



Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY

*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

MAR 03 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff–Appellee,

G.R. No. 229829

Present:

- versus -

VELASCO, JR., J., *Chairperson*,  
BERSAMIN,  
LEONEN,  
MARTIRES\*, and  
GESMUNDO, JJ.

ARNEL KALIPAYAN y ANIANO,  
Accused–Appellant.

Promulgated:

January 22, 2018

X ----- *Wilfredo V. Lapitan* ----- X

DECISION

**GESMUNDO, J.:**

This is an appeal from the Decision<sup>1</sup> dated July 29, 2016 of the Court of Appeals-Visayas Station (CA) docketed as CA-G.R. CEB-CR-HC No. 01962. The CA affirmed with modification the Judgment<sup>2</sup> dated November 26, 2014 of the Regional Trial Court (RTC) of Tacloban City, Branch 34, finding accused-appellant Arnel Kalipayan y Aniano (*accused-appellant*) guilty of murder.

\*On leave.

<sup>1</sup> *Rollo*, pp. 4-12. Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap, concurring.

<sup>2</sup> *CA rollo*, pp. 44-52. Penned by Judge Frisco T. Lilagan.

### The Antecedents

Accused-appellant was charged with the crime of murder under Article 248 of the Revised Penal Code (*RPC*). The accusatory portion of the information reads:

Criminal Case No. 2008-06-323

That on or about the 25<sup>th</sup> day of June 2008 in the City of Tacloban and within the jurisdiction of this Honorable Court the above-named accused with intent to kill, with treachery, evident premeditation and abuse of superior strength did then and there wilfully [*sic*] and feloniously stab several times Glaiza Molina, his former live-in partner inside her house with the use of bladed knife hitting different parts of the latter's body causing her some injuries thereon resulting to her instantaneous death.

Said act is attended with the aggravating circumstance of "dwelling."

Contrary to law.<sup>3</sup>

On September 10, 2008, accused-appellant was arraigned and he pleaded not guilty to the charge.<sup>4</sup> Thereafter, trial ensued.

#### *Evidence for the Prosecution*

Prosecution witnesses testified that Glaiza Molina (*Glaiza*) and accused-appellant were lovers and they have a child. They lived with Glaiza's grandmother Celestina Molina (*Celestina*) for some time. Their living arrangements changed throughout the years until it was agreed that Glaiza, together with the couple's daughter, would live with Celestina so that Glaiza can continue her studies. Glaiza and accused-appellant's relationship took a negative turn with the incident that occurred on June 25, 2008.<sup>5</sup>

Josephine Paraiso (*Josephine*), Glaiza's mother, testified that on June 25, 2008, at around 5:45 p.m., she was watching television inside their house while Celestina and Glaiza were in the kitchen preparing their dinner. Accused-appellant entered their house without permission, approached Glaiza, stabbed her in the back and held her hair. Accused-appellant then made Glaiza face him and continued stabbing her in the abdomen. Josephine tried to stop accused-appellant but the latter poked the knife at her, telling

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<sup>3</sup> Records, p. 1.

<sup>4</sup> Id. at 17.

<sup>5</sup> CA rollo, p. 46.

her not to interfere as it was none of her business. Josephine then ran outside the house and asked for help. A neighbor, Dennis Alegre, tried to stop accused-appellant but the latter was undeterred, even when Josephine was begging him to stop. Josephine decided to leave the house while accused-appellant escaped. With accused-appellant gone, Josephine went back inside their house, where she found Glaiza still breathing. Glaiza was brought to Remedios Trinidad Romualdez Medical Foundation Hospital where she was declared dead on arrival.

On cross examination, she testified that accused-appellant entered the house through the main door. Glaiza was about to put the pot on the stove with her back facing accused-appellant when the latter stabbed her using a 9 ½ inch long Rambo knife, which they did not have in their kitchen. She likewise said that accused-appellant and Glaiza did not have a conversation immediately prior to the incident.

Celestina testified that she was in the kitchen with Glaiza while the latter was trying to cook rice. Celestina was doing something to the gas tank when accused-appellant suddenly entered the house and stabbed Glaiza. The latter fell to the ground but accused-appellant continued stabbing her. Celestina then went out of the house to seek help and she was prevented by their neighbors to go back inside.

