Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-appellee,

- versus -

YBO LASTIMOSA,
Accused-appellant.

G.R. No. 265758

Present:

GESMUNDO, *C.J.*, *Chairperson*,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:

FEB 03 2025

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DECISION

GESMUNDO, *C.J.*:

Pursuant to Rule 130, Sections 3 and 4 of the 2019 Revised Rules on Evidence,[1] in conjunction with Rule 4, Sections 1 and 2 of the Rules on Electronic Evidence,[2] the duplicate of any original, whether an electronic data message, electronic document, or paper-based document, is admissible to the same extent as the original unless (1) a genuine question is raised as to the authenticity of the original, or (2) under the circumstances, it is unjust or inequitable to admit the duplicate in lieu of the original.

A photocopy, being a duplicate, is admissible to the same extent as the original absent any genuine question as to the authenticity of the original or a showing that it is unjust or inequitable to admit the duplicate in lieu of the original.

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1 A.M. No. 19-08-15-SC (2019).
2 A.M. No. 01-7-01-SC (2001).

This is an appeal seeking to reverse and set aside the February 11, 2022 Decision[3] of the Court of Appeals, Cebu City (CA) in CA-G.R. CR No. 03604, which denied the appeal of Ybo Lastimosa (Lastimosa) and set aside the June 1, 2018 Judgment[4] of Branch 12, Regional Trial Court of Cebu City (RTC) in Criminal Case No. CBU-98906. The CA found Lastimosa guilty of the crime of Murder, instead of Homicide.

The Antecedents

In an Information[5] dated February 12, 2013, Lastimosa was charged with the crime of Murder, viz.:

> That on or about the 17th day of November 2012 at about 4:30 in the afternoon, more or less, at Cansojong, Talisay City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a firearm of unknown caliber, with deliberate intent, with intent to kill, and with treachery and evident premeditation, did then and there attack, assault and shot one ILDEFONSO VEGA, JR., with said firearm, thereby inflicting upon him fatal gunshot wounds, and as a consequence of said injuries, Ildefonso Vega, Jr. died. Instantaneously.
>
> Contrary to law.[6]

On his arraignment on December 12, 2013, Lastimosa pleaded not guilty.[7]

Version of the Prosecution

The evidence for the prosecution rested mainly on the testimonies of Dureza Vega (Dureza), Elmer Cañeda (Cañeda), and Vicente Cortes (Cortes). The CA summarized their testimonies as follows:

> Their combined testimonies show that on November 17, 2012, at around 4:30 in the afternoon, Cañeda was going out of the cockpit located at Sugarland, Cansojong, Talisay, Cebu, when he saw Ildefonso Vega (Ildefonso) riding on his [motorcycle], who was two (2) to three (3) meters away from him (Cañeda). Ildefonso was standing on his motorcycle as he could not get out at that time. Suddenly, [Lastimosa] shot Ildefonso three (3) times hitting him on his right jaw. Consequently, Ildefonso and his motorcycle fell on the ground.

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3 *Rollo*, pp. 11–24. The February 11, 2022 Decision in CA-G.R. CR No. 03604 was penned by Associate Justice Roberto Patdu Quiroz and concurred in by Associate Justices Marilyn B. Lagura-Yap and Nancy C. Rivas-Palmones of the Twentieth Division, Court of Appeals, Cebu City.

4 *Id.* at 26–35. The June 1, 2018 Judgment in Criminal Case No. CBU-98906 was penned by Presiding Judge Estela Alma A. Singco of Branch 12, Regional Trial Court, Cebu City.

5 *Id.* at 12.

6 *Id.*

7 *Id.*

> After shooting Ildefonso, [Lastimosa] rode a motorcycle driven by an [un]identified person, unfortunately, the [motorcycle] did not start immediately and the helmet [Lastimosa] was holding fell on the ground. Ca[ñ]eda helped Ildefonso board a vehicle which brought him (Ildefonso) to the hospital.
>
> Cortes corroborated the testimony of Ca[ñ]eda on the fact of shooting. He narrated that he is six (6) meters away from Ildefonso and [Lastimosa], when he saw the latter [shoot] the former.
>
> Dureza was tending to their carenderia in Poblacion, Talisay, Cebu when she was informed by a certain Monching Canton that her husband, Ildefonso[,] was shot to death. She immediately trailed her husband's location and found him dead at the Talisay District Hospital. Ildefonso sustained two gunshot wounds, one in his shoulder and the other one in his right cheek. An autopsy was conducted at the St. Francis Funeral. She spen[t] the amount of [PHP] 80,000.00 in connection with the death of her husband. The deceased Ildefonso is engaged in making gaff and earns around [PHP] 50,000.00 per month.[8]

Version of the Defense

Meanwhile, the evidence of the defense mainly rested on the testimonies of Lastimosa and his live-in partner, Maria Amie Paquit[9] (Paquit). The CA summarized their testimonies in the following manner:

> In sum, [Lastimosa] and his witness narrates a tale of denial and alibi. [Lastimosa] asserts that on November 17, 2012 at around 4:30 in the afternoon, he was at his rented residence in Barangay San Roque, Cebu City, with his live-in partner for ten (10) years, Mary Ann Bargamento. He denied having gone as there was never a chance to go to Cansojong, Talisay, Cebu City, on the said date. The only shooting incident he was involved with pertains to the incident in Dumlog, Talisay, which was already settled by his brother.
>
> Ildefonso and [Lastimosa] were jailmates and friends while in Maghaway City Jail sometime in 2007 or 2008. After he was released in 2012, he never met Ildefonso, thus, he was devastated when he was arrested in September 9, 2013 for Murder. Prior to the incident, he does not know prosecution witnesses Cañeda and Cortes and only saw them inside the [courtroom].[10]

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8 *Id.* at 12–13.

9 In the CA Decision, the name stated as Lastimosa's live-in partner is Maria Amie Paquit. However, she was also referred to therein as Mary Ann Bargamento.

10 *Rollo*, pp. 13–14.

The Ruling of the RTC

In its June 1, 2018 Judgment, the RTC found Lastimosa guilty beyond reasonable doubt of Homicide. Its dispositive portion reads as follows:

> IN VIEW THEREOF, accused YBO LASTIMOSA is found guilty of Homicide and sentenced to an indeterminate sentence of eight (8) years and one (1) day of [*prision mayor*] medium as minimum, and fourteen (14) years, eight (8) months and one (1) day of [*reclusion temporal*] medium as maximum; and to pay the heirs of Ildefonso Vega, Jr. the sum of [PHP] 75,000.00 as civil indemnity for his death; [PHP] 50,000.00 as Moral Damages for the pain and anguish suffered by the heirs as a result of his death; Temperate damages in the amount of [PHP] 25,000.00; and Exemplary damages in the amount of [PHP] 25,000.00, all indemnifications are without subsidiary imprisonment in case of insolvency. Also, all monetary awards for damages shall earn interest at the legal rate of 6% per annum from finality of this decision until fully paid.
>
> Finally, in the service of his sentence, accused, who is a detention prisoner, shall be credited with the entire period during which he has undergone preventive imprisonment.
>
> SO ORDERED.[11]

The RTC held that the shooting and killing of Ildefonso Vega, Jr. (Ildefonso) is clear and undisputed, as evidenced by his Certificate of Death.[12] It observed that Ildefonso died of gunshot wounds to his head and neck. It relied on the positive identification by Cañeda and Cortes of Lastimosa as the author of the crime. It cited Cañeda's testimony that he was two to three meters away when he saw Lastimosa shoot Ildefonso three times, hitting him at the right side of his jaw. It discounted the fact that Cañeda only surfaced after a month from the incident as the delay does not impair his credibility. Besides, Cañeda's testimony is buttressed by that of Cortes. It did not give any weight to Lastimosa's defense of denial and alibi, more so as it was shown that Lastimosa requested Paquit to testify in his favor. Also, it was not physically impossible for Lastimosa to have been at the crime scene on November 17, 2012 when the incident occurred since his place of residence in Cebu City and the crime scene in Talisay City are only about an hour's travel apart.[13]

