



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 207629

Present:

- versus -

SERENO, CJ.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

ARNEL VILLALBA y DURAN
and RANDY VILLALBA y
SARCO,
Accused-Appellants.

Promulgated:
OCT 22 2014

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DECISION

LEONARDO-DE CASTRO, J.:

Before the Court is the Decision¹ dated September 25, 2012 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00844-MIN, which affirmed, with modifications as to the amount of damages imposed, the Judgment² dated February 18, 2010 of the Regional Trial Court (RTC) of Butuan City, Branch 33, in Criminal Case No. 11736, finding accused-appellants Arnel Villalba y Duran (Arnel) and Randy Villalba y Sarco (Randy) guilty beyond reasonable doubt of the murder of Maximillian Casona y Lacroix (Maximillian).

In the Information dated May 1, 2006 filed with the RTC, accused-appellants were charged as follows:

That on or about the 29th day of April 2006 at 2:30 o'clock in the morning, more or less, at Capitol Avenue, near Gaisano Mall, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with intent to kill, with treachery, evident premeditation, and abuse of superior strength, did then and there willfully,

¹ CA rollo, pp. 75-88; penned by Associate Justice Edgardo A. Camello with Associate Justices Marilyn B. Lagura-Yap and Renato C. Francisco, concurring.

² Id. at 23-36; penned by Presiding Judge Edgar G. Manilag.

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unlawfully, and feloniously, attack and stab one MAXIMILLIAN CASONA Y LACROIX, with the use of an ice pick, hitting the latter at his left breast and left portion of his stomach, which directly caused his death incurring damages which maybe proven in Court.³

Accused-appellants pleaded not guilty during their arraignment on August 8, 2006.⁴

At the pre-trial conference held on July 19, 2007,⁵ the parties stipulated only as to the time and place of the stabbing incident, *i.e.*, at around 2:00 in the early morning of April 29, 2006 near the Gaisano Mall in Butuan City. Thereafter, trial ensued.

The prosecution presented the testimonies of three persons who witnessed the stabbing incident: Maximillian's widow Josephine B. Casona (Josephine),⁶ Homer Ferdinand B. Hermosura (Homer),⁷ and Frederick L. Apolinario (Frederick).⁸ The prosecution also called to the witness stand the physicians who attended to Maximillian before his death, namely, cardiologist Dr. Annalisa A. Gonzalez (Gonzalez)⁹ and surgeon Dr. Edesio C. Urag (Urag).¹⁰ Last to testify for the prosecution was Police Inspector (P/Insp.) Inocencio T. Amora (P/Insp. Amora),¹¹ the investigator assigned to the case and the apprehending officer of accused-appellants.

The documentary exhibits of the prosecution consisted of the respective Sworn Statements, all dated May 1, 2006, of Josephine, Homer, and Frederick;¹² the police blotter entry dated April 29, 2006 which reported Maximillian's stabbing and death;¹³ the police blotter entry dated April 30, 2006 which reported the subsequent arrests of accused-appellants for illegal gambling and concealment of deadly weapon;¹⁴ the Affidavit of Apprehension dated April 30, 2006 jointly executed by P/Insp. Amora, Senior Police Officer (SPO) 3 Antonio A. Claros, Police Officer (PO) 3 Rey Gabrielle B. Maderal, and PO2 Judan Q. Alvizo;¹⁵ three photographs depicting Frederick's identification of accused-appellants as Maximillian's assailants;¹⁶ a sketch and description of the puncture wounds found on Maximillian's body prepared by Dr. Urag;¹⁷ Maximillian's Certificate of Death;¹⁸ and the hospital and burial expenses in the total amount of

³ Records, p. 1.

⁴ Id. at 20.

⁵ Id. at 46-47.

⁶ TSN, August 22, 2007.

⁷ TSN, August 29, 2007.

⁸ TSN, September 19, 2007.

⁹ TSN, September 12, 2007.

¹⁰ Id.

¹¹ TSN, January 24, 2008.

¹² Records, pp. 5-10.

¹³ Id. at 201.

¹⁴ Id. at 202.

¹⁵ Id. at 11.

¹⁶ Id. at 200.

¹⁷ Id. at 199.

¹⁸ Id. at 193.

