



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, **G.R. No. 240542**
 Plaintiff-appellee,

Present:

-versus-

LEONEN, J., *Chairperson,*
 LAZARO-JAVIER,
 LOPEZ, M.,
 LOPEZ, J., and
 KHO, JJ.

BALTAZAR ACHAY, JR. y
DOCIL,
 Accused-appellant.

Promulgated:
JAN 30 2023

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DECISION

LEONEN, J.:

The defenses of denial and alibi cannot outweigh a witness' positive identification of the accused. Further, for an alibi to prosper, the accused must prove the physical impossibility of their presence at the scene of the crime or within its immediate vicinity, "[t]he excuse must be so airtight that it would admit of no exception."¹

This Court resolves an appeal from the Court of Appeals Decision² affirming with modification the Regional Trial Court's Decision:³ (1)

¹ *People v. Dillatan*, G.R. No. 212191, September 5, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64393>> [Per J. Peralta, Third Division].

² *Rollo*, pp. 2-18. The July 18, 2017 Decision in CA-G.R. CR-HC No. 08229 was penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Eduardo B. Peralta, Jr. and Zenaida T. Galapate-Laguilles of the Special Third Division, Court of Appeals, Manila.

acquitting Baltazar Achay, Jr. (Achay) of violation of Section 10(a) of Republic Act No. 7610, but convicting him of Slight Physical Injuries; (2) acquitting him of Attempted Murder, but convicting him of Less Serious Physical Injuries; (3) acquitting him of Attempted Murder, but convicting him of Slight Physical Injuries; and (4) convicting him of Murder.

Achay was charged in four separate Informations for four distinct crimes. In the first Information for Criminal Case No. 13-300490, he was charged with violation of Section 10(a) of Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act:

That on or about September 6, 2013, in the City of Manila, Philippines, the said accused, armed with a firearm but not having been issued a license thereof, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of two year-old minor ADRIAN DAGULO y PICARA, by then and there firing the said unlicensed firearm described as .45 caliber pistol handgun Colt MK IV Series 80 with black handle, stainless slide SN345670 with impressions "BAD," with the bullet grazing his head, which debases and 'demeans the intrinsic worth and dignity of the said child as a human being, an act prejudicial to his normal growth and development, to the damage and prejudice of said Adrian Dagulo.⁴

Achay was then charged with two counts of attempted murder. For Criminal Case No. 13-300491, the accusatory portion of the Information reads:

That on or about September 6, 2013, in the City of Manila, Philippines, the said accused, with intent to kill, with treachery and evident premeditation, and armed with a firearm but not having been issued a license thereof, described as .45 caliber pistol handgun Colt MK IV Series 80 with black handle, stainless slide SN345670 with impressions "BAD," did then and there willfully, unlawfully and feloniously commence the commission of the crime of murder directly by overt acts, by then and there firing at MARILOU ESTRELLA REYES using the said firearm described above, thereby inflicting upon the said Marilou Estrella Reyes gunshot wound, but the said accused did not perform all acts of execution which should have produced the crime of murder by reason of some cause or accident other than his spontaneous desistance, that is, the injuries sustained by Marilou Estrella Reyes is only slight in nature.⁵

For Criminal Case No. 13-300492, the accusatory portion of the Information reads:

³ CA *rollo*, pp. 50-86. The February 10, 2016 Decision in Crim. Case Nos. 13-300490-93 was penned by Presiding Judge Emily L. San Gaspar-Gito of the Regional Trial Court, Branch 5, Manila.

⁴ *Id.* at 51.

⁵ *Id.* at 52.

That on or about September 6, 2013, in the City of Manila, Philippines, the said accused, with intent to kill, with treachery and evident premeditation, and armed with a firearm but not having been issued a license thereof, described as .45 caliber pistol handgun Colt MK IV Series 80 with black handle, stainless slide SN345670 with impressions "BAD," did then and there willfully, unlawfully and feloniously commence the commission of the crime of murder directly by overt acts, by then and there firing at JUANITO FAUSTO JR. y TOMAS using the said firearm described above, thereby inflicting upon the said Juanito Fausto Jr. gunshot wound, but the said accused did not perform all acts of execution which should have produced the crime of murder by reason of some cause or accident other than his spontaneous desistance, that is, the injuries sustained by Juanito Fausto Jr. is only slight in nature.⁶

For the fourth information, Achay was charged with murder in Criminal Case No. 13-300493:

That on or about September 6, 2013, in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, real identity and present whereabouts are still unknown and mutually helping one another, with intent to kill, with treachery and evident premeditation, and armed with a firearm but not having been issued a license thereof, described as .45 caliber pistol handgun Colt MK IV Series 80 with black handle, stainless slide SN345670 with impressions "BAD," and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of ROLANDO REYES y GINO-GINO Chairman of Barangay 130, Zone 11, District 1, Manila, by then and there successively shooting him with the mentioned unlicensed firearm, hitting him on the different parts of his body, thereby inflicting upon the said Brgy. Chairman Rolando Reyes y Gino-Gino gunshot wounds which are the direct cause of his death immediately thereafter.