The RTC did not find that the killing of Ildefonso was attended by treachery and evident premeditation. As to treachery, it observed that Cañeda did not describe the manner by which Lastimosa attacked Ildefonso. Cañeda merely stated that Lastimosa shot Ildefonso three times and then Ildefonso and his motorcycle fell to the ground. There is no evidence to determine

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11 *Id.* at 35.
12 RTC records, p. 9.
13 *Rollo*, pp. 31–33.

whether Ildefonso had no opportunity to defend himself or to retaliate, or that Lastimosa consciously adopted the means of execution. As to evident premeditation, it held that there is no proof as to when Lastimosa determined to commit the crime, that he clung to his determination, and that sufficient time elapsed from his determination to the execution to allow him to reflect on the consequences of the act.[14]

At this juncture, it would be proper to note that the prosecution presented a photocopy of the death certificate of Ildefonso during the direct testimony of Dureza on June 26, 2014, viz.:

> Fiscal Macion: (to witness)
>
> Q You mentioned that your husband was autopsied, was there any government issued a [sic] document?
>
> A Yes.
>
> Q What is that document, Madam Witness?
>
> A I have a Death Certificate.
>
> Q I am showing to you a Certificate of Death prepared by the manager of St. Francis Memorial Homes, is this the one you are referring to?
>
> Court:
>
> That is just a [x]erox copy, Fiscal.
>
> Fiscal Macion:
>
> Yes, Your Honor.
>
> Fiscal Macion: (to witness)
>
> Q Madam Witness, do you have the original copy of the Death Certificate?
>
> A I have it in my house.
>
> Fiscal Macion:
>
> May I ask for the continuance, Your Honor.
>
> Court:
>
> Let's have the continuation of the examination of this witness, when?[15]

During the continuation of Dureza's direct testimony on August 28, 2014, the prosecution again presented a photocopy of the death certificate of Ildefonso. Said photocopy was temporarily marked as Exhibit "B" for purposes of identification, viz.:

> COURT:
>
> For the continuation of the direct. Dureza Vega, you are testifying under the same oath.

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14 *Id.* at 33–34.

15 TSN, Dureza Vega, June 26, 2014, p. 6.

WITNESS:
Yes, Your Honor.

COURT:
Proceed Fiscal.

FISCAL MACION: (to Witness)
Q: The last time you testified Madam Witness, you mentioned that there was a death certificate issued in connection with the death of your husband, did you bring the original copy with you?
(witness showing the death certificate)

COURT:
Mura manag xerox copy, let me see, ... this is a xerox copy, kuha ug original.

WITNESS:
Abi nako original ni.

FISCAL MACION:
I'll just make some other questions Your Honor.....

COURT:
Alright, proceed.

FISCAL MACION:
We'll just make a temporary marking Your Honor, on the death certificate, Your Honor, and we ask that.....

COURT:
There [is] no admission of the fact of death here of the victim.....

FISCAL MACION:
That the photocopy of the death certificate be temporary mark [sic] as our Exhibit "B", Your Honor.

COURT:
Only for purposes of identification, [m]ark it as Exhibit "B[.]"[16]

While the RTC appeared to have relied on the photocopy of the death certificate in its Decision, expressly stating that the shooting and killing of Ildefonso is evidenced by said certificate,[17] the Decision fails to expressly discuss the admissibility and credibility of the photocopy of the death certificate.

Lastimosa appealed the RTC Decision before the CA, where he raised the following lone error:

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16 TSN, Dureza Vega, August 28, 2014, pp. 2–4.
17 *Rollo*, p. 31.

> THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[18]

Lastimosa argued that his guilt was not proven beyond reasonable doubt on the following grounds: "(1) the *corpus delicti* was not proven; and (2) the testimonies of the prosecution witnesses are not credible, hence, underserving of faith and credence."[19] On the issue of the *corpus delicti*, Lastimosa harped on the failure of the prosecution to present the original death certificate of Ildefonso. He asseverated that said photocopy, not having been authenticated, is inadmissible in evidence and has no probative value. Lastimosa claimed that there is no proof that the death of Ildefonso was the proximate result of his act. Thus, the *corpus delicti* of the crime was not proven. As to the testimonies of the prosecution witnesses, he insisted that they are not credible since they lack essential details of the incident.[20]

The Ruling of the CA

In its February 11, 2022 Decision, the CA denied Lastimosa's appeal, but modified the RTC's ruling from a conviction of Homicide to Murder. Its dispositive portion reads as follows:

> WHEREFORE, the instant appeal is DENIED. The assailed Decision dated June 1, 2018, of the Regional Trial Court, Branch 12, Cebu City, in Criminal Case No. CBU-98906 is SET ASIDE, the accused-appellant is hereby found GUILTY OF MURDER and he is hereby sentenced to suffer an imprisonment of *reclusion perpetua.* The accused-appellant is further directed to pay the heirs of Ildefonso Vega PHP 75,000.00 for civil indemnity, PHP 75,000.00 for moral damages, PHP 75,000.00 for exemplary damages and PHP 50,000.00 for temperate damages.
>
> All monetary awards shall earn an interest of 6% per annum upon finality of this decision.
>
> SO ORDERED.[21]

The CA held that the appeal lacks merit. It found that, contrary to Lastimosa's assertion, the *corpus delicti* was properly established through the testimony of the prosecution witnesses and corroborated by Ildefonso's death certificate. It stated that the cause of death is not an essential element of the crime. The failure of the prosecution to present the autopsy report showing the cause of death will not result in an acquittal. It also rejected Lastimosa's

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18 CA *rollo*, p. 25.
19 *Id.*
20 *Id.* at 26–36.
21 *Rollo*, pp. 23–24.

assertion that the RTC gravely erred in giving probative weight to a mere machine copy of Ildefonso's death certificate without the original having been produced in court. It perused the machine copy and concluded that there is no doubt as to its authenticity. It also agreed with the RTC that Cañeda and Cortes are credible witnesses despite their belated appearance.[22]

However, in contrast with the RTC, the CA found that treachery attended the killing. It cited the testimony of Cañeda that Ildefonso was on board his motorcycle, but standing still as he could not leave the cockpit area. Without suspicion of the danger to him and *sans* provocation, Lastimosa shot Ildefonso thrice. Ildefonso was not in a position to defend himself or evade the attack as he was on his motorcycle at the time. Finally, the CA also rejected Lastimosa's defense of alibi and denial.[23]

Hence, this appeal.

The Issues

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[24]

II

THE HONORABLE COURT OF APPEALS ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE QUALIFYING CIRCUMSTANCE OF TREACHERY.[25]

In his Supplemental Brief[26] dated November 28, 2023, Lastimosa adopts his Appellant's Brief[27] before the CA and adduces additional arguments to assail his conviction of Murder by the CA. *First*, Lastimosa argues that the *corpus delicti* of the crime was not proven since, aside from the bare claim of the prosecution witnesses that Ildefonso was shot to death, no other credible evidence was proffered. He argues that neither the autopsy report nor the medico-legal officer who conducted the autopsy was presented. Instead, the trial court relied on a photocopy of the death certificate. Since it was not authenticated, it is inadmissible in evidence and bears no probative

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22 *Id.* at 16–19.
23 *Id.* at 20–23.
24 CA *rollo*, p. 25.
25 *Rollo*, p. 51.
26 *Id.* at 51–61.
27 CA *rollo*, pp. 15–39.

value. Further, he highlights that there is no proof that the proximate cause of the death of Ildefonso were the gunshot wounds.[28]