₱55,225.60 incurred by Josephine.¹⁹ These exhibits were all admitted in evidence by the RTC in its Order dated February 29, 2008.²⁰

The prosecution's evidence established the following version of events:

Maximillian, a college instructor, attended a farewell party for his students at Moff's Restaurant and Cocktail Lounge along JC Aquino Avenue in Butuan City on the night of April 28, 2006. Maximillian was accompanied by his wife Josephine and their friends Frederick, Homer, and Homer's wife Marilou.

Around 2:30 in the morning of April 29, 2006, Josephine begged Maximillian that they already go home. Josephine reminded Maximillian of the lateness of the hour and of the great amount of liquor that he had already consumed. Maximillian still did not want to leave, but Josephine insisted. Angry, Maximillian rushed out of the restaurant and headed towards the direction of the Gaisano Mall in Butuan City. Josephine asked Frederick to catch up with Maximillian. Josephine, Homer, and Marilou then trailed about 10 meters behind Maximillian and Frederick.

When they turned the corner of JC Avenue and Capitol Drive, Maximillian and Frederick chanced upon accused-appellants and their girlfriends. Maximillian's group and accused-appellants' group did not know each other prior to the early morning of April 29, 2006. Maximillian suddenly ordered accused-appellants to wear their shirts, and then asked accused-appellant Arnel, "How much is that?" referring to accused-appellant Arnel's girlfriend. Frederick intervened and told accused-appellant Arnel, "Brod, don't mind him. He is a little bit drunk." Accused-appellant Arnel replied, "That was nothing, *Kuya*." However, Maximillian and accused-appellant Arnel continued to stare at each other. Moments later, Maximillian tried to get hold of accused-appellant Arnel's left arm but the latter was able to wave away Maximillian's hand. Accused-appellant Randy blocked Maximillian's way and held Maximillian's hand/s as accused-appellant Arnel hit Maximillian on the chest and abdomen. At this point, it appeared to eyewitnesses Frederick, Josephine, and Homer that Maximillian was just being boxed by accused-appellant Arnel. Frederick tried to break the scuffle, as Josephine and Homer, who were only five meters away, came running to help. Accused-appellants stepped back and then ran away. Despite telling Josephine that he was stabbed, Maximillian still chased accused-appellants, with Frederick and Homer at his heels. Stones were thrown their way but none of them were hit. All of a sudden, Maximillian fell to the ground. Josephine checked Maximillian's body yet found no blood or wound. Assuming that Maximillian was simply drunk and in pain because of the fist fight, Josephine, with the help of Frederick and Homer,

¹⁹ Id. at 195-198.

²⁰ Id. at 203.

brought Maximillian home on board a motorized “*trisikad*.” During the ride home, Maximillian was unconscious but snoring heavily. However, when they were already at their house, Josephine felt that Maximillian had no more pulse and his eyes had turned white. Josephine, again with Frederick and Homer, rushed Maximillian to Manuel J. Santos Hospital.

Maximillian arrived at the hospital at around 3:00 in the morning of April 29, 2006. Dr. Gonzalez, the attending physician at the emergency room, noticed that Maximillian was already unresponsive and had no more heartbeat. Dr. Gonzalez performed cardiopulmonary resuscitation and was able to revive Maximillian. Dr. Gonzalez conducted close physical examination of Maximillian’s body and discovered two hardly visible stab wounds located at the latter’s left chest and abdomen. Dr. Gonzalez immediately referred Maximillian to Dr. Urag, a surgeon.

As a result of his own examination, Dr. Urag reported that Maximillian’s stab wounds both had a lateral width of about 3-5 mm, and that the stab wound on Maximillian’s chest penetrated the pericardium of his heart, which caused the entry of fluid into the said organ. The delay in the discovery of the fatal chest wound and the lack of hospital facilities rendered it too late to save Maximillian. Resultantly, Maximillian died of “Cardio Pulmonary Arrest secondary to Pericardial Tamponade secondary to penetrating stab wound left chest.” Dr. Urag called Maximillian’s wounds as puncture wounds, which could be caused by any sharp instrument or bladed weapon, or even nails.

