



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 215748

Present:

- versus -

CARPIO, J., Chairperson,
 PERALTA,
 DEL CASTILLO,*
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

PAUL DURAN, JR. y MIRABUENO,
 Accused-Appellant.

Promulgated:

20 NOV 2017

Andre B. Reyes, Jr.

x-----x

DECISION

CAGUIOA, J.:

Before this Court is an appeal¹ filed under Section 13, Rule 124 of the Rules of Court from the Decision² dated June 2, 2014 (assailed Decision) of the Court of Appeals (CA), First Division in CA-G.R. CR-HC No. 05496. The assailed Decision affirmed the Decision³ dated February 22, 2012 of the Regional Trial Court of Cavite City, Branch 88 (RTC), in Crim. Case No. 160-09, finding herein accused-appellant Paul M. Duran, Jr. (Duran) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The Information charging Duran with Murder states as follows:

That on or about the 9th day of January, 2009, in the Municipality of Rosario, Cavite, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, using an unlicensed firearm, employing treachery and nocturnity, did, then and there, wilfully, unlawfully and feloniously shoot GILBERT GRIMALDO Y NERA on the back of his head and thereafter as the victim lay helpless and wounded on the ground with abuse of superior strength shot him another three times, inflicting upon the latter multiple gunshot wounds which

* Designated additional Member per Raffle dated September 25, 2017 in lieu of Associate Justice Andres B. Reyes, Jr.

¹ Rollo, pp. 9-12.

² Id. at 2-8. Penned by Associate Justice Manuel M. Barrios, with Presiding Justice Andres B. Reyes, Jr. (now a Member of this Court) and Associate Justice Normandie B. Pizarro concurring.

³ CA rollo, pp. 27-38. Penned by Judge Agapito S. Lu.

MSR

cause (sic) his instantaneous death, to the damage and prejudice of the latter's heirs.

CONTRARY TO LAW.⁴

Upon his arraignment, Duran entered a plea of "not guilty."⁵

The Facts

Version of the Prosecution

The prosecution presented three witnesses, namely: Beverly C. Quilana (Quilana), eyewitness; Berly L. Grimaldo (Mrs. Grimaldo), the widow of the victim, Gilbert N. Grimaldo (Grimaldo), and Dr. Jocelyn Dignos (Dr. Dignos), the municipal health officer who performed the autopsy on the victim.

Quilana's testimony, as summarized by the RTC, is as follows:

Beverly C. Quilana testified that on January 9, 2009 at around 1:48 in the morning, she was awakened by someone calling for her, uttering "Ninang". At that time she was inside her house located in Ligdong 3, Rosario, Cavite. She recognized the voice of the person as her godson named Gilbert Grimaldo. She then asked why. Grimaldo replied from outside saying "Ninang tulungan mo ako yung taong ito ay kinukursunada ako," "kinukursunada ako ng taong ito, me dala siyang baril". Then she opened the door for her godson. She then saw the accused Paul Duran shot Grimaldo with a .38 caliber revolver from behind at a distance of 2 ½ feet. Grimaldo was hit at the nape, and then fell to the ground lying with his face down. Duran then left the place passing between their houses. Moments later accused returned and shot Grimaldo three more times to make sure that the latter was dead. Witness then started shouting and asking for help. At this point in time, witness saw the accused Duran ran away. They then called the police. According to this witness, Grimaldo was hit on the nape, back and head.

Witness further clarified that Grimaldo did not know that Duran was behind him because he was surprised when he was shot.

Witness identified the accused in open court. She is familiar with the accused for they were neighbors for six (6) years. She clarified, that she was able to see the accused because the place was illuminated by a fluorescent bulb placed outside the house.⁶

Mrs. Grimaldo's testimony was stipulated upon and dispensed with as her testimony covered only her claim for damages.⁷ Dr. Dignos' testimony regarding the autopsy, the findings as to the cause of death and nature, location, and gravity of the injuries sustained by the victim, and the

⁴ Records, p. 1.

