

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMUEL LORETO, ACCUSED-APPELLANT.

G.R. Nos. 137411-13. February 28, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court on automatic review is the Decision[1] of Branch 50 of the Regional Trial Court of Palawan (stationed in Puerto Princesa City) convicting accused-appellant Samuel Loreto of murder, homicide and of slight physical injuries and meting on him the penalty of death for murder.

The Charges

On November 20, 1995, an Information was filed with the Regional Trial Court of Puerto Princesa City charging Samuel with murder. The accusatory portion of said Information, docketed as Criminal Case No. 12719, reads:

That on or about the 9[th] day of November, 1995, at more or less 6:30 in the evening, at Purok United Homeowners Association, Barangay Tiniguiban, Puerto Princesa City, (sic) Philippines, and within the jurisdiction of this Honorable Court, the said accused, with treachery and evident premeditation, abuse of superior strength, with intent to kill and while armed with a bladed weapon, did then and there wilfully, unlawfully and feloniously assault, attack and stab therewith one Leah Rondena, thereby inflicting upon the latter multiple stab wounds in the different parts of her body, which was the direct and immediate cause of her death.

CONTRARY TO LAW with the aggravating circumstance of superior strength, treachery and evident premeditation.[2]

A second Information, docketed as Criminal Case No. 12711, reads:

That on or about the 9[th] day of November, 1995, at more or less 6:30 in the evening, at Purok United Homeowners Association, Barangay Tiniguiban, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with treachery and evident premeditation, abuse of superior strength, with intent to kill and while armed with a bladed weapon, did then and there wilfully, unlawfully and feloniously assault, attack and stab therewith one Lettymar Rondena, thereby inflicting upon the latter multiple stab wounds in the different parts of his body, which was the direct and immediate cause of his death.

CONTRARY TO LAW with the aggravating circumstance of superior strength, treachery and evident premeditation.[3]

A third Information for Frustrated Murder, docketed as Criminal Case No. 12720 was filed with the said court, the accusatory portion of which reads:

That on or about the 9[th] day of November, 1995, at more or less 6:30 in the evening, at Purok United Homeowners Association, Barangay Tiniguiban, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with treachery and evident premeditation, with abuse of superior

strength and intent to kill, while armed with a bladed weapon did then and there wilfully, unlawfully and feloniously assault, attack and stab therewith one Princess Roan Rondina, a months (sic) old child, who as a result thereof suffered stabbed wounds in the different parts of her body, which ordinarily would cause the death of said Princess Roan Rondina, thus performing all the acts of execution which would have produced the crime of Murder as a consequence, but nevertheless did not produce it by reason or causes independent of his will, that is, by the timely and able medical attendance rendered to said Princess Roan Rondina which prevented her death.

CONTRARY TO LAW with the aggravating circumstance of superior strength, treachery and evident premeditation.[4]

Upon arraignment, Samuel, assisted by counsel, entered a plea of not guilty to all the charges.[5] A joint trial thereupon ensued.

The Evidence Adduced by the Prosecution

The prosecution adduced evidence that the spouses Venancio and Arsenia Rondina had two children, Leah Rondina, 12 years old[6] and Lettymar Rondina, 9 years old.[7] Arsenia's son, Rolando Rondina, a tricycle driver, is the father of Princess Roan Rondina, 3 months old.[8] The spouses Venancio and Arsenia and their two young children resided in Barangay San Pedro, Puerto Princesa City. Rolando, his wife Wendy and their daughter Princess Roan, resided in Gold Street, Acacia World Compound, Barangay Tiniguiban, Puerto Princesa City. The house of Marites Bentula, a store owner, was located about 25 to 30 meters away from the house of Rolando and about 15 meters away from the house of Dan Loreto, the brother of accused-appellant. Two meters in front of the house of Rolando was a jetmatic pump used by the residents. Only a fence separated the houses of Dan and Rolando. Sometime in October, 1995, accused-appellant, his wife Nimfa and their three children left their residence in San Vicente, Palawan and lived with Dan and Susan in Puerto Princesa City.

Romeo Barbo was a neighbor of Rolando and Dan. Romeo eked out a living as a driver of a tricycle owned by Ramie Pemias. When not driving the tricycle, Romeo would park the same in the garage near his house. Dan had at one time told Romeo that accused-appellant and his family left San Vicente and lived with Dan and his family because accused-appellant was charged with murder and the latter was settling the case for a certain amount which he had to pay by November 29, 1995.

