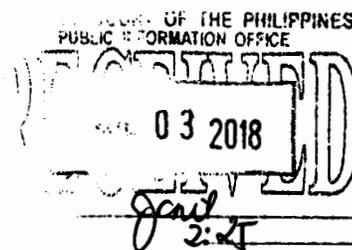




Republic of the Philippines  
 Supreme Court  
 Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 227502

Present:

LEONARDO-DE CASTRO,  
*Acting Chairperson,\**  
 DEL CASTILLO,  
 JARDELEZA,  
 TIJAM, *and*  
 GISMUNDO,\*\* JJ.

- versus -

RANDY GAJILA y SALAZAR,  
*Accused-Appellant.*

Promulgated:

JUL 23 2018

X-----X

DECISION

**DEL CASTILLO, J.:**

Assailed in this appeal is the September 10, 2015 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06741 which affirmed with modification the January 10, 2014 Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 10, Manila, finding appellant Randy Gajila y Salazar guilty beyond reasonable doubt of the crime of murder.

***The Antecedent Facts***

Appellant was charged with the crime of murder in an Information<sup>3</sup> dated January 30, 2008 which reads:

That on or about January 24, 2008, at night[t]ime purposely sought to better accomplish [his] criminal design, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified by treachery, evident premeditation and abuse of superior

\* Per Special Order No. 2559 dated May 11, 2018.

\*\* Per Special Order No. 2560 dated May 11, 2018.

<sup>1</sup> *Rollo*, pp. 2-13; penned by Associate Justice Jose C. Reyes, Jr., and concurred in by Associate Justices Agnes Reyes Carpio and Ramon Paul L. Hernando.

<sup>2</sup> *CA rollo*, pp. 14-41; penned by Judge Virgilio M. Alameda.

<sup>3</sup> Records, p. 1.

strength, attack, assault and use personal violence upon the person of one GERRY ALCANTARA Y CABILING, by then and there stabbing him twice using a butcher[’s] knife that hits [sic] the right side of his body, thereby inflicting upon the said GERRY ALCANTARA Y CABILING mortal wounds which were the direct and immediate cause of his death.

CONTRARY TO LAW.

During his arraignment on April 1, 2008, appellant entered a plea of not guilty.<sup>4</sup> Trial thereafter ensued.

### ***Version of the Prosecution***

The prosecution’s version of the incident is as follows:

On January 24, 2008, Ross Dizon (Ross) reported for work at the meat section of the Quinta Market located along Echague St., Quiapo, Manila, where he was a distributor of pork supplied by his uncle, Ryan Dizon (Ryan), to different stall holders in the market. The victim, Gerry Alcantara, was his co-worker who was employed by his uncle as a butcher. Both he and the victim worked at the market from 1:00 a.m. to 5:00 a.m.<sup>5</sup>

On the same day, at about 3:00 a.m., Ross saw appellant arrive at the market, apparently drunk because he walked in a swaying manner. Appellant worked as a butcher across the stalls of Ross’ uncle. Because appellant was drunk, Ross told him to just lie down on a bench near their stall.<sup>6</sup>

Moments later, appellant stood up and approached the victim from behind. At the time, the victim was busy weighing sliced pork meat for distribution to the stalls at the market. Appellant then used his left hand to hold the victim in place by the neck, and without saying a word, he suddenly stabbed the victim at the back. The victim turned around but he was stabbed for the second time. Appellant would have succeeded in stabbing the victim again, but it was prevented by Ryan who pushed a cart in appellant’s direction.<sup>7</sup>

Appellant immediately fled the scene, still carrying with him the butcher’s knife that was stained with the victim’s blood. He ran towards the direction of Platerias Street corner Palma Street, but he was eventually subdued by civilians and *barangay tanods* at the market.<sup>8</sup>

<sup>4</sup> See Order dated April 1, 2008, id. at 26.

<sup>5</sup> CA *rollo*, p. 16.

<sup>6</sup> Id. at 16-17.

<sup>7</sup> Id. at 17.

<sup>8</sup> Id.

