

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CARMELO CATBAGAN, APPELLANT.

G.R. Nos. 149430-32. February 23, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense.

The Case

Carmelo Catbagan appeals the May 19, 1999 Decision[1] of the Regional Trial Court (RTC) of Malolos, Bulacan (Branch 21), in Criminal Case Nos. 1082-M-98, 1083-M-98 and 1099-M-98. In these cases, he was convicted of homicide, murder and frustrated murder, respectively.

The decretal portion of the RTC Decision reads as follows:

“In sum and considering the foregoing findings, the Court hereby resolves and so states that the defense has not been able to overcome the moral certainty established upon the accused’s culpability. Stated otherwise, the prosecution has successfully discharged its undertaking herein. Accordingly, this Court finds and so holds that accused Carmelo Catbagan is GUILTY beyond reasonable doubt of the crimes of Homicide in Crim. Case No. 1082-M-98, Murder in Crim. Case No. 10[8]3-M-98 and Frustrated Murder in Crim. Case No. 1099-M-98.

“In Criminal Case No. 1082-M-98, the Court hereby credits the accused with the mitigating circumstance of incomplete self-defense pursuant to Article 13, paragraph 1 of the Revised Penal Code. In which event, what should be imposable as penalty is the minimum of Reclusion Temporal. Considering the application of the Indeterminate Sentence Law, accused Carmelo Catbagan is hereby sentenced to suffer the indeterminate prison term of ten (10) years and one (1) day of Prision Mayor maximum to fourteen (14) years of Reclusion Temporal minimum.

“In Criminal Case No. 1083-M-98, absent any circumstance that would aggravate the commission of the crime, the accused is sentenced to suffer the penalty of Reclusion Perpetua together with the accessory penalties.

“In Criminal Case No. 1099-M-98, since the crime committed is Murder in its frustrated stage, it is the penalty next lower in degree that should be imposed, which is Reclusion Temporal. However, with the application of the Indeterminate Sentence Law, accused Carmelo Catbagan is hereby sentenced to suffer the indeterminate prison term of ten (10) years of Prision Mayor medium to fifteen (15) years of Reclusion Temporal medium.

“In addition to the foregoing, the accused is also directed to pay the heirs of deceased Celso Suico the sum of P500,000.00 in loss of earning capacity, P50,000.00 as indemnity for Suico’s death, and the further sum of P100,000.00 as and for moral damages. With respect to deceased Danilo Lapidante, the accused is ordered to pay his heirs the sum P400,000.00 in loss of earning capacity, the sum of P50,000.00 as indemnity for Lapidante’s death, the sum of P100,000.00 as moral damages, and also the amount of P50,000.00 x x x for

actual damages. Finally, respecting complainant Ernesto Lacaden, the accused is directed to pay him the sum of P50,000.00 as and for moral damages and the sum of P6,400.86 as actual damages.

“With costs against the accused.”[2]

Except for the names of the victims, two (2) similarly worded criminal Informations[3] in Criminal Case Nos. 1082-M-98[4] and 1083-M-98,[5] both dated July 21, 1998, charged appellant as follows:

“That on or about the 15th day of March, 1998, in the [M]unicipality of San Jose del Monte, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, caliber .9MM pistol, and with intent to kill one x x x, did then and there wilfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault and shoot with the said caliber .9MM pistol said x x x, hitting the latter on the different parts of his body, thereby inflicting upon him mortal wounds which directly caused the death of the said x x x.”[6]

For the third crime, the Information,[7] also dated July 21, 1998, charged appellant with frustrated murder allegedly committed in this manner:

“That on or about the 15th day of March, 1998, in the [M]unicipality of San Jose del Monte, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a caliber .9MM pistol, did then and there wilfully, unlawfully and feloniously, with intent to kill, evident premeditation and treachery, attack, assault and shoot with the said caliber .9MM pistol one Ernesto Lacaden y Tacata, thereby inflicting upon him physical injuries, which ordinarily would have caused the death of the said Ernesto Lacaden y Tacata, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical assistance rendered to said Ernesto Lacaden y Tacata which prevented his death.”[8]

Appellant was arraigned on August 26, 1998 in Criminal Case Nos. 1082-M-98 and 1083-M-98. With the assistance of counsel de oficio,[9] he pleaded not guilty to both charges.[10] Thereafter, he was arraigned in Criminal Case No. 1099-M-98, in which, with the assistance of his counsel de oficio,[11] he also pleaded not guilty.[12]

Upon motion of appellant, the three cases were consolidated. After pretrial, trial on the merits ensued, and the lower court eventually promulgated its assailed Decision. Counsel[13] for appellant filed the Notice of Appeal[14] on July 5, 1999, but upon discovering that it contained an error in the designation of the court to which the case was being appealed, he filed an amended Notice of Appeal on September 10, 1999.[15]

The Facts

Version of the Prosecution

In its Brief,[16] the Office of the Solicitor General (OSG) presents the prosecution’s version of the facts as follows:

“Danilo Lapidante, an employee of the Manila Water Company, held his birthday party on March 15, 1998, one day in advance of his actual birthdate. That was intended to accommodate his many relatives and friends who trooped to his residence that Sunday at Block 5, Lot 28, Phase C-1 Francisco Homes, Barangay Mulawin, San Jose del Monte, Bulacan Province. As it was already summertime, and on account of the big attendance, the party had to be held in a vacant space within the fenced perimeter, with vehicular and pedestrian steel gates. In front thereof was a narrow concrete street.

“Inasmuch as Lapidante saw to it that drinks like gin and beer and appetizers were plenty, even before 10:00

A.M., inevitably, the revelers were already displaying excitement. Some were engaged in singing over a 'karaoke,' while one Sgt. Celso Suico of the Philippine Air Force and of the elite Presidential Security Group, who lived in another phase of the subdivision, demonstrated his exuberance by firing shots into the air with his Armalite rifle. Since the gunshots continued to ring out, and election gun ban was then in effect, the attention of Carmelo Catbagan, an investigator of the Criminal Investigation Service, Philippine National Police, whose residential unit was just one block away south of the Lapidantes, was called.

"When, by 5:00 p.m., Catbagan went there to verify from the group who among them had been firing the rifle, no one of those within the fenced area gave a positive answer. The embar[r]assed Catbagan left the place. Coincidentally, some minutes before that, Lapidante, driving his owner-type jeep, conducted home some of his guests. Accompanying him were Sgt. Suico and his companion Ernesto 'Jun' Lacaden. Even as they returned the Armalite to the PSG's residence at Phase M, Suico substituted it with a government-issued Springfield .45 caliber pistol which he tucked to his waistband as they went back to rejoin the party.

"By about 5:30 p.m., while the celebrants were being entertained with a song by the eldest daughter of Lapidante, Catbagan with [Zosimo] (Jess) Fababier returned to Lapidante's place on board a motorized tricycle. This time, after he alighted on the street in front, when Catbagan inquired about the gunshots of the Armalite, Sgt. Suico answered that 'It's nothing; it's just a part of the celebration'. Suddenly, a piece of stone hurled from the direction of the celebrant's house landed on a tree and thence to the body of Catbagan. Irritated and reacting thereto, the CIS agent directed Fababier to look for the one who threw the stone.

"At that moment, Sgt. Suico got out of the pedestrian steel gate and extended his hand towards Catbagan in the street as he introduced himself as being a PSG. Completely ignoring the gesture of the latter, Catbagan drew out his .9mm automatic pistol and with both hands holding the gun, fired successively at Suico, who when hit stretched out his hand, shouting 'Huwag (Don't) Pare.' Despite this Catbagan fired more shots at the victim who fell on the pavement, bloodied and dying from mortal wounds.

