manner of attack employed by appellant. He shot P/Insp. Miguel suddenly and unexpectedly, without the latter having had the opportunity to defend himself. P/Insp. Miguel, who was urinating, did no have any inkling of the fate that was to befall him.

Regarding the death of PO3 Arabejo, the trial court held that treachery was also present because he was completely defenseless and taken by surprise when he was shot by appellant. Was Arabejo taken completely by surprise? Recall that he sought cover in the radio room precisely because he was awakened by sudden gunfire. By finding cover inside the radio room like SPO4 Miguel, Arabejo was amply forewarned of brewing violence. Further, he knew of the earlier altercation between SPO4 Miguel and appellant. He saw appellant strafe the radio room when the latter caught a glimpse of SPO4 Miguel closing the door of the radio room. Thus, appellant's fatal shooting of Arabejo, in our view, was not attended by alevosia.

Coming now to the aggravating circumstance of evident premeditation, the Solicitor General agrees with appellant that the trial court erred on this score.

Like treachery, the qualifying circumstance of premeditation must not only be evident but must also be proved with certainty as the crime itself and must be based on external acts indicating deliberate planning.[47] For evident premeditation to be considered, the following facts must be established: (1) the time when the accused determined to commit the offense; (2) the commission of an act manifestly indicating that the accused clung to his determination; and (3) the lapse of time between the moment the accused decided to commit the offense and its actual commission, sufficient for the aggressor to reflect on the consequences of his act.[48]

Here, appellant's intent to kill SPO4 Santiago Miguel became manifest only after provocative insults were hurled by the victim. Appellant had no set plan to commit the crime as a fruit of mature deliberation. Furthermore, as the OSG observed, no sufficient time had elapsed for appellant to weigh the consequences of his actions. We likewise find no showing of deliberate preparations by appellant to kill P/Insp. Miguel and PO3 Arabejo. Recall that appellant immediately returned to the police station armed with his service revolver after he was ordered to go home by his superior officer. When there is no showing how and when the plan to kill was decided or what time had elapsed before it was carried out, there is no evident premeditation.[49]

In a criminal case, an appeal throws open the entire case wide open for review, and the appellate court can correct errors, though unassigned, that may be found in the appealed judgment.[50] In this automatic review, although appellant did not allege that the trial court erred in finding that the killing of P/Insp. Miguel was aggravated by disregard of rank, we must agree with the Solicitor General that on this point, indeed the trial court erred. Not for the reason that appellant did not intend to insult the rank of a superior officer because he simply mistook P/Insp. Miguel for SPO4 Miguel, the intended victim, but for an entirely different reason. Section 8, Rule 110 of the Revised Rules of Criminal Procedure which took effect on December 1, 2000 states:

> Sec. 8. Designation of the offense.-The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Under said rule, the particular qualifying and aggravating circumstances must be specifically alleged. In this instant case, the trial court, in convicting appellant, took into consideration

> "...the aggravating circumstances of evident premeditation and the generic aggravating circumstances of treachery and disregard on the respect due to the offended party, the immediate superior officer of the accused and his Commanding Officer at the PNP, Isabela Police Station at the time of the commission of the crime ..."[51]

However, the information specifically alleged only two aggravating circumstances, namely treachery and evident premeditation. The circumstance of disregard of respect due to the offended party, not having been alleged in the information, cannot be appreciated to modify appellant's liability,[52] pursuant to Section 8 of Rule 110.

Further, we find that the trial court likewise erred in failing to appreciate the mitigating circumstances of voluntary surrender as well as of passion and obfuscation in appellant's favor.

For voluntary surrender to be appreciated, the following requisites must concur: (a) the offender has not actually been arrested; (b) the offender surrenders himself to a person in authority; and (c) his surrender was voluntary .The records clearly show that after appellant had regained his senses, he meekly surrendered to SPO4 Maldan.

On the other hand, passion and obfuscation exists when (1) there is an act, both unlawful and sufficient to produce such a condition of the mind, and (2) the said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.[53] In the instant case, witnesses testified that the deceased SPO4 Miguel started the confrontation when he kicked appellant and hurled invectives at him, and aimed his rifle at appellant's temple. The witnesses also testified that immediately after said incident, appellant was driven home by his companions and appellant returned to the station within ten to 15 minutes. Under these circumstances, appellant is entitled to the mitigating circumstance of obfuscation. There is passion and obfuscation when the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts, or due to a legitimate stimulus so powerful as to overcome reason.[54]

In sum, we find that the trial court erred in qualifying the offenses of appellant on account of evident premeditation and disregard of rank for the death of P/Inspector Edgardo Miguel in Criminal Case No.2211-142, and by treachery and evident premeditation for the wrongful death of PO3 Roberto Arabejo in Criminal Case No.2213-145. The trial court correctly convicted appellant of murder for the death of P/Insp. Edgardo Miguel since treachery attended the killing. However, appellant's conviction for murder for the killing of PO3 Roberto Arabejo is erroneous. Absent any qualifying circumstance, the crime committed in this case was only homicide.

