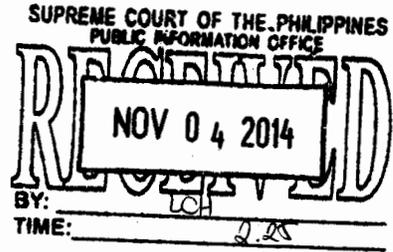




Republic of the Philippines  
 Supreme Court  
 Manila  
 FIRST DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **September 24, 2014** which reads as follows:

**G.R. No. 196432 – PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. JOHN JOHN A. BORCE, Accused-Appellant.**

Accused John John A. Borce was arraigned and tried for murder in the Regional Trial Court, Branch 71, in Candon City, Ilocos Sur (RTC) for the killing of the late Alex Cabradilla. Under its decision rendered on June 13, 2006,<sup>1</sup> the RTC found him guilty as charged, and imposed on him the penalty of *reclusion perpetua*, ordered him to pay the heirs of Cabradilla ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱45,000.00 as actual damages, all with interests of 12% *per annum* from the finality of judgment until full payment.<sup>2</sup> The RTC held that the Prosecution established the attendance of treachery in the killing during a Miss Gay Pageant held in the *barangay* plaza of Villa Hermosa in the Municipality of Sta. Cruz in Ilocos Sur in the evening of November 30, 2004, by showing that Borce had suddenly and without warning attacked the victim by stabbing while the latter was occupied with texting.

On appeal, the accused challenged the credibility of the Prosecution's witnesses, mainly because of their having belatedly given their statements regarding the stabbing incident.<sup>3</sup> He also challenged the trial court's finding on treachery.<sup>4</sup> Nonetheless, the Court of Appeals (CA) affirmed the conviction through the judgment promulgated on November 12, 2010.<sup>5</sup>

<sup>1</sup> CA *rollo*, pp. 74-81.

<sup>2</sup> *Id.* at 81.

<sup>3</sup> *Id.* at 66-67.

<sup>4</sup> *Id.* at 70.

<sup>5</sup> *Rollo*, pp. 2-12; penned by Associate Justice Noel G. Tijam, and concurred in by Associate Justice Marlene Gonzales-Sison and Associate Justice Jane Aurora C. Lantion.

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We find no reversible error committed by the CA.

Delay in the reporting of crimes is not unusual due to fear of reprisals.<sup>6</sup> In the absence of any credible showing that the testimonies of the witnesses were merely concocted, such delay would not discredit their testimonies.<sup>7</sup> In addition, the witnesses tendered probable explanations for the delay in reporting.

Moreover, the credibility of witnesses is a factual issue that the Court cannot disturb in this appeal.<sup>8</sup> Although there is no question about the appeal in a criminal case laying the record of the trial bare and open, it is equally without question that the finding of facts by the trial court are accorded great respect especially when affirmed on appeal by the CA.<sup>9</sup> This great respect for such findings rests mainly on the trial court's access to the witnesses while they testify in its presence, giving them the personal and direct observation of their manner and decorum during intensive grilling by the counsel for the accused, and being thereby enabled to see if the witnesses were fidgeting and prevaricating, or sincere and trustworthy.

We concur with the CA's conclusion that treachery attended the killing of the victim. The essence of treachery is the sudden, unexpected, and unforeseen attack on the victim without the slightest provocation on the part of the latter.<sup>10</sup> Here, the accused's attack on the victim was sudden and unexpected, because the accused took advantage of the victim's pre-occupation with texting, leaving him no opportunity to evade the mortal blow or to defend himself.

However, the amounts allowed as civil indemnity and moral damages are increased to ₱75,000.00 each considering that the crime was murder. In addition, exemplary damages of ₱30,000.00 are granted to the heirs of the victim because of the attendance of treachery. Article 2230 of the *Civil Code* authorizes the grant of exemplary damages if at least one aggravating circumstance attended the commission of the crime. It did not matter that the aggravating circumstance was a qualifying or attendant circumstance like treachery, for, as the Court has plainly said in *People v. Catubig*:<sup>11</sup>

The term "aggravating circumstances" used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each

<sup>6</sup> *People v. Clariño*, G.R. No. 134634, July 31, 2001, 362 SCRA 85, 96.

<sup>7</sup> *People v. Cabtalan*, G.R. No. 175980, February 15, 2012, 666 SCRA 174, 192.

<sup>8</sup> *Bernardo v. Court of Appeals*, G.R. No. 101680, December 7, 1992, 216 SCRA 224, 232.

<sup>9</sup> *Castillo v. Court of Appeals*, G.R. No. 106472, August 7, 1996, 260 SCRA 374, 381.

<sup>10</sup> *People v. Hormina*, G.R. No. 144383, January 16, 2004, 420 SCRA 102, 111.

<sup>11</sup> G.R. No. 137842, August 23, 2001, 363 SCRA 621.

of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.<sup>12</sup>

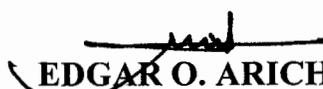
Also, in line with recent jurisprudence,<sup>13</sup> the interest fixed by the RTC is reduced to six percent (6%) *per annum* on all the items of civil liability computed from the date of the finality of this judgment until fully paid.

**WHEREFORE**, the Court **AFFIRMS** the penalty and civil liabilities imposed in the decision promulgated on November 12, 2010, subject to the **MODIFICATIONS** that the accused shall pay to the heirs of the late Alex Cabradilla: (a) civil indemnity of ₱75,000.00; (b) moral damages of ₱75,000.00; (c) ₱30,000.00 as exemplary damages; and (d) interest of six percent (6%) *per annum* on all the damages awarded from the date of finality of this judgment until fully paid.

The accused shall pay the costs of suit.

**SO ORDERED.”**

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court *ok rdy*  
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The Solicitor General (x)  
Makati City

Court of Appeals (x)  
Manila  
(CA-G.R. CR H.C. No. 02360)

<sup>12</sup> Id. at 635.

<sup>13</sup> *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

The Hon. Presiding Judge  
Regional Trial Court, Br. 71  
2710 Candon City, Ilocos Sur  
(Crim. Case No. 2304-C)

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