Second, Lastimosa argues that the prosecution witnesses are not credible as their testimonies are stripped of the essential details of the incident which should have been known to them. He characterizes their accounts as too generalized and overly simplistic. He also asserts that they failed to even describe to the court the kind of firearm used by the assailant. Also, even if the two eyewitnesses were present at the time of the incident, it was highly improbable for them to have witnessed the actual shooting. He theorizes that they probably heard the gun burst and had taken cover or ran away. Further, if they were indeed eyewitnesses, they should have shouted right in the middle of the throng of people. Instead, it took them awhile before they surfaced. This, for Lastimosa, renders the testimonies of Cañeda and Cortes unreliable. In addition to that, Lastimosa highlights the failure to assign any motive to him for the killing.[29]

Third, Lastimosa asserts that the CA erred in convicting him of Murder despite the failure of the prosecution to prove the qualifying circumstance of treachery. While it is true that Cañeda's testimony gives the impression that the attack was sudden and unexpected, such does not establish treachery by itself. He highlights the absence of evidence that he consciously and deliberately adopted the means, method, and manner of attack. Also, he points out that the deceased was shot in a public place in broad daylight and in the presence of several people who could have lent him help and support. This indicates that the killing was not without risk to the assailant and that the deceased was not rendered totally defenseless.[30]

In its Manifestation[31] dated October 23, 2023, the Office of the Solicitor General (OSG), on behalf of the People of the Philippines, adopted its Brief for the Plaintiff-Appellee[32] dated October 22, 2020, filed before the CA. *First*, it argues that the prosecution had established Lastimosa's guilt beyond reasonable doubt for the crime of Homicide. All elements of said crime are present. The prosecution established the death of Ildefonso through the testimony of his wife, Dureza. Meanwhile, the testimonies of Cañeda and Cortes established that Lastimosa shot Ildefonso thrice. This shows Lastimosa's intent to kill. None of the qualifying circumstances of murder, parricide, or infanticide are present. *Second*, it rejects Lastimosa's contention that the *corpus delicti* was not proven. It cites the testimonies of Dureza, Cañeda, and Cortes as proof that the *corpus delicti* of the crime of Homicide was proven. *Third*, it asserts that Cañeda and Cortes are credible witnesses.

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28 *Id.* at 25–29.
29 *Id.* at 31–35.
30 *Rollo*, p. 56.
31 *Id.* at 38–43.
32 CA *rollo*, pp. 55–75.

Their reactions and behaviors before, during, and after the shooting incident do not discredit them. No ill motive has been attributed to them for testifying in the manner they did. Further, the OSG insists that Lastimosa's alibi cannot prevail over the testimony of the prosecution witnesses.[33]

The Court's Ruling

The Court affirms the ruling of the CA and finds Lastimosa guilty of the crime of Murder.

Preliminarily, it must be stated that "in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[34]

The Information in the case at bench charges Lastimosa with the crime of Murder. The RTC found him guilty of only Homicide while the CA set aside the RTC ruling and found Lastimosa guilty of the crime of Murder.

On this score, it is observed that the Information alleges the qualifying circumstances of treachery and evident premeditation. It also alleges the use of a firearm of unknown caliber. The Information reads as follows:

> That on or about the 17th day of November 2012 at about 4:30 in the afternoon, more or less, at Cansojong, Talisay City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, *armed with a firearm of unknown caliber*, with deliberate intent, with intent to kill, and *with treachery and evident premeditation*, did then and there attack, assault and shot one ILDEFONSO VEGA, JR., with said firearm, thereby inflicting upon him fatal gunshot wounds, and as a consequence of said injuries, Ildefonso Vega, Jr. died. Instantaneously.[35] (Emphasis supplied)

Notably, the qualifying circumstances of treachery and evident premeditation are alleged in general terms, without specifically describing the acts committed by Lastimosa that would constitute the qualifying circumstances.

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33 *Id.* at 62–72.
34 *Ramos v. People*, 803 Phil. 775, 783 (2017) [Per J. Perlas-Bernabe, First Division].
35 *Rollo*, p. 12.

The Court, in the case of *People v. Solar*,[36] categorically declared that "it is insufficient for prosecutors to indicate in an Information that the act supposedly committed by the accused was done 'with treachery' or 'with abuse of superior strength' or 'with evident premeditation' without specifically describing the acts done by the accused that made any or all of such circumstances present."[37] Thus, the Court required that the Information state the ultimate facts relative to such circumstances.

Relative thereto, *Solar* laid down the following guidelines:

> 1. Any Information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty — is present, must state the ultimate facts relative to such circumstance. Otherwise, the Information may be subject to a motion to quash under Section 3(e)(i.e., that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.
>
> Failure of the accused to avail any of the said remedies constitutes a waiver of his right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him if proven during trial.
>
> Alternatively, prosecutors may sufficiently aver the ultimate facts relative to a qualifying or aggravating circumstance by referencing the pertinent portions of the resolution finding probable cause against the accused, which resolution should be attached to the Information in accordance with the second guideline below.
>
> 2. Prosecutors must ensure compliance with Section 8(a), Rule 112 of the Revised Rules on Criminal Procedure that mandates the attachment to the Information the resolution finding probable cause against the accused. Trial courts must ensure that the accused is furnished a copy of this Decision prior to the arraignment.
>
> 3. Cases which have attained finality prior to the promulgation of this Decision will remain final by virtue of the principle of conclusiveness of judgment.
>
> 4. For cases which are still pending before the trial court, the prosecution, when still able, may file a motion to amend the Information pursuant to the prevailing Rules in order to properly allege the aggravating or qualifying circumstance pursuant to this Decision.
>
> 5. For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has already

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36 858 Phil. 884 (2019) [Per J. Caguioa, *En Banc*].

37 *Id.* at 928.

> waived his right to question the defective statement of the aggravating or qualifying circumstance in the Information, (i.e., whether he previously filed either a motion to quash under Section 3(e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.[38]

It is observed that, at the time of the promulgation of *Solar* on August 6, 2019, the June 1, 2018 Judgment of the RTC was pending appeal before the CA. Thus, the fifth guideline in *Solar* is applicable. The CA should have determined whether Lastimosa had already waived his right to assail the defective statement of the qualifying circumstances of treachery and evident premeditation in the Information against him. Unfortunately, the February 11, 2022 Decision is silent on this point. Thus, the Court shall consider this matter and determine whether Lastimosa has waived said right.

A review of the records of this case demonstrates that Lastimosa did not question the failure to specifically allege the qualifying circumstances of treachery and evident premeditation in the Information against him. He also did not file a motion to quash or a motion for bill of particulars on said ground. Pursuant to *Solar*, Lastimosa is deemed to have waived his right to question the same. Thus, the qualifying circumstances of treachery and evident premeditation may be appreciated against him.

Lastimosa is guilty
of the crime of Murder

The elements for the crime of Murder under Article 248 of the Revised Penal Code are as follows: "(1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248...; and (4) that the killing is not Parricide or Infanticide."[39]

In the instant case, the prosecution established beyond reasonable doubt the presence of all the elements of the crime of Murder.

First, the prosecution established the fact of death of Ildefonso through the testimony of his wife, Dureza. She testified that when she went to the hospital, she found her husband already dead. Dureza's testimony is as follows:

> Fiscal Macion: (to witness)
>
> Q On November 17, 2012, Madam Witness, do you remember where were you?
> A I was in an eatery at Poblacion, Talisay City.

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38 *Id.* at 930–932.
39 *People v. Lagman*, 685 Phil. 733, 743 (2012) [Per J. Velasco, Jr., Third Division].

Q While you were at the eatery what happened, if you can remember?
A A person on motorcycle then arrived and informed me that my husband was shot to death.

Q Who was this person?
A Monching Canton.

Q What is the name of your husband?
A Ildefonso Vega, Jr. alias Boy.

Q After being informed by Monching, Madam Witness, what did you do?
A I was shocked. Immediately, I went to the place of the incident in Sugar Land, Kimba, Talisay City.

Q When you arrived at the Sugar Land what happened?
A I did not anymore find my husband there, because he was already brought to the Talisay District Hospital.