The imposition of the penalty of death on these two cases is also inappropriate. In Criminal Case No.2211-142, for the killing of P/Insp. Miguel, murder is punishable by reclusion perpetua to death under Article 248 of the Revised Penal Code. With the attendance of the mitigating circumstances of voluntary surrender and passion and obfuscation, however, the penalty that may be imposed is only reclusion perpetua, following Article 63(3) of the Revised Penal Code.

In Criminal Case No.2213-145, for the death of PO3 Arabejo, absent any qualifying circumstance, appellant may only be convicted of homicide. Under Article 249 of the Revised Penal Code, homicide is punished by reclusion temporal. Considering further the mitigating circumstances of voluntary surrender and passion and obfuscation,

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the imposable penalty under Article 64(5) of the Revised Penal Code is prision mayor. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed shall be taken from the medium period of prision mayor, while the minimum shall be taken from within the range of the penalty next lower in degree which is prision correccional. For the killing of PO3 Arabejo, then, the imposable penalty is imprisonment of from six years of prision correccional as minimum, to eight years and one day of prision mayor as maximum.

In Criminal Case No. 2214-146, we find that the trial court also erred in mitigating the wrongful death of SPO4 Santiago Miguel only with passion and obfuscation without including the mitigating circumstance of voluntary surrender. Accordingly, its sentence on appellant to suffer imprisonment from 12 years and one day as minimum to 14 years and eight months as maximum for the death of SPO4 Santiago Miguel is also erroneous.

As in the killing of PO3 Arabejo, there was no aggravating circumstance present in the killing of SPO4 Miguel. Similarly, two mitigating circumstances exist, namely, passion and obfuscation and voluntary surrender. Thus, the imposable penalty is the same as that imposed for the wrongful death of PO3 Arabejo, which is from six years of prision correccional as minimum, to eight years and one day of prision mayor as maximum.

Modifications on the damages awarded by the trial court are likewise in order.

In Criminal Case No. 2211-142, the lower court ordered appellant to pay to the heirs of the late P/Insp. Edgardo Miguel P78,000.00 as actual damages and P500,000.00 as moral damages. However, only a receipt of the Basilan Memorial Chapel for P20,000.00[55] was presented. Actual damages may only be awarded for expenses duly supported by receipts.[56] In this case then, actual damages should be only P20,000.00. Likewise, we find P500,000.00 for moral damages excessive. In line with prevailing jurisprudence, P50,000.00 should be adequate.[57] In addition, the sum of P50,000.00 as civil indemnity is also automatically awarded to the heirs without need of proof other than the fact of the commission of the crime.[58]

In Criminal Case No. 2213-145, the trial court awarded the heirs of the late PO3 Roberto Arabejo P50,000.00 as actual damages and P250,000.00 as moral damages. The award of P50,000.00 for actual damages was not justified by receipts and must be deleted. In its place, an award of P10,000.00 as nominal damages is justified. The award of P250,000.00 for moral damages is likewise tempered to P50,000.00. In addition, the sum of P50,000.00 is awarded to the heirs as civil indemnity.

In Criminal Case No. 2214-146, actual damages payable to the heirs of the late SPO4 Santiago Miguel was set by the trial court at P55,000.00. Again, no receipts substantiate this award for actual damages. As in Criminal Case No.2213-45, P10,000.00 by way of nominal damages is sufficient.[59] We agree with the trial court that since the late SPO4 Miguel's provocation led accused to commit these crimes, his heirs are not entitled to moral damages. They are, however, entitled to P50,000.00 as civil indemnity.

WHEREFORE, the consolidated decision of the Regional Trial Court of Isabela, Basilan, Branch 1 in Criminal Cases Nos. 2211-142, 2213-145, and 2214-146, finding herein appellant PO3 NOEL FELICIANO, GUILTY beyond reasonable doubt for the wrongful deaths of P/Insp. Edgardo Miguel, PO3 Roberto Arabejo, and SPO4 Santiago Miguel, is AFFIRMED WITH MODIFICATION. Appellant NOEL FELICIANO is found GUILTY beyond reasonable doubt of MURDER for the killing of P/Insp. Edgardo Miguel, and he is sentenced to suffer the penalty of reclusion perpetua. For the killing of PO3 Roberto Arabejo and SPO4 Santiago Miguel, appellant NOEL FELICIANO is found GUILTY of two counts of HOMICIDE. For each count, he is sentenced to suffer an indeterminate penalty of imprisonment ranging from six (6) years of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum, with the accessory penalties provided by law.

In addition, in Criminal Case No. 2211-142, for the death of P/Insp. Edgardo Miguel, he is ordered to indemnify

the heirs of the victim P28,000.00 as actual damages, P50,000.00 as civil indemnity, and P50,000.00, as moral damages, without subsidiary imprisonment in case of insolvency.