Unfortunately, the victim died at the hospital the following day.<sup>9</sup> Dr. Romeo T. Salen (Dr. Salen) performed the autopsy on the victim's body.<sup>10</sup> Based on the Medico-Legal Report<sup>11</sup> dated January 29, 2008, the cause of death was the stab wound sustained by the victim at the back.

### *Version of the Defense*

Appellant raised the justifying circumstance of self-defense in order to exculpate himself from criminal liability, viz.:

At around 3:00 o'clock in the [morning] of January 24, 2008, [he] was inside his stall [at the] Quinta Market waiting for the delivery of his pork meat when [the victim] suddenly approached him, uttered "[E]to ba" and boxed him. He stood up and fought back upon getting hurt, not knowing what [the victim] was referring to when he uttered those words. [The victim] continued boxing him so he embraced him and [they] both fell on the ground. Since [the victim] was on top of him, he was not able to resist. Thus, he picked up the knife on the ground which fell from [the victim's] waist and stabbed him, without intending to kill him.<sup>12</sup> x x x

### *Ruling of the Regional Trial Court*

In its Decision dated January 10, 2014, the RTC found appellant guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code.<sup>13</sup>

The RTC rejected appellant's contention that he had simply acted in self-defense which resulted in the victim's killing. It explained that:

x x x The testimony of the accused raising self-defense is difficult to believe because it is replete with contradictions and inconsistencies. The accused claims that the victim boxed him several times but nowhere in his medical certificate [was it shown] that he suffered [any] boxing injur[ies]. In fact, the medical certificate attested that there was no sign of external injuries at the time of the examination. Moreover, he claims that the victim pressed his left arm on his neck but again[,] there is no sign of injuries on his neck that appeared in his medical certificate. x x x **More importantly, the accused claims that he only stabbed the victim only [sic] once which is inconsistent with the autopsy performed on the body of the victim by Dr. Romeo T. Salen which indicated that the victim suffered two (2) stab wounds.**<sup>14</sup> x x x (Emphasis supplied)

<sup>9</sup> Records, p. 8.

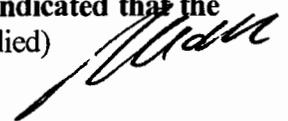
<sup>10</sup> CA rollo, p. 18.

<sup>11</sup> Records, p. 42.

<sup>12</sup> CA rollo, p. 69. Italics supplied.

<sup>13</sup> Id. at 41.

<sup>14</sup> Id. at 32.



Moreover, the RTC held that the victim's killing was attended by the qualifying circumstance of treachery.<sup>15</sup> "By attacking the victim at a time when his attention was drawn to his work of weighing the meat on the scale, [appellant] gave the victim no chance to prepare his defense of the attack."<sup>16</sup> The RTC thus concluded that the mode of attack chosen by appellant made it impossible for the victim to defend himself or retaliate.<sup>17</sup>

The RTC, however, ruled that the attendant circumstances of evident premeditation, taking advantage of superior strength, and nighttime alleged in the Information were not proven beyond reasonable doubt.<sup>18</sup>

Accordingly, the RTC sentenced appellant to suffer the penalty of *reclusion perpetua*. It likewise ordered appellant to pay the heirs of the victim: ₱50,000.00 as civil indemnity, ₱47,641.50 as actual damages, and ₱1,916,250.00 for the loss of the victim's earning capacity.<sup>19</sup>

Appellant thereafter appealed the RTC Decision before the CA.

### ***Ruling of the Court of Appeals***

In its Decision dated September 10, 2015, the CA affirmed the assailed RTC Decision with modifications, in that the appellate court: (a) directed appellant to pay the heirs of the victim ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages; (b) increased the award of civil indemnity to ₱75,000.00; (c) decreased the amount of loss of earning capacity to ₱1,383,286.95; and (d) imposed interest at the rate of 6% per annum on all damages awarded from the date of finality of the Decision until fully paid.<sup>20</sup>

The CA agreed with the RTC's finding that appellant had failed to clearly and convincingly prove the elements of self-defense.<sup>21</sup> It also pointed out that appellant himself testified that Ross (the prosecution's eye witness) held no grudges against him and that he had no hostile encounter with the latter.<sup>22</sup>

In addition, the CA held that the victim's killing was indeed qualified by treachery.<sup>23</sup> It noted that, while the victim was busy weighing pork meat on a

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<sup>15</sup> Id. at 34.