On November 9, 1995, Rolando and his wife asked Venancio to allow his younger brother Lettymar and sister Leah to stay in Rolando's house and take care of Princess Roan while he drove the tricycle for the day and his wife went to the public market. Venancio agreed. He brought Leah and Lettymar to the house of Rolando and they took care of Princess Roan while the latter's parents were away.

At about 6:30 p.m. that day, Romeo arrived home on board his tricycle and parked the same in the garage near his house. Suddenly, he saw Leah exiting from the house of Rolando and fleeing towards the house of Dan nearby. Leah was frantic and shouted: "Uncle Sam! Uncle Sam!" Romeo next saw accused-appellant exiting from the door of the house of Rolando, holding in his right hand a knife about eight inches long and chasing Leah at a brisk pace. Petrified, Romeo hid himself behind a mangium tree but peeped from the side of the tree. He saw Leah entering the house of Dan through the main door followed by accused-appellant who entered said house through the kitchen door. Romeo rushed back to his house. Momentarily, Marites left her house on her way to the jetmatic pump to fetch water. She was dumbfounded when she heard the shrill cries of a woman coming from the house of Dan. Marites rushed to Dan's house and saw accused-appellant through the opened door. Accused-appellant was in the sala, holding the left arm of Leah and stabbing her breast and arms with a knife about 8 inches long. The lights in the house of Dan were on. Marites saw Susan shouting and fleeing from the sala through the door of the kitchen. Marites was so horrified that she rushed back to their house to drink water.

Not long thereafter, Purok President Wilfredo Nuñez and Purok Auditor Letecia Hular heard the shouts of Susan and rushed to the house of Dan to investigate. When Marites regained her bearings, she went back to the house of Dan to be of help. She saw Leah sprawled near the canal about two meters in front of the door of Dan's house. Wilfredo and Letecia lifted Leah, who was still alive by then, from the canal and helped her inside a tricycle which brought her to the hospital. Rolando and Wendy then arrived in their house and were shocked to see Lettymar near the door, bloodied all over and already dead. They also saw Princess Roan, who was still alive, lying near the cereza tree and the water pump inside the fence of their house.

Later that evening, Susan returned to their house took all their personal belongings and forthwith left the place. In the meantime, a manhunt was conducted for the arrest of Samuel. With the help of Marites who knew the location of the house of Elias Loreto, the brother of accused-appellant and Dan, policemen were able to arrest accused-appellant at the house of Elias at about 10:30 p.m. of the same day.

On November 10, 1995, at 11:00 p.m., Leah died. Dra. Ma. Carla Vigonte conducted an autopsy on the cadaver of Leah. The doctor prepared and signed a Medico-Legal Report containing the following findings:

POST MORTEM FINDINGS

- Stab wound, sutured about 5 cm. length, at the proximal 3[rd], lateral aspect of the right arm, directed medially, penetrating the right deltoid and the pectoralis major muscles up to the level of midclavicular line.
- Stab wound, sutured, 2 cm. length and 1.5 cm deep, at the proximal 3[rd], anterior aspect of right arm.
- Stab wound, sutured, 4 cm. length and 5 cm deep, at the proximal 3[rd], lateral aspect of right forearm, through and through, producing a 2 cm length wound at the posterior aspect.
- Incised wound, sutured, 2 cm length and 1 cm deep at the distal 3[rd], anterior aspect of the right forearm.
- Incised wound, sutured, 4 cm length and 1.5 cm deep, at the proximal 3[rd], posterior aspect of the right forearm.
- Stab wound, sutured, 4 cm length and 12 cm deep, at the 2[nd] ICS, Right anterior axillary line, directed medially, penetrating the upper lobe of the right lung.
- Stab wound, gaping, about 2 cm length and 10 cm deep at the 7[th] ICS, right midaxillary line, directed upwards and medially, penetrating the lower lobe of the right lung.
- Stab wound, sutured, about 3 cm length and 10 cm deep at the 7[th] ICS, right midclavicular line, directed downwards and posteriorly, penetrating the diaphragm and the anterior lobe of the liver.
- Stab wound, sutured, about 2.5 cm length and 8 cm. deep, at the 5[th] ICS, left Midclavicular line, directed downwards and laterally, penetrating the lower lobe of the left lung.
- Stab wound, sutured, about 2 cm length and 6 cm deep, at the 4[th] ICS, left midclavicular line, directed downwards and posteriorly, penetrating the lower lobe of the left lung.
- Stab wound, sutured, about 4 cm length and 10 cm deep, at the 7[th] ICS, left anterior axillary line, directed downwards and medially, penetrating the peritoneal cavity and the spleen.
- Stab wound, sutured, about 3 cm length and 2 cm deep, at the middle 3[rd], anterior aspect of the left arm.
- Stab wound, sutured, about 2 cm length and 1 cm deep, at the middle 3[rd], medial aspect of the left arm.
- Incised wound, sutured, about 4 cm length and 2 cm deep, at the middle 3[rd], posterior aspect of left arm.
- Stab wound, sutured, about 3 cm length and 2.5 cm deep, at the left midscapular line, level of T4.