⁵ RTC Order dated September 18, 2009, id. at 47.

⁶ CA *rollo*, p. 28.

⁷ Id. at 29.

preparation and issuance of the death certificate, were also stipulated upon and admitted by the defense.⁸

Version of the Defense

Duran invoked self-defense. His testimony, as summarized by the RTC, is as follows:

Witness testified that he used to peddle fish in Rosario, Cavite. On January 9, 2009 at around 2:15 to 2:45 a.m. while on his way to buy fish in Parañaque, he was blocked by two persons whose identity he did not know. One of this (*sic*) men who turned out to be the victim Gilbert Grimaldo poked a gun at him, and said that they only needed his money. That when Grimaldo attempted to get the money from his belt bag, he was able to hold the victim's right hand which was then holding the gun. Grimaldo then used his left hand to box his nape. Then they wrestled for the possession of the gun for more or less thirty seconds. Then he (Duran) was able to take the gun away from Grimaldo. When Grimaldo moved backward, he pulled the trigger of the gun and hit Grimaldo. At that time he was worried that the other guy might retaliate and that's the reason why he was able to pull the trigger of the .38 caliber revolver gun.⁹

Ruling of the RTC

The RTC found Duran guilty of the crime of Murder, qualified by treachery, and sentenced him to *reclusion perpetua*.¹⁰ In arriving at its decision, the trial court ruled:

Like alibi, self-defense is inherently a weak defense and can easily be fabricated. When the accused interposes self-defense, he thereby admits having caused the injuries of the victim. The burden of proof then shifts on him to prove, with clear and convincing evidence, the confluence of the essential requisites for such a defense, namely: a.) unlawful aggression on the part of the victim; b.) reasonable necessity of the means employed and to prevent or repel it; and c.) lack of sufficient provocation on the part of the person defending himself. The accused must rely on the strength of his own evidence and not on the prosecution's, for even if the latter is weak, it cannot be disbelieved after the accused has admitted the killing x x x.

x x x x

This Court is convinced that there was no unlawful aggression. Assuming that Grimaldo and his unidentified companion really tried to hold-up Duran, the latter's testimony shows that the aggression had already ceased when he (Duran) was able to successfully take the gun from the possession of Grimaldo.

Having now the possession of the gun, there was obviously no reason for him to shoot the victim successively because the unlawful

⁸ Id.

⁹ Id. at 29-30.

¹⁰ Id. at 38.

aggression from the victim has stopped. Duran by his own admission stated that he shot Grimaldo four times. Hence, no unlawful aggression by the victim was shown. Be it remembered that the presence of said primary requisite is a condition sine qua non of the justifying circumstance of self-defense. Absent such, there could be no self[-]defense to speak of. The other two requisites need not be discussed.

On the part of the prosecution, it clearly proved the presence of intent to kill on the part of the accused. The fact that the shots fired by the accused were directed to the vital body parts of the victim, namely on the head and the chest, shows intent to kill.

In addition thereto, the testimony of eye witness Quilana is very credible. Witness saw vividly how the shooting incident happened, who the victim was – Gilbert Grimaldo and the perpetrator of the crime – herein accused Paul Duran.

x x x x

The qualifying circumstance of treachery is present in this case because accused shot the victim in a manner that the latter would not be able to defend himself, and the location and severity of the wounds inflicted on the victim belies the claim of self-defense.¹¹

Duran was further ordered to pay the heirs of the victim One Hundred Thousand (₱100,000.00) as moral damages and Fifty Thousand Pesos (₱50,000.00) in exemplary damages.¹²

Duran appealed to the CA via Notice of Appeal¹³ dated March 12, 2012. Duran then filed his Brief¹⁴ dated September 25, 2012, while the plaintiff-appellee, through the Office of the Solicitor General (OSG), filed its Brief¹⁵ dated February 4, 2013. Thereafter, the appeal was submitted for decision.¹⁶

Ruling of the CA

The CA affirmed Duran's conviction *in toto*.¹⁷ On June 26, 2014, Duran brought the instant case before this Court via Notice of Appeal¹⁸ of even date.