<sup>16</sup> Id. at 35.

<sup>17</sup> Id.

<sup>18</sup> Id. at 35-39.

<sup>19</sup> Id. at 41.

<sup>20</sup> *Rollo*, p. 12.

<sup>21</sup> Id. at 8.

<sup>22</sup> Id.

<sup>23</sup> Id. at 10.

scale, appellant approached him from behind, strangled his neck and, while in such position, stabbed him at the right side.<sup>24</sup> “A sudden attack against an unarmed victim, such as in this case, clearly constitutes treachery.”<sup>25</sup>

Aggrieved, appellant filed the present appeal.

### The Issues

Appellant raises the following issues for the Court’s resolution:

*First*, whether appellant was able to sufficiently prove the justifying circumstance of self-defense;

And *second*, whether the victim’s stabbing was attended by treachery.

### The Court’s Ruling

The appeal is unmeritorious.

In criminal cases, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt.<sup>26</sup> However, when the accused invokes self-defense, the burden of proof is *shifted* from the prosecution to the defense,<sup>27</sup> and it becomes incumbent upon the accused to prove, by clear and convincing evidence, the existence of the following requisites of self-defense: *first*, unlawful aggression on the part of the victim; *second*, reasonable necessity of the means employed to prevent or repel such aggression; and *third*, lack of sufficient provocation on the part of the person defending himself.<sup>28</sup>

In such cases, the accused must rely on the strength of his evidence and *not* on the weakness of the prosecution’s evidence. After all, by invoking self-defense, the accused, in effect, *admits having killed or injured the victim*, and he can no longer be acquitted of the crime charged *if* he fails to prove the essential requisites of self-defense.<sup>29</sup>

The most important requisite of self-defense is **unlawful aggression** which is the condition *sine qua non* for upholding self-defense as a justifying

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<sup>24</sup> Id. at 9.

<sup>25</sup> Id. at 10.

<sup>26</sup> *People v. Lopez, Jr.*, G.R. No. 232247, April 23, 2018.

<sup>27</sup> *People v. Rubiso*, 447 Phil. 374, 380 (2003).

<sup>28</sup> Id. at 380-381. See also REVISED PENAL CODE, Article 11(1).

<sup>29</sup> See *People v. Gumayao*, 460 Phil. 735, 746 (2003).

circumstance.<sup>30</sup> In simpler terms, the accused must prove by clear and convincing evidence that the victim committed unlawful aggression against him;<sup>31</sup> otherwise, “self-defense, whether complete or incomplete, *cannot* be appreciated, for the two other essential elements [thereof] would have *no factual and legal bases* without any unlawful aggression to prevent or repel.”<sup>32</sup>

Thus, we explained in *People v. Nugas*<sup>33</sup> that:

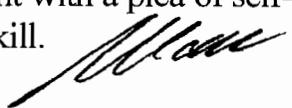
x x x The test for the presence of unlawful aggression under the circumstances is **whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat.** Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.<sup>34</sup> (Emphasis supplied)

After a thorough review of the records, we find that appellant failed to discharge the burden of proving that the unlawful aggression had originated from the victim.

**First**, it is undisputed that appellant tried to flee the *situs criminis* immediately after the stabbing incident.<sup>35</sup> It was only through the concerted efforts of the civilians and *barangay tanods* at the market that appellant’s escape attempt was thwarted.<sup>36</sup> “Flight is a veritable badge of guilt and negates the plea of self-defense.”<sup>37</sup>

We find no merit in appellant’s contention that he “ran after the stabbing incident because he intended to voluntarily surrender himself at the *barangay*.”<sup>38</sup> He could have easily surrendered to Milagros Reyes, one of the *barangay tanods* chasing after him, but he kept on running away until he was eventually subdued by Edgardo Reyes.<sup>39</sup>

**Second**, the location, nature and seriousness of the wounds sustained by the victim are inconsistent with a plea of self-defense;<sup>40</sup> rather, these factors indicate a determined effort to kill.