- Stab wound, sutured, about 4 cm length and 3 cm deep, at the right paravertebral portion, level of T10.
- Stab wound, sutured, about 5 cm length and 2 cm deep, at the right midscapular line, level of T5
- Incised wound, about 2 cm length and 0.5 cm deep at the anterior aspect of the left knee.

CAUSE OF DEATH: Shock, Hypovolemic, secondary to Hemorrhage, massive, secondary to Multiple Stab Wounds.[9]

Wound numbers 6, 7, 8, 9, 10 and 11 were fatal. The most fatal wound was number 8.[10]

Dra. Vigonte also conducted an autopsy on the cadaver of Lettymar. She prepared and signed an autopsy report which reads:

POST MORTEM FINDINGS

- Stab wound, gaping, about 3.5 cm length at the 5th intercostal space (ICS), right midclavicular line, directed upwards and medially, penetrating the lower lobe of the right lung, the pericardium and the right auricle and right ventricle of the heart
- Stab wound, gaping, about 4 cm length and 8 cm deep at the right anterior axillary line, level of 2nd ICS directed upwards and medially, penetrating the pectoralis major muscle, and producing an incomplete fracture at the middle 3rd portion of the right clavicle.
- Stab wound, about 4 cm length and 1 cm deep, subcutaneously, level of 2nd ICS, right midclavicular line, directed medially, through and through, producing a 2 cm-length wound at the right parasternal line.
- Stab wound, about 4 cm length at the lumbar portion of the abdomen, left side, penetrating the peritoneal cavity producing a herniation of the intestine.
- Stab wound, gaping, about 6 cm length at the dorsum of the right hand, between the 4th and 5th metacarpal bones, producing a through and through 3-cm-wound at the palmar aspect.
- Incised wound, about 3 cm length and 2 cm deep at the medial aspect of the right wrist.
- Stab wound, gaping, about 5 cm length and 6 cm deep, at the distal 3rd, anterior aspect of the left arm, directed upwards and laterally, penetrating the deltoid muscle.
- Incised wound, about 7 cm length and 0.5 cm deep at the proximal 3rd, anterior aspect of the left forearm.
- Stab wound, about 2 cm length and 0.5 cm deep at the anterior aspect of the left wrist.
- Stab wound, about 3 cm length and 4 cm deep of the middle 3rd, medial aspect of (L) forearm directed upwards and laterally, penetrating the subcutaneous tissue producing a through and through wound at the posterior aspect, measuring about 2 cm.
- Stab wound, about 3 cm length and 1 cm deep at the level of T5, left midscapular line.
- Hemothorax – 500 cc and Hemopericardium – 250 cc

CAUSE OF DEATH: SHOCK, hypovolemic, secondary to hemorrhage, massive, secondary to Multiple Stab wounds.[11]

Stab wound No. 1 was most fatal. The wounds sustained by Leah and Lettymar were caused by a sharp-pointed and sharp-edged instrument.

