Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

JUNIE (OR DIONEY) SALVADOR, SR. *Y* MASAYANG,
Accused-Appellant.

G.R. No. 223566

Present:

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

Promulgated:

June 27, 2018

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DECISION

MARTIRES, *J.*:

Accused-appellant Junie *(or Dioney)* Salvador, Sr., *y* Masayang assails through this appeal the 27 January 2016 Decision[1] of the Court of Appeals *(CA)*, Twenty-Third Division, in CA-G.R. CR-HC No. 01195-MIN affirming, with modification as to the award of damages, the 12 July 2013 Joint Decision[2] of the Regional Trial Court *(RTC)*, Branch 2, Tagum City, Davao del Norte, in Criminal *(Crim.)* Case Nos. 17628, 17629, 17630, 17631, and 17632.

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[1] *CA rollo*, pp. 70-81; penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos.

[2] Records, pp. 141-147. Penned by Judge Ma. Susana T. Baua.

THE FACTS

Accused-appellant was charged with five counts of murder under the following Informations:

Crim. Case No. 17628

That on or about February 11, 2011, in the Municipality of Kapalong, Province of Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with bolos, did then and there willfully, unlawfully, and feloniously attack, assault, and hack Junie M. Salvador, Jr., his son, a two year old minor, which caused his death, and further causing actual, moral, and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.[3]

Crim. Case No. 17629

That on or about February 11, 2011, in the Municipality of Kapalong, Province of Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolos, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault, and hack one Rossana B. Realo, a twelve (12) year old minor, daughter of his live-in partner, thereby inflicting upon her wounds which caused her death, and further causing actual, moral, and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.[4]

Crim. Case No. 17630

That on or about February 11, 2011, in the Municipality of Kapalong, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolos, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault, and hack one Miraflor B. Realo, his live-in partner, thereby inflicting upon her wounds which caused her death, and further causing actual, moral, and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.[5]

Crim. Case No. 17631

That on or about February 11, 2011, in the Municipality of Kapalong, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed

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3 Records (Criminal Case No. 17628), p. 3.
4 Records (Criminal Case No. 17629), p. 1.
5 Records (Criminal Case No. 17630), p. 1.

with bolos, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault, and hack one Mariz R. Masayang, a three (3) year old minor, his niece, thereby inflicting upon her wounds which caused her death, and further causing actual, moral, and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.[6]

Crim. Case No. 17632

That on or about February 11, 2011, in the Municipality of Kapalong, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolos, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault, and hack one Jonessa R. Masayang, a one (1) year and two months old minor, his niece, thereby inflicting upon her wounds which caused her death, and further causing actual, moral, and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.[7]

To prove its cases against accused-appellant, Joy Masayang *(Joy),* Melissa Masayang *(Melissa),* Felixchito Salaysay *(Felixchito),* Santos Masayang *(Santos),* and Police Officer I *(POI)* Kim Aguspina *(Aguspina)* took the witness stand.

For the defense, Dr. Reagan[8] Joseph Villanueva *(Dr. Villanueva)* and accused-appellant testified.

Version of the Prosecution

On 11 February 2011, at around 6:00 a.m., accused-appellant and his live-in partner Miraflor Realo *(Miraflor),* together with Miraflor's daughter Melissa, and Melissa's husband Santos, were walking on their way to the barangay hall to attend the *Pamilya Pantawid* program (*program*). Accused-appellant, who appeared then to be very sweet to Miraflor, was happily cracking jokes. When they reached the hall, accused-appellant told Miraflor and Melissa that he would go home already since his name did not appear in the program's list.[9]

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6 Records (Criminal Case No. 17631), p. 1

7 Records (Criminal Case No. 17631), p. 1.

8 Also referred to as "Regan" in the records. The name "Reagan" appears in the medical certificate; records, p. 127.

9 TSN, 8 November 2012, pp. 21-22.

At about 11:30 a.m., while still at the barangay hall, Melissa told Santos to go home so he could feed their children, Mariz and Jannes.[10] When Santos did not find his children at home, he went out looking for them at his neighbors' houses when he saw on the street accused-appellant with blood on his arms and shirt and a bolo in his hand. Santos asked accused-appellant what happened but he did not reply. Santos immediately went back to the barangay hall and told Melissa that the children were not at home and that he saw accused-appellant gone wild. Santos went back home to look for their children while Melissa told Miraflor what Santos told her.[11]