Josephine reported Maximillian’s stabbing and death to the police on April 29, 2006. P/Insp. Amora, then the Chief of the General Investigation Section of the Butuan City Police Office, took charge of the investigation of Maximillian’s case. P/Insp. Amora conducted an ocular inspection of the scene of the crime and was able to identify accused-appellants as the suspects. The following day, April 30, 2006, P/Insp. Amora came upon information that accused-appellants were in P-1 Barangay Imadejas Subdivision, Butuan City. P/Insp. Amora proceeded to the given location and there found accused-appellants playing and betting on a game of cards. The police immediately arrested accused-appellants for illegal gambling and brought them to the police station. Upon being informed of accused-appellants’ arrest, Josephine and Frederick arrived at the police station and identified accused-appellants as Maximillian’s assailants.

Accused-appellants testified in their own defense.

Accused-appellant Arnel²¹ while admitting his presence at the time and scene of the crime, narrated a different version of the events surrounding Maximillian’s stabbing.

²¹ TSN, April 11, 2008.

According to accused-appellant Arnel, at around 2:30 in the morning of April 29, 2006, he was with his girlfriend Jenny and friends Johndale and Tata in the vicinity of Gaisano Mall, waiting for a tricycle. When Jenny was about to board a tricycle, four persons, who all looked drunk, came out of a store. One of these four persons, who turned out to be Maximillian, approached and asked accused-appellant Arnel how much was the girl he was with. Maximillian's crude remark angered Jenny, who immediately left with Tata, on board the tricycle. A companion of Maximillian approached accused-appellant Arnel and requested him to bear with Maximillian who was already drunk. Accused-appellant Arnel expressed that he understood the situation. However, Maximillian suddenly blocked the way of accused-appellant Arnel and Johndale. Maximillian punched accused-appellant Arnel, hitting the latter on the neck, just below his left ear. Johndale was able to run away. Accused-appellant Arnel asked Maximillian why the latter hit him. Instead of answering the question, Maximillian threw back another question, asking if accused-appellant Arnel was brave. Accused-appellant Arnel looked for a stone to throw at Maximillian to fend off the latter, but saw none. What accused-appellant found and grabbed as a weapon to defend himself was a barbecue stick, about six inches long. Accused-appellant Arnel stabbed Maximillian once with the barbecue stick on the left side of the body, after which, the barbecue stick broke. When stabbed, Maximillian did not show any reaction but just walked away from accused-appellant. At that point, Maximillian's three companions also began to attack accused-appellant Arnel. After their attack, Maximillian's three companions left. Accused-appellant Arnel sat down for a while near Gaisano Mall, then went home. The following day, accused-appellant Arnel was apprehended by the police. Accused-appellant Arnel was surprised to learn from the police that Maximillian had died. Accused-appellant Arnel insisted that he had no intention of killing Maximillian and denied any knowledge of how Maximillian sustained the second stab wound. Accused-appellant Arnel further clarified that it was his friend Johndale, not his cousin accused-appellant Randy, who was with him when he encountered Maximillian the early morning of April 29, 2006.

Accused-appellant Randy²² narrated on the witness stand that he was at his house in Barangay Doongan with his wife and children in the early morning of April 29, 2006. Accused-appellant Randy knew nothing about Maximillian's stabbing and death. Accused-appellant Randy was with his wife at the house of a traffic aide called Puspus in Lower Doongan when he was accosted by the police. The police asked accused-appellant Randy for the whereabouts of his cousin accused-appellant Arnel. When accused-appellant Randy answered that he did not know, the police immediately arrested him and brought him to the police station. At the police station, the police promised that they would drop the charges against accused-appellant Randy if the latter would reveal where accused-appellant Arnel was. Accused-appellant Randy thus told the police that accused-appellant Arnel

²² TSN, November 28, 2008.

was in Pareja Subdivision. Accused-appellant Arnel was indeed found and arrested in Pareja Subdivision and was also brought to the police station. Accused-appellants were then presented before a witness to Maximillian's stabbing. The witness was wearing a cap and a cover on his face. The witness first pointed only at accused-appellant Arnel, but after some coaching from the police, the witness also pointed at accused-appellant Randy.