On November 13, 1995, Dr. Peter Hew Curameng examined the wounds sustained by the three-month old Princess Roan and issued a medico-legal certificate containing his findings:

xxx xxx xxx

- 4 cm incised wound (R) 4[th] intercostal space anterior axillary line
- 1.5 Lacerated wound (L) iliac b/r symphysis pubis & superior iliac crest
- 12 cm incised wound (L) thigh anterior medial aspect proximal 3[rd]
- 5 cm incised wound (L) leg anterior aspect proximal 3rd
- 7 cm incised wound (R) leg posterior aspect distal 3rd[12]

Dr. Curameng opined that the wounds sustained by Princess Roan were superficial and would not cause her death. Princess Roan was confined in the hospital from November 9, 1995 up to November 13, 1995.

The prosecution did not present as witnesses the parents of the victims. Neither did it adduce in evidence the certificates of birth of the three victims. The prosecution and the defense stipulated on the actual damages incurred by the parents of Leah and Lettymar for the wake and burial of the victims and for the medical and hospital expenses for Princess Roan.[13]

The Defense and Evidence of Accused-Appellant

Accused-appellant denied the charges. He testified in his behalf and presented his sister-in-law, Susan Loreto, to corroborate his testimony. He adduced evidence that he, his wife Nimfa and their three children were residents of Barangay Caruray, San Vicente, Palawan. However, accused-appellant was charged with murder and to settle the case, he had to pay off the heirs of his victim but he had no money for the purpose because he was jobless. Accused-appellant decided to transfer his family and live with his brother, Dan, the latter's wife Susan and their two children, Ivylyn, who was 4 years old, and Iandan, who was 1-1/2 years old. The house of Dan had a sala and a bedroom which was two steps higher than the sala. The bedroom was separated by a wall. The kitchen was behind the wall of the bedroom of the couple. Susan was a teacher at the Sta. Lourdes Elementary School in Puerto Princesa while Dan worked as a tricycle driver. Elias, another brother of Dan and accused-appellant, lived in a house 50 meters away from Dan's house. Susan's sister, Emy Taguan, resided along Rizal Avenue, Puerto Princesa City. Accused-appellant was so worried about his financial problem, and would often discuss the same with Dan. To help out accused-appellant in his financial woes, Dan allowed accused-appellant to drive his tricycle alternately with him.

On November 9, 1995, at 4:45 p.m., Susan arrived home from school. By 6:00 p.m., accused-appellant was in the kitchen and lighting the petromax lamp. Susan was taking care of her son Iandan when Nimfa suddenly shouted: "Susan, Susan!" When Susan looked at Nimfa, she saw Leah in the sala, bloodied all over. Accused-appellant, Nimfa and Susan were gripped by fear. Susan gathered her children and left the house, passing through the kitchen door. They proceeded to the house of Mellie Eleazar across the street. Accused-appellant, his wife and their children also left the house through the kitchen door and proceeded to the house of Mellie. Susan later brought her children to the house of her sister Emy Taguan at Rizal Avenue, Puerto Princesa City. Accused-appellant and Nimfa proceeded to the house of Elias where they stayed until the arrival of several policemen later that evening to arrest accused-appellant for the assault on Leah.

The Verdict of the Trial Court

On January 13, 1999, the trial court rendered a joint decision convicting accused-appellant of one count of murder, one count of homicide and one count of slight physical injuries. The decretal portion of the decision reads:

WHEREFORE, foregoing premises considered, a joint judgment is hereby rendered in:

- CRIMINAL CASE NO. 12719 – finding the accused Samuel Loreto guilty beyond reasonable doubt as

principal of the crime of murder and appreciating against him the specific aggravating circumstance of taking advantage and use of superior strength, without any mitigating circumstances to offset the same and pursuant to the provisions of Art. 248 of the Revised Penal Code as amended by Sec. 6 of Republic Act No. 7659, in relation to the provisions of the second par., No. 1 of Art. 63 of the Revised Penal Code, he is hereby sentenced to DEATH in the manner provided for by law, to pay the heirs of the deceased LEAH RONDINA

- Actual and compensatory damages – P20,000.00

- Moral damages – P20,000.00

- Civil indemnity for the death of the victim, Leah Rondina – P50,000.00; and to pay the costs.