That same morning, Joy was on her way to the house of Miraflor to look for Mariz and Jannes when she saw accused-appellant chasing Miraflor in the street. Joy was about two-arm-lengths away from Miraflor when accused-appellant, using a bolo, hacked Miraflor four times in the back and in the nape. Joy was about to ask help from the barangay when she saw accused-appellant drag Miraflor towards their house by pulling her hair.[12]

When informed of what happened, Kagawad Salaysay and two soldiers immediately proceeded to the house of accused-appellant, and there saw him holding two bolos while Miraflor lay on the floor. When Salaysay told accused-appellant to surrender, he voluntarily did so, saying, "I will surrender Cons," and "If I want to kill a lot of people, I could but I only killed my family"; and then handed his bolos to Salaysay's companion. It was only when the policemen entered accused-appellant's house that the bodies of the four dead children, namely: Mariz; Jannes; Rosana,[13] Miraflor's daughter; and Dioney, Jr.,[14] Miraflor's son with accused-appellant, were discovered.[15]

At the Kapalong, Davao del Norte police station, PO1 Aguspina asked accused-appellant about his personal circumstances to which he was responsive.[16]

Version of the Defense

Dr. Villanueva, who has a special training in psychiatry at the Southern Philippines Medical Center, stated that he had the chance to review Dr. Giola Fe Dinglasan's *(Dr. Dinglasan)* records on accused-appellant.

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10 Referred to as "Jonessa" in the information in Crim. Case No. 17632. The name "Jannes" appears in the certificate of death and the certification of the Punong Barangay; records, pp. 63 and 68.

11 TSN, 15 November 2012, pp. 16-18 and 22; TSN, 8 November 2012, p. 23.

12 TSN, 8 November 2012, pp. 4-7.

13 Referred to as "Rosanna" in the information in Crim. Case No. 17629. The name "Rosana" appears in the certificate of death and the certificate of live birth; records, pp. 61 and 65.

14 Also referred to as "Junie, Jr." in the records.

15 TSN, 8 November 2012, pp. 7-9.

16 TSN, 20 December 2012, p. 4.

Dr. Dinglasan saw accused-appellant on 6 June 2012 or sixteen months after the 11 February 2011 incident. Initially, accused-appellant was given medicine for depression and later for psychosis. According to Dr. Villanueva, it was possible for accused-appellant to have a relapse if he was not given his medicines; thus, Dr. Villanueva suggested that accused-appellant undergo regular check-up and that he be given proper medication.[17]

Accused-appellant testified that he remembers who his victims were but he does not recall that he killed them; the incident that took place before their death; or where he was on 11 February 2011. It was only his sister who informed him of the death of his family members and relatives. He had a happy relationship with Miraflor and was very close to Dioney, Jr. He stopped taking prohibited drugs when he started living-in with Miraflor, and gave up smoking when he was already in prison. He claimed that he had never been confined in a mental hospital either before the incident or after he was incarcerated.[18]

The Ruling of the RTC

The RTC held that there was no question that accused-appellant was the author of the gruesome killings of Miraflor and the four children and that the only issue was whether accused-appellant was fully aware of the wrongness of his acts to hold him liable.[19]

The RTC ruled that accused-appellant failed to establish by clear and convincing evidence that he was suffering from insanity or loss or absence of reason before and after he killed his victims. It found that the killing of Dioney, Jr. brings the case of accused-appellant within the ambit of Art. 246 of the RPC since Dioney was his son. Moreover, it held that the hacking by accused-appellant of Miraflor, Rosana, Mariz, and Jannes was attended by the qualifying circumstance of treachery. The RTC held that minors Rosana, Mariz, and Jannes could not have suspected the attack much less defended themselves when they were attacked as confirmed by wounds on their back, torso, and skull.[20]

The dispositive portion of the RTC joint decision reads:

> **WHEREFORE**, premises considered, accused **JUNIE SALVADOR y MASAYANG** is hereby found **GUILTY** as charged for each of the deaths of Miraflor Realo, Rosana Realo, Dioney Salvador, Jr.,

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17 TSN, 7 February 2013, pp. 5-7 and 9-11.
18 TSN, 13 February 2013, pp. 4-14.
19 Records, p. 144.
20 Id. at 145-146.