<sup>30</sup> *People v. Panerio*, G.R. No. 205440, January 15, 2018.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* Italics supplied.

<sup>33</sup> 677 Phil. 168 (2011).

<sup>34</sup> *Id.* at 177.

<sup>35</sup> TSN, February 17, 2009, p. 6.

<sup>36</sup> *Id.* at 6-7. See also CA *rollo*, p. 17-18.

<sup>37</sup> *People v. Gumayao*, *supra* note 29.

<sup>38</sup> CA *rollo*, p. 69. See also TSN, March 13, 2012, p. 14.

<sup>39</sup> TSN, May 4, 2010, pp. 5-8.

<sup>40</sup> See *People v. Rubiso*, *supra* note 27 at 381-382.

On this point, Dr. Salen testified that the stabbing wound sustained by the victim *at the back portion of his body* can be characterized as *fatal*, as it penetrated the intestines, mesentery and right lobe of the victim's liver, *viz.*:

[ACP LEA LLAVORE:]

Q: Mr. [W]itness, could you please describe the wounds and the injuries which are in the Anatomical Sketch?

A: The first stab wound was on the back portion and the second stab wound was on the left thigh, it was [a] thru and thru stab wound, there is an entry and there is an exit wound, ma'am.<sup>41</sup>

X X X X

Q: Mr. [W]itness, which of these two wounds were [sic] fatal?

A: The stab wound [at] the back, ma'am.

Q: Why do you consider this as a fatal wound?

A: Considering that **it hits** [sic] **the major organs of the body**[,] it is considered very fatal[;] it hits [sic] the intestines[,] the mesentery and the right lobe of the liver, ma'am.

Q: How soon would death be expected from the time of the infliction of the stab wound on the back?

A: This stab wound will not cause an immediate [death], but it will cause death when no medical intervention [is administered on the victim], ma'am.

Q: If there is no medical intervention, how long will [sic] death occur?

A: As short as 20 to 30 minutes, ma'am.<sup>42</sup> (Emphasis supplied)

And *third*, appellant's own account of the stabbing incident is simply *inconsistent* with the evidence on record.

Appellant testified that he stabbed the victim just once on the left side, right below the armpit,<sup>43</sup> while he was underneath the victim on the ground.<sup>44</sup> Under these circumstances, the direction of the stab wound should have been a downward thrust. However, based on Dr. Salen's post-mortem examination of the victim's body, the victim sustained *two stab wounds*, and the direction of the stab wound at the victim's back was an upward, *not downward, thrust*, *viz.*:

[ACP LEA LLAVORE:]

Q: With respect to the stab wound [at] the back, you said that the entry point was [at] the back[,] Mr. [W]itness, so what would be the relative position

<sup>41</sup> TSN, July 12, 2011, p. 7.

<sup>42</sup> Id. at 7-8.

<sup>43</sup> TSN, March 13, 2012, p. 14.

<sup>44</sup> Id. at 12-13.

of the attacker at the time that the wound was inflicted?

A: The most probable position was that **the assailant was at the back of the victim**, ma'am.<sup>45</sup> (Emphasis supplied)

x x x x

Q: Mr. [W]itness, I am inviting your attention to Exh. "M" which is the medico legal report, would you be able to say [whether the] thrust was it [sic] an upward stroke or downward stroke?

A: The direction of the stab wound was anterior wards or from the back going to the front, it was upward and lateral wards or from the middle going outside, ma'am.

Q: Would you be able to say if the victim was taller or shorter than the attacker?

A: No ma'am, as long as the direction was upward, **it is an upward thrust.**

Q: But the victim was definitely standing up, is that correct[?] [I]n an upright position?

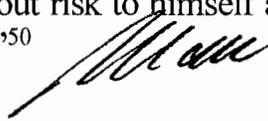
A: Yes, ma'am.<sup>46</sup> (Emphasis supplied)

We consider, too, the *absence of any physical evidence* showing that appellant sustained some injury from having been allegedly attacked by the victim. In fact, based on his Medical Certificate<sup>47</sup> dated January 24, 2008, appellant showed no external signs of any physical injury at the time of examination.

