

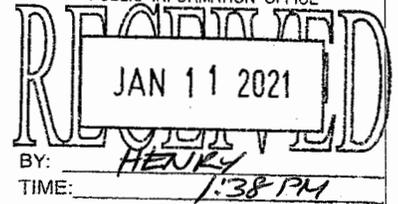


Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **July 8, 2020**, which reads as follows:

**“G.R. No. 241260 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. NORBERTO BOQUE y CUIZON a.k.a. “SIMMY,” accused-appellant).** – This is an ordinary appeal under Rule 122 of the Rules of Court, seeking to reverse and set aside the Decision<sup>1</sup> dated March 27, 2018 of the Court of Appeals (CA) in CA-G.R. CR HC No. 02270. The said issuance affirmed the January 6, 2016 Decision<sup>2</sup> of Branch 31 of the Regional Trial Court (RTC) of Calbayog City in Criminal Case No. 6725 which, in turn, found accused-appellant Norberto Boque y Cuizon a.k.a Simmy (appellant) guilty beyond reasonable doubt of the crime of murder and imposing upon him the penalty of *reclusion perpetua*.

THE FACTUAL AND PROCEDURAL ANTECEDENTS

In an Information dated April 2, 2012, appellant was indicted for the crime of murder as defined and penalized under Article 248 of the Revised Penal Code (RPC), as amended. The accusatory portion of the Information reads as follows:

That on or about the 27<sup>th</sup> day of February, 2012, in the morning, at Brgy. Central, Calbayog City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon and with intent to kill one Ferdinand Salen, did then and there willfully, unlawfully and feloniously, with treachery, attack, assault and stab several times said Ferdinand Salen with the use of same weapon, thereby inflicting upon the latter multiple stab wounds on the different parts of his body which directly caused his death.

<sup>1</sup> *Rollo*, pp. 4-13; penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Pamela Ann Abella Maxino and Louis P. Acosta.

<sup>2</sup> *Records*, pp. 178-181; rendered by Judge Reynaldo Bautista Clemens.

CONTRARY TO LAW.<sup>3</sup>

When he was arraigned on February 26, 2013, appellant, assisted by counsel, pleaded not guilty to the offense charged.<sup>4</sup> Thereafter, pre-trial ensued, followed by trial on the merits.

To prove its case, the prosecution presented as its sole witness Benjamin Potente (Potente), a tricycle-pedicab driver.

The evidence for the prosecution established that at past 11:00 o'clock in the morning of February 27, 2012, while Potente was stationed in front of the San Joaquin Hotel and Restaurant in Calbayog City, Samar, Ferdinand Salen (Salen) came out of his store, which was located at the public market, to board the sidecar part of Potente's tricycle-pedicab. Thereafter, Salen told Potente to take him to the headquarters of the Philippine National Police (PNP) in Barangay Aguit-itan, Calbayog City. While they were traversing Gelera Street, appellant pulled the tricycle-pedicab from behind. Upon looking towards the back of the vehicle, Potente saw appellant stabbing Salen's back several times with a nine-inch long pointed weapon. This prompted Potente to jump out of the tricycle-pedicab and go the nearby Mercury Drug store to call the police. Salen was also able to get out of the vehicle but Potente's act of repeatedly stabbing him did not stop. Failing to find any policeman, Potente returned to his vehicle. However, Salen and appellant were already gone from the scene.<sup>5</sup>

Potente would later learn that Salen had succumbed to his injuries.<sup>6</sup> Per Medical Certificate No. MC2187-12<sup>7</sup> issued by the Our Lady of Porziuncola Hospital, Salen sustained the following injuries:

1. STAB WOUND 4CM RIGHT INFRASCAPULAR AREA
2. STAB WOUND 4CM 7<sup>TH</sup> ICS MCL RIGHT
3. LACERATED WOUND 10 CM RIGHT FOREARM MEDIAL ASPECT
4. STAB WOUND 3CM RIGHT FOREARM LATERAL
5. STAB WOUND 3CM LEFT ARM MEDIAL
6. STAB WOUND 3CM #3 LEFT HAND

Salen's Certificate of Death<sup>8</sup> states that he died of "Cardiovascular Arrest secondary to Hypovolemic shock secondary to Stab wound 4cm Right Infrascapular Area, Stab Wound 7<sup>th</sup> ICS MCL Right."

Appellant, on the other hand, waived his right to present countervailing

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<sup>3</sup> Id. at 1.

<sup>4</sup> Id. at 43.

<sup>5</sup> Id. at 49-57.

<sup>6</sup> Id. at 13.