- CRIMINAL CASE NO. 12711 – finding the accused Samuel Loreto guilty beyond reasonable doubt as principal of the crime of Homicide, and there being no modifying circumstances appreciated, and being entitled to the application of the Indeterminate Sentence Law, he is hereby sentenced to an indeterminate penalty ranging from the minimum of NINE (9) years of Prision Mayor in its medium period of FIFTEEN (15) YEARS of Reclusion Temporal in its medium period; with the accessory penalty and perpetual absolute disqualifications; to pay the heirs of the deceased LETTYMAR RONDINA:

- Actual and compensatory damages – P20,000.00

- Moral damages – P20,000.00

- Civil indemnity for the death of the victim, Lettymar Rondina – P50,000.00; and to pay the costs.

CRIMINAL CASE NO. 12720 – finding the accused Samuel Loreto guilty beyond reasonable doubt as principal of the crime of Slight Physical Injuries, and there being no modifying circumstances appreciated, he is hereby sentenced to a penalty of imprisonment of TWENTY (20) DAYS of Arresto Menor in its medium period; to pay the victim Princess Roan Rondina actual damages of P5,000.00; and to pay the costs.

SO ORDERED.[14]

The Assignment of Errors

Accused-appellant assails the decision of the trial court and contends that:

I

THE TRIAL COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TAKING ADVANTAGE OF SUPERIOR STRENGTH AGAINST ACCUSED IN THE KILLING OF LEAH RONDINA.

II

THE TRIAL COURT ERRED IN RELYING MAINLY ON CIRCUMSTANTIAL EVIDENCE AS BASIS FOR THE CONVICTION OF THE ACCUSED IN THE KILLING OF LETTYMAR RONDINA AND INJURING PRINCESS ROAN RONDINA.

III

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF MURDER, HOMICIDE AND SLIGHT PHYSICAL INJURIES.[15]

The Verdict of this Court

Accused-appellant avers that the trial court erred in convicting him of homicide and slight physical injuries in Criminal Case Nos. 12711 and 12720 for the death of Lettymar and the injuries of Princess Roan, respectively.

The prosecution, he says, failed to adduce direct evidence or sufficient circumstantial evidence to prove that he killed Lettymar and inflicted the injuries on Princess Roan.

The Court has carefully and minutiously calibrated the evidence on record and assessed the probative weight thereof, and is convinced beyond reasonable doubt that indeed, the prosecution adduced the requisite quantum of evidence, albeit circumstantial, to prove the guilt of accused-appellant for the killing of Lettymar and for the injuries of Princess Roan.

Irrefragably, the prosecution failed to adduce direct evidence that accused-appellant killed Lettymar and stabbed Princess Roan. But direct evidence is not a condition sine qua non to prove the guilt of accused-appellant beyond reasonable doubt for said crimes. Crimes are usually committed in secret, at times under the protective mantle of the night. To require direct testimony in all cases would result in the acquittal of guilty parties, leaving them free to once more commit even more atrocious crimes and wreak havoc on society.[16]

In the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. For circumstantial evidence to be sufficient as proof of guilt of an accused, the prosecution is burdened to prove the confluence of the following requisites:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[17]

No general rule can be laid down as to the number of circumstances that must be adduced in evidence to prove the guilt of the accused. What is paramount is that all the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt. The facts and circumstances must be such as are absolutely incompatible upon any reasonable hypothesis with the innocence of the accused and incapable of explanation upon any reasonable hypothesis other than that of the guilt of the accused.[18] Circumstantial evidence is sufficient as basis for conviction if it constitutes an unbroken chain leading to one fair and reasonable conclusion proving that accused-appellant is the author of the crimes charged, to the exclusion of all others.[19] In these cases, the trial court declared that the prosecution adduced a web of circumstantial evidence proving that accused-appellant indeed killed Lettymar and inflicted the injuries on Princess Roan:

- The bodies of three victims, Leah, Lettymar and Roan all surnamed Rondina were found and lifted only few meters from each other.
- In the evening of November 9, 1995, accused Samuel Loreto was seen holding an eight inches knife and going after the bloodied Leah Rondina in a brisk manner while the latter was running away. Leah Rondina was seen running and screaming coming from her house towards the door of the Loreto residence while accused Samuel Loreto, then armed with an eight inches knife was going after her in a brisk manner.
- At about the same time the accused was seen stabbing Leah Rondina in the sala of the house of Loreto family. Thereafter the sprawled body of Leah Rondina was found in the canal about two (2) meters from the door of the house of Loreto family.
- Likewise on the same evening, Lettymar Rondina, whose intestines were already protruding from his stomach and who appears to be dead was found near the door of the house of the Rondina family.
- At about the same time, the three months old baby (Princess Roan Rondina) was lifted near the cereza tree about two meters from the water pump situated beside the house of the Loreto family.