On February 18, 2010, the RTC promulgated its Judgment convicting accused-appellants as charged. The trial court found that the prosecution had duly established the essential elements of murder, and rejected the uncorroborated claim of self-defense of accused-appellant Arnel and defenses of denial and alibi of accused-appellant Randy. The trial court held that Maximillian's killing was murder given the presence of the qualifying circumstances of abuse of superior strength and treachery, but not evident premeditation. The RTC sentenced accused-appellants thus:

WHEREFORE, in view of the foregoing, the court finds accused Arnel Villalba and Randy Villalba guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code, qualified by treachery and abuse of superior strength, with no mitigating circumstance. Pursuant to Republic Act No. 9346, banning the imposition of the death penalty, said accused are hereby sentenced to suffer the penalty of Reclusion Perpetua without possibility of parole. The accused are further ORDERED to pay the heirs of Maximillian Casona the amounts of SEVENTY[-]FIVE THOUSAND (₱75,000.00) PESOS as civil indemnity, TWENTY[-]FIVE THOUSAND (₱25,000.00) PESOS as exemplary damages, FIFTY[-]FIVE THOUSAND TWO HUNDRED TWENTY[-]FIVE PESOS AND SIXTY CENTAVOS (₱55,225.60) as actual damages, FIFTY THOUSAND (₱50,000.00) PESOS as moral damages, and TWENTY THOUSAND (₱20,000.00) PESOS as attorney's fees.²³

Accused-appellants appealed their conviction before the Court of Appeals, based on the following grounds:

[I] THE COURT A *QUO* ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF MURDER DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREM[E]DITATION

[II] THE COURT A *QUO* LIKEWISE ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.

[III] THE COURT A *QUO* ERRED WHEN IT FAILED TO APPRECIATE THE EXISTENCE OF SELF-DEFENSE ON THE PART OF THE ACCUSED-APPELLANT ARNEL VILLALBA.²⁴

²³ Records, pp. 287-288.

²⁴ CA *rollo*, pp. 9-10.

On September 25, 2012, the Court of Appeals rendered its assailed Decision affirming the conviction of accused-appellants for murder. Like the RTC, the appellate court gave scant consideration to accused-appellants' unsubstantiated defenses. The appellate court likewise agreed with the finding of the RTC that treachery attended Maximillian's killing, reasoning thus:

The court *a quo* for its part, had this to say about its finding of treachery:

The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. Frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate (*People v. De Guzman*, G.R. No. 173197, April 24, 2007).

Thus, there was treachery when accused Randy Villalba held the hand of the victim who was drunk while his co-accused Arnel Villalba simultaneously boxed and stabbed the deceased, thereby insuring its execution to kill the victim without risk to themselves arising from the defense which the offended party might make. Treachery qualifies the killing to murder (Article 248 of the Revised Penal Code).

We agree with the court *a quo*.

Jurisprudence abounds in holding that an altercation between the victim and the accused immediately before the attack upon the victim does not necessarily negate the presence of treachery. This was reiterated in *People v. Jabian* [G.R. No. 132913-14, April 4, 2001], viz:

Accused-appellant Jabian's suggestion that an argument between the parties preceded the slaying as testified to by Ruel Lipalam, coupled with the fact that the attack was frontal, as shown by location of the wound, and that therefore the killing of Jose Sammy was not sudden or unexpected as to negate a finding of treachery, cannot be sustained. There is treachery when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend to directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. Thus, it has been held that the fact that the attack was preceded by a fight, or even when the victim was forewarned of danger to his person does not negate treachery. In this case, accused-appellant Jimmy Magaro held both arms of the victim behind his back, effectively rendering the latter incapable of defending himself while the other accused stabbed him in the chest. As correctly pointed out by the trial court, the victim was "a virtual

sitting duck when stabbed by Jabian because he was hand clasped by Magaro in order to be so stabbed, without any risk whatsoever to the two accused arising from any useful defense which Jose Sammy might make.”

In addition, the Supreme Court has ruled in a number of cases that treachery attends the killing of a person who is drunk, unarmed, has no opportunity to defend himself and the attack is sudden.