<sup>7</sup> Id. at 16.

<sup>8</sup> Id. at 17.

evidence.

On January 6, 2016, the trial court rendered judgment convicting appellant as charged, decreeing as follows:

WHEREFORE, finding NORBERTO BOQUE Y CUIZON Alias SIMMY guilty beyond reasonable doubt of the crime of MURDER charged against him, this Court sentences him to suffer the penalty of RECLUSION PERPETUA.

Further, the accused is directed to pay the heirs of Ferdinand Salen the amount of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php30,000.00 as exemplary damages.

The accused, however, is entitled in full to the entire period of his preventive imprisonment if he abided by the Rules on convicted prisoners, and if not, only to four-fifths (4/5) thereof.

Costs de officio.

SO ORDERED.<sup>9</sup>

The trial court found that the prosecution was able to prove the existence of all of the elements of the crime of murder. The uncontested testimony of Potente and the uncontroverted medical findings on Salen's death led the trial court to such a conclusion. In addition, the trial court found the circumstance of treachery to be obtaining.

Undaunted, petitioner interposed an appeal with the CA which was, however, denied by the appellate court in the herein assailed Decision, the dispositive portion of which states:

WHEREFORE, the Appeal is DENIED. The Decision dated 06 January 2016 of the Regional Trial Court, Branch 31, Calbayog City finding accused-appellant Norberto Boque y Cuizon, alias "Simmy," guilty beyond reasonable doubt for Murder is AFFIRMED.

SO ORDERED.<sup>10</sup>

Hence, the present recourse.

On May 18, 2018, the CA issued a minute resolution<sup>11</sup> giving due course to the Notice of Appeal<sup>12</sup> filed by appellant, thereby ordering the elevation of the records of the instant case to this Court.

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<sup>9</sup> Id. at 181.

<sup>10</sup> *Rollo*, p. 12.

<sup>11</sup> Id. at 17.

<sup>12</sup> Id. at 14-16.

In a Resolution<sup>13</sup> dated September 26, 2018, this Court noted the records of the case forwarded by the CA. The parties were then ordered to file their respective supplemental briefs, should they so desire, within 30 days from notice.

On February 22, 2019, the Office of the Solicitor General (OSG) filed a Manifestation<sup>14</sup> on behalf of the People, stating that it would no longer file a supplemental brief because all of its contentions have been exhaustively ventilated in the Appellee's Brief<sup>15</sup> that it submitted to the CA. On March 13, 2019, appellant, through the Public Attorney's Office, filed a similar Manifestation (In Lieu of Supplemental Brief).<sup>16</sup>

### ARGUMENTS RAISED BY APPELLANT

Professing innocence, appellant excoriates the inconsistencies in Potente's testimony, particularly with regard to where exactly in the tricycle-pedicab Salen was seated prior to the attack and how Potente exited his vehicle during the actual stabbing incident. Appellant expounds that Potente contradicted himself when he testified on direct testimony that Salen was seated at the sidecar in front of his motorcycle, then later claimed that Salen was seated behind him. Furthermore, Potente first declared in his affidavit that despite appellant's initial attack on Salen, he kept running his tricycle-pedicab before jumping off said vehicle. However, Potente later claimed in open court that he immediately jumped off his tricycle-pedicab upon witnessing the stabbing incident. At any rate, appellant continues, the prosecution had failed to establish the presence of treachery as would qualify the crime as murder. Appellant submits that Salen was running away from him, thus negating the element of treachery that that victim must have had no opportunity for self-defense or retaliation.

### REBUTTAL ARGUMENTS BY APPELLEE

The People, through the OSG, maintain that the appellate court did not err in affirming the findings and conclusion of the trial court. The alleged inconsistencies in Potente's testimony strengthens its credibility as they show that the testimony was not rehearsed. Moreover, there is no evidence on record which would show that Salen boarded Potente's vehicle because he was running away from appellant. Thus, the qualifying circumstance of treachery was duly proven before the trial court.

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<sup>13</sup> Id. at 19-20.

<sup>14</sup> Id. at 25-29.

<sup>15</sup> CA *rollo*, pp. 51-63.

<sup>16</sup> *Rollo*, pp. 33-35.

## THE ISSUE

The issue raised for this Court's resolution is whether or not the CA correctly upheld the conviction of herein appellant for the crime of murder.

## THE RULING OF THE COURT

The appeal is bereft of merit.