All told, appellant's *self-serving* and *unsubstantiated* allegations that the victim was the unlawful aggressor must necessarily fail when weighed against the positive, straightforward and overwhelming evidence of the prosecution. After all, "[s]elf-defense cannot be justifiably appreciated when it is uncorroborated by independent and competent evidence or when it is extremely doubtful by itself."<sup>48</sup>

We also agree with the CA's conclusion that the victim's killing was qualified by treachery.<sup>49</sup>

"There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make."<sup>50</sup>



<sup>45</sup> TSN, July 12, 2011, p. 10.

<sup>46</sup> Id. at 11.

<sup>47</sup> Records, p. 7.

<sup>48</sup> *People v. Nugas*, supra note 33 at 176.

<sup>49</sup> *Rollo*, p. 10.

<sup>50</sup> *People v. Alajay*, 456 Phil. 83, 92 (2003).

In this case, the records clearly show that the victim's killing was attended by treachery, considering that: (a) the victim was *fatally* stabbed<sup>51</sup> by appellant *from behind*,<sup>52</sup> (b) appellant was *holding the victim by the neck* with his left arm when he delivered the first stabbing blow,<sup>53</sup> and (c) the attack was so *sudden* and *unexpected* that the victim was unable to defend himself.<sup>54</sup>

The totality of these circumstances clearly shows that the means of execution of the attack gave the victim **no opportunity to defend himself** or to retaliate, and said means of execution was **deliberately** adopted by appellant.<sup>55</sup>

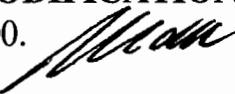
Given these circumstances, we find no cogent reason to overturn the factual findings and conclusions of the lower courts as they are supported by the evidence on record and applicable laws.

We likewise affirm the award of loss of earning capacity in the amount of ₱1,383,286.95, considering that: (a) the victim died at age 27;<sup>56</sup> and (b) before he died, he was earning ₱300.00/day as a butcher.<sup>57</sup>

$$\begin{aligned}
 \text{Net Earning Capacity} &= \text{life expectancy} \times [\text{gross annual income (GAI)} \\
 &\quad - \text{living expenses}] \\
 &= \frac{2}{3} [80\text{-age at time of death}] \times [\text{GAI} - 50\% \text{ of GAI}] \\
 &= \frac{2}{3} [80-27] \times [\text{₱}300.00 \times 261^{58} - 50\% \text{ of GAI}] \\
 &= \frac{2}{3} (53) \times [\text{₱}78,300.00 - \text{₱}39,150.00] \\
 &= 35.333 \times \text{₱}39,150.00 \\
 &= \text{₱}1,383,286.95
 \end{aligned}$$

However, we deem it appropriate to *increase* the amount of exemplary damages from ₱30,000.00 to ₱75,000.00 in conformity with prevailing jurisprudence.<sup>59</sup>

**WHEREFORE**, the appeal is **DISMISSED**. The September 10, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06741 is hereby **AFFIRMED with MODIFICATION** in that the award of exemplary damages is increased to ₱75,000.00.



<sup>51</sup> TSN, July 12, 2011, p. 7-8.

<sup>52</sup> Id at 10.

<sup>53</sup> TSN, February 17, 2009, p. 5.

<sup>54</sup> TSN, June 23, 2009, pp. 32 and 35.

<sup>55</sup> See *People v. Alajay*, supra note 50 at 92.

<sup>56</sup> See Certificate of Death, records, p. 8.

<sup>57</sup> Id. at 45.

<sup>58</sup> Number of working days in a year. See *People v. Adlawan*, 425 Phil. 804, 816 (2002).

<sup>59</sup> *People v. Jugueta*, 783 Phil. 806, 847-848 (2016).

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*  
*Acting Chairperson*

  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

  
**NOEL GIMENEZ TIJAM**  
*Associate Justice*

  
**ALEXANDER G. GESMUNDO**  
*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.

  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*  
*Acting Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.



**ANTONIO T. CARPIO**  
*Acting Chief Justice*