Q Who brought your husband to the hospital?
A The police on patrol car.

Q Upon hearing that your husband was brought to the hospital, what did you do?
A *I followed and went to the hospital.*

Q *And in the hospital, Madam Witness, what happened there?*
A *I found my husband still lying in the police car.*

Q *And what have you observed?*
A *He was already dead.*

Q Do you know what is the cause of his death?
A Yes.

Q What was the cause?
A He was shot.[40] (Emphasis supplied)

The Court is aware of Lastimosa's contention that the *corpus delicti* was not proven since neither the autopsy report nor the medico-legal officer who conducted the autopsy was presented during trial. Further, Lastimosa highlights that only a photocopy of the death certificate of Ildefonso was presented during trial and, as such, it has no probative value.

Contrary to the assertion of Lastimosa, Dureza's testimony sufficiently establishes the fact of death of her husband. She testified that when she arrived at the hospital, she found that her husband had already expired. Suffice to say that the submission of an autopsy report or the testimony of the medico-legal

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40 TSN, Dureza Vega, June 26, 2014, pp. 2–4.

officer who conducted said autopsy is not an essential requisite of the crime of Murder.

As to the defense's contention that the photocopy of the death certificate has no probative value, being a mere photocopy, the Court deems it proper to discuss the Best Evidence Rule and its current relevance due to developments in the rules of procedure.

Historical Development of the Best Evidence Rule

Foremost, it must be stated that Rule 128, Section 2 of the Revised Rules on Evidence provides that "[t]he rules of evidence shall be the same in all courts and in all trials and hearings, except as otherwise provided by law or these rules." This provision features in both the 1997 Rules of Court and in the 2019 Revised Rules on Evidence. Thus, there is no question that the Rules on Evidence apply to the instant proceedings for murder.

The earliest iteration of the Best Evidence Rule is found in ***Chapter X, Section 284 of Act No. 190***, otherwise known as the Code of Civil Procedure, enacted on August 7, 1901 and effective on September 1, 1901. Section 284 provides as follows:

> Section 284. *Original writing must ordinarily be produced. — There can be no evidence of the contents of a writing, other than the writing itself*, except in the following cases:
>
> 1. When the original has been lost or destroyed, in which case proof of the loss or destruction must first be made;
>
> 2. When the original is in possession of the party against whom the evidence is offered, and who fails to produce it after reasonable notice;
>
> 3. When the original is a record or other document in the custody of a public officer;
>
> 4. When the original has been recorded and a certified copy of the record is made evidence by the Code or other statute;
>
> 5. When the original consists of numerous accounts or other documents, which can not be examined in court without great loss of time and fact sought to be established from them is only the general result of the whole. (Emphasis supplied)

Subsequent to Act No. 190 is ***Rule 123, Sections 46 and 47 of the 1940 Rules of Court***, viz.:

> Section 46. *Writings in general; original must be produced; exceptions. — There can be no evidence of a writing other than the writing itself the contents of which is the subject of inquiry*, except in the following cases:
>
> (a) When the original has been lost or destroyed;
>
> (b) When the original is in possession of the party against whom the evidence is offered, and who fails to produce it after reasonable notice;
>
> (c) When the original is a record or other document in the custody of a public officer;
>
> (d) When the original has been recorded in an existing record a certified copy of which is made evidence by law;
>
> (e) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole. (Emphasis supplied)
>
> Section 47. *Certain copies regarded as originals.* — When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are equally regarded as originals.

The next iteration of the rule is found in ***Rule 130, Sections 2 and 3 of the 1964 Rules of Court.*** It was also this iteration that first referred to this rule as the Best Evidence Rule, viz.:

> B. *Documentary Evidence*
>
> 1. *Best Evidence Rule*
>
> Section 2. *Original writing must be produced; exceptions. — There can be no evidence of a writing the contents of which is the subject of inquiry, other than the original writing itself*, except in the following cases:
>
> (a) When the original has been lost, destroyed, or cannot be produced in court;
>
> (b) When the original is in the possession of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
>
> (c) When the original is a record or other document in the custody of a public officer;

(d) When the original has been recorded in an existing record a certified copy of which is made evidence by law;

(e) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole.

Section 3. *Certain copies regarded as originals.* — When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are equally regarded as originals. (Emphasis supplied)

In a Resolution dated March 14, 1989, the Court issued Bar Matter No. 411, which contained the ***Revised Rules on Evidence. Rule 130, Sections 3 and 4*** thereof provides for the Best Evidence Rule:

B. *Documentary Evidence*

....

1. *Best Evidence Rule*

Section 3. *Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself,* except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

Section 4. *Original of document.* —

(a) The original of a document is one the contents of which are the subject of inquiry.

(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals.

> (c) When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals. (Emphasis supplied)

This wording of the Best Evidence Rule was reproduced in ***Rule 130, Sections 3 and 4 of the 1997 Rules of Court.***

It is evident from the foregoing that, since the first iteration of the rules of procedure in the Philippine jurisdiction, the rules have always required that the original document itself be submitted in evidence. Secondary evidence is only admissible in select circumstances. Jurisprudence is replete with this rule, barring the acceptance into evidence of a mere photocopy of a document, unless one of the exceptions to the general rule applies, viz.:

> The best evidence rule requires that when the subject of inquiry is the contents of a document, no evidence is admissible other than the original document itself except in the instances mentioned in Section 3, Rule 130 of the Revised Rules of Court. *As such, mere photocopies of documents are inadmissible pursuant to the best evidence rule.* Nevertheless, evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment. Courts are not precluded to accept in evidence a mere photocopy of a document when no objection was raised when it was formally offered.[41] (Emphasis supplied)

On July 17, 2001, the Court approved the ***Rules on Electronic Evidence***. It took effect on August 1, 2001. The Rules on Electronic Evidence included provisions concerning the Best Evidence Rule insofar as electronic documents are concerned. The relevant provisions are as follows:

> RULE 4
>
> *Best Evidence Rule*
>
> Section 1. *Original of an Electronic Document. — An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.*
>
> Section 2. *Copies as equivalent of the originals. — When a document* is in two or more copies executed at or about the same time with identical contents, or *is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.*

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41 *Lorenzana v. Lelina*, 792 Phil. 271, 281–282 (2016) [Per J. Jardeleza, Third Division].

> Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if:
>
> (a) a genuine question is raised as to the authenticity of the original; or
>
> (b) in the circumstances it would be unjust or inequitable to admit the copy in lieu of the original. (Emphasis supplied)

Thus, the Rules on Electronic Evidence allowed counterparts "produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original" to be regarded as the equivalent of the original. This is a departure from the then uniform rule requiring the original and barring copies or duplicates thereof.

The Court had opportunity to elucidate on Rule 4, Section 2 of the Rules on Electronic Evidence in the case of *MCC Industrial Sales Corporation v. Ssangyong Corporation*.[42] This case involved MCC Industrial Sales (MCC), a domestic corporation engaged in the business of importing and wholesaling stainless steel products. It had as one of its suppliers Ssangyong Corporation (Ssangyong), an international trading company with head office in Seoul, South Korea and regional headquarters in Makati City, Philippines. "The two corporations conducted business through telephone calls and facsimile or telecopy transmissions. Ssangyong would send the *pro forma* invoices containing the details of the steel product order to MCC; if the latter conforms thereto, its representative affixes his signature on the faxed copy and sends it back to Ssangyong, again by fax."[43]

Ssangyong filed a civil action for damages due to breach of contract against MCC, Sanyo Seiki and Gregory Chan (MCC et al.). It alleged that MCC et al. breached the contract when they failed to open the L/C in the amount of US$170,000.00 for the remaining 100MT of steel under *Pro Forma* Invoice Nos. ST2-POSTS0401-1 and ST2-POSTS0401-2. During trial, Ssangyong presented photocopies of facsimile transmittals of the *pro forma* receipts as proof of the perfection of a contract of sale. After Ssangyong rested its case, MCC et al. filed a demurrer to evidence, arguing that Ssangyong failed to present the original copies of the *pro forma* invoices on which the civil action was based. The lower court denied the demurrer to evidence and, eventually, rendered judgment in favor of Ssangyong. The appellate court affirmed the lower court.[44]

On appeal, the Court declared that "the terms 'electronic data message' and 'electronic document,' as defined under the Electronic Commerce Act of

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42 562 Phil. 390 (2007) [Per J. Nachura, Third Division].
43 *Id.* at 396.
44 *Id.* at 401–403.

2000, do not include a facsimile transmission. Accordingly, a facsimile transmission cannot be considered as electronic evidence. It is not the functional equivalent of an original under the Best Evidence Rule and is not admissible as electronic evidence."[45]

Instead, the Court identified a facsimile transmission as paper-based, not an electronic data message or electronic document. It characterized it as having an original paper-based copy, as sent, and a paper-based facsimile copy, as received. The Court concluded that "*Pro Forma* Invoice Nos. ST2-POSTS0401-1 and ST2-POSTS0401-2, which are mere photocopies of the original fax transmittals, are not electronic evidence."[46] They are not admissible to the same extent as an original.

From the foregoing, it is evident that, in *MCC Industrial*, the Court drew a dichotomy between (a) electronic data message and electronic documents and (b) paper-based documents. In effect, it held that Rule 4, Section 2 of the Rules on Electronic Evidence, considering a copy or duplicate of a document as the equivalent of the original, applies only to electronic data messages and electronic documents, not to paper-based documents.

This brings to fore the question of whether this dichotomy still applies at present.

The Court answers in the negative.

On October 8, 2019, the Court approved the 2019 Proposed Amendments to the Revised Rules on Evidence. It took effect on May 1, 2020. ***Rule 130, Sections 3 and 4 of the 2019 Revised Rules on Evidence*** is instructive on this point:

> 1. Original Document Rule
>
> Section 3. Original document must be produced; exceptions. — *When the subject of inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is admissible other than the original document itself,* except in the following cases:
>
> (a) When the original is lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
>
> (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice, or the original cannot be obtained by local judicial processes or procedures;

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45 *Id.* at 427–428.
46 *Id.* at 428.

> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole;
>
> (d) When the original is a public record in the custody of a public officer or is recorded in a public office; and
>
> (e) When the original is not closely-related to a controlling issue.
>
> Section 4. *Original of document.* —
>
> (a) An "original" of a document is the document itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data is stored in a computer or similar device, any printout or other output readable by sight or other means, shown to reflect the data accurately, is an "original."
>
> (b) *A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.*
>
> (c) *A duplicate is admissible to the same extent as an original* unless (1) a genuine question is raised as to the authenticity of the original, or (2) in the circumstances, it is unjust or inequitable to admit the duplicate in lieu of the original. (Emphasis supplied)

Rule 130, Section 4(c), on the admissibility of a duplicate as an original, appears to be a reproduction of Rule 1003 of United States Federal Rules of Evidence, viz.:

> Rule 1003. Admissibility of Duplicates
>
> A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.
>
> (As amended Apr. 26, 2011, eff. Dec. 1, 2011.)[47]

The 2024 National Court Rules Committee of the United States explains that "[i]n essence, Rule 1003 allows duplicates to be used in place of originals in many legal situations. This approach reflects the practical realities of document usage and storage in the modern world, where duplicates are

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[47] United States Courts, Federal Rules of Evidence, *available at* https://www.uscourts.gov/forms-rules/current-rules-practice-procedure/federal-rules-evidence (last accessed on December 19, 2024).

often indistinguishable from originals and can be more accessible. However, the rule also provides safeguards to ensure the integrity of evidence in cases where the authenticity of the original is in question or where the use of a duplicate might lead to unfairness in the proceedings."[48]

The *Notes of Advisory Committee on Proposed Rules* of the United States Federal Rules of Evidence is also illuminating as to the rule's historical development:

> When the only concern is with getting the words or other contents before the court with accuracy and precision, then a counterpart serves equally as well as the original, if the counterpart is the product of a method which insures accuracy and genuineness. By definition in Rule 1001(4), supra, a "duplicate" possesses this character.
>
> Therefore, if no genuine issue exists as to authenticity and no other reason exists for requiring the original, a duplicate is admissible under the rule. This position finds support in the decisions, [*Myrick v. United States*], 332 F.2d 279 (5th Cir. 1964), no error in admitting photostatic copies of checks instead of original microfilm in absence of suggestion to trial judge that photostats were incorrect; [*Johns v. United States*], 323 F.2d 421 (5th Cir. 1963), not error to admit concededly accurate tape recording made from original wire recording; [*Sauget v. Johnston*], 315 F.2d 816 (9th Cir. 1963), not error to admit copy of agreement when opponent had original and did not on appeal claim any discrepancy. Other reasons for requiring the original may be present when only a part of the original is reproduced and the remainder is needed for cross-examination or may disclose matters qualifying the part offered or otherwise useful to the opposing party. [*United States v. Alexander*], 326 F.2d 736 (4th Cir. 1964). And see [*Toho Bussan Kaisha, Ltd. v. American President Lines, Ltd.*], 265 F.2d 418, 76 A.L.R.2d 1344 (2d Cir. 1959).[49]

There is also an emerging trend in the jurisdiction of England and Wales,[50] while less direct as the United States, demonstrating the Best Evidence Rule losing its relevance. On this point, Stephen Mason and Daniel Seng[51] observed as follows:

> 2.46 Since the statutory intercession of the Civil Evidence Act 1995 and the Criminal Justice Act 2003, the best evidence rule has further taken a simplified, statutory form. The judgment of the Court of Appeal in *Masquerade Music Ltd v Springsteen* suggests that the best evidence rule is hardly of any relevance. After considering the best evidence rule in detail

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48 2024 National Court Rules Committee, Rule 1003 – Admissibility of Duplicates, *available at* https://www.rulesofevidence.org/fre/article-x/rule-1003/ (last accessed on December 19, 2024).

49 *Id.*

50 The Civil Evidence Act 1995 "extends to England and Wales, section 10 extends to Northern Ireland; the provisions of Schs. 1 and 2 are co-extensive with the enactments they amend or repeal, see s.16" (Civil Evidence Act 1995, *available at* https://www.legislation.gov.uk/ukpga/1995/38 (last accessed on December 23, 2024).

51 The foundations of evidence in electronic form. University of London Press (2021), *available at* https://www.jstor.org/stable/j.ctv1vbd28p.9 (last accessed on December 23, 2024).

and reviewing the case law extensively, Jonathan Parker LJ outlined the position with respect to the best evidence rule in the twenty-first century, at [85]:

> In my judgment, the time has now come when it can be said with confidence that the best evidence rule, long on its deathbed, has finally expired. In every case where a party seeks to adduce secondary evidence of the contents of a document, it is a matter for the court to decide, in the light of all the circumstances of the case, what (if any) weight to attach to that evidence. Where the party seeking to adduce the secondary evidence could readily produce the document, it may be expected that (absent some special circumstances) the court will decline to admit the secondary evidence on the ground that it is worthless. At the other extreme, where the party seeking to adduce the secondary evidence genuinely cannot produce the document, it may be expected that (absent some special circumstances) the court will admit the secondary evidence and attach such weight to it as it considers appropriate in all the circumstances. In cases falling between those two extremes, it is for the court to make a judgment as to whether in all the circumstances any weight should be attached to the secondary evidence. Thus, the 'admissibility' of secondary evidence of the contents of documents is, in my judgment, entirely dependent upon whether or not any weight is to be attached to that evidence. And whether or not any weight is to be attached to such secondary evidence is a matter for the court to decide, taking into account all the circumstances of the particular case.[52]

The 2019 Revised Rules on Evidence modified the title of the *Best Evidence Rule* to the *Original Document Rule*. Further, scrutiny of the structure of the current Rule 130, Sections 3 and 4 reveals that no evidence is admissible other than the original document itself. By express provision, a duplicate, which is defined in Rule 130, Section 3(b), is admissible to the same extent as an original unless any of the two exceptions are present. It is notable that the definition of a duplicate does not exclude those reproduced from a paper-based original. Accordingly, ***a duplicate of a paper-based document, under the 2019 Revised Rules on Evidence, is admissible to the same extent as an original except when any of the exceptions are present.***

With this, the ruling in *MCC Industrial*, drawing a dichotomy between the admissibility of duplicates of (a) electronic data message and electronic documents and (b) paper-based documents, has been ***abandoned***.