Time and again, this Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.<sup>17</sup> Moreover, the CA, performing its sworn duty to re-examine the trial records as thoroughly as it could in order to uncover any fact or circumstances that could impact the verdict in favor of the appellant, is presumed to have uncovered none sufficient to undo or reverse the conviction.<sup>18</sup> Thus, it bears to reiterate that in the review of a case, this Court is guided by the long-standing principle that factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect.<sup>19</sup>

Following a thorough and judicious review of the records of this case, as well as the parties' respective postures as amplified in their pleadings, We affirm the conviction of appellant.

The crime of murder, under Article 248<sup>20</sup> of the RPC, is committed by any person who, not falling within the provisions of Article 246<sup>21</sup> of the same Code, shall kill another with treachery, taking advantage of superior strength,

<sup>17</sup> *People v. Dayaday*, 803 Phil. 363, 370-371 (2017).

<sup>18</sup> *People v. Sota*, G.R. No. 203121, November 29, 2017, 847 SCRA 113, 129.

<sup>19</sup> *People v. Racal*, 817 Phil. 665, 676 (2017).

<sup>20</sup> Art. 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:

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 railroad, fall of an airship, or 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 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.

<sup>21</sup> Art. 246. Parricide. - Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.<sup>22</sup> Jurisprudence dictates that the elements of murder are as follows: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) that the killing is not parricide or infanticide.<sup>23</sup> All of these elements are obtaining in the instant case.

The first duty of the prosecution is not to prove the crime but to prove the identity of the criminal; for, even if the commission of the crime is established, there can be no conviction without proof of the identity of the criminal beyond reasonable doubt.<sup>24</sup> As correctly found by the trial court, the uncontroverted testimony of Potente as sole witness was clear, positive, unequivocal and credible. He was able to positively identify appellant as the person who stabbed Salen several times, resulting in the latter's eventual death. Thus:

Q: Did you recognize that person who stabbed your passenger Ferdinand Salen?

A: Yes, sir.

Q: If he is now in Court will you be able to point him out?

A: Yes, sir.

Q: Kindly look around and point him out before the Court if he is now in the premises of the courtroom[.]

A: Yes, sir. (witness pointing to the accused wearing yellow t-shirt when asked his name answered by the name of Norberto Boque).

x x x x

Q: Now, you said when you looked back after you noticed that your Pedit cab [sic] was pulled back you saw the accused Norberto Boque stabbed [sic] your passenger Ferdinand Salen alias Ferdie were you able to observe the kind of weapon in which the accused stabbed your passenger?

A: Yes, sir.

Q: What kind of weapon [and] how long was that?

A: A pointed weapon.

May we pray that the length be indicated.

A: The length of the weapon [is] about 9 inches long.

Q: And to what part of the body of Ferdinand Salen alias Ferdie was the stabbing blows was [sic] directed by the accused?

<sup>22</sup> *People v. Manzano*, G.R. No. 217974, March 5, 2018, 857 SCRA 323, 352.

<sup>23</sup> *People v. Kalipayan*, 824 Phil. 173, 183 (2018).

<sup>24</sup> *People v. Cadampog*, G.R. No. 218244, June 13, 2018, 866 SCRA 226, 234.

A: At his back.<sup>25</sup>

It bears stressing that the foregoing testimony of Potente is consistent with the medical findings stating in detail the injuries that Salen sustained at his infrascapular or back area. The fact that the crime occurred in the morning also shows that Potente could not have been mistaken as to what he witnessed.

As to the alleged inconsistencies in Potente's testimony, We find the same to be too specious and inconsequential as would render him an unreliable witness. It has been held, time and again, that minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.<sup>26</sup> Stated differently, such inconsistencies on minor details are in fact badges of truth, candidness, and the fact that the witness is unrehearsed.<sup>27</sup> Inconsistencies in the testimony of witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony.<sup>28</sup> An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction.<sup>29</sup>

Indeed, it has been held that the testimony of a single witness, if positive and credible, is sufficient to support a conviction even in the charge of murder.<sup>30</sup> In the determination of the value and credibility of evidence, witnesses are to be weighed, not numbered.<sup>31</sup> Truth is established not by the number of witnesses but by the quality of their testimonies.<sup>32</sup>

Then, too, this Court finds that the prosecution was able to prove the existence of treachery.

Treachery or *alevosia* is present when the offender commits any of the crimes against persons, employing means, methods or forms in its execution, tending directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.<sup>33</sup> Treachery constitutes two elements: (1) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate; and (2) that said means of execution were deliberately or consciously adopted.<sup>34</sup> In order to qualify the killing as murder, treachery must be proved by clear and

<sup>25</sup> Records, pp. 53-54.

