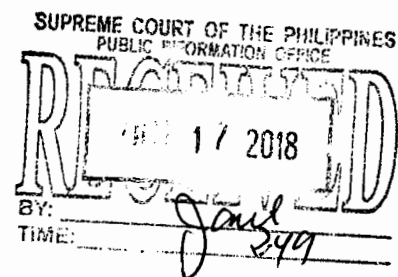




Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION



PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 213415

Present:

- versus -

LEONARDO-DE CASTRO, C.J.,
 Chairperson,

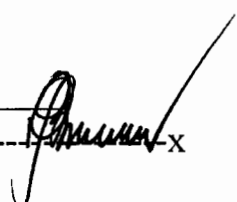
JIMMY EVASCO y NUGAY and
ERNESTO ECLAVIA,
 Accused.

BERSAMIN,
DEL CASTILLO,
 ***BERNABE,** and
TIJAM, JJ.

Promulgated:

JIMMY EVASCO y NUGAY,
 Accused-Appellant.

SEP 26 2018

X-----X 

DECISION

BERSAMIN, J.:

The determination of whether or not the aggravating circumstance of abuse of superior strength was attendant requires the arduous review of the acts of the accused in contrast with the diminished strength of the victim. There must be a showing of gross disproportionality between each of them. Mere numerical superiority on the part of the accused does not automatically equate to superior strength. The determination must take into account all the tools, skills and capabilities available to the accused and to the victim to justify a finding of disproportionality; otherwise, abuse of superior strength is not appreciated as an aggravating circumstance.

The Case

The Court considers and resolves the appeal of accused-appellant Jimmy Evasco y Nugay (Jimmy) who assails his conviction for murder

* In lieu of Associate Justice Francis H. Jardeleza, who inhibited due to his prior participation as the Solicitor General, per the raffle of September 24, 2018.

handed down by the Regional Trial Court (RTC), Branch 63, in Calauag, Quezon through the judgment rendered on November 22, 2011 in Criminal Case No. 5019-C,¹ which the Court of Appeals (CA) affirmed on appeal through the decision promulgated on January 6, 2014.²

Antecedents

For the killing of Wilfredo Sasot, Jimmy, along with Ernesto Eclavia (Ernesto), was indicted for murder under the information that alleged:

That on or about the 6th day of June 2006, at Barangay Mambaling, Municipality of Calauag, Province of Quezon, Philippines; and within the jurisdiction of this Honorable Court, the above-named accused, Jimmy Evasco, armed with a stone, conspiring and confederating with Ernesto Eclavia and mutually helping each other, with intent to kill, with treachery and evident premeditation, and taking advantage of their superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and hit with the said stone one Wilfredo Sasot, thereby inflicting upon the latter fatal injuries on his head, which directly caused his death.

CONTRARY TO LAW.³

The factual and procedural antecedents were summarized in the assailed decision of the CA in the following manner, *viz.*:

x x x the prosecution presented three witnesses, namely, Lorna Sasot, Joan Fernandez, and Dr. Haidee T. Lim in order to establish the following:

On June 6, 2006, at about 9:00 p.m., while in Barangay Mambaling, Calauag, Quezon, witness Lorna Sasot (Lorna) went to the house of their neighbor, one Armando Braga (Armando), to fetch her husband, Wilfredo Sasot (Wilfredo).

When Lorna arrived at Armando's house, she saw Ernesto boxing Wilfredo. Thereafter, she saw Jimmy hit Wilfredo's head with a stone. As a result, Wilfredo fell to the ground with his face up.

While Wilfredo was still on the ground, Jimmy continuously hit him with a stone and Ernesto was boxing Wilfredo's body.

After mauling Wilfredo, Jimmy and Ernesto walked away together.

Subsequently, Lorna brought Wilfredo to the hospital and was pronounced dead-on-arrival.

¹ CA rollo, pp. 24-37; penned by Presiding Judge Manuel G. Salumbides

² Rollo, pp. 2-13; penned by Associate Justice Florito S. Macalino, with the concurrence of Associate Justice Sesonando E. Villon and Associate Justice Zenaida T. Galapate-Laguilles.

³ CA rollo, p. 16.

According to Lorna, Wilfredo did not fight back when Ernesto and Jimmy mauled him. He just parried the hands of Ernesto. She also claimed that Jimmy was standing at the back of Wilfredo, when he pounded a stone on Wilfredo's head many times.