With the advent of the 2019 Revised Rules on Evidence, in conjunction with the Rules on Electronic Evidence, the duplicate of any original, whether an electronic data message, electronic document, or

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[52] *Id.*

paper-based document, is admissible to the same extent as the original unless (1) a genuine question is raised as to the authenticity of the original, or (2) under the circumstances, it is unjust or inequitable to admit the duplicate in lieu of the original.

In the present case, the prosecution presented a duplicate of the death certificate of Ildefonso. Is it admissible in evidence?

The duplicate of the death certificate of Ildefonso is admissible in evidence.

The Court is aware that the 2019 Revised Rules on Evidence took effect on May 1, 2020, while the duplicate of the death certificate was marked as Exhibit "B" on August 28, 2014.[53] Nonetheless, it is well-established that rules of procedure may be given retroactive effect. The Court previously cited Ruben Agpalo's discussion on the matter in the case of *Tan, Jr. v. Court of Appeals*,[54] viz.:

> 9.17. Procedural laws.
>
> Procedural laws are adjective laws which prescribe rules and forms of procedure of enforcing rights or obtaining redress for their invasion; they refer to rules of procedure by which courts applying laws of all kinds can properly administer justice. They include rules of pleadings, practice and evidence. As applied to criminal law, they provide or regulate the steps by which one who commits a crime is to be punished.
>
> The general rule that statutes are prospective and not retroactive does not ordinarily apply to procedural laws. It has been held that "a retroactive law, in a legal sense, is one which takes away or impairs vested rights acquired under laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or considerations already past. Hence, remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes." The general rule against giving statutes retroactive operation whose effect is to impair the obligations of contract or to disturb vested rights does not prevent the application of statutes to proceedings pending at the time of their enactment where they neither create new nor take away vested rights. A new statute which deals with procedure only is presumptively applicable to all actions – those which have accrued or are pending.
>
> Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage.

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53 RTC records, p. 9.

54 424 Phil. 556 (2002) [Per J. Puno, First Division].

> Procedural laws are retroactive in that sense and to that extent. The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. Nor is the retroactive application of procedural statutes constitutionally objectionable. The reason is that as a general rule no vested right may attach to, nor arise from, procedural laws. It has been held that "a person has no vested right in any particular remedy, and a litigant cannot insist on the application to the trial of his case, whether civil or criminal, of any other than the existing rules of procedure."
>
> Thus, the provision of Batas Bilang 129 in Section 39 thereof prescribing that "no record on appeal shall be required to take an appeal" is procedural in nature and should therefore be applied retroactively to pending actions. Hence, the question as to whether an appeal from an adverse judgment should be dismissed for failure of appellant to file a record on appeal within thirty days as required under the old rules, which question is pending resolution at the time Batas Bilang 129 took effect, became academic upon the effectivity of said law because the law no longer requires the filing of a record on appeal and its retroactive application removed the legal obstacle to giving due course to the appeal. A statute which transfers the jurisdiction to try certain cases from a court to a quasi-judicial tribunal is a remedial statute that is applicable to claims that accrued before its enactment but formulated and filed after it took effect, for it does not create new nor take away vested rights. The court that has jurisdiction over a claim at the time it accrued cannot validly try the claim where at the time the claim is formulated and filed the jurisdiction to try it has been transferred by law to a quasi-judicial tribunal, for even actions pending in one court may be validly taken away and transferred to another and no litigant can acquire a vested right to be heard by one particular court.
>
> 9.18. Exceptions to the rule.
>
> The rule that procedural laws are applicable to pending actions or proceedings admits certain exceptions. The rule does not apply where the statute itself expressly or by necessary implication provides that pending actions are excepted from its operation, or where to apply it to pending proceedings would impair vested rights. Under appropriate circumstances, courts may deny the retroactive application of procedural laws in the event that to do so would not be feasible or would work injustice. Nor may procedural laws be applied retroactively to pending actions if to do so would involve intricate problems of due process or impair the independence of the courts.[55]

Rule 130, Section 4(c) of the 2019 Revised Rules on Evidence may be given retroactive effect in the instant case as none of the exceptions apply. There is neither a defeat of a substantive right nor injustice due to the retroactive application of Rule 130, Section 4(c) of the 2019 Revised Rules on Evidence. While a conviction will result, such result is not due to the admission of the duplicate. The death certificate merely serves to buttress the

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[55] *Id.* at 568–570, *citing* RUBEN AGPALO, STATUTORY CONSTRUCTION 269–272 (1986).

testimony of Dureza that her husband, Ildefonso, had already passed when she arrived at the hospital. As previously elucidated, the testimony of Dureza, on its own, establishes without a doubt that her husband had already passed due to gunshot wounds when she arrived at the hospital.

This is in contrast with *Tan*, where the Court declined to give retroactive effect to Rule 39, Section 1 of the 1997 Revised Rules of Procedure "as it would result in great injustice to the petitioner."[56] In so ruling, the Court observed that therein petitioner had a right to redeem, a substantive right, and he followed the procedural rule then existing. However, said rule was changed with the promulgation of the 1997 Revised Rules of Procedure. The Court held that the new rule cannot be given retroactive effect as it would result in the petitioner losing his right to redeem.

Applying the foregoing to the instant case, the photocopy of the death certificate of Ildefonso may be admitted in evidence.

Merriam-Webster Dictionary defines *photocopy* as "a copy of usually printed material made with a process in which an image is formed by the action of light usually on an electrically charged surface."[57] Meanwhile, Encyclopedia Britannica defines *photocopying* as "[t]he process of producing copies of original documents and drawings by exposing the originals to chemicals, light, heat, or electrostatic energy and recording the resulting images on a sensitized surface."[58]

A duplicate is defined by Rule 130, Section 3(b) of the 2019 Revised Rules on Evidence as "a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original."

A photocopy, which is a counterpart produced by the same impression as the original through action of light on an electrically charged surface, clearly falls under the definition of a duplicate. A photocopy, being a duplicate, is admissible to the same extent as the original absent any genuine question as to the authenticity of the original or a showing that it is unjust or inequitable to admit the duplicate in lieu of the original.

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56 *Id.* at 570.

57 MERRIAM-WEBSTER DICTIONARY, "photocopy," *available at* https://www.merriam-webster.com/dictionary/photocopy#:~:text=pho%C2%B7%E2%80%8Bto%C2%B7%E2%80%8Bcopy,photocopy (last accessed on December 20, 2024).

58 ENCYCLOPEDIA BRITANNICA, *photocopying, available at* https://kids.britannica.com/students/article/photocopying/276408#:~:text=The%20process%20of%20producing%20copies,sensitized%20surface%20is%20called%20photocopying (last accessed on December 20, 2024).

In this case, no question has been raised as to the authenticity of the original death certificate. There is also no allegation, much less proof, that it would be unjust or inequitable to admit the duplicate. Accordingly, the duplicate of the death certificate of Ildefonso, marked as Exhibit "B" by the RTC, is admissible to the same extent as the original.