In lieu of supplemental briefs, Duran and plaintiff-appellee filed separate manifestations respectively dated April 13, 2015¹⁹ and April 15, 2015,²⁰ foregoing their right to file the same.

¹¹ Id. at 31, 36-38.

¹² Id. at 38.

¹³ Records, p. 95.

¹⁴ CA *rollo*, pp. 52-61.

¹⁵ Id. at 84-102.

¹⁶ CA Resolution dated May 15, 2013, id. at 108.

¹⁷ See CA Decision dated June 2, 2014, *rollo*, pp. 2-8.

¹⁸ *Rollo*, pp. 9-12.

¹⁹ Id. at 21-25.

²⁰ Id. at 26-30.

Issue

Whether or not Duran's guilt for the crime of Murder was proven beyond reasonable doubt.

The Court's Ruling

The appeal is partly meritorious.

There was no unlawful aggression

An accused who pleads self-defense admits the commission of the act charged as a crime. The burden of proving self-defense rests on the accused. He must prove by clear and convincing evidence the concurrence of the following elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself or at least any provocation executed by the accused claiming self-defense was not the proximate and immediate cause of the victim's aggression.²¹

Unlawful aggression is an indispensable element of self-defense. Without unlawful aggression, self-defense cannot and will not be appreciated, even if the other elements are present.²² As held in *People v. Dolorido*²³:

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It "presupposes actual, sudden, unexpected or imminent danger – not merely threatening and intimidating action." It is present "only when the one attacked faces real and immediate threat to one's life." x x x²⁴

In *People v. Nugas*,²⁵ the Court expounded on the kinds of unlawful aggression:

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was

²¹ See *People v. Nugas*, 677 Phil. 168, 176-177 (2011).

²² *Nacnac v. People*, 685 Phil. 223, 229 (2012).

²³ 654 Phil. 467 (2011).

²⁴ *Id.* at 475.

²⁵ *Supra* note 21.

holstered, accompanied by an angry countenance, or like aiming to throw a pot.²⁶

The Court agrees with the RTC and CA that Duran was unable to prove the presence of unlawful aggression on the part of the victim. Even if Duran's account of an attempted robbery against him is to be believed, his testimony also shows that Grimaldo, albeit the initial aggressor, ceased to be the aggressor as Duran had successfully wrested the weapon from him. Thereafter, Duran shot the gun at Grimaldo four times; three of which hit Grimaldo on vital parts of his body.²⁷ At this moment, actions of the accused were already done in retaliation and not self-defense. In retaliation, the aggression initiated by the victim had already ceased when the accused attacked him; in self-defense, the aggression from the victim is continuing.²⁸

Duran's own testimony is illustrative of the absence of unlawful aggression:

[Atty. Marjorie Ann C. Toledo (on direct examination)]

Q Before the killing incident, do you recall any unusual event that transpired?

A Yes, Ma'am, there was.

Q And, what was that?

A When my way was blocked by two persons, Ma'am.

Q Do you know these two persons?

A No, Ma'am.

Q What did they do when they blocked you?

A One of them poked the gun at me, Ma'am.

Q Who poked the gun at you?

A That Grimaldo, I think, Grimaldo, Ma'am.

Q And that was the victim in this case?

A Yes, Ma'am.

Q When he poked the gun at you, what happened next?

A He said that he only needed my money, Ma'am.

Q And then, what was your reply when he uttered those words?

A I was not able to immediately reply, Ma'am.

Q What happened next?

A When he was about or attempting to get the money from my belt bag, that was the time when I was able to hold to the gun, Ma'am.

Q Meaning to say that, he was the one who was getting your belt bag, you did not voluntarily give it to him?

²⁶ Id. at 177-178.

²⁷ See Identification Anatomical Chart and Post-Mortem Report, Exhibits "D" and "E," records, pp. 15-17.