> Mariz Masayang, and Jannes Masayang, and is hereby sentenced to suffer the penalty of reclusion perpetua for each of the said deaths.
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> The said accused is likewise ordered to pay each of the heirs of the aforesaid deceased the sum of ₱50,000.00 each for their wrongful deaths and the sum of ₱50,000.00 as moral damages.
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> SO ORDERED.[21]

Believing that the RTC erred in its decision, accused-appellant appealed to the CA.

The Ruling of the CA

The CA found no merit in the appeal. It held that the only issue for resolution in these cases was whether accused-appellant was mentally insane at the time he killed the victims which, thus, would have exempted him from liability for the crimes he committed. It ruled that accused-appellant's defense of insanity failed considering that no evidence was presented to prove that he was struck with schizoaffective disorder *(disorder)* immediately prior to or during the time that he hacked his victims to death. It found that the evidence on record showed that accused-appellant was diagnosed with the disorder more than a year after the hacking incident and that the arguments he advanced to prove his defense was speculative and inconclusive. It declared that the penalty imposed by the RTC in each of the criminal cases was correct, albeit there was a need to modify the award of damages to conform to jurisprudence.[22]

The CA resolved the appeal as follows:

> WHEREFORE, foregoing premises considered, this ordinary appeal is DISMISSED for lack of merit. The 12 July 2013 Joint Decision of the Regional Trial Court, Branch 2, Tagum City, Davao del Norte, in Crim. Case Nos. 17628, 17629, 17630, 17631, and 17632 convicting JUNIE SALVADOR, SR. for Parricide and Multiple Murder is AFFIRMED with MODIFICATIONS:
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> Accused-appellant is ordered to pay the following amounts to the heirs of the deceased:
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> 1) Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity;
> 2) Fifty-Thousand Pesos (₱50,000.00) as moral damages;
> 3) Twenty-Five Thousand Pesos (₱25,000.00) as temperate damages;
> 4) Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and

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21 Id. at 147.

22 *CA rollo*, pp. 75-80.

5) Legal interest of six percent (6%) per annum from the date of the finality of this judgment.[23]

ISSUES

I.

THE COURT A QUO ERRED IN NOT GIVING PROBATIVE WEIGHT TO THE TESTIMONY OF AND PSYCHIATRIC EVALUATION BY DR. REAGAN JOSEPH VILLANUEVA FINDING ACCUSED-APPELLANT TO BE SUFFERING FROM SCHIZOAFFECTIVE DISORDER;

II.

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

OUR RULING

The appeal is without merit.

Accused-appellant failed to prove his defense of insanity.

It is not disputed that it was accused-appellant who killed Dioney, Jr., Rosana, Miraflor, Mariz, and Jannes; and that the only crux of the controversy in these cases is whether accused-appellant, at the time of the commission of the offenses, was insane and, thus, is exempted from criminal liability.

Jurisprudence dictates that every individual is presumed to have acted with a complete grasp of one's mental faculties.[25] "It is improper to assume the contrary, i.e., that acts were done unconsciously, for the moral and legal presumption is that every person is presumed to be of sound mind, or that freedom and intelligence constitute the normal condition of a person. Thus, the presumption under Article (*Art.*) 800 of the Civil Code is that everyone is sane."[26]

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23 Id. at 80-81.
24 Id. at 19.
25 *People v. Belonio*, 473 Phil. 637, 653 (2004).
26 *People v. Opuran*, 469 Phil. 698, 711 (2004).

On the one hand, insanity as an exempting circumstance is provided for in Art. 12, paragraph (*par.*) 1 of the Revised Penal Code (*RPC*):

> Article 12. *Circumstances which exempt from criminal liability.* - The following are exempt from criminal liability:
>
> 1. An imbecile or an insane person, unless the latter has acted during a lucid interval.
>
> When the imbecile or an insane person has committed an act which the law defines as a felony (delito), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.