Contrary to law.⁷

Achay was arraigned and pleaded not guilty to all four charges against him. After pre-trial was terminated, trial then ensued.⁸

The prosecution evidence showed that at about 9:15 a.m. on September 6, 2013, Chairperson Rolando Reyes (Chairperson Rolando), his wife Marilou Estrella Reyes (Marilou), Concha Ababao, Merced Guamos (Guamos), and Kagawad Ricardo Feliciano (Kagawad Ricardo) were conversing inside the barangay hall located at corner Buendia and Playa Streets, Balut, Tondo, Manila. Thereafter, Achay barged in with a .45 caliber pistol and shot Chairperson Rolando twice, hitting him on the neck and on the cheek. The bullet that hit Chairperson Rolando's neck then went

⁶ Id. at 52.

⁷ Id. at 53.

⁸ Id.

through and hit Marilou's right foot. Achay immediately rushed out of the barangay hall after the attack.⁹

In the meantime, Roberto Socorro (Socorro) was walking along an alley in Villado Street when he came face to face with a man with a .45 caliber gun. He would later identify this man as Achay. Achay pointed a gun at him and began to frisk him. Just then, another man appeared and told Achay "*halika na.*" Achay stopped frisking Socorro and ran towards the bridge with the second man.¹⁰

About five to ten minutes later, Socorro saw Juanito Fausto, Jr. (Fausto) and told him that a man threatened him with a gun. They both ran after Achay and his companion, but Achay fired at and hit Fausto's right calf. The bullet that exited Fausto's calf grazed the head of his grandchild, two-year-old Adrian Dagulo (Dagulo).¹¹

Fausto and Dagulo were then brought to Tondo General Hospital. There, Dr. Paul Nimrod Firaza examined Dagulo and found that he suffered positive laceration, the probable cause of which was a gun shot, on the frontal area 3.5 c.m., which had a healing duration of less than nine days.¹²

Dr. Minerva Decena examined Fausto and found that he suffered a gunshot wound on the "lower left leg back portion[,]'" which would have a healing duration of nine days.¹³ Both Fausto and Dagulo were confined in the hospital for two days.¹⁴

Chairperson Rolando and Marilou were also brought to the Tondo General Hospital. However, the doctors failed to revive Chairperson Rolando.¹⁵

Dr. Tyrone Lalas opted not to remove the bullet in Marilou's foot as it was embedded and removing it would only cause her great pain. She was confined in the hospital for a day and the attending physician opined that she would recover from her injury in less than a month.¹⁶

Two days later,¹⁷ the Station Commander of Police Station 1 formed a team composed of 11 police officers to check on the veracity of a report

⁹ Id. at 54.

¹⁰ Id. at 57.

¹¹ Id. at 58.

¹² Id. at 59.

¹³ Id.

¹⁴ Id. at 58.

¹⁵ Id. at 54.

¹⁶ Id. at 54-55.

¹⁷ *Rollo*, p. 7.

regarding a person with a gun at Balut, Tondo, Manila. The team then proceeded to Building 21, Permanent Housing, Balut, Tondo, Manila.¹⁸

The police officers observed a man with a gun tucked on his waist standing at the building's *pasilyo*. Police Officer II Darwin Arboleda (PO2 Arboleda) approached the man and introduced himself as a police officer. Thereafter, he immediately seized the gun from the man he later identified as Achay. PO2 Arboleda proceeded to frisk Achay and recovered a magazine, while Police Senior Inspector Vergara¹⁹ (PS/Insp. Vergara) handcuffed and informed Achay of his constitutional rights as an accused.²⁰

After arresting Achay, the police officers received word that he shot Chairperson Rolando; thus, they brought him back to the police station and turned him over, along with the confiscated firearm and magazine, to Investigator Senior Police Officer 2 Arnel Tobias.²¹

For the defense, Achay denied the accusations against him. He claimed that from September 6 to 8, 2013, he was in his house at Permanent Housing, Barangay 128, Balut, Tondo, Manila with his common-law wife Jennifer Sucaldito (Jennifer), sister-in-law Rochelle Boco (Rochelle), and his nephews.²²

On September 8, 2013, Achay claimed that he was buying rice when several men pointed their guns at him and informed him that he was being arrested. The police officers then handcuffed him, took off his shirt, and covered his head with it. They then proceeded to pin him down, put a gun in his hands, and forced him to confess. He added that he was electrically tortured from 4:00 p.m. to 9:00 p.m. While he was being tortured, he insisted that he was not involved in the killing of Chairperson Rolando. However, he eventually admitted ownership of the gun to end his ordeal.²³

Jennifer and Rochelle corroborated Achay's statement that he was home with them from September 6 to 8, 2013.²⁴

On February 10, 2016,²⁵ the Regional Trial Court acquitted Achay for violation of Section 10(a) of Republic Act No. 7610 but convicted him of Slight Physical Injuries. He was likewise acquitted of two counts of Attempted Murder, but he was convicted of Less Serious Physical Injuries and Slight Physical Injuries. However, the Regional Trial Court found him

¹⁸ CA *rollo*, p. 59.

¹⁹ PS/Insp. Vergara's full name was not provided in any of the attachments in the *rollo*.

²⁰ CA *rollo*, p. 60.

²¹ Id.

²² Id. at 61.

²³ Id. at 61-62.

²⁴ Id. at 63-64.

²⁵ Id. at 50-86.

guilty beyond reasonable doubt for the crime of Murder. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing disquisition, accused BALTAZAR ACHAY JR. y DOCIL @ "ATCHAY" [sic] is hereby:

1) ACQUITTED in Criminal Case No. 13-300490, for the offense of Violation of Section 10 (a) of *Republic Act No. 7610*. He is however CONVICTED of the felony of Slight Physical Injuries defined and penalized under Article 266 of the *Revised Penal Code*. He is sentenced (a) to suffer imprisonment for twenty (20) days; (b) to pay Adrian actual damages of P 4,565.00 [sic] and P5,000.00 as moral damages; and (c) to pay costs;

2) ACQUITTED in Criminal Case No. 13-300491, for the felony of Attempted Murder. He is however CONVICTED of the felony of less serious physical injuries defined and penalized under Article 265 of the *Revised Penal Code*. He is sentenced (a) to suffer imprisonment for four (4) months; (b) to pay Marilou actual damages of P1,066.00 and P5,000.00 as moral damages; and (c) to pay costs;

3) ACQUITTED in Criminal Case No. 13-300492, for the felony of Attempted Murder. He is however CONVICTED of the felony of slight physical injuries defined and penalized under Article 266 of the *Revised Penal Code*. He is sentenced (a) to suffer imprisonment for twenty (20) days; (b) to pay Juanito actual damages of P 707.00 and P5,000.00 as moral damages; and (c) to pay costs;

4) CONVICTED in Criminal Case No. 13-300493, for the felony of Murder defined and penalized under Article 248 of the *Revised Penal Code*. He is sentenced (a) to suffer the penalty of *reclusion perpetua*; (b) to pay the Heirs of Chairman Rolando the amounts of (i) P44,225.00 as actual damages; (ii) P50,000.00 as civil indemnity, (iii) P50,000.00 as moral damages, and (iv) P30,000.00 as exemplary damages pursuant to prevailing jurisprudence; and (c) to pay the costs.²⁶

In finding Achay not guilty of child abuse as penalized by Section 10(a) of Republic Act No. 7610, the trial court discussed the lack of intent on Achay's part to shoot Dagulo. It found that Achay did not directly shoot at the child and that the injury was caused by the bullet, which exited Fausto's calf. Dagulo had a healing period of less than nine days; hence, Achay was convicted of Slight Physical Injuries instead.²⁷

With regard to the two counts of attempted murder, the trial court acquitted Achay of both charges as it found that the essential element of intent to kill was neither present in Marilou's case nor Fausto's.²⁸ It pointed out that Marilou's injury was from the same bullet that passed through her husband's neck. While Achay clearly intended to kill Chairperson Rolando, the same could not be said for Marilou. Hence, for the nonfatal wound that

²⁶ Id. at 85-86.

²⁷ Id. at 65-70.

²⁸ Id. at 71-73.

would take Marilou “less than a month after the treatment”²⁹ to recover from, the trial court found Achay guilty of Less Serious Physical Injuries.³⁰

In the same manner, the trial court reasoned that Achay only fired at Fausto’s calf, showing that he did not intend to kill Fausto but only desired to immobilize him.³¹ Achay was acquitted of Attempted Murder but convicted of Slight Physical Injuries as the wound suffered by Fausto had a healing period of nine days.³²

However, for the death of Chairperson Rolando, the Regional Trial Court ruled that Achay was guilty beyond reasonable doubt of Murder. It found that treachery was present in the manner Achay killed the chairperson. Nonetheless, it did not appreciate the qualifying circumstance of evident premeditation. The trial court stressed that none of the witnesses testified as to when Achay decided to kill Chairperson Achay, as it was their first time to see him on the day of the killing.³³

The Regional Trial Court gave full credence to how the prosecution witnesses, Guamos and Kagawad Ricardo, established Achay as the person who shot Chairperson Rolando. In addition to the firm identification offered by these two witnesses who were in the barangay hall during the shooting incident itself, Fausto and Socorro likewise pointed to Achay as the person who passed by them coming from the direction of the barangay hall.

Against these testimonies, the Regional Trial Court stressed that Achay’s defense of alibi significantly pales in comparison. It likewise considered the proximity between the barangay hall and Permanent Housing, Barangay 128, where Achay claimed to be on the day of the incident, and concluded that they were in the same barangay. Thus, it was not physically impossible for Achay to have been at the scene of the crime.³⁴

With regard to civil liability, the Regional Trial Court was convinced that Achay’s victims were able to substantiate their claims for actual damages. Nonetheless, it found that Chairperson Rolando’s loss of earning capacity was not supported by documentary evidence.³⁵

Aggrieved, Achay filed a Notice of Appeal³⁶ to which the Regional Trial Court gave due course.³⁷

²⁹ Id. at 73.

³⁰ Id. at 74.

³¹ Id. at 73.

³² Id. at 74.

³³ Id. at 74–77.

³⁴ Id. at 78–83.

³⁵ Id. at 83–85.

³⁶ Id. at 16.

³⁷ Id. at 17.

In its assailed Decision,³⁸ the Court of Appeals affirmed the Regional Trial Court Decision with regard to Marilou and Dagulo's case, but modified the finding of Slight Physical Injuries to Attempted Homicide as to Fausto's case. It also affirmed Achay's conviction of Murder but modified the amount of damages awarded. The dispositive portion of its Decision reads:

WHEREFORE, premises considered, the February 10, 2016 Decision of the Regional Trial Court, Branch 5, Manila in Criminal Case Nos. Case Nos. [sic] 13-300490 & 13-300491 are AFFIRMED IN TOTO.

In Criminal Case No. 13-300492, accused-appellant is found guilty beyond reasonable doubt of Attempted Homicide and is sentenced to suffer an indeterminate prison penalty from four (4) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. He is ordered to pay Juanito Fausto, Jr. P20,000.00 as civil indemnity and P20,000.00 as moral damages and P707.00 as actual damages.

The Decision in Criminal Case No. 13-300493 is modified in so far as the damages awarded to the heirs of Rolando Reyes are increased to P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary damages. All damages shall bear interest at the rate of six percent (6%) per annum from the finality of this judgment until fully paid. The penalty of *reclusion perpetua* imposed upon him by the trial court is correct.

SO ORDERED.³⁹

Similar to the Regional Trial Court, the Court of Appeals found that the prosecution witnesses' testimonies, where they positively identified Achay as the assailant, trumped his defense of denial and alibi.⁴⁰ It held that his claim of illegal arrest did not hold water to warrant his acquittal, as his conviction was convincingly supported by those who saw him committing the crimes.⁴¹

The Court of Appeals upheld Achay's conviction for Slight Physical Injuries instead of violation of Section 10(a) of Republic Act No. 7610 for the injury sustained by Dagulo. The same was true for Achay's acquittal for the charge of Attempted Murder and his conviction for Less Serious Physical Injuries for Marilou's injury.⁴²

However, for Fausto's case, the Court of Appeals discussed that even if Fausto was hit only on his calf and even if the injury was not fatal, the

³⁸ *Rollo*, p. 2-18.

³⁹ *Id.* at 17-18.

⁴⁰ *Id.* at 12-13.

⁴¹ *Id.* at 13.

⁴² *Id.* at 14.

circumstances attending Achay's firing at Fausto show that Achay intended to kill him. More importantly, Achay's motive to kill Fausto was to guarantee his escape.⁴³

The Court of Appeals then ruled that the prosecution was able to prove Achay's guilt for the murder of Chairperson Rolando beyond reasonable doubt as the elements of murder were established and treachery attended the killing.⁴⁴ However, it modified the actual damages to reflect the amount in the receipts presented into evidence.⁴⁵

Achay filed his Notice of Appeal⁴⁶ which the Court of Appeals gave due course to.⁴⁷ This Court⁴⁸ then directed the parties to file their supplemental briefs. Both parties filed their respective manifestations⁴⁹ stating that they will no longer file supplemental briefs and will instead be adopting the briefs they filed before the Court of Appeals.

In his Appellant's Brief,⁵⁰ Achay insists that the prosecution failed to prove that it was him who shot Chairperson Rolando and Fausto, and who inflicted injuries on Dagulo and Marilou. He maintains his innocence by reiterating that he was home at the time Chairperson Rolando was killed. Further, at the time of his arrest, he was merely buying rice, making the warrantless arrest illegal. Lastly, he asserts that the qualifying circumstance of treachery was not proven to have attended the killing of Chairperson Rolando.⁵¹

On the other hand, the People of the Philippines in its Appellee's Brief⁵² claims to have successfully established Achay as the perpetrator of the crimes, highlighting that its eyewitnesses did not waver in pointing at Achay as the person who shot Chairperson Rolando and Fausto.⁵³ It also contends that Achay employed treachery when he shot Chairperson Rolando.⁵⁴

The People of the Philippines then maintains that with Achay's active participation in the trial, "he is deemed to have waived his right to question the validity of his arrest, thus curing whatever defect may have attended his arrest."⁵⁵

⁴³ Id. at 15.

⁴⁴ Id. at 15-16.

⁴⁵ Id. at 17.

⁴⁶ *CA rollo*, pp. 158-160

⁴⁷ Id. at 164.

⁴⁸ *Rollo*, pp. 24-25.

⁴⁹ Id. at 30-33 and 35-39.

⁵⁰ *CA rollo*, pp. 31-48.

⁵¹ Id. at 41-46.

⁵² Id. at 100-130.

⁵³ Id. at 116-121.

⁵⁴ Id. at 122-127.

⁵⁵ Id. at 121.

Nonetheless, it points out that even if the weapons seized from Achay become inadmissible due to the alleged illegality of his arrest, his guilt for the multiple crimes charged against him had been proven beyond reasonable doubt through the testimony of several prosecution witnesses.⁵⁶

The two issues for this Court's Resolution are:

First, whether the prosecution proved beyond reasonable doubt that accused-appellant Baltazar Achay, Jr. y Docil committed the crimes charged against him; and

Second, whether accused-appellant's warrantless arrest was lawful.

I

Murder is defined and penalized under Article 248 of the Revised Penal Code which provides:

ARTICLE 248. Murder. — Any person who, not falling within the provisions of article 246 shall kill another, shall be guilty of murder and shall be punished by reclusión temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

⁵⁶ Id. at 128.

For an act to be considered Murder, the following elements should be satisfied: (1) that a person was killed; (2) it was the accused who killed such person; (3) the killing is neither parricide nor infanticide; and (4) the killing was attended by any of the enumerated circumstances.

Guamos and Kagawad Ricardo, who were inside the barangay hall during the shooting incident, consistently and categorically pointed to accused-appellant as the one who shot and killed Chairperson Rolando.

Accused-appellant's defenses of denial and alibi cannot outweigh the positive identification by a witness. "[F]or the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the locus delicti or within its immediate vicinity. The excuse must be so airtight that it would admit of no exception."⁵⁷ In *People v. Acabado*:⁵⁸

Alibi is one of the weakest defenses, and is easily fabricated. We have examined the testimonies in support of this defense of alibi and have found the same unworthy of credence. Even if the alibi were to be given credence it would not constitute a good defense because the appellant could easily have taken time to go to the barrio of San Isidro in half an hour by bicycle or in less than two hours by foot and because of the positive identification of appellant, in the circumstances, by Sunday Jabole and by the victim himself.⁵⁹

Here, accused-appellant's denial and alibi cannot prevail over the positive identification made by the witnesses who were not shown to have harbored any ill-motives against him.

Also, to reiterate, the place where accused-appellant claimed to be at the time of the incident—Permanent Housing, Barangay 128—is in the same barangay as the barangay hall. Considering the proximity of these two places, the physical impossibility of accused-appellant to be in the barangay hall at the time of Chairperson Rolando's killing is rendered illusory.

The Court of Appeals was also correct in not giving credence to the corroborating testimonies of accused-appellant's common-law wife and sister-in-law, as their relationship makes their testimony naturally suspect. *People v. Sumalinog*⁶⁰ explains:

⁵⁷ *People v. Dillatan*, G.R. No. 212191, September 5, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64393>> [Per J. Peralta, Third Division], citing *People v. Manchu, et al.*, 593 Phil. 398 (2008) [Per J. Nachura, Third Division].

⁵⁸ 136 Phil. 154 (1969) [Per J. Capistrano, *En Banc*].

⁵⁹ *Id.* at 156-157.

⁶⁰ *People v. Sumalinog*, 466 Phil. 637 (2004) [Per J. Carpio, First Division], citing *People v. Batidor*, 362 Phil. 688 (1999) [Per J. Pardo, First Division]; and *People v. Enoja*, 378 Phil. 623 (1999) [Per J. Quisumbing, Second Division].

[I]f that witness testifies to support the specific defense of alibi, courts view his testimony with skepticism. This is due to the very nature of alibi that the witness affirms. One can easily fabricate an alibi and ask friends and relatives to corroborate it. When a defense witness is a relative of an accused whose defense is alibi, courts have more reason to view such testimony with skepticism.⁶¹ (Citations omitted)

Prosecution evidence then established the presence of treachery to qualify the killing of Chairperson Rolando to murder.

Treachery, as an aggravating circumstance, is present “when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.”⁶²

*People v. Umawid*⁶³ instructs that two requisites must be satisfied for treachery to be appreciated: (1) “the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate;” and (2) “the means of execution was deliberate or consciously adopted.”⁶⁴

Chairperson Rolando, unarmed and innocently having a conversation inside the barangay hall, had no opportunity to defend himself from accused-appellant’s attack. Accused-appellant barged in the barangay hall, shouted “Chairman!” and fired two shots at Chairperson Rolando.⁶⁵

Likewise, it is evident that accused-appellant deliberately utilized the surprise attack to prevent Chairperson Rolando from fighting back or deflecting the shots at him. As observed by the Court of Appeals: “[t]he stealth, swiftness[,] and methodical manner by which the attack was carried out gave the victim no chance at all to evade the shots and defend himself from the unexpected attack.”⁶⁶

Finally, the Court of Appeals did not err in imposing the penalty of *reclusion perpetua* considering the absence of any generic aggravating or mitigating circumstance attending the commission of the offense.

⁶¹ Id. at 650.

⁶² REV. PEN. CODE, art. 14, sec. 16.

⁶³ 735 Phil. 737 (2014) (Resolution) [Per J. Perlas-Bernabe, Second Division].

⁶⁴ Id. at 746.

⁶⁵ CA rollo, p. 76.

⁶⁶ Rollo, p. 16.

II

The Court of Appeals also did not err in convicting accused-appellant of Attempted Homicide in relation to his attack on Fausto.

Homicide is punished in Article 249 of the Revised Penal Code which provides:

ARTICLE 249. Homicide. — Any person who, not falling within the provisions of article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

The elements of Homicide under Article 249 of the Revised Penal Code are: (1) that a person was killed; (2) the accused killed such person without any justifying circumstance; (3) accused had the intention to kill, which is presumed; and (4) the killing was not attended by any of the qualifying circumstances of murder.

The Regional Trial Court acquitted accused-appellant of Attempted Murder but convicted him of Slight Physical Injuries as it gave weight to the fact that the bullet only hit Fausto's calf when accused-appellant shot him. It posited that this showed that accused-appellant did not intend to kill Fausto but only desired to immobilize him in order to facilitate his escape.⁶⁷

In modifying the Regional Trial Court Decision and convicting accused-appellant of Attempted Homicide, the Court of Appeals pointed out that the circumstances attending accused-appellant's firing at Fausto clearly showed his intention to kill, as he was trying to guarantee his escape:

With regard to the case of private complainant Fausto, this Court, finds that his conviction for slight physical injuries is erroneous.

The following factors were considered by the Supreme Court in determining the presence of intent to kill, namely: (1) motive, (2) the means used by the malefactors; (3) the nature, location, and number of wounds sustained by the victim; (4) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (5) the circumstances under which the crime was committed and the motives of the accused. In the case at bar, Achay shot private complainant Juanito Fausto while the latter was trying to apprehend accused-appellant for killing Chairman Rolando. Although the injury inflicted upon Fausto was at the right calf only and not fatal, accused's intent to kill is shown by the weapon he used to commit the crime which was a .45 caliber. Furthermore, the fact that Fausto was trying to pursue Achay for killing Chairman Rolando, accused-appellant had the motive to kill Fausto to

⁶⁷ Id. at 73.

ensure his escape. However, the prosecution failed to prove treachery and evident premeditation to qualify the killing to murder. Thus, Achay is guilty beyond reasonable doubt of attempted homicide as the wound sustained by Fausto was not fatal.⁶⁸

It must be remembered that Fausto was trying to apprehend accused-appellant for having killed Chairperson Rolando, when accused-appellant fired at him. This circumstance indubitably shows that accused-appellant intended to kill Fausto to ensure his escape, and it is irrelevant that Fausto only got shot on his calf. The intent to kill was still duly proven.

Nonetheless, the prosecution failed to establish treachery and evident premeditation to qualify the crime to murder. In *People v. Villonez*,⁶⁹ this Court ruled that “[t]reachery may still be appreciated even when the victim was forewarned of danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.”⁷⁰

Here, Fausto actively pursued accused-appellant and, unlike Chairperson Rolando, was not a victim of a surprise attack. The shooting was thus not premeditated as it clearly happened during an impromptu chase, with accused-appellant shooting at Fausto to prevent his capture.

The Court of Appeals likewise did not err in acquitting accused-appellant of two counts of Attempted Murder for the injuries inflicted on Marilou and Dagulo. It is settled that if there was no intent to kill, the accused should only be liable for physical injuries, not attempted or frustrated homicide.⁷¹

III

As to the issue on the validity of accused-appellant’s warrantless arrest, this Court notes that the police officers were tasked to verify a report that there was an armed person in Building 21, Permanent Housing, Barangay 128, Balut, Tondo, Manila.

It is well-established that a search and seizure, to comply with the constitutional guarantee against unreasonable searches and seizures,⁷² must be carried out through a judicial warrant. Thus, any evidence resulting from an unreasonable search and seizure “shall be inadmissible for any purpose in

⁶⁸ Id. at 15.

⁶⁹ 359 Phil 95 (1998) [Per J. Davide, Jr., First Division].

⁷⁰ Id. at 112.

⁷¹ *Palaganas v. People*, 533 Phil. 169, 193 (2006) [Per J. Chico-Nazario, First Division]; see also *People v. Pagador*, 409 Phil. 338, 351–352 (2001) [Per J. Bellosillo, En Banc].

⁷² CONST., art. III, sec. 2.

any proceeding.”⁷³ But the constitutional proscription only pertains to *unreasonable* searches and seizures, and a “stop and frisk” is one of those recognized instances of reasonable warrantless searches and seizures.⁷⁴

Stop and frisk searches are conducted by State agents to deter crime.⁷⁵ *People v. Cogaed*⁷⁶ emphasized that stop and frisk searches, though necessary, should never be at the expense of a citizen’s constitutional right to privacy:

“Stop and frisk” searches (sometimes referred to as Terry searches) are necessary for law enforcement. That is, law enforcers should be given the legal arsenal to prevent the commission of offenses. However, this should be balanced with the need to protect the privacy of citizens in accordance with Article III, Section 2 of the Constitution.

The balance lies in the concept of “suspiciousness” present in the situation where the police officer finds himself or herself in. This may be undoubtedly based on the experience of the police officer. Experienced police officers have personal experience dealing with criminals and criminal behavior. Hence, they should have the ability to discern — based on facts that they themselves observe — whether an individual is acting in a suspicious manner. Clearly, a basic criterion would be that the police officer, with his or her personal knowledge, must observe the facts leading to the suspicion of an illicit act.⁷⁷ (Citation omitted)

In *Manibog v. People*,⁷⁸ this Court underscored that to uphold the validity of a stop and frisk search, “the arresting officer should have personally observed two (2) or more suspicious circumstances, the totality of which would then create a reasonable inference of criminal activity to compel the arresting officer to investigate further.”⁷⁹

In *Manibog*, police officers received information that a security aide of a mayor was carrying a gun while there was an election gun ban. The police officers verified the report and found the mayor’s aide outside of a government building, with what appeared to be a firearm tucked inside his belt, under his shirt. This Court upheld the validity of the stop and frisk conducted on the petitioner, ruling that “the combination of the police asset’s tip and the arresting officers’ observation of a gun-shaped object under petitioner’s shirt already suffices as a genuine reason for the arresting officers to conduct a stop and frisk search on petitioner.”⁸⁰

⁷³ CONST., art. III, sec. 3(2).