In the case at hand, it was established by the prosecution witnesses that appellant Randy held an intoxicated Maximillian while appellant Arnel stabbed him. Consequently, at the time of the attack, the victim was not in the position to defend himself. Clearly then, the court *a quo*'s finding of treachery is justified. At the same time, this collaborative manner of the attack supports the finding of conspiracy.²⁵

The Court of Appeals though modified the amount of damages awarded. The dispositive portion of the Court of Appeals' decision reads:

FOR THE REASONS STATED, the appeal is DENIED. The RTC Decision in Criminal Case No. 11736 finding accused-appellants guilty beyond reasonable doubt of murder is AFFIRMED with the following MODIFICATIONS;

1. Moral damages are awarded in the increased amount of Php75,000;
2. Exemplary damages are awarded in the increased amount of Php30,000; and
3. Interest at the rate of 6% *per annum* on all damages from April 29, 2006 up to the finality of this Decision, and interest at 12% *per annum* on these damages from date of finality of this Decision until fully paid shall likewise be paid by accused-appellants to the heirs of Maximillian Casona.²⁶

Hence, the instant appeal.

The Court gave the parties the opportunity to file their respective supplemental briefs²⁷ but the parties manifested that they had already exhausted their arguments before the Court of Appeals.²⁸

Accused-appellant Arnel asserts that he cannot be adjudged criminally liable for the resulting death of Maximillian as he only stabbed Maximillian in self-defense. Accused-appellant also argues that treachery cannot be appreciated to qualify the killing of Maximillian to murder, as even the prosecution admits that provocation and aggression came from Maximillian and that an altercation between accused-appellant Arnel and Maximillian preceded the stabbing.

²⁵ *Rollo*, pp. 12-13.

²⁶ *Id.* at 15.

²⁷ *Id.* at 22.

²⁸ *Id.* at 23-24, 26-27.

Accused-appellant Randy insists on his alibi, *i.e.*, that he was at home with his family and not in the company of accused-appellant Arnel on April 29, 2006 near the Gaisano Mall.

The Court finds partial merit in the instant appeal.

At the outset, the Court bears in mind the following pronouncement in *People v. Gerolaga*²⁹:

In this Decision, this Court emphasizes the need to review the facts and details of appealed cases with meticulous, laser-like precision. While, as a rule, the findings of fact of trial courts are accorded great respect by appellate tribunals, still, the latter must wade through the mass of evidence in order to ensure that the trial court did not overlook or misapprehend little details that could spell the innocence of the accused, or at least mitigate their guilt. This is but consistent with the doctrine that all doubts must be resolved in their favor. Indeed, it is far better to set free a thousand guilty persons than to unjustly punish an innocent one.

The Court, after a meticulous review of the records of the case, finds bases to downgrade accused-appellant Arnel's crime from murder to homicide and to absolve accused-appellant Randy of any criminal liability for Maximillian's death.

The Court begins with the undisputed facts: Maximillian and Frederick, followed by Josephine, Homer, and Marilou, chanced upon accused-appellant Arnel, his girlfriend Jenny, and two other companions, somewhere along Capitol Drive, near the vicinity of Gaisano Mall in Butuan City, at around 2:30 in the morning of April 29, 2006. These two groups did not know each other prior to April 29, 2006. Maximillian addressed an insulting remark towards Jenny causing tension between Maximillian and accused-appellant Arnel. A scuffle ensued between the two men and accused-appellant Arnel eventually stabbed Maximillian on the chest with a sharp instrument, causing a puncture wound that penetrated Maximillian's heart and ultimately caused Maximillian's death.

Prosecution witnesses Josephine and Frederick had positively identified both accused-appellants at the police station soon after accused-appellants' arrest. The same prosecution witnesses, together with Homer, would again positively identify both accused-appellants in open court during trial. Hence, accused-appellant Randy's presence at the time and place of Maximillian's stabbing was duly established. Accused-appellant Randy was not able to attribute any ill motive on the part of the three prosecution witnesses that could have impelled them to testify against him. Where there is nothing to show that the witnesses for the prosecution were actuated by improper motive, their positive and categorical declarations on the witness stand, under the solemnity of an oath, deserve full faith and credence. It

²⁹ 331 Phil. 441, 446 (1996).

necessarily prevails over alibi and denial, especially when neither alibi nor denial is substantiated by clear and convincing evidence.³⁰ Nonetheless, accused-appellant Randy's presence at the time and place of Maximillian's stabbing does not necessarily mean that the former should bear criminal liability for the latter's death, as the Court will subsequently discuss herein.