SPO2 Marion Lavadia testified that he was the policeman on duty and he received the phone call about the stabbing incident. Celestina met the police who responded to the incident and informed them that Glaiza was stabbed several times. They later discovered that accused-appellant could be somewhere in V&G Subdivision in Tacloban City. When they saw accused-appellant, Josephine confirmed that he was the one that stabbed Glaiza. The police arrested accused-appellant and frisked him, which resulted in the discovery of the knife used against Glaiza.

The Medico-Legal Autopsy Report<sup>6</sup> stated that the victim Glaiza Molina (*Glaiza*) suffered one (1) puncture wound on her head, eight (8) stab wounds and one (1) puncture wound on her chest, one (1) stab wound on her abdomen, two (2) incise wounds, and three (3) stab wounds on her extremities.<sup>7</sup>

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<sup>6</sup> Records, p. 7.

<sup>7</sup> Rollo, p. 49.

*Evidence for the Defense*

Accused-appellant presented a different account of the incident. He claimed that he confronted Glaiza because he believes that the latter was having an affair with another man and the situation hurt him. Accused-appellant and Glaiza then went to the balcony of the house near the kitchen, where they ended up arguing and shouting. Glaiza was angry at him, and thereafter went to the kitchen, and he followed her. Accused-appellant took a knife from the sink and threatened Glaiza, causing the latter to slap him. Accused-appellant then lost control and started stabbing Glaiza, and he could not remember the number of times he stabbed her. He could also not recall what happened until he surrendered when the police saw him at V&G Subdivision.

On cross-examination, accused-appellant stated that he had no intention of hurting Glaiza; instead he wanted to mend their relationship. Glaiza, however, was cold to him. He insisted that he was not armed when he went to Glaiza and he only found the knife inside the house.

*The RTC Ruling*

In the judgment dated November 26, 2014, the RTC found accused-appellant guilty beyond reasonable doubt of committing the crime of murder. On the matter of the circumstance of abuse of superior strength, it noted that Glaiza was unarmed and stabbed numerous times and it showed that accused-appellant abused his superior strength and demonstrated his brutality. Nevertheless, the RTC opined that this circumstance is absorbed in treachery which was also present in this case. Treachery was proven by the clear and credible testimony of Celestina. The trial court observed that due to the suddenness of the attack, Glaiza was unable to defend herself and repel the attack. On the subject of dwelling as an aggravating circumstance, the RTC stated that there is no evidence showing that the crime was deliberately and purposely intended to be inside Glaiza's house and to cause disrespect to the sanctity of the dwelling.

It held, however, that the evidence presented by the prosecution did not sufficiently show that the killing was attended by evident premeditation. As pointed out by the court, though accused-appellant planned to confront Glaiza, it was not tantamount to planning to kill Glaiza. The RTC concluded that there was no direct or circumstantial proof demonstrated by the prosecution to show that accused-appellant meditated and reflected on committing murder. The dispositive portion of the RTC ruling states:



WHEREFORE, premises considered, the herein accused ARNEL KALIPAYAN y Aniano is hereby found guilty beyond reasonable doubt of the offense of MURDER and is hereby sentenced to suffer a penalty of *Reclusion Perpetua*.

Accused Arnel Kalipayan is hereby ordered to indemnify Josephine Paraiso, the mother of the victim, the amount of Php75,000.00 as moral damages, the heirs of Glaiza Molina Php75,000.00 as death indemnity, Php30,000.00 for funeral expenses and Php 25,000.00 as exemplary damages.

The herein accused Arnel Kalipayan shall be credited the period of his detention during the pendency of this case in accordance with existing laws and procedures.

COSTS against the accused

SO ORDERED.<sup>8</sup>

Accused-appellant appealed to the CA.

#### *The CA Ruling*

In its decision dated July 29, 2016, the CA denied the appeal. It held that there was suddenness in the attack, as gathered from the testimonies of the prosecution, when accused-appellant swiftly appeared inside Glaiza's house and attacked her. The numerous stab wounds found on Glaiza's body, delivered in a sudden manner, negates the claim that Glaiza might have defended herself. The CA likewise agreed with the RTC that there was the qualifying circumstance of abuse of superior strength but the same is absorbed in the circumstance of treachery.