- The distance the house of Loreto family to the house of the Rondina family is only twenty (20) meters.
- Prior to November 9, 1995, accused Samuel Loreto has been residing in the house of his brother (Dan Loreto) for about one month.
- Few days before the incident the accused was observed to be restless.[20]

The Court agrees with the trial court. The prosecution proved that: (a) on November 9, 1995, Lettymar and Leah were in the house of Rolando and took care of Princess Roan, while Rolando and his wife were out of the house; (b) the houses of Dan and Rolando were adjacent to each other and separated only by a fence; (c) In the evening of November 9, 1995 at about 6:30 p.m., accused-appellant was in the house of Rolando, armed with a knife; (d) Leah emerged from the house of Rolando and fled towards the house of Dan Loreto for sanctuary and shouted: "Uncle Sam, Uncle Sam!" (referring to accused-appellant); thereafter, the latter, armed with a knife, also emerged from the house of Rolando and followed Leah at a brisk pace; (e) Leah managed to enter the house of Dan through the main door of said house; (f) accused-appellant entered the house of Dan through the kitchen door and rushed to the sala of the house; (g) once inside, accused-appellant found Leah and stabbed her no less than eighteen times on her arms and other portions of her body, six of such wounds were fatal; (h) Lettymar was found dead near the door of the house of Rolando with eleven stab wounds and his intestines protruding from his abdomen; (i) Princess Roan was found near the cereza tree, about two meters from the water pump, and she had incised and lacerated wounds; (j) accused-appellant fled from the house of Dan and hid in the house of his other brother, Elias where he was arrested by police authorities at about 10:30 p.m. that same night; and (k) the wounds sustained by the victims were caused by a sharp-edged and sharp-pointed weapon.

In light of all the foregoing facts and circumstances, the ineluctable conclusion is that accused-appellant and no other killed Lettymar and inflicted the injuries on Princess Roan.

The trial court convicted accused-appellant of murder under Article 248 of the Revised Penal Code, as amended by Republic Act 7659, for the death of Leah on its finding that the crime was qualified by abuse of superior strength with the ratiocination that:

The victim, Leah Rondina, is a girl only Twelve (12) years of age unarmed when brutally slain. On the contrary, the accused is a man of legal age and armed with an eight inches knife. Considering the gender, age, height, built, size, and agility of the accused, he is much superior in strength and disposition than the hapless and innocent victim. The use of a bladed weapon even if already superior in physical strength in killing the victim is indicative of the accused's unmistakable intent of taking advantage of his superior strength.[21]

However, the trial court further declared that treachery was attendant but can no longer be appreciated against accused-appellant because treachery absorbed abuse of superior strength, citing the decision of this Court in *People vs. Molato*.^[22] The Court agrees with the ruling of the trial court that abuse of superior strength is absorbed in treachery, hence, abuse of superior strength is not a separate and distinct aggravating circumstance. However, the Court does not agree with the ruling of the trial court that although treachery absorbed abuse of superior strength, it is abuse of superior strength and not treachery which qualified the crime. What should qualify the crime is treachery as proved and not abuse of superior strength. If treachery is not proved but abuse of superior strength was proved by the prosecution, the crime is qualified by abuse of superior strength.

Accused-appellant does not dispute the finding of the trial court in Criminal Case No. 12719 that he killed Leah. However, he avers that contrary to the ruling of the trial court, the prosecution failed to prove that he killed the victim with abuse of superior strength. He contends that he is guilty only of homicide.