Witness Joan Fernandez (Joan) corroborated the testimony of Lorna. She alleged that she was standing for about four meters from the accused when the incident happened. Wilfredo was standing when Jimmy and Ernesto mauled him. In particular, she stated, "*[s]inusuntok po saka iyong bato pinupukpuk po sa ulo ni Wilfredo Sasot.*"

Joan also stated that Jimmy hit Wilfredo's head with a stone, which is as big as her fist, while Ernesto with his bare hands hit Wilfredo on his face, chest and neck. Jimmy and Ernesto simultaneously attacked Wilfredo, who was unable to run because the two of them were holding him.

Lorna and Joan identified in open court Jimmy as one of the persons who mauled Wilfredo.

In addition, one Dr. Haidee T. Lim (Dr. Lim), Municipal Health Officer of Calauag, Quezon, testified for the prosecution. She stated that she conducted a Post Mortem Examination of Wilfredo's cadaver. She found that Wilfredo sustained a lacerated wound on his right ear, which could have been caused by a blunt instrument or a hard object. She also averred that there was an abrasion on the area below the chin of Wilfredo.

Dr. Lim also issued the Certificate of Death of Wilfredo and indicated therein that the "immediate cause [of his death] was cerebral infected secondary to mauling, this means a traumatic death or brain injury secondary to mauling."

For its part, the defense presented Jimmy in order to establish the following:

On June 6, 2006, Jimmy was in Barangay Mambaling, Calauag, Quezon and was having a drinking spree with Wilfredo, Ernesto, Armando, Armando's son, along with a certain Efren and Ito.

At about 9:00 p.m., Ernesto and Wilfredo had a heated argument. Because the group was allegedly accustomed to such argument, the group did not interfere.

Thereafter, Ernesto and Wilfredo had a fist fight. Wilfredo stood up and Ernesto pushed him on a chair. Then, Wilfredo fell to the ground. The group tried to pacify Ernesto and Wilfredo because the latter was already lying on the ground.

In his cross-examination, Jimmy stated that when Ernesto and Wilfredo were fighting, he was held by Armando and was told not to interfere. He also said that there were only two punches when Wilfredo fell from his chair.

Jimmy averred that the group had a drinking session from 3:00 p.m. up to 10:00 p.m. After the incident, he went home.⁴

Judgment of the RTC

After trial, the RTC convicted Jimmy, concluding that the Prosecution's witnesses were credible as they did not have any ill-motive to impute a heinous crime against Jimmy unless the imputation was true; that Jimmy and his co-accused had conspired to kill Wilfredo as borne out by their concerted actions in assaulting the latter; that the killing of Wilfredo had been treacherous and attended with abuse of superior strength; and that the attendance of evident premeditation was ruled out.

The dispositive portion of the judgment of the RTC reads:

Wherefore, premises considered, the prosecution has sufficiently proved and convinced this court beyond reasonable doubt that **JIMMY EVASCO y Nugay** is **GUILTY of Murder** for the killing of Wilfredo Sasot and that he should be punished therefor. He is hereby sentenced to Reclusion Perpetua or imprisonment from twenty (20) years and one (1) day to forty (40) years without eligibility for parole. Let his preventive imprisonment be deducted from the penalty herein imposed pursuant to the provisions of Article 29 of the Revised Penal Code.

Jimmy Evasco is likewise ordered to indemnify the family of the late Wilfredo Sasot the following amounts:

Php75,000.00	-	civil indemnity for death;
Php75,000.00	-	for and as moral damages;
Php30,000.00	-	for and as exemplary damages;
Php25,000.00	-	for and as temperate damages.

Let the records of the case insofar as Ernesto Eclavia alias Boy is concerned be sent to the Archives without prejudice to its subsequent prosecution upon the arrest or voluntary surrender of said accused.

SO ORDERED.⁵

Decision of the CA

On appeal, the CA affirmed the conviction of Jimmy. It concurred with the disquisition of the RTC, except that it declared that treachery was not attendant. It concluded that Jimmy had committed murder because he and Ernesto abused their superior strength in killing the victim and in preventing the latter from fleeing. The *fallo* reads:

⁴ Rollo, pp. 3-6.

⁵ CA rollo, p. 82.

WHEREFORE, premises considered, the Decision dated November 22, 2011 of the Regional Trial Court of Calauag, Quezon, Branch 63 in Criminal Case No. 5019-C is hereby **AFFIRMED with MODIFICATION** that all monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.⁶

Hence, this appeal.⁷

Issue

Jimmy argues that the CA erred in affirming his conviction for murder considering that the RTC gravely erred in finding that conspiracy had existed between him and Ernesto because there was no direct evidence to prove the conspiracy, but only circumstantial evidence. He argues that the Prosecution did not establish the attendance of any of the qualifying circumstances alleged in the information.