The CA sustained the grant of civil indemnity and moral damages of ₱75,000.00, and the award of ₱30,000.00 for funeral expenses and ₱25,000.00 as exemplary damages. The monetary award was, however, modified by adding an interest of six percent (6%) per annum on the aggregate amount of the monetary awards, computed from the time of finality of the decision until its full payment. The CA disposed the appeal in this wise:

WHEREFORE, this appeal is DENIED. The *Judgment* dated 26 November 2014 of Branch 34 of the Regional Trial Court of Tacloban City in Crim. Case No. 2008-06-323 is AFFIRMED with

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<sup>8</sup> CA rollo, p. 52.

MODIFICATION. Appellant shall pay an interest of six percent (6%) per annum on the aggregate amount of the monetary awards computed from the time of finality of this Decision until full payment.

SO ORDERED.<sup>9</sup>

Hence, this appeal.

### Issue

WHETHER THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF MURDER DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH ANY QUALIFYING CIRCUMSTANCE.

The records of this case were forwarded by the CA pursuant to its Resolution<sup>10</sup> dated October 26, 2016, which gave due course to the notice of appeal. The Court required the parties to submit their respective supplemental briefs. The Office of the Solicitor General (*OSG*), representing the appellee People of the Philippines, filed a Manifestation<sup>11</sup> stating it will not file a Supplemental Brief to avoid a repetition of arguments already presented in its Appellee's Brief dated January 29, 2016. Appellant likewise filed a Manifestation in lieu of a Supplemental Brief<sup>12</sup> adopting *in toto* the Appellant's Brief filed before the CA.

#### *Arguments of accused-appellant*

Accused-appellant admits that he committed the acts that eventually led to Glaiza's death. However, he argues that the qualifying circumstances alleged in the information were not sufficiently proven by the prosecution. Accused-appellant points to the nature of the attack against Glaiza, which he characterizes as not sudden and unexpected. He claims that there was a commotion and a heated argument prior to the killing, which would have allowed Glaiza to raise her guard. The weapon used was also found in Glaiza's residence showing that the means of execution was only adopted as a result of an impulse prior to the killing. Thus, accused-appellant argues that there was no treachery proven.

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<sup>9</sup> *Rollo*, p. 11.

<sup>10</sup> *CA rollo*, p. 109.

<sup>11</sup> *Rollo*, pp. 20-21.

<sup>12</sup> *Id.* at 25-26.

Accused-appellant likewise posits that the presence of evident premeditation is not backed by evidence, which was acknowledged by the RTC. There was no proof that accused-appellant decided to kill the victim and that there was time for him to reflect upon his decision.

Finally, accused-appellant reiterates abuse of superior strength was also not present. He insists that the prosecution failed to show the disparity in age, size and strength, or force, except for the gender of the parties. Further, there appeared no actual difference between the body types of accused-appellant and Glaiza that will constitute superior strength on his part.

Accused-appellant concludes that these circumstances negate the suddenness of the attack, the deliberateness or conscious adoption of the method of killing, and the existence of treachery. Hence, he underscores that his conviction should only be for the crime of homicide.

#### *Arguments of appellee*

Contrary to the protestations of appellant, the OSG claims that the presence of a prior heated argument is untrue based on the testimonies of the prosecution witnesses. Both Josephine and Celestina were actually surprised of his presence in their house. The OSG also highlights that the testimonies show that Glaiza was held by the hair and was stabbed in the back, rendering the latter incapable of defending herself. Not only was Glaiza unaware of accused-appellant's presence, she was also caught unaware of his impending attack on her.

#### **The Court's Ruling**

The appeal is unmeritorious.

It is a hornbook rule that an appeal of a criminal case throws the entire case up for review. It becomes the duty of the appellate court to correct any error that may be found in the appealed judgment, whether assigned as an error or not.<sup>13</sup> Bound by this doctrine, this Court will thus review not just the propriety of appellant's conviction, but likewise the penalty and monetary award given to the heirs of the victim.

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<sup>13</sup> *Candelaria v. People of the Philippines*, 749 Phil. 517, 530 (2014) citing *People v. Balacano* 391 Phil. 509, 525-526 (2000).

*The elements of murder were proven beyond reasonable doubt by the prosecution*

Accused-appellant is charged with the murder of his former girlfriend who also happened to be the mother of his child. Art. 248 of the RPC states:

*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 temporal* in its maximum period to death, if committed with any of the following attendant circumstances:

5. 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.