"As the shots were fired, Jun Lacaden who was taking a nap on the front seat of the owner-type jeep parked on the other side of the street, in front of the residential unit of Aida Villanueva, was abruptly awakened. Not fully aware of what happened, he disembarked therefrom without knowing what to do. Unexpectedly, two shots were also fired at him by Catbagan. One bullet found its mark in the body of Jun Lacaden who then fell down.

"Almost simultaneously, Catbagan directed his attention to Lapidante who was then inside their compound in the vicinity of their steel main gate. Upon the prompting of his wife Rosita for him to run and evade the assailant, the celebrant turned towards the main door of their house. But before he could reach the safety of their abode, two rapid shots were aimed by Catbagan at him, one of which hit him in the upper part of his body.

"After causing the mayhem, Catbagan then proceeded eastward to the main road. Thereupon, Charles Lacaden picked up the weapon of the PSG man and threw it to a vacant lot somewhere at the rear of the house and lot of Lapidante. As a consequence of the injuries they sustained, Sgt. Suico died on the spot; Lapidante later died in the hospital in Lagro, Quezon City; whereas Jun Lacaden had to be treated and confined at the East Avenue Medical Center, Quezon City.

"Police investigators went to the scene and there recovered some pieces of evidence.

The .45 caliber Springfield pistol of Suico was retrieved in a place at the back of the Lapidante residence. With a bullet vertically standing on the chamber, it had misfired due to some vital defects. There were six (6) live ammunitions of the .45 caliber pistol excluding the vertical one. No empty shell of .45 caliber pistol were recovered. There were nine (9) empty shells of the .9 mm pistol; and a deformed slug of the same weapon, aside from many shells from the Armalite rifle.

"Upon examination of Sgt. Suico's body, Dr. Dominic Aguda of the National Bureau of Investigation found

four (4) gunshot wounds, to wit:
No. 1 - left upper chest;
No. 2 - left chest above left nipple;
No. 3 - left anterior portion of forearm;
No. 4 - right palm (inside)

“Dr. Aguda concluded that the victim died from massive bleeding of the four injuries. The most fatal was wound No. 1 as it perforated the aorta and the right upper lung. Death therefrom was instantaneous. He opined that this wound was inflicted in a level from a higher plane, whereas the others may have been inflicted on some level with the victim. Suico died of massive bleeding.

“As regards the victim Lapidante, as shown by Dr. Aguda’s schematic sketch and the post-mortem autopsy report, the entry wound was at the left side of the back, exiting at the right anterior portion of the chest in a forward and upward trajectory. The bullet hit the upper left tube of the left lung and then penetrated the upper lobe of the right lung. The victim also died from massive bleeding.

“From the shapes and measurement of the wound of entry, Dr. Aguda stated that the (weapon) firearm used in the shooting of the two victims were probably the same, they being approximately 1 x 1 cm.

“With respect to Jun Lacaden, Dr. Cristina Atienza of the East Avenue Medical Center found that he was hit at the right side of the back, the scapular and the bullet exited at the uppermost part of the left arm, near the armpit. She said that as the slug entered the thoracic cavity, they had to insert a tube to evacuate blood. Said victim was confined for more than one week, and it would have taken another 30 days for the victim to resume his usual activity.”[17]

Version of the Defense

Appellant argues that he was justified in shooting the victims, as he was merely defending himself and fulfilling his sworn duties. On the basis of these justifying circumstances, he insists on his acquittal. In his Brief,[18] he summarizes his version of the facts as follows:

“The defense had a different version of the circumstances that led to the shooting incident on March 15, 1998. On said date, between 9:00 and 11:00 in the morning, ERNESTO PURBOS heard successive gunshots coming from the residence of Danilo Lapidante at San Francisco Homes, San Jose del Monte, Bulacan. The gunshots numbered about ten (10) in the span of two (2) hours. Alarmed and scared, as there were children then playing in the vicinity, he went to the house of Carmelo Catbagan to report the gun firing incident. He pleaded Catbagan, known in their place as a policeman, to maintain the peace in the neighborhood. He was worried that the children might be hit accidentally by the revelry. Catbagan retorted not to mind the revelers, as they were just drinking. He then went home.

“At around 4:00 in the afternoon, he again heard successive gunshots coming from the house of the Lapidantes. The gunshots were louder and rapid in succession. Fearing for the safety of the children playing in the vicinity, he again proceeded to the house of Catbagan, pleading the latter to pacify or maintain order in the place. Catbagan replied that he would call the attention of the Barangay Captain and advised him to go home.

“ZOSIMO PAVABIER corroborated the testimony of witness Ernesto Purbos. On March 15, 1998, between the hours of 9:00 and past 11:00 in the morning, he heard several gunshots coming from the house of Danilo Lapidante. The reverberating gunshots were again heard at around 4:00 in the afternoon, prompting him to go out to the street to observe the commotion. In the street, he saw children playing as well as a group of his neighbors talking about the gunshots coming from the house of the Lapidantes. The neighbors were complaining that the children might be accidentally hit and that there was a gunban. On his way home, he met

Carmelo Catbagan, who asked if he would accompany him to the barangay captain to report the incident. Catbagan was then limping and there was something bulging in his waist. They proceeded to the house of the barangay captain onboard a tricycle. Upon reaching the place, the wife of the barangay captain informed them that her husband left for the police precinct and instructed them to proceed to the house of the Lapidantes as the barangay captain might be already there. Catbagan then told him to proceed to the barangay hall to call upon the tanods, but the place was closed. They then proceeded to the house of Danilo Lapidante.

“At the residence of the Lapidantes, they found several persons engaged in a drinking session. Catbagan then introduced himself as a CIS and inquired who fired the firearm. The merry-makers ignored Catbagan and continued their merrymaking. Seconds later, somebody threw a fist-sized stone at Catbagan, hitting the latter on the shoulder. The stone came from the side of the kitchen of the Lapidantes. Catbagan directed him to find out who threw the stone. After he had taken five steps, he saw Danilo Lapidante emerge from the side of the kitchen, rushing towards Catbagan. About the same moment, Jun Lacaden and Celso Suico were likewise proceeding towards the gate. Lacaden then went on the side of Catbagan, who was stepping backward, while Suico, uttering that he is a PSG, drew his .45 caliber pistol and cocked it. Instinctively, Catbagan drew his gun and fired at Suico, hitting the latter with three shots. Lacaden, who was attacking Catbagan from the side, was shot by the latter once. Seeing what happened to his companion, Danilo Lapidante hurriedly retreated towards his house, shouting repeatedly ‘akina iyong mahaba’. Catbagan made one shot upward, yelling at Lapidante, ‘pare, pare, huwag kang tatakbo’. As Lapidante continued proceeding towards his house, Catbagan fired at him once. Taken aback by the sudden turn of events, he retreated towards his house and just peeped over the window. He then saw Catbagan rushing towards his own house, gather his children and leave. At around 6:30 in the evening, he was picked-up by police authorities for investigation.

“JONATHAN BELLOSILLO, the Barangay captain of Barangay Mulawin, Francisco Homes San Jose del Monte, Bulacan, confirmed that a complaint/report was made by Carmelo Catbagan at his home office, anent a gunfiring incident, at around 4:30 in the afternoon of March 15, 1998. The Barangay Captain likewise testified on the several complaints he received against Danilo Lapidante, for conducting gambling and Jun Lacaden, for mauling incidents.

“The accused, CARMELO CATBAGAN, testifying on his behalf, averred that he is a regular agent of the Criminal Investigation and Detection Group (CIDG), with a rank of Crime Investigator I. As a regular agent of the CIDG, he was issued two (2) official firearms, a 9MM Jericho pistol and a .38 caliber revolver. His principal duties were to protect the innocent against deception, [and] against violence, arrest felons, and in general, to respond to all calls for public assistance.