In Criminal Case No. 2213-145, for the death of PO3 Roberto Arabejo, he is ordered to pay the heirs of the victim P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P10,000.00 as nominal damages, without subsidiary imprisonment in case of insolvency.

In Criminal Case No. 2214-146, for the death of SPO4 Santiago Miguel, he is ordered to pay the heirs of the victim, P50,000.00 as civil indemnity and P10,000.00 as nominal damages, without subsidiary imprisonment in case of insolvency.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

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[1] Records, Crim. Case No. 2211-142, pp. 177-194.

[2] Records, Criminal Case No. 2211-142, p. 1.

[3] Records, Criminal Case No. 2213-145, p. 1

[4] Records, Criminal Case No.2214-146, p. 1.

[5] Sometimes spelled "Wilfrido".

[6] Sometimes spelled "Arguilles".

[7] TSN, December 5, 1994, p. 7.

[8] Id. at 36.

[9] Id. at 40.

[10] Id. at 61-62.

[11] Ibid.

[12] TSN, December 6, 1994, p. 81.

[13] Id. at 80.

[14] Id. at 81.

[15] Id. at 108-109.

[16] Id. at 116.

[17] TSN, December 6-7, 1994, pp. 127-167.

[18] Records, Criminal Case No. 2211-142, pp.109-111; TSN, December 7, 1994, pp.173-178.

[19] TSN, December 7, 1994, p. 185.

[20] Id. at 205-206; TSN, March 1, 1995, pp. 295-299.

[21] TSN, December 7, 1994, pp. 228-229.

[22] Id. at 232, 235.

[23] Id. at 239.

[24] TSN, March 1, 1995, p. 246; Records, Crim. Case No. 2211-142, p. 114.

[25] TSN, March 1,1995, pp.247-256.

[26] Records, Crim. Case No. 2211-142, pp. 116-118; TSN, March 1, 1995, pp. 277-282.

[27] TSN, August 30, 1995, pp. 6, 8, 11-14, 27-29.

[28] TSN, July 9, 1996, pp. 8-9, 10, 14.

[29] Id. at 9-11.

[30] Id. at 15-19, 36-38.

[31] Records, Crim. Case No. 2211-142, p. 185; TSN, July 9, 1996, pp. 19-20, 41.

[32] TSN, July 9, 1996, p. 20.

[33] Id. at 20-21.

[34] Id. at 22-23.

[35] Id. at 23-26.

[36] Id. at 44, 57.

[37] Id. at 41.

[38] Id. at 51.

[39] Id. at 38-40.

[40] TSN, August 8, 1996, pp. 65-68.

[41] Records, Criminal Case NO. 2211-142, pp. 192-194.

[42] Rollo, p. 60.

[43] Id. at 60-61.

[44] Id. at 129-130.

[45] Id. at 130.

[46] People v. Tan, 315 SCRA 375, 393 (1999).

[47] People v. Monieva, 333 SCRA 244, 256 (2000), citing People v. Peña, G.R. No. 116022, 291 SCRA 606, 616 (1998).

[48] People v. Bautista, 331 SCRA 170,187 (2000), citing People v. Lagarto, G.R. No. 65833, 196 SCRA 611, 619-620 (1991).

[49] People v. Gadin, Jr., 331 SCRA 345, 354-355 (2000), citing People v. Sambulan, G.R. No. 112972, 289 SCRA 500, 516 (1998).

[50] People v. Court of Appeals, 308 SCRA 687, 703 (1999).

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[51] Rollo, p. 80.

[52] People v. Arrojado, G.R. No. 130492, January 31, 2001, p. 21.

[53] People v. Gravino, 122 SCRA 123, 134 (1983), citing People v. Alanguilang, G.R. No. 30125, 52 Phil. 663, 665 (1929); People v. Guillano, G.R. No. L-11904 (February 29,1960).

[54] People v. Valles, 267 SCRA 103, 116 (1997), citing R.C. AQUINO, I The Revised Penal Code 265 (1987 ed.).

[55] Exhibit "R," Records, Criminal Case No. 2211-142, p. 113.

[56] People v. Dimailig, 332 SCRA 340, 354 (2000), citing People v. Silvestre, G.R. No. 127573, 307 SCRA 68, 91 (1999); People v. Gutierrez, Jr., G.R. No. 116281, 302 SCRA 643, 666 (1999).

[57] People v. Lazarte, 334 SCRA 635, 654 (2000).

[58] People v. Gadin, Jr., 331 SCRA 345, 356 (2000), citing People v. Obello, G.R. No. 108772, 284 SCRA 79, 95 (1998).

[59] People v. Carillo, 333 SCRA 338, 353 (2000), citing Sumalpong v. Court of Appeals, G.R. No. 123404, 268 SCRA 764, 775 (1997).

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