<sup>26</sup> *People v. Moner*, G.R. No. 202206, March 5, 2018, 857 SCRA 242, 255.

<sup>27</sup> *People v. Descartin, Jr.*, 810 Phil. 881, 893 (2017).

<sup>28</sup> *People v. Empuesto*, G.R. No. 218245, January 27, 2018, 851 SCRA 611, 627.

<sup>29</sup> *People v. SPO1 Gonzales, Jr.*, 781 Phil. 149, 156 (2016).

<sup>30</sup> *People v. Manchu, et al.*, 593 Phil. 398, 409 (2008).

<sup>31</sup> *People v. Perez*, 595 Phil. 1232, 1252 (2008).

<sup>32</sup> *Ceniza-Manantan v. People*, 558 Phil. 104, 116 (2009).

<sup>33</sup> *People v. Panerio*, G.R. No. 205440, January 15, 2018.

<sup>34</sup> *People v. Kalipayan*, G.R. No. 229829, January 22, 2018.

convincing evidence or as conclusively as the killing itself.<sup>35</sup>

On the first element, the legal teaching consistently upheld by this Court is that the essence of treachery is when the attack comes without warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow. Relative to the second element, jurisprudence imparts that there must be evidence to show that the accused deliberately or consciously adopted the means of execution to ensure its success since unexpectedness of the attack does not always equate to treachery. The means adopted must have been a result of a determination to ensure success in committing the crime.<sup>36</sup>

As previously discussed, Potente witnessed appellant stab Salen multiple times at the back while the latter was riding his tricycle-pedicab. Salen was unarmed and could not have reasonably had any time to prepare to defend himself or even retaliate against the attack. Likewise, there is nothing on record in support of appellant's allegation that Salen was rode the tricycle-pedicab to away from him. Moreover, appellant used a nine-inch pointed weapon which ensured Salen's death. The Certificate of Death<sup>37</sup> of Salen corroborates this narrative, declaring that Salen died of "Cardiovascular Arrest secondary to Hypovolemic shock secondary to Stab wound 4cm Right Infrascapular Area, Stab Wound 7<sup>th</sup> ICS MCL Right." Indeed, *alevosia*, which is characterized by a deliberate, sudden and unexpected assault from behind, without warning and without giving the victim a chance to defend himself or repel the assault and without risk to the assailant,<sup>38</sup> is obtaining in this case.

All told, We find no compelling reason to depart from the findings and conclusion of the trial court as affirmed by the appellate court.

As to appellant's civil liability, the prevailing rule is that when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, as in this case, the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages, regardless of the number of qualifying aggravating circumstances present.<sup>39</sup> Thus, the award of exemplary damages case at bar must be increased from ₱30,000.00 to ₱75,000.00.

Furthermore, appellant must also pay the heirs of Salen the amount of ₱50,000.00 as temperate damages, which amount is prescribed by prevailing

<sup>35</sup> *People v. Panerio*, supra note 33.

<sup>36</sup> *People v. Salvador, Sr.*, G.R. No. 223566, June 27, 2018, 869 SCRA 112, 137-138.

<sup>37</sup> Records, p. 17.

<sup>38</sup> *People v. Raytos*, 810 Phil. 1007, 1025 (2017).

<sup>39</sup> *People v. Racal*, supra note 19, citing *People v. Jugueta*, 783 Phil. 806 (2016).

jurisprudence in murder *cases*,<sup>40</sup> in lieu of actual damages when no documentary evidence of burial or funeral expenses is presented in court.<sup>41</sup>

Finally, all damages awarded shall earn legal interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until their full satisfaction.<sup>42</sup>

**WHEREFORE**, the Decision dated March 27, 2018 of the Court of Appeals in CA-G.R. CR HC No. 02270 is hereby **AFFIRMED with MODIFICATION**.

Accused-appellant Norberto Boque y Cuizon a.k.a. "Simmy" 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 Ferdinand Salen civil indemnity, moral damages and exemplary damages at ₱75,000.00 each, temperate damages amounting to ₱50,000.00, and the costs of suit.

In line with current jurisprudence, interest at the rate of six percent (6%) *per annum* is hereby imposed on the total monetary award from the date of finality of this judgment until its full satisfaction.

**SO ORDERED.**

By authority of the Court:

*Misael D C Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court *July 17, 2020*

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<sup>40</sup> Id.

<sup>41</sup> *People v. Norada*, G.R. No. 218958, December 13, 2017, 849 SCRA 74, 92.

<sup>42</sup> *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

The Superintendent  
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