“On March 15, 1998, he was at his residence at Block 5, Lot 11, Phase 6-1, Francisco Homes, San Jose del Monte, Bulacan, tending to his five (5) children. His wife was then in the province. At around 9:00 to 11:00 in the morning, he heard several burst[s] of gunfire coming from the direction of the rear portion of his house. A neighbor, Ernesto Purbos, then came to his house complaining about the gunshots. ‘Manong Erning’ wailed that the gunshots might accidentally hit the children playing in the street. Having told from where the gunshots came from, he pacified the complainant telling him that the revelers were just engaged in merrymaking and that they will just stop later on. Ernesto Purbos then went home.

“The peace in the vicinity was again disturbed at around 4:00 in the afternoon of the same day. Loud burst of rapid gunshots, to the tune of the song ‘Let’s Go’, were again heard coming from the same direction as that in the morning. From his experience, he knew that the firearm used was an armalite (M-16). Two of their neighbors came to him complaining about the gunshots. He advised them to go to the barangay captain and he will just follow after finishing his chores. He then heard a woman scream, complaining that the shots were being directed towards the firewall of the house neighboring that of the Lapidantes. Ernesto Purbos likewise returned, echoing his previous complaint about the gunshots. He assured Purbos that he would act on his complaint, but first he would go to the barangay captain to report the incident. He then got his service firearm and went out. On his way to the house of the barangay captain, he met Zosimo Pavabier, who likewise

complained of the gunshots. He asked Pavabier to accompany him and the two of them proceeded to the house of the said official. When they reached their destination, however, the wife of the barangay official told them that her husband has gone to the Police on the Block Headquarter. Learning the purpose of their visit, the wife told them to just proceed to the vicinity in question as her husband might already be there. On their way, they went by the barangay hall to fetch some 'tanods', but the place was closed. They then proceeded to the house of the Lapidantes.

"Upon reaching the house of the Lapidantes, Catbagan and Pavabier noticed that the Barangay Captain was not yet there. They likewise noticed that there were several persons having a drinking spree inside the compound. Catbagan introduced himself as a CIS and inquired upon the group who fired the gunshots. The merry-makers, however, ignored him and laughed. As he was telling the group that: 'Don't you know there are many residents here and you might hit somebody', a fist sized stone was thrown which hit his left shoulder. The stone came from the rear of the house of the Lapidantes. Alerted by the hostility of the crowd, he instructed Pavabier to look for the one who threw the stone at him. As Pavabier was about to comply with his instructions, Danilo Lapidante emerged from the side of his house and rushed to where he was standing, uttering: 'ano ba ang problema pare?' About the same time, two more persons suddenly came out of the compound of the Lapidantes, rushing and encircling him. One of the aggressors, Ernesto Lacaden, was toting an ice-pick on one hand and positioned himself at his side. The other, whose identity he did not know at that moment, went straight to him, drew a gun from his waist and cocked it, after which, aimed the pistol at him, uttering 'Pare PSG ito', in an arrogant voice. Threatened of his safety, he drew his own gun while stepping backward and fired at the aggressors.

"Simultaneously, Danilo Lapidante retreated towards his house, shouting: 'Akina yung mahaba, yung mahaba', while Jun Lacaden attacked him coming from the side, with the ice-pick. Catbagan side stepped and fired a shot at Lacaden before turning his attention at Lapidante. He fired a warning shot, uttering: 'Tumigil ka, huwag kang kikilos'. Lapidante, however, did not heed Catbagan's warning and continued rushing towards his house, as if to get something. Fearing that Lapidante might be able to get hold of the long gun, Catbagan fired a shot at him once.

"Concerned for his safety and that of his family, Catbagan brought his five children to the house of his sister in Malabon, Metro Manila. He then surrendered himself and his firearms to his superior officer at the CIDG Office.

"ATTY. VIRGILIO PABLICO Y TABALBA, Chief of the CIDG Legal Office and immediate superior of the accused, testified on the latter's official duties and functions as well as his voluntary surrender on March 16, 1998[.] Accordingly, accused Carmelo Catbagan was appointed as a regular and non-organic member of the CIDG, with a rank of Criminal Investigator I. His official functions include the authority to conduct investigation of cases involving violations of the Revised Penal Code and other special laws, to effect arrest and to conduct search in accordance with existing rules, to take sworn statements and to appear as a witness in appropriate forum. As a regular agent, Catbagan was issued and authorized to carry a firearm. The issued firearm to Catbagan was a 9MM Jericho pistol, with Serial No. 000748. Catbagan, as a CIDG agent, was likewise deputized by the COMELEC and granted an exemption to carry firearm during election period.

"On March 15, 1998, at around 8:00 to 10:00 in the evening, he received a telephone call from Agent Catbagan, informing him that he was involved in a shooting incident, wherein he was able to shoot three (3) persons. Two (2) of the protagonists allegedly died and the other was wounded and taken to a hospital. Catbagan intimated that he wanted to be put under his custody as soon as he made arrangements for his children's security. On March 16, 1998, at around 1:00 in the afternoon, Catbagan presented himself to Police Superintendent Edgardo Acuña together with his service firearm." [19]

Ruling of the Trial Court

The RTC held that appellant did not know who had fired the gunshots at Lapidante's party; thus, he could not claim that he had gone there to perform his duty to make an arrest. Consequently, it brushed aside his defense of fulfillment of duty, or lawful exercise of a right or office. It did not give credence, either, to his invocation of self-defense.

With respect to Celso Suico in Criminal Case No. 1082-M-98, the trial court ruled that there was unlawful aggression on the part of the victim, but that the means employed to repel such aggression was unreasonable. It "entertain[ed] serious doubts on the right of the [appellant] to continue firing at Suico after the latter was dispossessed of his gun due to the injuries received from the gunfire of the assailant." [20] It credited appellant with incomplete self-defense, because he supposedly lost the right to kill or even wound the victim after the unlawful aggression had ceased.

The RTC refused to qualify the crime against Suico. Ruling that there had been no evident premeditation and treachery in the killing, it found appellant guilty only of the crime of homicide.

As regards the victim Danilo Lapidante in Criminal Case No. 1083-M-98, he was undisputedly unarmed, as he was inside his own premises —within his fenced front yard — at the time of the incident. Thus, the lower court found no act of aggression on his part. It held that "the belief on the part of [appellant] that the victim was about to retrieve a rifle from the doorside of the house, existed only in his imagination." [21] Consequently, "there was no moment for [appellant] to validly state that his own life [was] in imminent danger from Lapidante." [22]

Aside from rejecting self-defense, the trial court also held that treachery had attended the killing, because the unarmed victim had unexpectedly been shot while his back was towards appellant.

Finally, in Criminal Case No. 1099-M-98, the court a quo found that Ernesto Lacaden had been shot in the back, apparently while "in the act of fleeing from the fury of gunfire from [appellant]." [23] It did not accept the allegation that the victim had been carrying an ice pick at the time of the shooting. Nonetheless, it explained that even if he indeed had one at the time, he could not have done any real harm to appellant who was just too far from him. Absent any clear and convincing proof that Lacaden committed unlawful aggression, self-defense —whether complete or incomplete — could not be appreciated.

The RTC found the crime against Lacaden to be qualified by treachery, as he had not posed any imminent danger to appellant. It ruled that treachery was proven by the following circumstances: (1) the fact that the victim was running away from the scene of the crime; and (2) appellant's use of his .9 mm automatic pistol, a lethal weapon used to wound the former's vital organs. Since death did not ensue by reason of causes independent of the will of appellant, the court a quo found him guilty of frustrated murder.