Insanity exists when there is a complete deprivation of intelligence while committing the act, i.e., when the accused is deprived of reason, he acts without the least discernment because there is a complete absence of power to discern, or there is total deprivation of freedom of the will.[27] The legal teaching consistently maintained in our jurisprudence is that the plea of insanity is in the nature of confession and avoidance.[28] Hence, if the accused is found to be sane at the time he perpetrated the offense, a judgment of conviction is inevitable because he had already admitted that he committed the offense. Insanity, as an exempting circumstance that had been explained by the Court, is as follows:

> In all civilized nations, an act done by a person in a state of insanity cannot be punished as an offense. The insanity defense is rooted on the basic moral assumption of criminal law. Man is naturally endowed with the faculties of understanding and free will. The consent of the will is that which renders human actions laudable or culpable. Hence, where there is a defect of the understanding, there can be no free act of the will. An insane accused is not morally blameworthy and should not be legally punished. No purpose of criminal law is served by punishing an insane accused because by reason of his mental state, he would have no control over his behavior and cannot be deterred from similar behavior in the future.
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> x x x x
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> In the Philippines, the courts have established a more stringent criterion for insanity to be exempting as it is required that there must be a complete deprivation of intelligence in committing the act, i.e., the accused is deprived of reason; he acted without the least discernment because there is a complete absence of the power to discern, or that there is a total deprivation of the will. Mere abnormality of the mental faculties will not exclude imputability.

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[27] *People v. Domingo,* 599 Phil. 589, 606 (2009).

[28] *People v. Roa*, G.R. No. 225599, 22 March 2017.

> The issue of insanity is a question of fact for insanity is a condition of the mind, not susceptible [to] the usual means of proof as no man can know what is going on in the mind of another, the state or condition of a person's mind can only be measured and judged by his behavior. Establishing the insanity of an accused requires opinion testimony which may be given by a witness who is intimately acquainted with the accused, by a witness who has rational basis to conclude that the accused was insane based on the witness' own perception of the accused, or by a witness who is qualified as an expert, such as a psychiatrist. The testimony or proof of the accused's insanity must relate to the time preceding or coetaneous with the commission of the offense with which he is charged. (citations omitted)[29]

He who invokes insanity as a defense has the burden of proving its existence;[30] thus, for accused-appellant's defense of insanity to prosper, two (2) elements must concur: (1) that defendant's insanity constitutes a complete deprivation of intelligence, reason, or discernment; and (2) that such insanity existed at the time of, or immediately preceding, the commission of the crime.[31]

Accused-appellant insists that, as testified to by Dr. Villanueva, he was suffering from the disorder which impaired his mental condition that deprived him of reason at the time of the incident.[32]

The Court is not persuaded.

The Court takes note of the fact that based on Dr. Dinglasan's certification,[33] she first evaluated and examined accused-appellant only on 22 March 2011, or more than a month from the 11 February 2011 incident. The records of these cases however, are bereft of any showing as to Dr. Dinglasan's diagnosis of accused-appellant on 22 March 2011; hence, it cannot be validly asserted that as of that day, or even earlier than that date, accused-appellant already had the disorder. Additionally, the certification merely evinces that it was on 6 June 2012 that Dr. Dinglasan diagnosed accused-appellant to be suffering from the disorder.

Dr. Villanueva personally examined accused-appellant on 27 September 2012,[34] or one (1) year and seven (7) months from the incident, and found him to be suffering from the disorder. However, no documentary proof was presented by the defense to show how Dr. Villanueva was able to arrive at his diagnosis. Indeed, the records only show a single medical certificate from Dr. Villanueva indicating that accused-

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29 Id.
30 *People v. Belonio*, supra note 25 at 653.
31 *People v. Pantoja*, G.R. No. 223114, 29 November 2017.
32 *CA rollo*, pp. 24-26.
33 Records, p. 131; Exh. "1."
34 Id. at 127.

appellant was diagnosed with the disorder on 27 September 2012. Moreover, a review of Dr. Villanueva's testimony will confirm that he never stated how he arrived at his diagnosis of accused-appellant. The probability that there was but this single instance on 27 September 2012 that Dr. Villanueva attended to accused-appellant was easily confirmed by his testimony before the RTC which basically dwelt on his giving opinion as to what a person with the disorder would normally do; or whether the disorder would cause a person to be violent; or whether a person with the disorder would know what he was doing; but not as to his specific observations with regard to accused-appellant's condition.[35] The defense never even tried to propound questions to Dr. Villanueva that would elicit certain and categorical answers relative to accused-appellant's demeanor or disposition in relation to the disorder he was suffering from.

Notably, it cannot be ascertained even with Dr. Villanueva's testimony that accused-appellant's disorder existed at the time of or immediately preceding the commission of the crime. Dr. Villanueva candidly admitted that Dr. Dinglasan's diagnosis that accused-appellant was suffering from the disorder was based on the latter's observation reckoned from accused-appellant's consultation sixteen (16) months after the 11 February 2011 incident and his last consultation, *viz:*

> Q. The medical certificate which I showed to you a while ago was dated June 6, 2012 and the incident happened February 11, 2011. More or less sixteen months before. Tell us doctor, is it probable that the accused at that time of the incident had been suffering a condition worse than schizoaffective disorder?
>
> A. The incident happened a year prior to the patient being seen by a psychiatrist, so the diagnosis given by Dr. Dinglasan was based on her observation from the first consultation up to the last consultation. **So we do not exactly say when the condition started** so that is why an informant, preferably a relative [is needed], so that we can go back into history years before.[36] (emphasis supplied)

Likewise noted, Dr. Villanueva cannot state for sure that when accused-appellant committed the crimes he was suffering from any mental illness. It is even significant that Dr. Villanueva admitted it was possible that accused-appellant's present condition was triggered by the massacre that he committed and not because he already had the disorder at the time he killed his victims.[37]

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[35] TSN, 7 February 2013, pp. 8-9.
[36] Id. at 9.
[37] Id. at 13 and 17.

To stress, an inquiry into the mental state of an accused should relate to the period immediately before or at the very moment the felony is committed.[38] Thus, the diagnosis on accused-appellant long after the 11 February 2011 incident, even if this was testified to by a doctor, may not be relied upon to prove accused-appellant's mental condition at the time of his commission of the offenses.

In the same vein, accused-appellant's testimony did not help to fortify his defense of insanity. While accused-appellant denied having any memory of what transpired on 11 February 2011, and claimed that he was merely informed of what had happened that day, he admitted nonetheless that he knew who his victims were, and that it was because of the pain that he felt whenever he remembered what happened that made him intentionally erase the incident from his mind.[39] Put differently, by his own admission, accused-appellant purposely put out of his mind what he had done to his victims on 11 February 2011; not because he did not know what he did that day but because he grieved whenever he thought about it.

For purposes of exemption from criminal liability, mere behavioral oddities cannot support a finding of insanity unless the totality of such behavior indubitably shows a total absence of reason, discernment, or free will at the time the crime was committed.[40] In the Philippines, the courts have established a clearer and more stringent criterion for insanity to be exempting as it is required that there must be a complete deprivation of intelligence in committing the act, i.e., the accused is deprived of reason; he acted without the least discernment because there is a complete absence of the power to discern, or that there is a total deprivation of the will.[41] Accused-appellant's claim that he allegedly failed to remember what had happened on 11 February 2011, neither qualifies him as insane nor negates the truth that he was fully aware that he had killed his victims. For sure, accused-appellant's statement right after he surrendered to Salaysay–"If I want to kill a lot of people, I could but I only killed my family"[42]– persuasively disproves his claim of not knowingly or voluntarily killing his victims.

The crimes committed by accused-appellant and their corresponding penalties

Foremost, the Court is mindful that jurisprudence instructs it to rigidly review the records of these cases since the appeal confers upon it full jurisdiction over the cases, *viz*:

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38 *People v. Racal*, G.R. 224886, 4 September 2017.
39 TSN, 13 February 2013, pp. 6, and 10-12.
40 *People v. Pantoja*, supra note 31.
41 *People v. Racal*, supra note 38.
42 TSN, 8 November 2012, p. 8.