X X X

5. With evident premeditation.

X X X

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>14</sup>

There is no need to dwell on the first two (2) elements. Accused-appellant admitted that he indeed stabbed Glaiza which resulted to the latter's death. The last element also exists as Glaiza and accused-appellant were only in a boyfriend-girlfriend relationship at the time of the crime, albeit with a common child, but no relationship that would be classified as falling within the definition of parricide or infanticide. The sole issue in this case is the existence of a circumstance that would qualify the killing of Glaiza to the crime of murder.

There is no question that appellate courts will not overturn the findings of fact of the trial court unless there is a showing that the latter overlooked facts or circumstances of weight and substance that would affect the result of the case. Generally, though, the findings of the trial court, especially as to its calibration of witnesses' testimonies and assessment of

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<sup>14</sup> *People of the Philippines v. Bensig*, 437 Phil. 748, 763 (2002).





their credibility and conclusions anchored on these findings, are given due deference and respect.<sup>15</sup>

As concluded by the RTC, evident premeditation is not present in this case. This Court is in agreement but for a different reason. The elements of evident premeditation are: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused has clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution enough to allow the accused to reflect upon the consequences of his acts.<sup>16</sup> These elements have to be proven beyond reasonable doubt.<sup>17</sup>

Though accused-appellant went into the house in a sudden and unexpected manner, presumably to attack Glaiza, there is no proof beyond reasonable doubt that he decided to do so and clung to this amounting to evident premeditation. The Court cannot fully subscribe to the RTC's theory that accused-appellant planned to confront Glaiza but did not plan to kill her. On the contrary, the evidence shows that when he swiftly entered the house and went straight to the kitchen, he already had a decision to harm Glaiza. However, the element that there was a sufficient lapse of time between the decision to commit the crime and its actual commission was not proven satisfactorily inasmuch as it would qualify the killing as murder. The testimonies and object evidence do not necessarily yield the conclusion that he clung to the determination to kill Glaiza. The decision to kill prior to the moment of its execution must have been the result of meditation, calculation, reflection or persistent attempts.<sup>18</sup> This aspect was not proven by the prosecution beyond reasonable doubt and as such, evident premeditation cannot be said to be present here. Nevertheless, the conclusion that the crime is still murder stays not because of the existence of evident premeditation, but of treachery.

*Treachery is present in this case*

Accused-appellant's main contention is that the qualifying circumstance of treachery was not proven by the prosecution; hence, the crime should be homicide, not murder.

The Court disagrees.

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<sup>15</sup> *People of the Philippines v. Pulgo*, G.R. No. 218205, July 5, 2017.

<sup>16</sup> *People of the Philippines v. Sebastian*, 428 Phil. 622, 626-627 (2002).

<sup>17</sup> *People of the Philippines v. Paragas*, 434 Phil. 124, 143 (2002).

<sup>18</sup> *Id.* at 144.



Based on the clear, consistent, and convincing testimonies of Josephine and Celestina, accused-appellant entered the house and commenced stabbing Glaiza while the latter was preparing dinner. Celestina was even in the same small vicinity where the attack was committed while she was working with the gas tank that Glaiza needed to cook the rice.

Accused-appellant's version is belied by the testimonies of Celestina and Josephine, who averred that they did not notice his presence and arrival at their home prior to the stabbing incident. Not only was his account of the events riddled with inconsistencies, it is also self-serving and unsupported by any other circumstance that would make the Court believe his story over that of Josephine's and Celestina's.

Treachery has long been defined by this Court, especially as to its character as a qualifying circumstance for murder. It is a circumstance that must be proven as indubitably as the crime itself and constitutes two (2) 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>19</sup>

The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person being attacked.<sup>20</sup> A swift and unexpected attack on an unarmed victim that insures its execution without risk to the assailant arising from the defense of his victim is an indication that treachery is present.<sup>21</sup> What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.<sup>22</sup> In that sense, even attacks that occur from the front may be considered treacherous if the attack was so sudden and unexpected that the deceased had no time to prepare for self-defense.<sup>23</sup> The mode of attack must also be consciously adopted. The accused must make some preparation to kill the deceased in a manner as to insure the execution of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. The attack, then, must not spring from the unexpected turn of events.<sup>24</sup>

Both elements of treachery are doubtlessly attendant here. Even in the short span of time that Celestina turned her back to switch on the stove, accused-appellant already managed to start his deplorable deed. This is a sign of his conscious choice to employ the specific means and methods to

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<sup>19</sup> *People of the Philippines v. Aquino*, 396 Phil. 303, 307 (2000).