Hence, this appeal.[24]

The Issues

Before us, appellant assigns to the trial court the following alleged errors for our consideration:

"I

The court a quo gravely erred in finding accused-appellant Carmelo Catbagan guilty beyond reasonable doubt of the offenses charged in Criminal Case Nos. 1082-M-98, 1083-M-98 and 1099-M-98, respectively.

"II

The court a quo gravely erred in failing to rule that accused-appellant Carmelo Catbagan acted in the fulfillment of his sworn duties and/or acted in self-defense in the commission of the offenses charged.

“III

Granting arguendo that the accused-appellant’s guilt was proven beyond reasonable doubt, the court a quo still committed a reversible error in not considering the attendance of the mitigating circumstance of voluntary surrender in the imposition of the appropriate penalties for the offenses proved during the trial.”[25]

In sum, the issues to be resolved are as follows: 1) whether appellant was justified in shooting the victims as a direct result of his “fulfillment of a lawful duty” and “self-defense”; 2) whether he could be credited with the mitigating circumstance of voluntary surrender; and 3) whether the characterization of the crimes and penalties imposed by the trial court was correct.

The Court’s Ruling

The appeal is partly meritorious.

First Issue:

Fulfillment of a Lawful Duty

In criminal cases, the prosecution has the burden of establishing the guilt of the accused beyond reasonable doubt. But once the commission of the act charged is admitted, the burden of proof shifts to the accused, who must now prove the elements of the justifying circumstances cited.[26]

Appellant invokes his lawful performance of duty as one such circumstance, arguing that “his presence at the scene of the incident, prompted by the complaints in their neighborhood and his own personal knowledge relative to the wanton discharge of a firearm, the effectivity of the election gun ban, his coordination with the authorities of the barangay, and the inquiry he made to the revellers, were all in consonance with the legitimate performance of a sworn duty.”[27] Citing these specific facts, he argues that he was justified in shooting the victims. In effect, his contention is that, being a regular agent of the Criminal Investigation and Detection Group (CIDG) of the Philippine National Police (PNP), he was justified in maintaining public order, as well as in protecting and securing life and property.

Although he is correct in arguing that he had the legal obligation to maintain peace and order, he was not justified in shooting the victims. Article 11 of the Revised Penal Code (RPC) provides that a person who acts in the fulfillment of a duty or in the lawful exercise of a right or office does not incur any criminal liability. Two requisites must concur before this defense can prosper: 1) the accused must have acted in the performance of a duty or in the lawful exercise of a right or office; and 2) the injury caused or the offense committed should have been the necessary consequence of such lawful exercise.[28]

These requisites are absent in this case. Appellant was not performing his duties at the time of the shooting, because the men he shot had not been indiscriminately firing guns in his presence, as he alleges. Further, as found by the RTC, “nothing was mentioned in [his] direct testimony that he was there to effect an arrest.”[29] Said the trial court:

“While he might have heard of gunfire, since there is no proof to the effect that Catbagan had personal knowledge that it was Suico who had been firing the Armalite, under no circumstances may it be said that the accused was justifiably there to perform the duty of making the arrest in accordance with existing laws and rules.”[30]

At most, appellant was in the house of the Lapidantes to determine who had fired the gunshots that were heard by the neighborhood. But the fatal injuries that he inflicted on the victims were not a necessary consequence of the

performance of his duty as a police officer.

Indeed, his “presence at the scene of the incident [was] all in the legitimate performance and fulfillment of a sworn duty.”[31] He was duty-bound to find out who had fired the gun that day and to maintain peace and order in the neighborhood. But his act of shooting of the victims cannot be justified. His presence at the scene of the incident should be distinguished from his act of shooting them.

Appellant cites *People v. Cabrera*[32] to support his argument that he was performing his duty and was thus justified in shooting the victims. There is an important distinction between the present case and *Cabrera*. In the latter, the disturbance had been created by the victim in the presence of the accused, who therefore had the duty to immediately intervene and subdue the former, who was causing danger. In the present case, appellant had no personal knowledge of who had fired the gunshots. Thus, his duty at the time was simply to determine who was the subject of the complaints of the residents of the village. It was never shown, though, that the shooting was in furtherance of or was a necessary consequence of his performance of such duty.

To be sure, the right to kill an offender is not absolute, and may be used only as a last resort, and under circumstances indicating that the offender cannot otherwise be taken without bloodshed. The law does not clothe police officers with authority to arbitrarily judge the necessity to kill. It may be true that police officers sometimes find themselves in a dilemma when pressured by a situation where an immediate and decisive, but legal, action is needed. However, it must be stressed that the judgment and discretion of police officers in the performance of their duties must be exercised neither capriciously nor oppressively, but within reasonable limits. In the absence of a clear and legal provision to the contrary, they must act in conformity with the dictates of a sound discretion, and within the spirit and purpose of the law.[33]

Second Issue:

Self-Defense

Appellant also invokes the principle of standing one’s ground when in the right. Allegedly, since he had the right to be where he was, “the law does not require him to step aside when his assailant is rapidly advancing upon him with a deadly weapon.”[34] We clarify. Article 11 of the RPC provides:

“ART. 11. Justifying circumstances. — The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.”

In self-defense, proof by clear and convincing evidence is incumbent upon the accused.[35] Appellant cannot rely on the weakness of the evidence for the prosecution, which can hardly be disbelieved after he himself admitted that he had shot the victims.[36] A judicial confession constitutes evidence of a high order, on the presumption that no sane person would deliberately confess to the commission of an act unless moved by the desire to reveal the truth.[37]

As the RTC correctly did, we should look at the circumstances of the shooting in the case of each victim.

Circumstances Surrounding
the Death of Suico

The first requisite of self-defense is unlawful aggression by the person who is eventually injured or killed by the accused.

This Court is convinced that the RTC's finding of unlawful aggression on the part of Suico is supported by the records, and we see no reason to disturb those findings. Ruled the lower court:

“Under the given situation wherein the Sergeant cocking the pistol was one who was trained, and skilled in the handling of guns, plus the fact that he was drunk, the Court cannot blame accused Catbagan to believe and fear that Suico would attack him in that mock introduction.”[38]

The prosecution presented, in fact, conflicting accounts of how Suico had been shot. The shooting allegedly happened after he had offered a handshake to appellant,[39] according to Rosita Lapidante, the wife of another victim. On the other hand, Charlie Lacaden, the brother of still another victim, gave testimony that conflicted with hers. Suico was allegedly shot by appellant when the former turned his back to the latter.

On the other hand, appellant[40] and Defense Witness Zosimo Pavabier[41] positively and consistently testified that it was Suico who had first drawn and aimed his gun at appellant. This assertion was confirmed by the physical evidence that the victim's gun had a live bullet sandwiched between its breechblock and chamber.[42] This fact proves that the gun was cocked and fired, but that the bullet was jammed in the process.

The prosecution tried to explain this occurrence by inconsistent and incongruous statements. According to the testimony of Rosita, Charlie took the gun from Suico's belly then aimed it at appellant, but the gun did not fire because it was defective.[43] According to the testimony of Charlie, on the other hand, he took the gun because he was afraid that appellant would come back, but that he later threw it towards the rear portion of the house.[44] Thus, the RTC concluded:

“As regards the proof that Suico's gun misfired due to vital defects in its mechanism, the Court suspects that the firearm was tampered with to create the scenario that the PSG man was without fault. In fact, Mrs. Lapidante and Charles Lacaden's testimonies regarding what was done to the gun after the incident are in conflict with each other.”[45] (*Italics supplied*)

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person.[46] In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury — as in this case. Thus, Suico's act of aiming a cocked gun at appellant is sufficient unlawful aggression.