The Information charged accused-appellants with Maximillian's murder, alleging that accused-appellants, acting in conspiracy with each other, and with abuse of superior strength, treachery, and/or evident premeditation, stabbed Maximillian with an icepick.

On conspiracy

Jurisprudence requires that conspiracy must be proven as the crime itself. Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. Proof of the agreement need not rest on direct evidence, as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. The rule is that conviction is proper upon proof that the accused acted in concert, each of them doing his part to fulfill the common design to kill the victim.³¹

There is no clear evidence that accused-appellants had a common design to kill Maximillian. To recall, Maximillian's group and accused-appellants' group completely met by chance that fateful early morning of April 29, 2006 near Gaisano Mall. They did not know each other before this meeting. The events swiftly happened, in a matter of minutes, from the meeting of the two groups, to Maximillian's insulting remark to Jenny, to the scuffle between Maximillian and accused-appellant Arnel, and to accused-appellant Arnel's stabbing of Maximillian.

The scuffle between Maximillian and accused-appellant Arnel broke out because the former tried to grab the latter's arm. It was at this point that prosecution witnesses saw accused-appellant Randy block Maximillian's way and hold Maximillian's hand/s. Josephine testified that accused-appellant Randy held only Maximillian's left hand, and Frederick narrated that accused-appellant Randy held both of Maximillian's hands; but neither of these witnesses was able to describe the extent that Maximillian's ability to defend himself or flee was impaired by accused-appellant Randy's hold on his hand/s. Given the circumstances, the Court has serious doubts that accused-appellant Randy so acted to ensure that accused-appellant Arnel would be able to stab and kill Maximillian. It is completely reasonable and

³⁰ *People v. Galicia*, G.R. No. 191063, October 9, 2013, 707 SCRA 267, 282.

³¹ *People v. Quinao*, 336 Phil. 475, 488-489 (1997).

plausible that accused-appellant Randy was merely stepping in to stop Maximillian from further attacking his cousin accused-appellant Arnel. There was no proof that accused-appellant Randy had prior knowledge that accused-appellant Arnel carried a sharp weapon with him or that accused-appellant Arnel intended to stab Maximillian.

In fact, there is no strong evidence of the weapon accused-appellant Arnel used in stabbing Maximillian. None of the prosecution witnesses actually saw accused-appellant use an ice pick or any other weapon. Josephine, Homer, and Frederick did not even know that Maximillian was stabbed, believing that he was just punched by accused-appellant Arnel.

For his part, accused-appellant Arnel admitted stabbing Maximillian but asserted that he used only a barbecue stick which he found in the area. A barbecue stick, with a sharp end, could cause a puncture wound consistent with that which killed Maximillian. That accused-appellant Arnel used a barbecue stick he found in the area as weapon shows that he acted instantaneously and spontaneously in stabbing Maximillian, thus, further negating the possibility that he conspired with accused-appellant Randy to commit the stabbing.

On the qualifying circumstances for murder

The prosecution likewise failed to prove beyond reasonable doubt any of the alleged circumstances which would qualify the killing of Maximillian to murder.

The RTC, affirmed by the Court of Appeals, already found that there was no evident premeditation. The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. For it to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.³² As the Court already discussed in the preceding paragraphs, the events leading to the stabbing of Maximillian by accused-appellant Arnel happened swiftly and unexpectedly, with accused-appellant Arnel instantaneously and spontaneously stabbing Maximillian with a barbecue stick he found in the area. Accused-appellant Arnel clearly had no opportunity for cool thought and reflection prior to stabbing Maximillian.

Unlike the RTC and the Court of Appeals, however, the Court finds no treachery in accused-appellant Arnel's stabbing of Maximillian. That accused-appellant Randy was present or that Maximillian was unarmed and

³² *People v. Duavis*, G.R. No. 190861, December 7, 2011, 661 SCRA 775, 784.

drunk at the time of the stabbing are not sufficient to constitute treachery. Neither do said circumstances constitute abuse of superior strength.