<sup>20</sup> *Supra* note 16 at 626.

<sup>21</sup> *People of the Philippines v. Caboquin*, 420 Phil. 744, 750 (2001).

<sup>22</sup> *Supra* note 16 at 626.

<sup>23</sup> *People of the Philippines v. Perez*, 404 Phil. 380, 388 (2001).

<sup>24</sup> *People of the Philippines v. Santillana*, 367 Phil. 373, 389 (1999).



kill Glaiza, and not the product of some sudden emotional response. There is also no proof to show that he and Glaiza were engaged in a heated discussion immediately prior to the incident. On the other hand, the courts *a quo* were thoroughly convinced that accused-appellant unexpectedly entered the house, went straight for Glaiza, and immediately, without warning and through an almost stealthy manner, stabbed the latter numerous times. The circumstances are typical of a treacherous attack constituting of murder and not homicide.

Further, Glaiza was attacked in the back, with accused-appellant holding her hair to prevent her from moving. Josephine testified to this fact in this wise:

Q: While watching TV, what if any happened?

A: While watching TV my daughter Glaiza was preparing for our supper.

Q: And after that, what happened next?

A: At the time Arnel Kalipayan, the former live-in partner of my daughter suddenly entered our house having with him a bladed weapon.

Q: Upon entering your house, what if any did Arnel Kalipayan do?

A: **He suddenly entered the house without permission and approached my daughter who was at that time preparing for our meals stabbed her at her back and held her hair and let my daughter faced him and stabbed her on her stomach and the food that she ate spilled out of her stomach.**

Q: As far as you know, how many times did Arnel Kalipayan stabbed your daughter?

A: 17 times.

Q: And while he was stabbing your daughter, what did you do, if any?

A: I tried to stop him but he instead faced me and poked at me the bladed weapon that he used in stabbing my daughter and he said "do you intervene because you have no business."<sup>25</sup>

X X X

Q: When your daughter was stabbed, what was she doing at the time she was stabbed?

A: She was cooking.

Q: You mean she was preparing for the rice to be cooked?

A: She was preparing to cook the rice.

Q: So, what is that, was she washing the rice to be cooked?

A: When she was about to put the rice to be cooked over the stove she requested my mother to open the stove because it was leaking and at that time when they were having a conversation with my mother that was the time when Arnel Kalipayan entered the house.

Q: **If you know, where was your daughter hit for the first time?**

A: **At her back (witness pointed to her back towards the shoulder).**

Q: Using the Interpreter, please indicate whether your daughter was hit for the first time?

A: **Here (witness indicated by touching the middle portion of the back of the Interpreter, the spinal column).<sup>26</sup> (emphasis supplied)**

<sup>25</sup> TSN dated October 6, 2009, p. 4.

Celestina's account of the events also shows not only the suddenness of the attack but that accused-appellant rendered Glaiza defenseless as well, to wit:

- Q: After she requested you to open the tank, what did you do?  
A: I went near the LPG tank to open it.  
Q: Were you able to open it?  
A: I was not able to open it, because when I was about to open it I saw Arnel Kalipayan already stabbing my granddaughter.  
Q: Did you notice where Arnel Kalipayan came from?  
A: I just saw him inside our house already stabbing Glaiza.  
Q: What was the position of Glaiza when she [*sic*] first stabbed by Arnel Kalipayan?  
A: She was already lying down faced up and she was being stabbed by Arnel.  
Court: The first time you saw Arnel Kalipayan what she was doing?  
A: That's it, when I was about to open the gas, when I turned my head to the left (witness demonstrated by turning her head to the left) that was what I saw, Arnel Kalipayan was already stabbing my granddaughter Glaiza.<sup>27</sup>

Though she was asked several times<sup>28</sup> at various points during the course of her testimony, Celestina did not waver in her story and remained consistent throughout.

The Medico-Legal Autopsy Report corroborates these statements. From what can be made out from the said report, the following are the wounds sustained by Glaiza:

HEAD:

- Punctured wound, right lower mandibular region, measuring 1 x 0.5 x 1 cms AML.