The second element of self-defense — reasonable necessity of the means employed to prevent or repel it — requires the following: 1) a necessity of the course of action taken by the person making the defense and 2) a necessity of the means used. Both the course of action taken and the means used must be reasonable.[47]

Appellant argues that he was justified in wounding Suico, because the latter was armed with a deadlier weapon and was still persistently aggressive after being shot the first time. The former maintains that “[t]he fact that [he] struck one blow more than [what] was absolutely [necessary] to save his own life, or that he failed to hold his hand so as to avoid inflicting a fatal wound where a less severe stroke might have served the purpose, would not [negate] self-defense, because [he], in the heat of an encounter at close quarters, was not in a position to reflect coolly or to wait after each blow to determine the effects thereof.”[48]

The means employed by the person invoking self-defense is reasonable if equivalent to the means of attack used by the original aggressor.[49] Whether or not the means of self-defense is reasonable depends upon the nature or quality of the weapon, the physical condition, the character, the size and other circumstances of the aggressor; as well as those of the person who invokes self-defense; and also the place and the occasion of the assault.[50]

The RTC made a definitive finding on the unreasonableness of the means employed by appellant as follows:

“However, what followed, as testified by witnesses was that Catbagan continued firing even while Suico was pleading ‘Huwag pare!’ with outstretched hand and open palm of his right hand. While the accused asserted that he had to fire his gun and hit Suico with more shots to totally disable him, the same cannot be believed by the Court, if we take stock of Dr. Aguda’s testimony that with the injured arm and that on the chest being inflicted with the first ‘double tap’ shots; the victim would have had much difficulty to retaliate. In fact, Catbagan himself stated on clarification questions that the .45 caliber gun of the victim fell already so that the threat of continued aggression was no longer present.

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“On this point, the Court entertains serious doubts on the right of the accused to continue firing at Suico after the latter was dispossessed of his gun due to the injuries received from the gunfire of the assailant. Additionally, we cannot accept as credible Catbagan’s statement that he had to fire again at Suico inasmuch as the latter had stooped acting to pick up his own pistol from the pavement. If ever the victim was positioned that way, it was more of the impact of the bullets that hit him. The logical explanation can be derived from the presence of the entry wound in the inside of Suico’s right palm.”[51]

These findings are well-supported by the evidence on record. Clearly, the nature and the number of gunshot wounds — debilitating, fatal and multiple — inflicted by appellant on the deceased shows that the means employed by the former was not reasonable and commensurate to the unlawful aggression of the latter. The unreasonableness becomes even more apparent from the fact, duly admitted by appellant himself, that Suico had obviously been inebriated at the time of the aggression. It would have thus been easier for the former to have subdued the victim without resorting to excessive means.

Finally, as to the element of lack of sufficient provocation on the part of the person resorting to self-defense, appellant has sufficiently established that he went to the house of the Lapidantes to find out who had fired the gunshots earlier that day. There was therefore absolutely no provocation from him, either by unjust conduct or by incitement, that would justify Suico’s acts of cocking and aiming a gun at him.

Not having proven all the elements of self-defense, appellant cannot use it to justify sufficiently his fatal shooting of Suico. Having proven a majority of the elements, however, the former may still be credited with a mitigating circumstance in accordance with Article 13[52] of the RPC.

Circumstances Surrounding the Shooting of Lapidante

With respect to Lapidante, he allegedly rushed towards his house to get hold of the “mahaba,” so appellant had no other recourse but to shoot him. The purpose of the victim in rushing towards his house was supposedly to recover the advantage he had previously enjoyed. Hence, it is argued that unlawful aggression was present.

We disagree with appellant’s averments. Unlawful aggression presupposes an actual, sudden and unexpected attack or imminent danger thereof. Such aggression refers to an attack that has actually broken out or materialized or is at the very least clearly imminent; it cannot consist merely of any oral threat or intimidating stance or posture. [53]

In this case, the RTC was categorical in ruling that the perceived danger was more in the mind of appellant than in reality. The circumstances did not point to any actual or imminent peril to his life, limb or right. On the part of Lapidante, the act of running towards his house can hardly be characterized as unlawful aggression. It could not have imperiled appellant’s life.

In a previous case,[54] this Court ruled that “a threat even if made with a weapon or the belief that a person [is] about to be attacked, is not sufficient, but that it is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression.”[55] We agree with the RTC’s ratiocination, which we quote:

“With respect to the incident involving the victim Lapidante, it is not disputed that he was unarmed as he was inside his own premises within the fenced area in front of his house. What acts of aggression against Catbagan which he did are not apparent to us. To this Court, the belief on the part of Catbagan that the victim was about to retrieve a rifle from the doorside of the house, existed only in his imagination.

“Aside from its intrinsic ambiguity, the claims of the defense witnesses about the alleged utterance of Lapidante about ‘Ang mahaba!’ an[g] mahaba!’ do not sit well with this Court. Indeed, we are not convinced that he could have uttered that statement since the evidence points to the fact that he and his friends had just arrived from another phase of the subdivision upon having delivered thereat, the Armalite of Suico. On the contrary, Lapidante appeared to have been gripped by fear and was obviously trying to escape from harm. Indeed, there was no moment for Catbagan to validly state that his own life [was] in imminent danger from Lapidante.”[56]

Neither do we accept the contention that unlawful aggression by Lapidante was shown by his act of rushing towards his house for the purpose of taking a more advantageous position. Referred to here is the rule that if it is clear that the purpose of the aggressor in retreating — or, as in this case, Lapidante’s rushing towards his house — is to take a more advantageous position to ensure the success of the attack already begun, the unlawful aggression is considered still continuing; and the one resorting to self-defense has a right to pursue and disable the former.[57]

Obviously, this rule does not apply to Lapidante, because 1) there was no clear purpose in his act of retreating to take a more advantageous position; and 2) since he never attacked appellant in the first place, the former could not have begun any unlawful aggression and, hence, would not have had any reason to take a more advantageous position. How could there have been a continuation of something that had never been started? If any aggression was begun in this case, it was by Suico, not by Lapidante.

Hence, no unlawful aggression by Lapidante was shown. Because the presence thereof is a statutory and doctrinal *conditio sine qua non* of the justifying circumstance of self-defense[58] —complete or incomplete — we need not examine the presence of the other requisites.

Circumstances Surrounding the Shooting of Lacaden

Appellant asserts that Lacaden attacked him with an ice pick from the side. Allegedly, this act clearly showed unlawful aggression on the latter’s part. All the pieces of evidence on record, however, point to the absence thereof.

Most crucial is the position of the gunshot wound. As testified to by the doctor who had treated the victim, its point of entry was on the right side of the back, just below the scapula.[59] This incontestable fact belies the claim of appellant that he was attacked by Lacaden with an ice pick. Such attack would have required the latter to face him; and, logically, a gunshot entry wound would have been in the front — not in the back — portion of Lacaden’s body. The wound in the back of the victim clearly shows that he was shot while his back was turned to appellant. Hence, there was no unlawful aggression on the part of the former.

Neither was any ice pick presented in the proceedings before the RTC. Appellant maintains that his testimony, coupled with that of Pavabier, is sufficient to establish the existence of the weapon. But the prosecution witnesses,

including the victim himself, testified otherwise—that there was no unlawful aggression during the incident, much less with the use of an ice pick. The RTC held thus:

“In the case of Jun Lacaden, he was shot in the back which could only corroborate the evidence to the effect that he was also in the act of fleeing from the fury of gunfire from Catbagan. As to the allegation of the latter that Jun Lacaden had an icepick, that claim is rather nebulous. Firstly, as veteran criminal investigator, he should have taken, kept and presented that said instrument to augment his legal excuse. Secondly, if really there was one, it is rather surprising why he did not demand Jun Lacaden for its surrender initially as he passed thru the pedestrian steel door and subsequently while the latter had positioned himself near the owner-type jeep.