Treachery is defined under Article 14 of the Revised Penal Code as follows:

There is treachery when the offender commits any of the crimes against the person, employing the means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

Based on the above definition, two conditions must be present in order to constitute treachery: (1) the employment of such means of execution that gave the person attacked no opportunity to defend himself or to retaliate, and (2) the means of execution was deliberately or consciously adopted. Jurisprudence, however, has qualified that the suddenness of the attack, the vulnerability of the position of the victim at the time of the attack, or even the fact that the victim was unarmed, do not by themselves render the attack as treacherous, to wit:

This Court has held that the **suddenness of the attack, the infliction of the wound from behind the victim, the vulnerable position of the victim at the time the attack was made, or the fact that the victim was unarmed, do not by themselves render the attack as treacherous.** This is of particular significance in a case of an instantaneous attack made by the accused whereby he gained an advantageous position over the victim when the latter accidentally fell and was rendered defenseless. **The means employed for the commission of the crime or the mode of attack must be shown to have been consciously or deliberately adopted by the accused to insure the consummation of the crime and at the same time eliminate or reduce the risk of retaliation from the intended victim. For the rules on treachery to apply, the sudden attack must have been preconceived by the accused, unexpected by the victim, and without provocation on the part of the latter. Treachery is never presumed.** Like the rules on conspiracy, it is required that the manner of attack must be shown to have been attended by treachery as conclusively as the crime itself.³³ (Emphasis supplied.)

The elements of treachery are wanting in this case. At the risk of sounding repetitive, the Court once more emphasizes the swiftness of the events that took place on April 29, 2006 when Maximillian's group unexpectedly came upon accused-appellants' group. The tension and physical violence between Maximillian and accused-appellant Arnel quickly escalated from a verbal exchange, to a physical scuffle, and then to the stabbing of Maximillian by accused-appellant Arnel. Accused-appellant Arnel merely found a barbecue stick in the area which he used to stab Maximillian. The barbecue stick could hardly be a weapon of choice and accused-appellant Arnel obviously used it only in desperation. Moreover, it cannot be said that Maximillian did not expect at all some form of attack from accused-appellant Arnel. Maximillian provoked accused-appellant

³³ *People v. Dagani*, 530 Phil. 501, 520-521 (2006).

Arnel by making a crude remark about the latter's girlfriend, then grabbing accused-appellant Arnel's arm, and taunting accused-appellant Arnel if he was brave. It would appear that Maximillian was, in fact, spoiling for a fight. In addition, as the Court previously observed herein, it cannot simply assume in the absence of proof that accused-appellant Randy held Maximillian's hand/s to prevent the latter from retaliating as accused-appellant Arnel stabbed Maximillian. Accused-appellant Randy could just as well be holding Maximillian's hand/s to stop Maximillian from further attacking accused-appellant Arnel during the scuffle. Lastly, the Court is unconvinced that accused-appellant Arnel took advantage of Maximillian's drunken state. No clear and convincing evidence has been presented to show the degree of Maximillian's intoxication or if it had even affected his strength and intelligence.

As for abuse of superior strength, it is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage.³⁴

In the case at bar, Maximillian was with Frederick when they first chanced upon accused-appellants, an even match of two against two, therefore disputing any allegation of inequality of forces between the two sides. Moreover, given the doubts as to accused-appellant Randy's actual participation in the stabbing, it cannot be said that the two accused-appellants had used their combined strength against Maximillian to ensure the latter's death.

Without any qualifying circumstance, the stabbing and death of Maximillian is a homicide rather than a murder.

The respective criminal liabilities of accused-appellants

In the absence of conspiracy, the respective criminal liability of accused-appellants would depend on the precise participation of each in the crime.

Accused-appellant Arnel had already admitted to stabbing Maximillian with a barbecue stick, which eventually caused the latter's death. Unless he is able to prove to the satisfaction of the Court his claim of self-defense as a justifying circumstance, accused-appellant Arnel's

³⁴ *People v. Beduya*, G.R. No. 175315, August 9, 2010, 627 SCRA 275, 284.

conviction for the crime of homicide becomes inevitable.³⁵

It is a hornbook doctrine that when self-defense is invoked, the burden of evidence shifts to the appellant to prove the elements of that claim, *i.e.*, (1) unlawful aggression on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person defending himself.³⁶

Accused-appellant Arnel failed to establish the unlawful aggression of Maximillian at the time he stabbed the latter.