CHEST:

- Stab wound, left chest, anterior at the level of the 3<sup>rd</sup> ICS, measuring 3 x 1 x 9 cms. AML, 8 cms in depth penetrating the left thoracic cavity hitting the upper lobe of the left lung.
- Punctured wound, anterior chest, left, measuring 1 x 0.5 x 2 cms AML, muscle deep, non-penetrating.
- Stab wound, left chest, anterior portion, measuring 3 x 1 x 12 cms AML, directed medialwards, non-penetrating.
- Stab wound, left anterior chest, measuring 3 x 2 x 1 cms AML, 6 cms in deep, directed posteriorwards penetrating [indiscernible] cavity, left hitting the substance of the heart.

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<sup>26</sup> Id. at 5.

<sup>27</sup> TSN dated June 21, 2011, pp. 6-7.

<sup>28</sup> Id. at 18, 20, 21, 24, 25.



- Stab wound, [indiscernible] portion of the left chest at the level of the 4<sup>th</sup> ICS, measuring [indiscernible] x13 cms AML, directed medially, penetrating the left thoracic cavity hitting the left lung and the side of the heart.
- Stab wound, right anterior chest, at the level of the 3<sup>rd</sup> ICS, measuring 3 x 2 x 9 cms AML, 4 cms in depth, directed posteriorwards, penetrating the right thoracic cavity hitting the middle lobe of the left lung.
- Stab wound, anterior chest right, at the level of the 3<sup>rd</sup> ICS, at the level of the anterior mid mammary line, measuring 3 x 1 x 3 cms AML, non-penetrating.
- **Stab wound, [indiscernible] posterior chest, right at the level of the 5<sup>th</sup> ICS, measuring 1 x 1 just along the posterior median line measuring 1 x 1 cms.**
- **Stab wound, left posterior chest at the level of the 5<sup>th</sup> CIS, measuring 1 x 1 x 2 cms, non-penetrating.**

## ABDOMEN:

- Stab WOUND, lateral left portion of the abdomen, measuring 3 x 3 x 10 cms AML, directed medially, penetrating the abdominal cavity.

## EXTREMITIES:

- Stab wound, right forearm, middle third, anterior portion, measuring 3 x 1 cms.
- Incised wound, left hand, at the base portion of the left finger, measuring 3 x 2 cms.
- Incised wound, posterior portion of the left hand, measuring 4 x 3 cms.
- Stab wound, left thigh, anterior lower third, measuring 4 x 2 cms.
- Stab wound, medial portion of the left thigh measuring 1 x 1 cms. (emphasis supplied)

While many of the stab and puncture wounds were frontally made, it is notable that Glaiza sustained posterior wounds, which strengthens Josephine's claim that Glaiza was first struck in the back. Given this, and uncontroverted by convincing evidence, the only reasonable conclusion that can be made is that the attack was attended by treachery.

Furthermore, the above details show that Glaiza was not expecting the attack. She was also rendered helpless and unprotected not only by the swiftness of the attack, but also because she was already stabbed in the back before even becoming fully aware that a reprehensible act was being committed against her. From this, the first element of treachery is demonstrated without question.

The second element of treachery is likewise undoubtedly present. The time and place, and manner of attack were deliberately chosen and accused-appellant was immediately cloaked with impunity to ensure its successful execution. The time of the attack, at around 5:30 p.m., was a time in which people usually prepare their supper and households are buzzing with activity. Accused-appellant's mode of attack, of suddenly entering the house and



going straight to where Glaiza was while the latter was preparing food, is also clearly indicative of his nefarious plan to attack when Glaiza was not in a position to defend herself.

With this finding that treachery is present, the conclusion that the circumstance of abuse of superior strength is absorbed therein necessarily follows. Even without a definite finding as to whether it exists in this case or not, it is beyond cavil that treachery, as a qualifying circumstance, absorbs the aggravating circumstance abuse of superior strength even though the latter was alleged in the information.<sup>29</sup> Thus, the circumstance of abuse of superior strength should not be appreciated as a separate aggravating circumstance.