²⁸ *People v. Dulin*, 762 Phil. 24, 38 (2015).

A Yes, Ma'am.

Q And then you were able to grab the gun?

A Yes, Ma'am.

x x x x

[Prosecutor Ferdinand H. Palafox (cross-examination)]

Q So, Mr. Witness, it is now your testimony indeed on January 9, 2009, you met the victim in this case Gilbert Grimaldo y Nera?

A If he is the victim, then he is the one that I was able to meet that night, Sir.

Q It is your version, however, that it was him who actually tried to hold you up and was armed with a firearm?

A Yes, Sir, that is the truth.

Q When he tried to grab your belt bag, which according to you contained money, you fought back and tried to take away his gun?

A Yes, Sir.

Q And you were able to successfully take away this firearm from your hold upper?

A Yes, Sir.

Q Can you describe the type of weapon which you got from your attacker?

A 38 revolver, Sir.

Q 38 revolver?

A Yes, Sir.

Q So, after you got the 38 revolver, you shot this person?

A I was able to shoot him, Sir.

Q Where was he initially hit?

A I am not sure but it was frontal, Sir.

Q After you shot this person, what happened then?

A After shooting him twice, he turned around and then I shot him again, Sir.

x x x x

COURT:

x x x x

Q What you are trying to say to the Court is that, this Grimaldo tried to rob you?

A Yes, your Honor.

Q But you were able to grab the gun away from him?

A Yes, your Honor.

Q After you grabbed the gun from Grimaldo, he was no longer armed?

A **After I was able to grab the gun away from him and then he moved a little backward and he was in the act of attacking me again, that was the time I was able to shoot him successively, your Honor.**²⁹ (Emphasis supplied)

x x x x

[Prosecutor Ferdinand H. Palafox (*continued*)]

Q **You mentioned that the reason you panicked and started squeezing your trigger was that you were afraid that the companion of Grimaldo would also attack you, what happened to him?**

A **He disappeared, Sir.**³⁰ (Emphasis supplied)

Duran's claim of self-defense is belied by his own testimony. As admitted by Duran himself, the unlawful aggression from Grimaldo had ceased when he had been disarmed and had been shot. Moreover, the alleged companion of Grimaldo had already run away, posing no threat to Duran. In the similar case of *People v. Escarlos*,³¹ the Court held:

Even assuming *arguendo* that there was an altercation before the stabbing incident and that some danger did in fact exist, the imminence of that danger had already ceased the moment appellant disarmed the victim by wresting the knife from the latter. After the former had successfully seized it, there was no longer any unlawful aggression to speak of that would have necessitated the need to kill the latter. Hence, appellant became the unlawful aggressor when he stabbed the victim.

When an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even to wound the former aggressor. x x x³² (Emphasis supplied)

Notably, after Grimaldo was disarmed, he had attempted to escape from Duran and sought help from his godmother, Quilana, as the altercation took place on the street in front of her house.

Quilana, the sole eyewitness to the shooting, testified:

[Prosecutor Ferdinand H. Palafox (*direct examination*)]

Q Madame witness, if you can recall where were you on January 9, 2009 at around 1:48 in the morning?

A At home, Sir.

Q And where is your house located?

A In Ligdong 3, Rosario, Cavite, Sir.

x x x x

Q What time did you wake up, Madame witness?

²⁹ TSN, August 26, 2010, pp. 6-7, 9-11, 30.

³⁰ Id. at 19.

³¹ 457 Phil. 580 (2003).

³² Id. at 596-597.

- A I was awakened by the call of somebody at the house, Sir.
- Q You heard someone calling you?
- A Yes, Sir.
- Q What exactly were the words you heard?
- A I was called "Ninang", Sir
- Q You are named Beverly C. Quilana, Madame witness, and you heard the word "Ninang", why are you now claiming that when you heard the word "Ninang" that person shouting was calling you?
- A I recognized the voice, Sir.
- Q And when you heard the voice, to whom does it belong?
- A Gilbert Grimaldo, Sir.
- Q Who is Gilbert Grimaldo?
- A My godson, Sir.
- Q That is why he was referring to you as "Ninang"?
- A Yes, Sir.
- Q So when you heard the word "Ninang" and you were assuming that the person shouting the word "Ninang" was Gilbert Grimaldo, what did you do?
- A I asked him why, Sir.
- Q You were inside your house then when you heard Gilbert Grimaldo shouting the word "Ninang", calling you "Ninang", where was Gilbert at the time he was shouting?
- A By my door, Sir.
- Q And your door was closed or open at that time?
- A Closed, Sir.
- Q While shouting the word "Ninang", what else was Gilbert shouting?
- A "Meron po sa aking kumukursunada sa labas", Sir.
- Q And according to you, you asked him why, or what is it he wants, when you asked Gilbert and Gilbert answered back, you were still inside your home?
- A Yes, Sir.

COURT:

- Q Gilbert was still outside the door of your house?
- A Yes, your Honor.
- Q And what was the reply of Gilbert when you asked him why?
- A "Meron po sa kanyang kumukurs[u]nada sa labas, Barangay Tanod po namen na nagtitinda ng isda", Sir.
- Q What were the exact words of Gilbert?
- A His words were, "Ninang tulungan mo ako yung taong ito ay kinukursunada ako", your Honor.

x x x x

Q What words did he say?

A What he said was, "Kinursunada ako ng taong ito, me dala siyang baril", your Honor.

x x x x

Q Then what did you do?

A I opened the door for him, your Honor.

COURT:

Continue.

[Prosecutor Ferdinand H. Palafox (continuation):]

Q And when you opened the door, did you ask any other question to Gilbert?

A No more, your Honor.

Q What happened then?

A And then I saw this Paul Duran shoot this Gilbert Grimaldo, Sir.

Q When you opened the door of your house, Madame witness, were (*sic*) was Gilbert Grimaldo then?

A Still by my door, Sir.

Q And according to you, you also saw the accused Paul Duran?

A Yes, your Honor.

Q When you saw Paul Duran where was he in relation to Gilbert Grimaldo?

A In front, your Honor.

COURT:

Q In front of Gilbert Grimaldo?

A Behind, your Honor.

Q How far behind?

A About this, your Honor.

Q Only about 2 ½ feet away?

A Yes, your Honor.

COURT:

Alright, continue.

[Prosecutor Ferdinand H. Palafox (continuation):]

Q And when you opened the door and you saw Gilbert and also Duran just feet away, what happened then, Madame witness?

A He already shot him, Sir.

Q Who shot who?

A Paul Duran shot Gilbert Grimaldo, Sir.³³

³³ TSN, November 20, 2009, pp. 4-8.

As can be gleaned from the above testimonies, at the time that Duran shot Grimaldo, there was no unlawful aggression on the part of the latter. Time and again, this Court has held that when an unlawful aggression that has begun has ceased to exist, the one who resorts to self-defense has no right to kill or even to wound the former aggressor.³⁴ Aggression, if not continuous, does not constitute aggression warranting defense of one's self.³⁵ The condition *sine qua non* of unlawful aggression being absent, self-defense cannot be appreciated in favor of the accused.

The prosecution failed to prove treachery

The Court modifies the findings of the RTC as affirmed by the CA, with regard to the qualifying circumstance of treachery. Under Article 14, paragraph 16 of the RPC, there is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.³⁶ The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.³⁷

It was error for the RTC to rule that treachery was present as said finding is not supported by the evidence. Moreover, the RTC did not fully discuss its appreciation of the circumstance of treachery. The trial court merely held:

x x x [T]reachery is present in this case because accused shot the victim in a manner that the latter would not be able to defend himself, and the location and severity of the wounds inflicted on the victim belies the claim of self-defense.³⁸ (Emphasis supplied)

Treachery must be unequivocally proven as the crime itself. As held in the case of *People v. Obzunar*³⁹:

x x x It is an almost immutable rule of evidence that treachery must be proven as clearly as the crime itself, and "absent any particulars as to the manner in which the aggression commenced or how the act which resulted in the death of the victim unfolded, as in

³⁴ *People v. Escarlos*, supra note 31, at 597.