⁷⁴ *People v. Aruta*, 351 Phil. 868, 879–880 (1998) [Per J. Romero, Third Division].

⁷⁵ *People v. Cogaed*, 740 Phil. 212, 229 (2014) [Per J. Leonen, Second Division].

⁷⁶ 740 Phil. 212 (2014) [Per J. Leonen, Second Division].

⁷⁷ *People v. Cogaed*, 740 Phil. 212, 229–230 (2014) [Per J. Leonen, Second Division].

⁷⁸ G.R. No. 211214, March 20, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65164>> [Per J. Leonen, Third Division].

⁷⁹ Id.

⁸⁰ Id.

Here, police officers also received a tip that someone was carrying a gun in Building 21, Permanent Housing, Balut, Tondo. When the police officers went to verify the report, they saw accused-appellant with what appeared to be a gun tucked in his waistband. When they frisked him, they confirmed that he was indeed carrying a gun and a loaded magazine. Just like in *Manibog*, the stop and frisk conducted on accused-appellant was an exemption to the constitutional proscription against the unreasonable searches and seizures.

Still, as plaintiff-appellee pointed out, even if accused-appellant's arrest was eventually held to be illegal, and the seized gun and magazine deemed inadmissible for evidentiary purposes, his guilt for the crimes charged against him was still proven beyond reasonable doubt through the testimony of the prosecution's multiple eyewitnesses.⁸¹ Thus, his conviction for the multiple crimes against him must stand.

ACCORDINGLY, the July 18, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08229 is **AFFIRMED**.

For Criminal Case No. 13-300490, accused-appellant Baltazar Achay, Jr. y Docil is found **GUILTY** beyond reasonable doubt of the crime of Slight Physical Injuries. He is **SENTENCED** to suffer imprisonment for 20 days; to **PAY** Adrian Dagulo the amounts of ₱4,565.00 as actual damages; and ₱5,000.00 as moral damages;

For Criminal Case No. 13-300491, accused-appellant is found **GUILTY** beyond reasonable doubt of the crime of Less Serious Physical Injuries. He is **SENTENCED** to suffer imprisonment for four (4) months; to **PAY** Marilou Estrella Reyes the amounts of ₱1,066.00 as actual damages; and ₱5,000.00 as moral damages;

For Criminal Case No. 13-300492, accused-appellant is found **GUILTY** beyond reasonable doubt of the crime of Attempted Homicide. He is **SENTENCED** to suffer an indeterminate penalty of four (4) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, and to **PAY** Juanito Fausto, Jr. the amounts of ₱20,000.00 as civil indemnity, ₱20,000.00 as moral damages, and ₱707.00 as actual damages; and,

For Criminal Case No. 13-300493, accused-appellant is found **GUILTY** beyond reasonable doubt of the crime of Murder. He is **SENTENCED** to suffer the penalty of *reclusion perpetua*, and to **PAY** the heirs of Rolando Reyes the amounts of ₱44,225.00 as actual damages;

⁸¹ CA rollo, p. 128.

₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages.

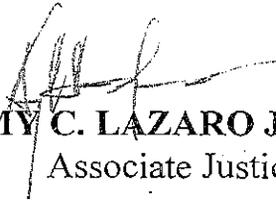
All damages shall bear interest at the rate of six percent (6%) per annum⁸² from the finality of this Decision until fully paid.

SO ORDERED.

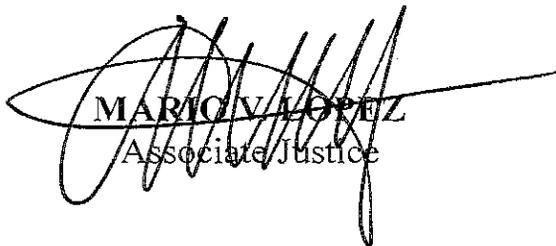


MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:



AMY C. LAZARO JAVIER
Associate Justice



MARVIC V. LOPEZ
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
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.

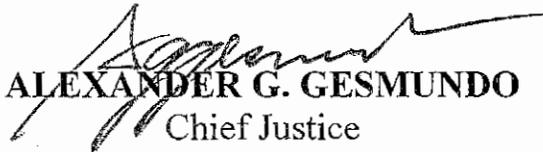


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

⁸² *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

CERTIFICATION

Pursuant to Article VIII, Section 13 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.



ALEXANDER G. GESMUNDO
Chief Justice