### *Penalty and damages*

As correctly held by the RTC and CA, the crime committed by accused-appellant is murder, qualified by treachery. However, the Court has to modify the penalty, as well as the awarded damages, because of the existence of the aggravating circumstance of dwelling. This circumstance was discussed by the RTC in this wise:

Reviewing the evidence of the prosecution, there is no evidence to prove that Arnel had deliberately and purposely intended to carry his evil design inside the house of Glaiza, and to cause disrespect to the sanctity of Glaiza's dwelling place. In fact, this Court even eliminated the presence of evident premeditation as an attendant qualifying circumstance.<sup>30</sup>

Notably, the aggravating circumstance of dwelling need not be "deliberately and purposely intended" by an accused for it to be appreciated. Rather, it aggravates the felony when the crime was committed in the residence of the offended party and the latter did not give any provocation. It is considered an aggravating circumstance primarily because of the sanctity of privacy accorded to the human abode. Repeated across many cases are these lines: "[o]ne's dwelling is a sanctuary worthy of respect thus one who slanders another in the latter's house is more severely punished than one who offends him elsewhere. According to Cuello Calon, the commission of the crime in another's dwelling shows worse perversity and produces graver harm."<sup>31</sup> He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.<sup>32</sup>

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<sup>29</sup> *People of the Philippines v. Castro, et. al.*, 346 Phil. 894, 912 (1997).

<sup>30</sup> CA rollo, p. 51.

<sup>31</sup> *People of the Philippines v. Taboga*, 426 Phil. 908, 928-929 (2002), among others.

<sup>32</sup> *People of the Philippines v. Belo*, 360 Phil. 36, 50 (1998).



As pointed out earlier, Glaiza was only preparing dinner in the sanctity of her home when the attack happened. There was no prior incident that would give rise to accused-appellant's sudden actions. Clearly, there was no provocation that would exempt this case from being aggravated by the circumstance of dwelling. There is also no question that Glaiza was living in the same house where the crime was committed. Therefore, the penalty imposed upon accused-appellant should be that for an aggravated crime, the higher of the two (2) indivisible penalties, which is death in this case. However, pursuant to Republic Act No. 9346<sup>33</sup>, the penalty of *reclusion perpetua* shall be imposed, with no eligibility for parole. Not only that, the amount of the civil indemnity, moral and exemplary damages have to be modified accordingly. The case of *People v. Jugueta*<sup>34</sup> laid down the amounts that should be awarded to the victims of some particular crimes. For the crime of murder, punished by death but reduced to *reclusion perpetua* without eligibility for parole because of Republic Act No. 9346, the heirs of Glaiza should be awarded the amount of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. The award of funeral expenses claimed by Josephine is sustained.

**WHEREFORE**, the appeal is **DISMISSED**. The July 29, 2016 Decision of the Court of Appeals-Visayas Station in CA-GR CEB-CR-HC No. 01962 is **AFFIRMED with MODIFICATION** that accused-appellant Arnel Kalipayan y Aniano is found **GUILTY** beyond reasonable doubt of murder and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is ordered to pay the heirs of Glaiza Molina ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. All the other monetary awards ordered by the RTC are sustained. Appellant shall pay an interest of six percent (6%) per annum on the aggregate amount of the monetary awards computed from the time of finality of this Decision until full payment.


**SO ORDERED.**

  
ALEXANDER G. GESMUNDO  
Associate Justice

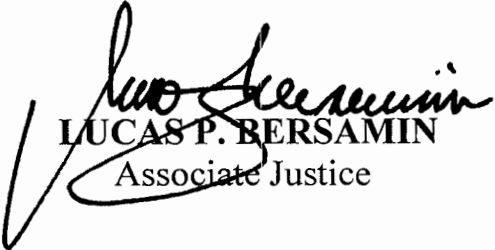
<sup>33</sup> An Act prohibiting the imposition of death penalty in the Philippines.

<sup>34</sup> G.R. No. 202124, April 5, 2016.

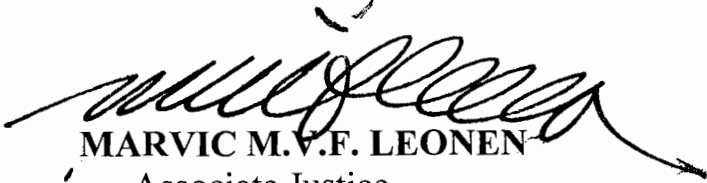
**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**LUCAS P. BERSAMIN**  
Associate Justice




**MARVIC M.V.F. LEONEN**  
Associate Justice

(On leave)  
**SAMUEL R. MARTIRES**  
Associate Justice

**A T T E S T A T I O N**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division





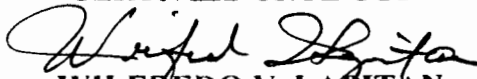
**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice

**CERTIFIED TRUE COPY**



**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division

MAR 03 2018