“More importantly, granting that Jun Lacaden had an icepick, and/or had any design to launch an attack against Catbagan, the former was just too far a distance away to do real harm to the accused. From 6-7 meters, as clarified from the accused himself, it is ridiculous for us to believe that Jun Lacaden could stab him. More so because the accused himself testified that the two arms of Jun Lacaden were raised upward which is not to mention that Catbagan had already demonstrated his proficiency and accuracy in the use of his .9 mm automatic pistol. Thus, there was, like that of Lapidante, no occasion to find as existing, the element of unlawful aggression.”[60]

Appellant has presented no sufficient reason to overturn these conclusive findings of the trial court. Aside from being completely in accord with logic and human experience, they are too solid to be debunked by him.

Third Issue:

Voluntary Surrender

Finally, appellant argues that even on the assumption that his guilt was proven beyond reasonable doubt, he is still entitled to a mitigating circumstance. According to him, he voluntarily surrendered to the authorities after the occurrence of the incident, a fact not only uncontroverted but even admitted by the prosecution.

For voluntary surrender to mitigate criminal liability, the following elements must concur: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority; and 3) the surrender was voluntary.[61] It is sufficient that that act be spontaneous and clearly indicative of the intent of the accused to surrender unconditionally, because there is either an acknowledgement of guilt or a desire to save the authorities the trouble and the expense that would necessarily be incurred in searching for and capturing the culprit.[62]

It was established that on the night after the shooting incident, appellant called up his immediate supervisor, Atty. Virgilio Pablico, to tell him about the incident that had occurred that afternoon and to convey the former's intention to surrender.[63] The following day, appellant surrendered himself and his firearm to Police Supt. Edgardo Acuña, the chief of the Assistant Directorate for Intelligence.[64] This surrender is evidenced by a Progress Report[65] signed by Police Chief Superintendent Efren Quimpo Fernandez.

At the time of his surrender, appellant had not actually been arrested. He surrendered himself and his firearm to a person in authority, the chief of the Assistant Directorate for Intelligence of the Philippine National Police. Finally, the surrender was voluntary and spontaneous; it thus showed an intent to surrender unconditionally to the authorities. In fact, in the aforementioned Progress Report, appellant had given the same narration of events he later gave in court; moreover, he owned responsibility for the shooting. Thus, we credit him with the mitigating circumstance of voluntary surrender.

Final Issue:

Crimes and Penalties

Appellant was convicted of homicide, murder, and frustrated murder for the shooting of Suico, Lapidante and Lacaden, respectively. In determining the crimes committed and in imposing the proper penalties, it is necessary to look into the qualifying circumstances alleged in the three Informations. Treachery and evident premeditation were both alleged; thus, there is a need to ascertain their presence or absence in the commission of the acts, in order to determine the crimes committed by appellant.

To establish treachery, the following must be proven: 1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and 2) the deliberate and conscious adoption of the means of execution.[66] It is also the running case law that where treachery is alleged, the manner of attack must be proven.[67] Such attack must be sudden and unexpected and without the slightest provocation on the part of the victim, who is thus deprived of any real chance for self-defense, thereby ensuring the commission of the crime without risk to the aggressor.[68]

With respect to the shooting of Suico, there was no treachery. The shooting was perpetrated in a frontal encounter as shown by the location of his wounds. Appellant did not make any deliberate, surprise attack against him or consciously adopt a treacherous mode thereof. As established, he shot the victim after the latter had aimed, cocked and fired a gun at him.

As to the shooting of Lapidante, the RTC qualified the crime to murder because of the presence of treachery. According to the trial court, the shooting was unexpected, he was unarmed, and his back was turned towards appellant when the incident occurred. Treachery was also appreciated in the shooting and wounding of Lacaden, since he had been shot at the back. Further, even if he had posed no imminent danger to appellant, the former was nevertheless shot with a .9 mm automatic pistol — a lethal weapon. For this act, the latter was convicted of frustrated murder.

The mere fact that the attack against Lapidante and Lacaden was perpetrated when their backs were turned did not by itself constitute treachery or alevosia.[69] Whether the mode of attack was consciously adopted, and whether there was risk to the offender, must be taken into account.[70] Treachery cannot be considered when there is no evidence that the accused had resolved to commit the crime prior to the moment of the killing; or that the death of the victim was the result of premeditation, calculation or reflection.[71]

In this case, it is evident that the decision to shoot Lapidante and Lacaden was suddenly arrived at after the confrontation with Suico had already occurred. Even if the positions of the victims were vulnerable, there was still no treachery, as appellant did not deliberately adopt such mode of attack. Its presence was negated by the fact that the shootings had sprung from the unexpected turn of events. The treacherous character of the means employed does not depend upon its result, but upon the means itself — upon appellant's purpose in employing it.[72]

Treachery cannot be appreciated where, as in this case, there is nothing in the records that shows that appellant pondered upon the mode or method of attack to ensure the wounding and the killing of the victims; or to remove or diminish any risk to himself that might arise from the defense that they might make.[73] His decision to shoot them was clearly sudden. In the absence of treachery, the killing of Lapidante and the wounding of Lacaden cannot be qualified to murder and frustrated murder, respectively.

The allegation of evident premeditation was correctly rejected by the lower court. For this aggravating circumstance to be appreciated, the following must be proven: 1) the time when the accused decided to commit the crime; 2) an overt act manifestly indicating that the accused clung to such determination; and, 3) between the decision and the execution, a sufficient lapse of time that allowed time to reflect upon the consequences of the act contemplated.[74] None of these elements has been established in the case at bar.

Undeniably, the shooting of the victims was done without any prior plan to kill or attack them. As previously stated, appellant began shooting at them after a cocked gun had been aimed and fired at him. This fact negates any finding that he had already previously conceived the shooting, and that he then manifestly clung to his determination to commit the crime after a sufficient lapse of time.

Having rejected both treachery and evident premeditation in the killing of Suico and Lapidante, we hold appellant guilty only of homicide in both cases. But for the shooting of Lacaden, a careful review must be made of the crime that was actually committed. The RTC charged him with frustrated murder and found him guilty thereof; but, as ruled above, no qualifying circumstance was proven. Thus, his crime can only be frustrated homicide, in which evidence of intent to kill is essential, however.[75] It bears stressing that such intent determines whether the infliction of injuries should be punished as attempted or frustrated murder, homicide or parricide; or as consummated physical injuries.[76]

Homicidal intent must be evidenced by acts that, at the time of their execution, are unmistakably calculated to produce the death of the victim by adequate means.[77]

The principal and essential element of attempted or frustrated homicide or murder is the assailant's intent to take the life of the person attacked.[78] Such intent must be proved clearly and convincingly, so as to exclude reasonable doubt thereof.[79]

Although the injury sustained by Lacaden was inflicted by appellant, the facts do not support a finding that the latter had been impelled by an intent to injure to the point of killing the former. The intent to kill is absent in this case. It was found that the shooting was sudden and unexpected, having been brought about by a confrontation between appellant and Suico and the commotion that ensued. The absence of such intent was, in fact, even more apparent in the testimony of appellant, who said therein that he did not even look at the victim anymore. The former's attention was concentrated on the latter, who was shouting, "Ang mahaba, ang mahaba!"[80]

The intent to kill, an essential element of the offense of frustrated or attempted homicide, must be proved by clear and convincing evidence and with the same degree of certainty as that required of the other elements of the crime.[81] The inference that such intent existed should not be drawn in the absence of circumstances sufficient to prove it beyond reasonable doubt. If it was absent but wounds were inflicted, the crime is not frustrated murder, but only physical injuries.[82] In this case, the expert opinion of the doctor who treated Lacaden was that it would take the latter thirty days to heal and recover from the lone gunshot wound and to resume his normal work.[83] Thus, a finding of less serious physical injuries[84] is proper.