The contention of accused-appellant is barren of merit. Article 14, paragraph 15 of the Revised Penal Code

provides that a crime against persons is aggravated by the accused taking advantage of superior strength. There are no fixed and invariable rules regarding abuse of superior strength or employing means to weaken the defense of the victim. Superiority does not always mean numerical superiority. Abuse of superiority depends upon the relative strength of the aggressor vis-a-vis the victim. There is abuse of superior strength even if there is only one malefactor and one victim. Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the position of both and the employment of means to weaken the defense, although not annulling it. The aggressor must have taken advantage of his natural strength to insure the commission of the crime.[23] In this case, accused-appellant was armed with a knife and used the same in repeatedly stabbing Leah, a young wisp of a girl, no less than eighteen times after overtaking her in the sala of Dan's house. Irrefragably, then, accused-appellant abused his superior strength in stabbing Leah. In a case of early vintage, the Court held that:

There is nothing to the argument that the accused was erroneously convicted of murder. An attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself. (U.S. vs. Camiloy, 36 Phil., 757; U.S. vs. Consuelo, 13 Phil., 612; People vs. Quesada, 62 Phil., 446), The circumstance of abuse of superior strength was, therefore, correctly appreciated by the trial court, as qualifying the offense as murder. xxx.[24]

The prosecution failed to prove that the crime was qualified by treachery. Case law has it that the killing of minor children by adults qualifies the crime to murder even if the manner or mode of aggression or attack is not shown, the reason being that minor children by reason of their tender years cannot possibly defend themselves.[25] However, in this case, the prosecution failed to prove that Leah was a minor at the time of the commission of the crime. Although the trial court found and declared that Leah was 12 years old, such declaration was based merely on the Medico-Legal Report[26] and the sworn statement of Susan Loreto who is not related to Leah, which documents indicate that Leah was 12 years old at the time she was stabbed by accused-appellant.[27] There is no evidence showing how and from whom Dra. Vigonte learned that Leah was 12 years old. With respect to proving the age of Leah, the medico-legal report of Dra. Vigonte and the sworn statement of Susan Loreto are hearsay evidence and hence, incompetent to prove the allegation that she was 12 years old at the time of her death. The prosecution was burdened to adduce in evidence the birth certificate of Leah to prove her age at the time the crime was committed, even if accused-appellant did not dispute the precise age of the victim.[28] The prosecution also failed to adduce in evidence in Criminal Case No. 12711 the birth certificate of Lettymar to prove that he was 9 years old when he was killed. The trial court relied merely on the medico-legal report of Dra. Vigonte to prove the age of the victim at the time he was killed. Since the prosecution failed to prove any qualifying circumstance attendant to the killing of Lettymar, the conviction of accused-appellant of homicide is correct. The Court also agrees with the ruling of the trial court that in Criminal Case No. 12720 accused-appellant is guilty only of slight physical injuries absent in evidence the intent of accused-appellant to kill Princess Roan.

Proper Penalties on Accused-appellant

In Criminal Case No. 12719, the trial court meted the supreme penalty of death on accused-appellant on its finding that abuse of superior strength qualified the crime without any other modifying circumstances in the commission of the crime. The Court does not agree with the penalty imposed by the trial court. Under Article 248 of the Revised Penal Code, as amended by Republic Act 7659, the penalty for murder is reclusion perpetua to death. Under Article 63 of the Revised Penal Code, the death penalty will be imposed on the accused if an aggravating circumstance was attendant in the commission of the crime, absent any mitigating circumstances. Absent any aggravating circumstance, the lesser penalty of reclusion perpetua should be imposed on accused-appellant. In this case, aside from abuse of superior strength which qualified the crime to murder, no

other modifying circumstances was attendant in the commission of the crime. Hence, accused-appellant should be meted only the penalty of reclusion perpetua.

In Criminal Case No. 12711, the trial court imposed an indeterminate penalty on accused-appellant “ranging from the minimum of nine (9) years of prision mayor in its medium period of fifteen (15) years of reclusion temporal in its medium period. The penalty meted on accused-appellant is imprecise. Under the Indeterminate Sentence Law, the trial court is mandated to impose an indeterminate sentence with a minimum term and definite maximum term. The trial court must specifically indicate which is the minimum of the indeterminate penalty and which is the maximum of the indeterminate penalty. In this case, the penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal in its full term. The minimum of the indeterminate penalty, absent any modifying circumstances, shall be taken from the full range of prision mayor and the maximum of the indeterminate penalty shall be taken from medium period of reclusion temporal. Hence, accused-appellant may be meted an indeterminate penalty of from nine (9) years of prision mayor in its medium period as minimum to fifteen (15) years of reclusion temporal in its medium period as maximum.