³⁵ *Martinez v. Court of Appeals*, 549 Phil. 683, 707 (2007).

³⁶ *People v. Dulin*, supra note 28, at 40.

³⁷ *People v. Escote, Jr.*, 448 Phil. 749, 786 (2003).

³⁸ CA rollo, p. 38.

³⁹ 333 Phil. 395 (1996).

this case, treachery cannot be appreciated.” The prosecution’s sole eyewitness Lydia Zilmar saw what transpired only from the time the victim was already being chased by the accused-appellants. Hence, not having seen how the assailants commenced the execution of the felony, she gave no testimony as to, and there is no sufficient evidence available to prove conclusively, the use of treachery in the commission thereof. x x x⁴⁰ (Emphasis supplied)

The prosecution did not prove that Duran intentionally sought the victim for the purpose of killing him. The confrontation between Duran and Grimaldo appears to have been a chance encounter. It was also not proven that Duran deliberately and consciously employed means, methods, or forms in the execution of the criminal act to ensure that Grimaldo could not defend himself.

In *People v. Caratao*,⁴¹ the Court held:

Repeatedly upheld has been the rule that chance encounters, impulse killing or crimes committed at the spur of the moment, x x x are generally not attended by treachery, for lack of opportunity of the accused deliberately to employ a treacherous mode of attack. x x x⁴²

Notably, eyewitness Quilana only witnessed the moment of the actual shooting but did not witness the inception of the fatal altercation. The prosecution failed to establish that Duran had deliberately adopted a treacherous mode of attack for the purpose of depriving the victim of a chance to fight or retreat. In this case, Grimaldo was aware of the impending attack and was even able to seek help from eyewitness Quilana.

As the Court held in *People v. Latag*⁴³:

Treachery cannot be presumed where the lone witness has not actually seen the commencement of the attack, as we held in *People v. Narit*:

“x x x [Treachery] cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself. For, as held in *U.S. vs. Perdon* where no particulars are known as to the manner in which aggression was made or how the act which resulted in the death of the victim began and developed, it can in no way be established from mere suppositions, drawn from circumstances prior to the very moment of the aggression, that an accused perpetrated the killing with treachery. **Accordingly, treachery cannot be considered where the lone witness did not see the commencement of the assault.**”⁴⁴ (Emphasis supplied)

⁴⁰ Id. at 420.

⁴¹ 451 Phil. 588 (2003).

⁴² Id. at 607.

⁴³ 465 Phil. 683 (2004).

⁴⁴ Id. at 693-694.

In the case of *People v. Rapanut*,⁴⁵ the Court held:

x x x [W]here the lone eyewitness did not see how the attack was carried out and he can not testify on how it began, the trial court cannot merely surmise from the circumstances of the case that treachery attended the commission of the crime.⁴⁶ (Emphasis supplied)

In this case, there was no other circumstance attendant to the shooting that shows that Duran carefully and deliberately planned the killing in a manner that would ensure his safety and success. It was not proven that he had deliberately chosen the place, time, and method of killing, or that the meeting between him and Grimaldo was planned. In fact, the location was disadvantageous to him, as it was right in front of the house of Quilana, Grimaldo's godmother.

The prosecution had attempted to prove treachery with the testimony of Quilana who stated that Duran had shot Grimaldo from behind. Thereafter, he left the crime scene yet returned to shoot Duran three more times. However, upon questions from the Court, the statement was clarified:

COURT [(clarificatory questions for eyewitness Quilana)]:

Q What do you mean returned, you mean to say that after shooting Gilbert Grimaldo this Paul Duran left away and then returned later on?

A Yes, your Honor, he made sure that this Gilbert was already dead.

Q Where did Paul Duran go after shooting Gilbert Grimaldo at the nape?

A In between our houses, your Honor.

x x x x

Q Between your house and whose house?

A And my nephew's house, your Honor.

Q And how far is that spot from the place where he shot Gilbert Grimaldo?

A **One step away only, your Honor.**

Q So Paul Duran made one step back and then moved forward again to shoot Gilbert Grimaldo?

A Yes, your Honor.⁴⁷ (Emphasis supplied)

Quilana's testimony that Duran left and "returned" after shooting Grimaldo is contradicted by her own testimony that Duran only made one step. Duran could not have left the scene of the crime by only taking one step backward.

⁴⁵ 331 Phil. 820 (1996).

⁴⁶ Id. at 836-837.

⁴⁷ TSN, November 20, 2009, pp. 12-13.

In this regard, Duran's testimony as to the manner in which he shot Grimaldo is more credible as it is corroborated by the Post Mortem Report. Duran testified:

- Q** So, after you got the 38 revolver, you shot this person?
A I was able to shoot him, Sir.
Q Where was he initially hit?
A I am not sure but it was frontal, Sir.
Q After you shot this person, what happened then?
A After shooting him twice, he turned around and then I shot him again, Sir.

COURT:

- Q** How many times?
A Once only, your Honor.
Q So, all in all you shot Grimaldo 3 times?
A 4 times, your Honor.
Q When did you fire the fourth shot?
A 3 times frontally, your Honor.
Q And one at the back?
A Yes, your Honor.
Q And after firing him 4 times, what happened to Grimaldo?
A I saw him fall down, your Honor.⁴⁸ (Emphasis and underscoring supplied)

Meanwhile, the Post-Mortem Report⁴⁹ prepared by Dr. Dignos states that Duran was hit by three bullets. One bullet hit his face near his lower lip and exited at the back of his head; another bullet hit his chest and exited his back; and another bullet hit his back, near his right shoulder, which exited near his right neck. Thus, Duran's testimony that he was able to wound Grimaldo twice in the front and once in the back is consistent with the Post-Mortem Report.

Generally, findings of fact of the trial courts are accorded great weight, particularly in the determination of credibility of witnesses as said courts have the opportunity to observe the witness and the manner in which they testified. However, this can be disregarded when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.⁵⁰ This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and

⁴⁸ TSN, August 26, 2010, pp. 10-11.

⁴⁹ Exhibit "E," records, pp. 16-17.

⁵⁰ See *People v. Gaspar*, 376 Phil. 762, 785 (1999).

the court may even consider issues which were not raised by the parties as errors.⁵¹

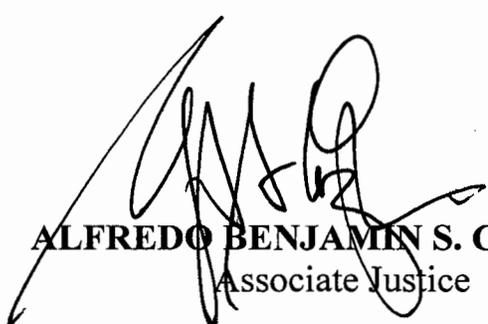
With the removal of the qualifying circumstance of treachery, the crime is Homicide and not Murder. The penalty for Homicide under Article 249 of the RPC is *reclusion temporal*. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years.⁵²

Thus, the appellant shall suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.⁵³

Finally, in view of the Court's ruling in *People v. Jugueta*,⁵⁴ the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

WHEREFORE, in view of the foregoing, the Court **DECLARES** accused-appellant Paul M. Duran, Jr. **GUILTY** of **HOMICIDE**, for which he is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. He is further ordered to pay the heirs of Gilbert N. Grimaldo the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

⁵¹ *Luz v. People*, 683 Phil. 399, 406 (2012).

⁵² *People v. Duavis*, 678 Phil. 166, 178-179 (2011).

⁵³ See *id.* at 179.

⁵⁴ *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 386 and 388.


DIOSDADO M. PERALTA
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