Although the charge in the instant case is frustrated murder, a finding of guilt for the lesser offense of less serious physical injuries may be made, considering that the essential ingredients of this lesser offense are necessarily included in or form part of those constituting the graver one.[85] In the same manner, a conviction may be for slight or serious physical injuries in a prosecution for homicide or murder, inasmuch as the infliction of the former, when carried out to the utmost degree, could lead to the latter offense. Such conviction may be made, without intent to kill — an essential element of the crime of homicide or murder.[86]

To summarize, in Criminal Case No. 1082-M-98, appellant is found guilty of homicide, for which the penalty prescribed is reclusion temporal.[87] Since he proved a majority of the elements of self-defense — unlawful aggression and lack of sufficient provocation — the penalty prescribed by law may be lowered by two degrees[88] to prision correccional. Considering further the presence of the generic mitigating circumstance of voluntary surrender without any aggravating circumstance, the penalty shall be imposed in its minimum period.[89] The Indeterminate Sentence Law is applicable in this case. Hence appellant should be sentenced to an indeterminate sentence, the maximum term of which shall be that which may properly be imposed under the Revised Penal

Code; and the minimum of which shall be within the range of the penalty next lower than that prescribed by the Code — in this case, *arresto mayor*.

In Criminal Case No. 1083-M-98, appellant is found guilty of homicide, for which the penalty prescribed by law is *reclusion temporal*.^[90] Again, considering the presence of the generic mitigating circumstance of voluntary surrender without any aggravating circumstance, the penalty shall be imposed in its minimum period.^[91] The Indeterminate Sentence Law is also applicable to this case. Hence, appellant should be sentenced to an indeterminate sentence, the maximum term of which shall be that which may properly be imposed under the Revised Penal Code; and the minimum of which shall be within the range of the penalty next lower than that prescribed by the Code — in this case, *prision mayor*.

Finally, as to Criminal Case No. 1099-M-98, appellant is found guilty of less serious physical injuries, for which the penalty prescribed by law is *arresto mayor*. Again, considering the presence of the generic mitigating circumstance of voluntary surrender without any aggravating circumstance, the penalty shall be imposed in its minimum period

Coming now to pecuniary liabilities, the heirs of the victims Suico and Lapidante in Criminal Case Nos. 1082-M-98 and 1083-M-98, respectively, are entitled to a fixed sum representing civil indemnity for death. Death indemnity is currently fixed at P50,000.^[92] This kind of civil indemnity is separate and distinct from other forms of indemnity for damages and is automatically awarded without need of further proof other than the fact of death and the responsibility of the accused therefor.

Proof of moral damages was presented through the testimony of Lapidante's wife. The RTC's award of such damages herein is excessive, however, considering that it is not meant to enrich an injured party. ^[93] Hence, in Criminal Case No. 1083-M-98, the amount thereof should be reduced to P50,000. In the other two cases, there being no proof of moral damages, the award therefor is deleted. Moral damages cannot be granted in the absence of proof.^[94]

It is also proper to award compensation to the heirs of the victims for loss of earning capacity, pursuant to Article 2206 of the Civil Code.^[95] The documents presented, coupled with the testimonies of Elsie Suico and Rosita Lapidante, are sufficient bases for the award.

At the time of his death, Suico, forty-four (44) years old,^[96] was receiving a monthly take-home pay of P942.70,^[97] as proven and admitted. To compute his net earnings, we multiply this amount by 12 to get his annual income; then deduct the reasonable and necessary living expenses which, in the absence of contrary evidence, is pegged at 50 percent of the earnings. Applying the formula "Net earning capacity = $[2/3 \times (80 - \text{age at time of death}) \times (\text{gross annual income} - \text{reasonable and necessary living expenses})]$ ",^[98] we arrive at a loss of earning capacity of P135,748.80.

Applying the same formula to Lapidante who was thirty-five (35) years old^[99] at the time of his death, with a monthly take-home pay of P10,004.24^[100] and an additional income of P1,000.00 for slaughtering pigs,^[101] we arrive at a loss of earning capacity of P1,980,763.20. His heirs are also entitled to actual damages in the amount of P13,850 for hospital and funeral expenses. These expenses are supported by receipts.^[102] The receipt^[103] for the amount of P6,000 — which also mentions a remaining payable balance of P6,500 — was not properly identified and characterized; thus, we should exclude it from the award of actual damages.

Finally, with respect to the civil indemnities for Lacaden, the award for actual damages — for hospitalization and medicines — should be P4,589.86, as only this amount was properly covered by receipts.^[104] The amount of P1,831, allegedly for hospital services, was included in a list presented by the victim, but was not properly

supported by any receipt or record; thus, we cannot grant such amount.

WHEREFORE, the appeal is partly GRANTED and the assailed Decision MODIFIED. In Criminal Case No. 1082-M-98, Appellant Carmelo Catbagan is found guilty beyond reasonable doubt of homicide and is SENTENCED to a prison term of one (1) month and one (1) day arresto mayor as minimum; to one (1) year and six (6) months of prision correccional as maximum. In Criminal Case No. 1083-M-98, he is found guilty beyond reasonable doubt of homicide and SENTENCED to a prison term of six (6) years and one (1) day of prision mayor as minimum; to twelve (12) years and one (1) day of reclusion temporal as maximum. In Criminal Case No. 1099-M-98, he is found guilty of less serious physical injuries and SENTENCED to a prison term of one (1) month and one (1) day of arresto mayor.

Appellant is also ORDERED to pay the following amounts: 1) to the legal heirs of Suico, P50,000 as indemnity ex delicto and P135,748.80 for loss of earning capacity; 2) to the legal heirs of Lapidante, P13,850 for actual damages, P50,000 as indemnity ex delicto, P50,000 as moral damages, and P1,980,763.20 for loss of earning capacity; and 3) to Lacaden, P4,589.86 for actual damages. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

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- [1] Rollo, pp. 36-48; records, pp. 225-237. Penned by Judge Cesar M. Solis.
- [2] Assailed RTC Decision, pp. 12-13; rollo, pp. 47-48; records, pp. 236-237.
- [3] Signed by 3rd Asst. Provincial Prosecutor Lucita E. Marcelo; rollo, pp. 4-7; records, pp. 22-23 & 32-33.
- [4] The victim was Celso Suico y Veloria.
- [5] The victim was Danilo Lapidante y Pamunag.
- [6] Informations dated July 21, 1998; rollo, pp. 4 & 6; records, pp. 22 & 32.
- [7] Signed by 3rd Asst. Provincial Prosecutor Lucita E. Marcelo; id., pp. 8-9; id., pp. 1-2.
- [8] Information dated July 21, 1998; id., p. 8; id., p. 1.
- [9] Atty. Alfredo de la Cruz of the Public Attorney's Office (PAO).
- [10] Order dated August 26, 1998; records, p. 40.
- [11] Atty. Arsenio Bumacod of the PAO.
- [12] Order dated August 27, 1998; records, p. 9. See also Certificate of Arraignment; records, p. 10.
- [13] Atty. Joselito B. Flores.
- [14] Records, p. 249.
- [15] See Order dated September 10, 1999; id., p. 255.
- [16] Signed by Assistant Solicitors General Carlos N. Ortega and Magdangal M. de Leon and Solicitor Bernard G. Hernandez.
- [17] Appellee's Brief, pp. 9-19. Citations omitted.

[18] Signed by Attys. Amelia C. Garchitorena, Marvin R. Osias and Nestor P. de Los Reyes of the PAO.

[19] Appellant's Brief, pp. 11-17; rollo, pp. 90-96. Citations omitted.

[20] Assailed RTC Decision, p. 9; rollo, p. 44; records, p. 233.

[21] Ibid.

[22] Ibid.

[23] Id., pp. 10, 45 & 234.

[24] This case was deemed submitted for decision upon the Court's receipt of appellant's Reply Brief on September 19, 2002. Earlier, appellant's Brief was received by the Court on April 11, 2002, and appellee's Brief on August 22, 2002.

[25] Appellant's Brief, p. 1; rollo, p. 80.

[26] *Angcaco v. People*, 378 SCRA 297, February 28, 2002; *Balanay v. Sandiganbayan*, 344 SCRA 1, October 20, 2000.

[27] Appellant's Brief, p. 27; rollo, p. 106.

[28] *People v. Peralta*, 350 SCRA 198, January 24, 2001; *People v. Ulep*, 340 SCRA 688, September 20, 2000; *People v. Belbes*, 389 Phil. 500, June 21, 2000.

[29] Assailed RTC Decision, p. 7; rollo, p. 42; records, p. 231.

[30] Ibid.

[31] Appellant's Brief, p. 27; rollo, p. 106.

[32] 100 SCRA 424, October 28, 1980.

[33] *People v. Ulep*, supra, p. 700.

[34] Appellant's Brief, p. 28; rollo, p. 107.

[35] *People v. Caguig*, 347 SCRA 374, December 6, 2000; *People v. Calabroso*, 340 SCRA 332, September 14, 2000; *People v. Belbes*, supra.

[36] *People v. Bonifacio*, 376 SCRA 134, February 5, 2002; *People v. Domingo*, 414 Phil. 628, August 8, 2001; *People v. Camacho*, 411 Phil. 715, June 20, 2001.

[37] *Angcaco v. People*, supra.

[38] Assailed RTC Decision, p. 8; rollo, p. 43; records, p. 232.

[39] TSN, November 4, 1998, p. 9.

[40] Id., March 24 & April 14, 1999, pp. 26-28 & 35.

[41] Id., March 1 & 8, 1999, pp. 12 & 24-25.

[42] Id., January 20 & 27, 1999, pp. 6-13 & 9.

[43] Id., November 6, 1998, p. 6.

[44] Id., November 18, 1998, pp. 8-9.

[45] Assailed RTC Decision, p. 8; rollo, p. 43; records, p. 232.

[46] *People v. Basadre*, supra.

[47] Reyes, *The Revised Penal Code*; Book I, (2001 ed.), p.171.

[48] Appellant's Brief, p. 36; rollo, p. 114.

[49] *People v. Obordo*, 382 SCRA 98, May 9, 2002.

[50] Reyes, *The Revised Penal Code*; supra, p. 178.

[51] Assailed RTC Decision, p. 9; rollo, p. 44; records, p. 233.

[52] "Art. 13. Mitigating circumstances. — The following are mitigating circumstances:

1. Those mentioned in the preceding chapter, when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant.

"x x x x x x x x"

[53] *People v. Tac-an*, 182 SCRA 601, February 26, 1990; *People v. Lachica*, 132 SCRA 230, September 28, 1984; *People v. Adlawan*, 375 SCRA 188, January 30, 2002; *People v. Geneblazo*, 414 Phil. 103, July 20, 2001; *Calim v. CA*, 351 SCRA 559, February 13, 2001.

[54] *US v. Carrero*, 9 Phil. 544, January 10, 1908.

[55] *Id.*, p. 547, per Torres, J.

[56] Assailed RTC Decision, p. 9; rollo, p. 44; records, p. 233.

[57] Reyes, *The Revised Penal Code*; supra, p. 161.

[58] *People v. Campomanes*, 376 SCRA 307, February 6, 2002; *People v. Saul*, 372 SCRA 636, December 19, 2001; *People v. Peralta*, supra; *People v. Sambulan*, 352 Phil. 336, April 24, 1998.

[59] "Scapillar" in the TSN, January 25, 1999, p. 3.

[60] Assailed RTC Decision, p. 10; rollo, p. 45; records, p. 234.

[61] Reyes, *The Revised Penal Code*; supra, p. 290.

[62] *People v. Tambis*, 370 Phil. 459, July 28, 1999; *People v. Sambulan*, supra.

[63] TSN, March 26, 1999, p. 6.

[64] *Id.*, p. 7.

[65] Records, p. 184.

[66] *People v. Casingal*, 337 SCRA 100, August 1, 2000; *People v. Aquino*, 379 Phil. 845, January 20, 2000.

[67] *People v. Parba*, 416 Phil. 902, September 5, 2001; *People v. Samudio*, 353 SCRA 746, March 7, 2001.

[68] *People v. Tejero*, 381 SCRA 382, April 19, 2002; *People v. Castellano*, 377 SCRA 79, February 15, 2002; *People v. Medios*, 371 SCRA 120, November 29, 2001.

[69] Reyes, *The Revised Penal Code*; supra, p. 435.

- [70] *People v. Calago*, 381 SCRA 448, April 22, 2002; *People v. Guzman*, 372 SCRA 344, December 14, 2001.
- [71] *People v. Recto*, 419 Phil. 674, October 17, 2001.
- [72] Reyes, *The Revised Penal Code*; *supra*, p. 411.
- [73] *People v. Mazo*, 419 Phil. 750, October 17, 2001; *People v. Santillana*, 367 Phil. 373, June 9, 1999.
- [74] *People v. Calago*, 381 SCRA 448, April 22, 2002.
- [75] *People v. Fortich*, 346 Phil. 596, November 13, 1997.
- [76] *People v. Listerio*, 335 SCRA 40, July 5, 2000.
- [77] *Ibid.*
- [78] *People v. Pagador*, 357 SCRA 299, April 20, 2001.
- [79] *Ibid.*
- [80] *Id.*, p. 4.
- [81] *People v. Fortich*, *supra*.
- [82] *People v. Pagador*, *supra*.
- [83] TSN, January 25, 1999, p. 4.
- [84] Revised Penal Code, Art. 265.
- [85] §5, R120, Revised Rules of Criminal Procedure; *People v. Vicente*, 372 SCRA 765, December 21, 2001.
- [86] *Ibid.*
- [87] Revised Penal Code, Art. 249.
- [88] *Id.*, p. 741; see also Revised Penal Code, Art. 69.
- [89] Revised Penal Code, Art. 64(2).
- [90] *Id.*, Art. 249.
- [91] *Id.*, Art. 64(2).
- [92] *People v. Callet*, 382 SCRA 43, May 9, 2002; *People v. Dumalahay*, 380 SCRA 37, April 2, 2002; *People v. Kinok*, 368 SCRA 510, November 13, 2001.
- [93] *People v. Manlansing*, 378 SCRA 685, March 11, 2002.
- [94] *People v. Escarlos*, GR No. 148912, September 10, 2003; *People v. Villanueva*, GR No. 139177, August 11, 2003.
- [95] Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:
- (1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity in every case shall be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

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[96] TSN, November 9, 1998, p. 6.

[97] *Id.*, p. 7; see also Exhibit “I”; CA rollo, p. 53.

[98] *People v. Yatco*, 379 SCRA 432, March 19, 2002; *People v. Bantiling*, 420 Phil. 849, November 15, 2001; *People v. Cabilto*, 414 Phil. 615, August 8, 2001; *People v. Templo*, 346 SCRA 626, December 1, 2000; *People v. Reanzares*, 334 SCRA 624, June 29, 2000.

[99] *Id.*, November 6, 1998, p. 19.

[100] Exhibit “D,” CA rollo.

[101] TSN, November 6, 1998, p. 19.

[102] Exhibits “E” and “E-2”; CA rollo, p. 48.

[103] Exhibit “E-1”; CA rollo, p. 48.

[104] Exhibits “P-2” to “P-18”; CA rollo, p. 65.

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