Unlawful aggression is the indispensable element of self-defense, for if no unlawful aggression attributed to the victim is established, self-defense is unavailing as there is nothing to repel. The unlawful aggression of the victim must put the life and personal safety of the person defending himself in actual peril. A mere threatening or intimidating attitude does not constitute unlawful aggression.³⁷

In this case, accused-appellant Arnel's contemplated threat to his life or limb when he stabbed Maximillian was not real or imminent. Maximillian merely uttered insulting remarks to accused-appellant Arnel and the latter's girlfriend, Jenny. Accused-appellant Arnel even admitted that Frederick, Maximillian's companion, immediately intervened and apologized for Maximillian's unruly conduct. Granting that Maximillian did punch accused-appellant Arnel and hit the latter below his left ear, accused-appellant Arnel could have simply hit Maximillian back. Instead, accused-appellant Arnel used a barbecue stick to stab Maximillian on the chest, which was evidently not commensurate, and well overboard, as compared to the aggression exhibited by Maximillian to him.

The penalty prescribed by Article 249 of the Revised Penal Code for the crime of homicide is *reclusion temporal*. Under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code.

Absent any mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of *reclusion temporal* in its medium term which has a duration of fourteen (14) years, eight (8) months, and one (1) day, to seventeen (17) years and four (4) months; and that the minimum should be within the range of *prision mayor* which has a duration of six (6) years and one (1) day to twelve (12) years. In the instant case, the Court sentences accused-appellant Arnel to imprisonment of eight

³⁵ *People v. Cawaling*, 355 Phil. 1, 37 (1998).

³⁶ *People v. Duavis*, supra note 32 at 782.

³⁷ *People v. Ramos*, G.R. No. 190340, July 24, 2013, 702 SCRA 204, 215.

(8) years of *prision mayor*, as minimum, to fifteen (15) years of *reclusion temporal*, as maximum.

As to the civil indemnity and damages, based on current jurisprudence, the Court orders accused-appellant Arnel to pay Maximillian's heirs the amount of Fifty-Five Thousand Two Hundred Twenty-Five Pesos and Sixty Centavos (₱55,225.60) as actual damages, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and another Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity.

Absent any evidence that accused-appellant Randy acted with criminal intent in holding Maximillian's hand/s at about the same time that accused-appellant Arnel stabbed Maximillian, the Court absolves accused-appellant Randy of any criminal and civil liability for Maximillian's death.

WHEREFORE, in view of all the foregoing, the appeal of accused-appellants is **PARTIALLY GRANTED**.

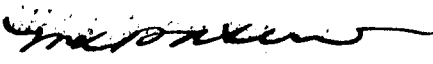
The Court finds accused-appellant ARNEL VILLALBA y DURAN **GUILTY** beyond reasonable doubt of the crime of Homicide, for which he is **SENTENCED** to imprisonment of eight (8) years of *prision mayor*, as minimum, to fifteen (15) years of *reclusion temporal*, as maximum, and **ORDERED** to pay the heirs of Maximillian Casona the amounts of ₱55,225.60 as actual damages, ₱75,000.00 as moral damages, and another ₱75,000.00 as civil indemnity plus interest on all damages awarded at the rate of 6% per annum from date of finality of this decision until fully satisfied.

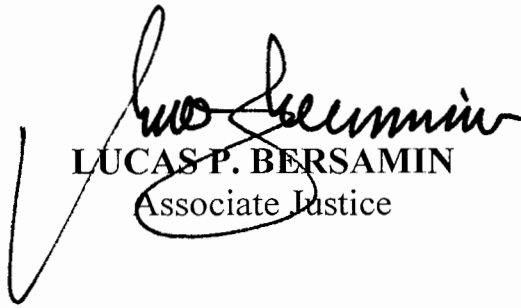
The Court **ACQUITS** accused-appellant RANDY VILLALBA y SARCO on the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice




JOSE PORTUGAL PEREZ
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.



MARIA LOURDES P. A. SERENO
Chief Justice