Ruling of the Court

The appeal lacks merit.

The essential requisites of murder that the Prosecution must establish beyond reasonable doubt are, namely: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the *Revised Penal Code*; and (4) that the killing was not parricide or infanticide.⁸

As borne out by the record, Jimmy and Ernesto ganged up on Wilfredo, with Ernesto punching Wilfredo and Jimmy, from behind, hitting Wilfredo on the head with a rock. According to the medico-legal officer, the continuous trauma on the brain was the cause of Wilfredo's death. That Jimmy and Ernesto were the authors of the crime who should be held criminally responsible for the killing of Wilfredo is beyond dispute.

Did the acts of Jimmy and Ernesto establish a conspiracy between them?

⁶ *Rollo*, p. 12.

⁷ The State and the accused-appellant separately manifested that they were no longer filing supplemental briefs, and prayed instead that their respective briefs filed in the CA be considered in resolving the appeal (see *rollo*, pp. 29, 33).

⁸ *People v. Lagman*, G.R. No. 197807, April 16, 2012, 669 SCRA 512, 522.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it.⁹ Conspiracy must be established, not by conjecture, but by positive and conclusive evidence, direct or circumstantial.

Jimmy and Ernesto were shown to have acted in conspiracy when they assaulted Wilfredo. Although their agreement concerning the commission of the felony, and their decision to commit it were not established by direct evidence, the records contained clear and firm showing of their having acted in concert to achieve a common design – that of assaulting Wilfredo. Direct proof of the agreement concerning the commission of a felony, and of the decision to commit it is not always accessible, but that should not be a hindrance to rendering a finding of implied conspiracy. Thus, the Court has discoursed in *Macapagal-Arroyo v. People*:¹⁰

In terms of proving its existence, conspiracy takes two forms. The first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime. However, conspiracies are not always shown to have been expressly agreed upon. Thus, we have the second form, the implied conspiracy. An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.¹¹

Indeed, when it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy could be inferred although no actual meeting among them is proved.¹²

The lower courts disregarded the alibi and denial interjected by the accused-appellant in his defense. The lower courts were correct in doing so, for alibi and denial were generally self-serving and easily fabricated. Moreover, several witnesses positively identified Jimmy as one of the assailants of the victim. Such positive identification, being categorical and

⁹ Article 8, *Revised Penal Code*.

¹⁰ G.R. No. 220598 & G.R. No. 220953, July 19, 2016, 797 SCRA 241.

¹¹ *Id.* at 312.

¹² *E.g., People v. de Leon*, G.R. No. 179943, June 26, 2009, 591 SCRA 178, 194-195.

consistent, could not be undone by alibi and denial in the absence of any credible showing of ill-motive on the part of the identifying witnesses.¹³

The CA concluded that the assault was not treacherous. We concur. Treachery exists when the offender commits any of the crimes against the person, 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.¹⁴ For treachery to be appreciated, therefore, the State must establish the following elements, to wit: (1) the accused must employ means, method, or manner of execution that will ensure his safety from defensive or retaliating acts on the part of the victim, with no opportunity being given to the latter to defend himself or to retaliate; and (2) the accused must deliberately or consciously adopt such means, method, or manner of execution.¹⁵ The sudden and unexpected attack by the aggressor on the unsuspecting victim is of the essence of treachery because such manner of attack deprives the latter of any real chance to defend himself and at the same time ensures the commission of the assault without risk to the aggressor, and without the slightest provocation on the part of the victim.¹⁶

In this case, there was no evidence adduced to show that Ernesto and Jimmy had deliberately chosen their particular mode of attack to ensure the accomplishment of their criminal intention. None of the Prosecution's witnesses had seen how the assault had commenced; hence, treachery could not be held to have attended the assault that led to the untimely death of the victim.

The CA found that Jimmy and Ernesto had perpetrated the killing with abuse of superior strength; and that the manner of attack indicated abuse of their superiority,¹⁷ observing that their simultaneous acts of hitting Wilfredo with the rock and mauling him together indicated their taking advantage of their combined strengths to assault the victim.

We reverse the lower courts' findings. Abuse of superior strength is to be appreciated only when there was a *notorious inequality* of forces between the victim and the aggressors that was plainly and obviously advantageous to the latter who purposely selected or took advantage of such inequality in order to facilitate the commission of the crime. The assailants must be shown to have consciously sought the advantage, or to have the deliberate intent to use their superior advantage. In this context, to take advantage of superior strength means to purposely use force *excessively out of*

¹³ *Medina, Jr. v. People*, G.R. No. 161308, January 15, 2014, 713 SCRA 311, 323.