At this juncture, it must be emphasized that the Court has, time and again, reiterated that the admissibility of evidence should not be confused with its probative value:

> Admissibility of evidence should not be confounded with its probative value.
>
> The *admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.* The admissibility of a particular item of evidence has to do with whether it meets various tests by which its reliability is to be determined, so as to be considered with other evidence admitted in the case in arriving at a decision as to the truth. The weight of evidence is not determined mathematically by the numerical superiority of the witnesses testifying to a given fact, but depends upon its practical effect in inducing belief on the part of the judge trying the case. *Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.* Thus, *a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.*[59] (Emphasis supplied)

Thus, while the photocopy of the death certificate of Ildefonso is admissible, pursuant to Rule 130, Section 4(c) of the 2019 Revised Rules on Evidence, its evidentiary weight lies in the fact that it corroborates the testimony of Dureza.

Scrutiny of the death certificate of Ildefonso reveals that he expired on November 17, 2012 due to gunshot wounds to the head and neck.[60] This, together with Dureza's testimony, establishes beyond doubt the fact of Ildefonso's death.

Second, Lastimosa's identity as the perpetrator of the crime was established beyond reasonable doubt by the testimonies of Cañeda, Cortes, and Dureza and the physical evidence corroborating the same.

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[59] *Lim v. Allied Banking Corp.*, G.R. No. 210196, February 22, 2023 [Notice, Second Division], *citing Mancol, Jr. v. Development Bank of the Philippines*, 821 Phil. 323, 335 (2017) [Per J. Tijam, First Division].

[60] RTC records, p. 9 (dorsal portion).

Cañeda's eyewitness testimony identified Lastimosa as the perpetrator of the crime. He clearly stated that he was two to three meters away when he saw Lastimosa shoot Ildefonso three times. The pertinent excerpts from his testimony are as follows:

FISCAL MACION: [(]to Witness[)]

Q: On November 17, 2012 Mr. Witness, at around 4:30 o'clock in the afternoon can you remember where were you?
A: I was at the cockpit.

Q: Where was this cockpit?
A: In Sugarland, Cansojong, Talisay City.

Q: While you were in that area, cockpit in Sugarland, what have you observe[d], if any?
A: I was then betting on a fighting cock.

Q: *While you [were] there, what happen[ed]?*
A: *When I went out from the cockpit, I then saw this Ildefonso Vega got was shot?* [*sic*]

Q: *Who shot Ildefonso Vega Mr. Witness?*
A: *Ybo Lastimosa.*

Q: By the way Mr. Witness, why do you know this Ildefonso Vega and Ybo Lastimosa?
A: Ildefonso Vega is known in the place because he's the one who puts on the gaff on the fighting cock and he is also a gaff maker.

Q: How about Ybo Lastimosa?
A: Ybo Lastimosa is known in the place to be a person involved in a shooting incidence. [sic]

Q: *How far were you when you saw Ybo Lastimosa shot Ildefonso Vega?*
A: *Two (2) to three (3) meters away.*

Q: What was Ildefonso doing at that time when Ybo Lastimosa shot him?
A: He was riding on a motorcycle.

Q: Was the motorcycle running?
A: He was still then, at [ ] that time, standing by because he cannot immediately get out from the place.

Q: *How many times did Ybo Lastimosa shot [sic] Ildefonso Vega?*
A: *Three (3) times.*

Q: And, do you know where was Ildefonso hit when Ybo Lastimosa shot him?
A: What I really saw was that the victim being hit in his jaw.

COURT: [(]to Witness[)]
Q: Right side or left side?
A: On his right.

FISCAL MACION: [(]to Witness[)]
Q: After Ybo Lastimosa shot Ildefonso what happen[ed] next?
A: Ildefonso and the motorcycle fell into the ground.

Q: How come that there is a motorcycle, was it driven by Ildefonso Vega?
A: Yes.

Q: Now, what about Ybo Lastimosa after he shot Ildefonso, what did he do?
A: He rode on a motorcycle that I don't know who the person was driving.

Q: Then what happen[ed] after he rode on a motorcycle?
A: They were not immediately able to speed away because the motorcycle did not right away start and it was when the helmet of Ybo fell into the canal? [sic]

Q: Now, what did you do after Ildefonso [sic] seeing Ildefonso get shot and Ybo riding a motorcycle?
A: I help[ed] Ildefoso board a vehicle to bring him to the hospital.

. . . .

Q: Now, if this Ybo Lastimosa is present in the courtroom, can you please identify him?
A: Yes.

Q: Please point to him[.]
A: He is in front of me.
[(]Witness is pointing to a man who stood up and answered by the name of Ybo Lastimosa.[)][61] (Emphasis supplied)

This testimony was corroborated by Cortes, who testified that he was six meters away when he saw Lastimosa shoot Ildefonso:

Pros. Macion:
Q On November 17, 2012 Mr. Witness, do you remember where were you?
A I was at the cockpit at about 1:00 o'clock in the afternoon.

Q While in the cockpit then can you recall of any unusual incident that happened Mr. Witness?
A Nothing unusual incident happened while I was inside the cockpit.

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[61] TSN, Elmer Cañeda, February 12, 2015, pp. 3–6.

Q While you were in the cockpit on that date, do you remember something happened?
A While I was about to leave the cockpit.

Q What was that incident Mr. Witness?
A There was a shooting incident.

Pros. Macion:
Q *Who shot Mr. Witness?*
A *Ybo Lastimosa.*

Q *Ybo Lastimosa shot whom, Mr. Witness?*
A *Ildefonso Vega, Jr.*

Q *How far were you when Ybo Lastimosa shot Ildefonso Vega, Jr.?*
A *About 6 meters away.*

Q And what did Ybo Lastimosa use to shoot Ildefonso Vega?
A I was not able to identify the firearm that was used.

Q After Ybo Lastimosa shot Ildefonso Vega Mr. Witness, what happened next?
A That is the only thing that I witnessed because right thereafter I ran away.

Q If Ybo Lastimosa present in the court room Mr. Witness, will you be able to identify him?
A Yes.

Court:
Witness is pointing to a man who answered by the name of Ybo Lastimosa.[62] (Emphasis supplied)

The testimonies of Cañeda and Cortes establish that Lastimosa shot Ildefonso on November 17, 2012. Ildefonso was then taken to the hospital, where he expired, as testified by his wife, Dureza, who expressly stated that he had already passed when she arrived at the hospital. The death certificate corroborates these accounts, as it provides the date of death to be November 17, 2012 and the cause of death to be gunshot wounds.[63] Thus, the prosecution established beyond reasonable doubt Lastimosa's identity as the perpetrator of the crime.

At this juncture, the Court deems it prudent to address the arguments raised by the defense.

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62 TSN, Vicente Cortes, August 20, 2015, pp. 3–4.
63 RTC records, p. 9–dorsal portion.

There is no merit to the defense's contention that the prosecution witnesses are not credible.

It is emphasized "that the trial court's findings of fact and evaluation of witnesses' credibility and testimony [are] entitled to great respect unless it is shown that any fact or circumstance of weight and substance may have been overlooked, misapprehended, or misapplied."[64]

In this case, there is no compelling reason to depart from the lower courts' appreciation of the witnesses' credibility.

The testimonies of Cañeda and Cortes are straightforward and convincing. They both testified that they saw Lastimosa shoot Ildefonso outside of the cockpit. Cañeda even emphasized during his cross-examination that he really saw Lastimosa shoot Ildefonso, viz.:

> ATTY. BABATUAN: [(]to Witness[)]
>
> . . . .
>
> Q: Will you confirm Mr. Witness that at that instance when the investigation was yet active and on going, you did [not] divulge any information about the incident, correct?
> A: *During the investigation, I volunteered to testify as a witness, in fact, at the wake because I cannot take in my conscience not to testify considering that the victim had always helped me.*
>
> Q: You volunteered because no one could solve the investigation?
> A: I myself volunteered and presented myself to testify.
>
> Q: You mentioned that you were there at the alleged shooting, what were you doing there at that time Mr. Witness?
> A: I was going out from the cockpit on my way home.
>
> Q: This cockpit, this is situated in Barangay Cansojong, Talisay City, correct?
> A: In Kimba.
>
> Q: Because the incident happened so fast, you were in the state of confusion, am I right?
> A: *I had presence of mind then and that I am not confused, I really saw the incident.*[65] (Emphasis supplied)

It does not escape the attention of the Court that the defense attempted to ascribe to Cañeda the motive of feeling indebted to Ildefonso as the reason

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[64] *People v. Angeles*, G.R. No. 254747, July 13, 2022 [Per J. Inting, Third Division] at 7–8. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[65] TSN, Elmer Cañeda, February 12, 2015, p. 9.

for his testifying.[66] Meanwhile, the defense attempted to attribute Cortes's testimony to Dureza having asked him to testify.[67] It must be emphasized that both Cañeda and Cortes categorically denied these attributions from the defense and there is no proof to support the same. Accordingly, they do not merit any consideration.

Further, in the face of Cañeda and Cortes's positive identification of Lastimosa, his defense of denial and alibi deserves scant consideration of this Court.

The Court has repeatedly held that "[d]enial is inherently a weak defense which cannot outweigh positive testimony. A categorical statement that has the earmarks of truth prevails over a bare denial which can easily be fabricated and is inherently unreliable. For the defense of alibi to prosper, the accused must prove that he was at some other place at the time of the commission of the crime and it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. These requirements of time and place must be strictly met."[68]

Lastimosa only offered the testimony of his live-in partner, Paquit, to support his defense of denial and alibi. He claimed to have been in his rented residence in Barangay San Roque, Cebu City at the time of the incident. However, Lastimosa failed to prove that it was impossible for him to be at the scene of the crime at Cansojong, Talisay, Cebu City. As the RTC observed, travel between his residence and the crime scene would only take an hour or so.[69] Faced with his positive identification by two eyewitnesses, his defense necessarily crumbles.

Third, the prosecution established the qualifying circumstance of treachery. However, it failed to prove the presence of the qualifying circumstance of evident premeditation.

To recall, the Information alleged the presence of the qualifying circumstances of treachery and evident premeditation. While these allegations were made in a general manner, contrary to the mandate of *Solar*, Lastimosa is deemed to have waived his right to question the same due to his failure to file a motion to quash or motion for bill of particulars.

It is well-established that "[t]here is treachery 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

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66 *Id.* at 8–9.
67 TSN, Vicente Cortes, August 20, 2015, pp. 5–6.
68 *People v. Moreno*, 872 Phil. 17, 28 (2020) [Per J. Hernando, Second Division].
69 *Rollo*, p. 33.

party might make."[70] The two elements of treachery are as follows: "(1) that at the time of the attack, the victim was not in a position to defend himself or herself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him or her."[71]

The Court agrees with the CA that treachery attended the killing. Both elements of treachery are present in this case. The testimony of Cañeda reveals that Ildefonso was outside the cockpit on his motorcycle, when Lastimosa shot him thrice, hitting him on his head and neck. There is no indication that an altercation between Lastimosa and Ildefonso preceded the attack. Thus, Ildefonso was not in a position to defend himself at the time of the attack.

Further, Lastimosa adopted means to ensure the execution of his criminal intent—the use of a gun and the aiming of the same at Ildefonso's vital parts.

In *People v. Natindim*,[72] the Court appreciated the qualifying circumstance of treachery, declaring that the location of the wound indicated that the accused deliberately and consciously aimed at the victim's vital part to ensure the commission of the offense:

> Pepito was unarmed and looking out the window to ascertain the noise outside when appellant Edimar shot him on his head which consequently knocked him on the floor. The prosecution also established that appellants consciously and deliberately adopted the mode of attack. They lurked outside Pepito's residence and waited for him to appear. When Pepito emerged from his window with a flashlight which he used to focus on and determine the people outside his house, appellant Edimar immediately shot him on the head with the use of a firearm. *The location of the wound obviously indicated that the appellants deliberately and consciously aimed for the vital part of Pepito's body to ensure the commission of the crime. The attack was done suddenly and unexpectedly, leaving Pepito without any means of defense.* More importantly, the subsequent hacking of Pepito when he lay lifeless on the floor indicated treachery since he was already wounded and unable to put up a defense.[73] (Emphasis supplied)

The same reasoning applies in the instant case. The location of the wounds in Ildefonso's body, the head and the neck, as well as the fact that Lastimosa shot Ildefonso thrice, shows that Lastimosa deliberately and consciously adopted means to ensure the commission of the offense. Thus, treachery attended the killing.

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70 *Cirera v. People*, 739 Phil. 25, 44 (2014) [Per J. Leonen, Third Division].
71 *People v. Natindim*, 889 Phil. 18, 44 (2020) [Per J. Hernando, Third Division].
72 *Id.*
73 *Id.*

Nonetheless, the prosecution failed to prove the presence of the qualifying circumstance of evident premeditation.

There is evident premeditation when the following requisites are present: "(1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act."[74]

"It is emphasized that the essence of this circumstance of evident premeditation is that the execution of the criminal act be preceded by cool thought and reflection upon the resolve to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment."[75]

None of the elements of evident premeditation have been proven by the prosecution in the instant case. There is nothing to suggest that Lastimosa clung to his determination to commit the crime despite a lapse of sufficient time prior to its commission. There is no showing of cool thought and reflection on the part of Lastimosa as to his resolve to kill Ildefonso. Thus, said circumstance cannot be appreciated against him.

Finally, the element that the killing be not parricide or infanticide is also present. There is no allegation that Lastimosa and Ildefonso are related to one another.

The Court is aware that the Information alleged the use of a firearm. Nonetheless, it failed to allege that the same was unlicensed. Similarly, no evidence of this tenor was presented or submitted before the lower courts. Thus, it does not merit any consideration by this Court.

Penalty Imposed and Damages Awarded

The penalty of *reclusion perpetua* is affirmed.

Article 248[76] of the Revised Penal Code states:

> 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 *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

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74 *People v. Moreno*, 828 Phil. 293, 317 (2018) [Per J. Martires, Third Division].
75 *Id.*
76 As amended by Republic Act No. 7659 (1993), sec. 6.

1. With treachery . . .

The penalty for the crime of Murder is *reclusion perpetua* to death.[77] These two penalties are indivisible. Since neither mitigating nor aggravating circumstances are present, the lesser of the two penalties, which is *reclusion perpetua*, shall be applied.[78] Pursuant to Section 3 of Republic Act No. 9346, Lastimosa shall not be eligible for parole under Act No. 4103.[79]

The Court also affirms the award of civil indemnity, moral damages, and exemplary damages in the amount of PHP 75,000.00 each, pursuant to *People v. Jugueta*.[80] It also affirms the award of temperate damages in the amount of PHP 50,000.00[81] and the imposition of legal interest at the rate of 6% per annum from finality of the judgment until its satisfaction.

ACCORDINGLY, the February 11, 2022 Decision of the Court of Appeals, Cebu City in CA-G.R. CR No. 03604 is **AFFIRMED**.

Accused-appellant Ybo Lastimosa is found **GUILTY** beyond reasonable doubt of the crime of Murder punishable under Article 248 of the Revised Penal Code. He is sentenced to suffer the penalty of *reclusion perpetua*. Further, he is **ORDERED** to **PAY** civil indemnity in the amount of PHP 75,000.00, moral damages in the amount of PHP 75,000.00, exemplary damages in the amount of PHP 75,000.00, and temperate damages in the amount of PHP 50,000.00. Interest rate of 6% per annum shall be imposed on all damages awarded from the finality of this judgment until fully paid.

SO ORDERED.

ALEXANDER G. GESMUNDO
Chief Justice

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77 REV. PEN. CODE, art. 248.

78 REV. PEN. CODE, art. 63, second paragraph (2).

79 Sec. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

80 783 Phil. 806 (2016) [Per J. Peralta, *En Banc*].

81 *Id.* at 855.

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ALEXANDER G. GESMUNDO
Chief Justice