> At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[43]

In view of this legal teaching, the Court has meticulously examined the records of this case and found that there were substantial facts that both the RTC and the CA had overlooked and which, if considered, may affect the outcome of these cases.

The Court notes that the RTC and the CA failed to appreciate the mitigating circumstance of accused-appellant's voluntary surrender, the elements of which are as follows: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary.[44] Without the elements of voluntary surrender, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance.[45]

Salaysay stated that on 11 February 2011, two persons reported to the barangay hall that a person had gone wild. Salaysay and two soldiers proceeded to the scene of the crime and there saw accused-appellant holding two bolos. When asked to surrender, accused-appellant calmly approached Salaysay and said, "I will surrender Cons," and thereafter gave his bolos to Salaysay's companion. Accused-appellant voluntarily went with Salaysay to the barangay hall and thereafter to the police station.[46] Clearly, the voluntary surrender of accused-appellant was spontaneous and with the intent to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[47] Hence, it is only proper that this mitigating circumstance be appreciated in imposing the correct penalties upon accused-appellant.

a) Crim. Case No. 17628

It is not disputed that Dioney, Jr. was the two year-old son of accused-appellant; thus, qualifying the crime committed by accused-appellant as parricide as defined and penalized under Art. 246 of the RPC, *viz*:

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43 *Ramos v. People*, G.R. No. 218466, 23 January 2017, 815 SCRA 266, 233.
44 *People v. Placer*, 719 Phil. 268, 281-282 (2013).
45 *Belbis, Jr. v People*, 698 Phil. 706, 724 (2012).
46 TSN, 15 November 2012, pp. 4-5, 7 and 9.
47 Id.

> 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.

Applying Art. 63[48] of the RPC, with one mitigating circumstance of accused-appellant's voluntary surrender and there being no aggravating circumstance, the lesser penalty of *reclusion perpetua* should be imposed.

Pursuant to the jurisprudence laid down in *People v. Jugueta*,[49] accused-appellant shall be held liable to pay the heirs of Dioney, Jr. the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00; with interest at the rate of 6% per annum reckoned from the finality of this decision until full payment.

b) Crim. Case Nos. 17629, 17631, and 17632

In Crim. Case Nos. 17629, 17631, and 17632, accused-appellant was charged for the killing of Rosana, Mariz, and Jannes with ages twelve (12) years and three (3) months, three (3) years and two (2) months, and (one) 1 year and (two) 2 months, respectively, at the time of the incident.

Settled is the rule that minor children, by reason of their tender years, cannot be expected to put up a defense. When an adult person attacks a child, treachery exists.[50] On the one hand, jurisprudence dictates that the elements of murder[51] 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

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48 Art. 63. *Rules for the application of indivisible penalties.* – In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.
In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:
x x x
3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
x x x

49 783 Phil. 806 (2016).

50 Id. at 819.

51 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.
x x x (as amended by R.A. No. 7659 entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes, amending for that Purpose the Revised Penal Laws, as amended, Other Special Penal Laws, and for Other Purposes").

circumstances mentioned in Art. 248; and (d) that the killing is not parricide or infanticide.[52] Considering that the killing of Rosana, Mariz, and Jannes was attended by the qualifying circumstance of treachery, accused-appellant's conviction for murder in these cases should be sustained.

Taking into account the mitigating circumstance of voluntary surrender and following Art. 63 of the RPC, the penalty of *reclusion perpetua* shall be imposed upon accused-appellant for each of Crim. Case Nos. 17629, 17631, and 17632.

In addition, accused-appellant shall be held liable in Crim. Case Nos. 17629, 17631, and 17632 to the heirs of Rosana B. Realo, Mariz R. Masayang, and Jannes R. Masayang, respectively, for the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00. Accused-appellant shall pay interest for the civil indemnity and the moral, exemplary, and temperate damages at the rate of 6% per annum reckoned from the finality of this decision until full payment.

c) Crim. Case No. 17630

In this case, accused-appellant was charged with murder for the killing of Miraflor, his live-in partner. The information provides that the killing of Miraflor was attended by the qualifying circumstances of treachery and evident premeditation.

Treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[53] *Alevosia* 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.[54]

For treachery to be appreciated two elements must be alleged and proved, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or retaliate; and (2) that the means of execution were deliberately or consciously adopted, that is, the means, methods or forms of execution must be shown to be deliberated upon or consciously adopted by the offender.[55] Treachery, whenever alleged in the

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52 *People v. Kalipayan*, G.R. No. 229829, 22 January 2018.
53 *People v. Sibbu*, G.R. No. 214757, 29 March 2017.
54 *People v. Raytos*, G.R. No. 225623, 7 June 2017.
55 *People v. Dasmarinas*, G.R. No. 203986, 4 October 2017.

information and competently and clearly proved, qualifies the killing and raises it to the category of murder.[56]

Additionally, in murder or homicide, the offender must have the intent to kill.[57] The evidence to prove intent to kill may consist of, inter alia, the means used; the nature, location, and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of, or immediately after the killing of the victim.[58]

On the first element, the legal teaching consistently upheld by the 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.[59] 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[60] since unexpectedness of the attack does not always equate to treachery.[61] The means adopted must have been a result of a determination to ensure success in committing the crime.[62]

Joy testified that on 11 February 2011, she saw accused-appellant chase Miraflor out of the house, and thereafter stabbed her and hacked her in the nape using a bolo.[63] There was no doubt that the intent of accused-appellant was to kill Miraflor, which fact was firmly established by her certificate of death reflecting that her cause of death was the "hacked wound, neck area, (R) dorsal area."[64] Obviously too, the means adopted by the accused-appellant in suddenly attacking Miraflor from behind using a bolo ensured his killing her. The presence of treachery is thus established, finding accused-appellant guilty of murder.

Taking into consideration the mitigating circumstance of voluntary surrender and following Art. 63 of the RPC, the penalty of *reclusion perpetua* shall be imposed upon accused-appellant.

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56 *People v. Macaspac*, G.R. No. 198954, 22 February 2017.
57 *Cirera v. People*, 739 Phil. 25, 39 (2014).
58 *Escamilla v. People*, 705 Phil. 188, 196-197 (2013).
59 *People v. Bugarin*, G.R. No. 224900, 15 March 2017.
60 *People v. Oloverio*, 756 Phil. 435, 449 (2015).
61 *Cirera v. People*, supra note 57 at 28.
62 Id. at 45.
63 TSN, 8 November 2012, p. 5.
64 Records, p. 100.

In all these cases, following *Jugueta,*[65] accused-appellant shall be liable to the heirs of Miraflor B. Realo for the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00; with interest at the rate of 6% per annum from the finality of this decision until full payment.

WHEREFORE, the appeal is **DISMISSED**. Accordingly, judgment is rendered as follows:

In Crim. Case No. 17628, accused-appellant JUNIE (or DIONEY) SALVADOR, SR. *y* MASAYANG is hereby found **GUILTY** beyond reasonable doubt of the crime of Parricide as defined and penalized under Art. 246 of the RPC and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is ordered to pay the heirs of Junie (or Dioney) Salvador, Jr. the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00, and shall pay interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until their full payment.

In Crim. Case Nos. 17629, 17630, 17631, and 17632, accused-appellant JUNIE (or DIONEY) SALVADOR, SR. *y* MASAYANG is hereby found **GUILTY** beyond reasonable doubt of the crime of Murder as defined and penalized pursuant to Art. 248 of the RPC and is sentenced to suffer, in each of these cases, the penalty of imprisonment of *reclusion perpetua* without eligibility for parole. He is ordered to pay in each of these cases the heirs of Rosana B. Realo, Miraflor B. Realo, Mariz R. Masayang, and Jannes R. Masayang, respectively, the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00, with interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until their full payment.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

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[65] Supra note 49.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. No. 296,
The Judiciary Act of 1948, as amended)

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WILFREDO V. LAPUAN
Division Clerk of Court
Third Division

JUL 24