Civil Liabilities of Accused-Appellant

In Criminal Case No. 12719, the trial court awarded the heirs of the victim the amount of P20,000.00 as actual damages, P20,000.00 as moral damages and P50,000.00 as civil indemnity. Similarly, in Criminal Case No. 12711, the trial court awarded the heirs of the victim the amounts of P20,000.00 as actual damages; P20,000.00 as moral damages and P50,000.00 as civil indemnity. In Criminal Case No. 12720, the trial court awarded the amount of P5,000.00 by way of actual damages to the victim but did not award any moral damages.

The Court shall modify the awards. In Criminal Cases Nos. 12719 and 12711, the awards for moral damages should be increased to P50,000.00 without need of proof other than the death of the victims.[29] In Criminal Case No. 12720, Princess Roan should be awarded the amount of P5,000.00 by way of moral damages in addition to actual damages.[30]

IN LIGHT OF ALL THE FOREGOING, the decision of the Regional Trial Court of Palawan is hereby AFFIRMED with MODIFICATION.

- In Criminal Case No. 12719, accused-appellant is found guilty beyond reasonable doubt of murder defined in Article 248 of the Revised Penal Code, as amended by Republic Act 7659, and there being no modifying circumstances in the commission of the crime, is meted the penalty of reclusion perpetua. He is ordered to pay to the heirs of the victim, Leah Rondina, the amounts of P50,000.00, as civil indemnity; P50,000.00 as moral damages; and P20,000.00 as actual damages;

- In Criminal Case No. 12711, accused-appellant is found guilty of homicide defined in Article 249 of the Revised Penal Code, and there being no modifying circumstances in the commission of the crime, is meted an indeterminate penalty of from nine (9) years of prision mayor in its medium period as minimum to fifteen (15) years of reclusion temporal in its medium period as maximum. He is ordered to pay to the heirs of the victim, Lettymar Rondina, the amounts of P50,000.00 as civil indemnity; P50,000.00 as moral damages; and P20,000.00 as actual damages;

- In Criminal Case No. 12720, accused-appellant is found guilty beyond reasonable doubt of slight physical injuries defined in paragraph 1, Article 266 of the Revised Penal Code and is meted a straight penalty of twenty (20) days of arresto menor. He is also ordered to pay the victim Princess Roan Rondina the amount of P5,000.00 as moral damages and P5,000.00 as actual damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, and Azcuna, JJ., concur.

Ynares-Santiago J., on leave.

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- [1] Penned by Judge Nelia Yap Fernandez.
- [2] Original Records of Crim. Case Nos. 137411-13, p. 1.
- [3] Ibid., at 15.
- [4] Id., at 24.
- [5] Id., at 6.
- [6] Exhibit "B."
- [7] Exhibit "C."
- [8] Exhibit "D."
- [9] Original Records of Crim. Case No. 137411-13, pp. 65-67, Exhibit "B."
- [10] Ibid., Exhibit "B-5."
- [11] Id. at 67-68, Exhibit "C."
- [12] Id., at 69, Exhibit "D."
- [13] TSN, May 15, 1996, pp. 3-4.
- [14] Id., at 112.
- [15] Rollo, p. 57.
- [16] People vs. Pineda, 157 SCRA 71 (1988).
- [17] REVISED RULES OF COURT, Rule 133, Sec. 4.
- [18] People vs. Ludday, 61 Phil. 216 (1935).
- [19] People vs. Bantilan, 314 SCRA 380 (2000).
- [20] Original Records, pp. 106-107.
- [21] Id. at 108.

[22] 170 SCRA 640 (1989).

- [23] AQUINO, REVISED PENAL CODE, 1987 ed., Vol. 1, p. 377.
- [24] People vs. Guzman, 107 Phil., 1123, 1127 (1960).
- [25] People vs. Diaz, 320 SCRA 168 (1999); People vs. Palomar, 278 SCRA 114 (1977).
- [26] Exhibit "B."

[27] Exhibit “E-1.”

[28] People vs. Tundag, 342 SCRA 704 (2000); People vs. Pruna, G.R. No. 138471, October 10, 2002.

[29] People v. Carillo, 333 SCRA 341 (2000); People v. Ballenas, 330 SCRA 519 (2000).

[30] Article 2219, paragraph 1 of the New Civil Code.

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