¹⁴ Article 14, paragraph 16, *Revised Penal Code*.

¹⁵ *Cirera v. People*, G.R. No. 181843, July 14, 2014, 730 SCRA 27, 47.

¹⁶ *People v. Bugarin*, G.R. No. 224900, March 15, 2017.

¹⁷ CA rollo, p. 81.

proportion to the means of defense available to the person attacked. The appreciation of the attendance of this aggravating circumstance depends on the age, size and strength of the parties.¹⁸

Mere numerical superiority on the part of the aggressors does not define the attendance of this aggravating circumstance. As the Court pointed out in *People v. Beduya*:¹⁹

Abuse of superior strength 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. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. [Bold emphasis supplied]

A review quickly illustrates that the lower courts did not calibrate the relative strengths of the aggressors and their victim. Their failure to do so was palpable enough, for there was no indication of the assailants having deliberately taken advantage of their numerical superiority if there were no witnesses who could describe how the assault had commenced. For sure, their having assaulted the victim *together* was not by itself a definite index of their having deliberately taken advantage of their greater number.

Considering that the numerical superiority of the assailants could not be considered as the aggravating circumstance of abuse of superior strength that would qualify the killing, the crime was homicide, not murder.

Article 249 of the *Revised Penal Code* punishes homicide with *reclusion temporal*. With the absence of any aggravating circumstances, the medium period of *reclusion temporal* – from 14 years, eight months and one day to 17 years and four months – is the proper imposable penalty. Pursuant to the *Indeterminate Sentence Law*, the minimum of the indeterminate sentence should be derived from *prision mayor* (*i.e.*, from six years and one day to 12 years), the penalty next lower than *reclusion temporal*, while the maximum of the indeterminate sentence should be 14 years, eight months and one day. In short, the indeterminate sentence of the accused-appellant is 10 years of *prision mayor*, as the minimum, to 14 years, eight months, and one day of *reclusion temporal*, as the maximum.

¹⁸ *Valenzuela v. People*, G.R. No. 149988, August 14, 2009, 596 SCRA 1, 11.

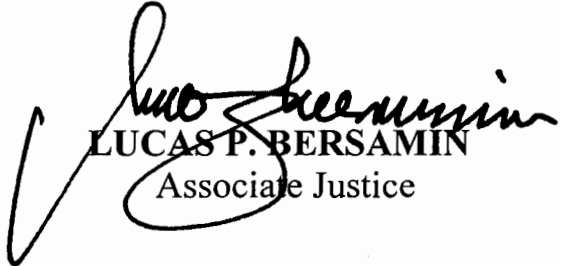
¹⁹ G.R. No. 175315, August 9, 2010, 627 SCRA 278, 284.

To conform with *People v. Jugueta*,²⁰ the Court reduces the civil indemnity and moral damages to ₱50,000.00 each, but increases the amount of temperate damages to ₱50,000.00 (in lieu of actual damages representing the expenses for the burial of the remains of the victim, which were not proved with certainty). The award of exemplary damages is deleted because of the absence of any aggravating circumstances. In addition, all the amounts allowed herein shall earn interest of 6% *per annum* reckoned from the finality of this decision until full settlement.

WHEREFORE, the Court **FINDS** and **DECLARES** accused-appellant Jimmy Evasco y Nugay **GUILTY** beyond reasonable doubt of homicide, and, accordingly, **SENTENCES** him to suffer the indeterminate sentence of 10 years of *prison mayor*, as minimum, to 14 years, eight months, and one day of *reclusion temporal*, as maximum; and **ORDERS** him to pay the heirs of the late Wilfredo Sasot ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages, plus legal interest of 6% *per annum* from the finality of this decision until full settlement.

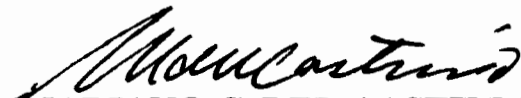
The accused-appellant shall further pay the costs of suit.

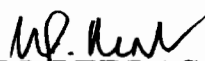
SO ORDERED.

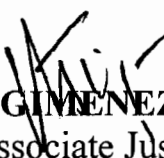

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Chief Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice

²⁰ G.R. No. 202124, April 6, 2016, 788 SCRA 331, 386.

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.

Terésita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice