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MISAELO DOMINGO C. BATTUNG III  
Division Clerk of Court  
Third Division

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SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-appellee,

**G.R. No. 201867**

Present:

- versus -

LEONEN, J.,  
Chairperson,  
HERNANDO,  
INTING,  
DELOS SANTOS, and  
ROSARIO, JJ.

**ROGELIO NATINDIM, JIMMY P.  
MACANA, ROLANDO A. LOPEZ,  
DANNY A. PIANO, ARNOLD A.  
ARANETA, JOHNNY O. LOPEZ,  
SATORANE PANGGAYONG,  
NESTOR LABITA, CARLITO  
PANGGAYONG, GERRY LOPEZ  
NATINDIM, EDIMAR  
PANGGAYONG, AND MARQUE  
B. CLARIN,**

Promulgated:

Accused-appellants.

November 4, 2020

X-----*Mis D C Batt*-----X

**DECISION**

**HERNANDO, J.:**

Challenged in this appeal is the October 14, 2011 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00088-MIN, which affirmed with modification the November 23, 2008 Judgment<sup>2</sup> of the Regional Trial Court (RTC), Branch 25 of Cagayan De Oro City in Criminal Case Nos. 97-1257 and 97-1258 finding accused-appellants Rogelio Natindim (Rogelio), Jimmy P. Macana (Jimmy), Rolando A. Lopez (Rolando), Danny A. Piano (Danny), Arnold A. Araneta (Arnold), Johnny O. Lopez (Johnny), Satorane Panggayong (Satorane), Nestor Labita (Nestor), Carlito Panggayong (Carlito), Gerry Lopez

<sup>1</sup> CA rollo, Vol. II, pp. 956-1000; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles.

<sup>2</sup> Records, Vol. IV, pp. 2733-2761, penned by Judge Noli T. Catli.

Natindim (Gerry), Edimar Panggayong (Edimar), and Marque B. Clarin (Marque) guilty beyond reasonable doubt of the crimes of Robbery and Murder.

Appellants were charged before the RTC with the crimes of Robbery and Murder in two separate Informations that read:

**Criminal Case No. 97-1257 (Robbery):**

That at around 9:00 o'clock in the evening of July 29, 1997 at Sitio Sta. Cruz, Dansolihon, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with intent to gain, with violence and intimidation of persons, and armed with deadly weapons, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously take, rob and carry away one air gun worth ₱3,000.00, one radio worth ₱500.00, one goat worth ₱600.00, two pigs worth ₱3,000.00, one fighting cock worth ₱500.00 and one hen worth ₱100.00, all owned by and belonging to Judith Gunayan y de la Pe[ñ]a, without the consent of the latter, when the said accused after having attained their primary purpose of shooting, hacking and stabbing to death Pepito A. Gunayan, husband of Judith Gunayan, forcibly entered the house of Pepito and Judith Gunayan, hogtied Judith Gunayan and proceeded to take, rob and carry away the properties aforementioned, to the damage and prejudice of Judith Gunayan in the total amount of ₱7,700.00, Philippine Currency.<sup>3</sup>

**Criminal Case No. 97-1258 (Murder):**

That at around 9:00 o'clock in the evening of July 29, 1997 at Sitio Sta. Cruz, Dansolihon, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with evident premeditation, with treachery, by taking advantage of superior strength and under cover of night, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously shoot, with the use of a firearm, one Pepito Angga Gunayan, hitting the latter on the head, and as Pepito Angga Gunayan fell dying, the said accused did then and there willfully, unlawfully and feloniously hack and stab, with the use of bladed weapons, their victim inflicting upon the aforementioned Pepito A. Gunayan mortal wounds that eventually caused his death, to the great damage and prejudice of the wife and children of the deceased.<sup>4</sup>

Upon arraignment, all accused pleaded not guilty to the crimes charged except for accused-appellants Edimar, Nestor, and Gerry. Thereafter, trial on the merits ensued.

Judith Gunayan (Judith) and Geronima de la Peña testified for the prosecution while Nestor, Gerry, Maribel Sinukat (Maribel), Edimar, Arnold, Danny, Johnny, Rolando, Jimmy, Marque, Fernando Piano (Fernando), Rogelio, and Dino Natindim (Dino) testified for the defense.

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<sup>3</sup> Records, Vol. I, p. 3.

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

**Evidence for the Prosecution:**

The evidence for the prosecution presented the following version of events:

On July 29, 1997, at around 9 o'clock in the evening, Judith and her husband Pepito Gunayan (Pepito), together with their two minor children, Pepito, Jr. and Jopet, were having dinner at their residence in Sta. Cruz, Dansolihon, Cagayan de Oro City when they heard the hushed conversation of several persons outside their house and the cocking of a "*paleontod*" firearm (homemade shot gun). Pepito stood up to check the noise outside. He went to their bedroom and looked out from the window. Suddenly, a gunshot was fired which hit and knocked Pepito on the floor. Judith immediately put off their kerosene lamp and embraced her two children.<sup>5</sup>

Somebody from the outside then shouted: "*Panganaog kamo dinha aron dili kamo maangin. Mga Ronda Tanod kami sa Mambuaya. Kami si Freddie Macana ug Yañez.*" which means "*Come down so that you will not be involved. We are Ronda Tanods of Mambuaya. We are Freddie Macana and Yañez.*"<sup>6</sup> The men continued to shout saying: "*mag-ihap lang kami sa tulo ug kon dili kamo manganaog, masakeron kamo namo.*" which means "*We will count to three and if you do not go down, we will massacre you.*"<sup>7</sup>

At this moment, Judith stood and peeped through the window. She asked for the identities of the men and one of them replied "*Ronda Tanod kami sa Mambuaya,*" which means "*We are Ronda Tanod from Mambuaya.*"<sup>8</sup> She then recognized her neighbor Rolando standing beside a molave tree and saying "*uno, dos.*"<sup>9</sup>

Overwhelmed by fear, she and her children went downstairs. She was met by Dino, Marque, Fernando, and Danny whom she recognized as they were close friends in Purok Uno, Mambuaya where she worked when she was a student at Mambuaya Elementary School. She also used to see them at fiestas. Judith also recognized Gerry as he spoke close to her face and asked her "*nang asa ang inyong cuarta?*" During the incident, Dino, Rogelio, and Jimmy were carrying a firearm, a *bolo*, and an air gun, respectively.<sup>10</sup>

Thereafter, Arnold and Johnny entered the house. Hacking sounds were then heard from inside the house. Rogelio and Jimmy also entered their house. After a short while, Jimmy returned outside and handed an FM radio to Gerry.

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<sup>5</sup> Records, Vol. IV, p. 2735.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id. at 2736.

<sup>9</sup> Id.

<sup>10</sup> Id.

Jimmy then went back inside the house and took Pepito's air gun while Rogelio took a 25-inch *bolo*.<sup>11</sup>

When Rogelio, Jimmy, Arnold, and Johnny went out of the house, Satorane shouted "Attack!" At this point, Satorane took their goat, while Edimar rushed towards the kitchen and snatched their hen, Gerry got their fighting cock, and someone took and pulled their two pigs.<sup>12</sup>

Afterwards, everyone gathered around Judith and her two children. Then someone said "It is better we just include and kill her as well." Then someone replied "that's a good idea." Judith pleaded for mercy saying "Please don't kill me, I have small children."<sup>13</sup> Dino then poked a *paleontod* in her head. However Maribel intervened and shoved it away. Then Carlito mashed her vagina.<sup>14</sup>

Meanwhile, Gerry got a piece of rope which he used to tie Judith's hands. Before leaving, Gerry warned Judith: "Do not ever shout, Nang, because if you shout, we will kill you."<sup>15</sup> Then, the group left.<sup>16</sup>

After a few minutes, Judith screamed for help. Her neighbors, Mario Fernandez, Jerry Fernandez, and Edwin Caayon responded and untied her. When she entered their house, she saw her husband Pepito slumped on the floor with gunshot and hack wounds.<sup>17</sup>

#### **Evidence for the Defense:**

The defense presented the following version of events:

***Nestor Labita.*** Appellant Nestor pleaded guilty and testified that on July 29, 1997, about two hours before the incident, he and his companions, namely, Edimar, Gerry, Satorane, Carlito and Maribel met at Kibonhog Forest, Tinagpoloan and planned to kill Pepito that evening. All were armed with *paleontod* except for Maribel.<sup>18</sup>

At around 9:30 in the evening, Maribel brought them to the house of Pepito in Sta. Cruz, Dansolihon, Cagayan de Oro City. Sensing their presence, Pepito looked out from their window and focused his flashlight on them. Edimar immediately shot Pepito using his *paleontod* which knocked him down.<sup>19</sup>

Thereafter, they approached the door of the house shouting "*Gawas mo diha kay don dili mo mogawas, amo kamong masakeron.*" which means "Come

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<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id. at 2736-2737.

<sup>17</sup> Id. at 2737.

<sup>18</sup> Id. at 2741.

<sup>19</sup> Id.

out, otherwise if you will not come out, we will massacre all of you.” Judith came out trembling and crying while holding her two children. Gerry immediately tied her to the wooden sled.<sup>20</sup>

They then went inside the house followed by Edimar, Gerry, and Maribel. There they saw Pepito lying on the floor. Gerry hacked Pepito several times prompting Nestor to say: “*Exacto na kana kay patay na kana siya, looy kaayo.*” which means “Enough, he is already dead. He is pitiful.” Afterwards, Edimar and Gerry took the air gun and FM radio. However, Nestor denied that they took the spouses’ goat and two pigs.<sup>21</sup>

**Gerry Natindim.** Appellant Gerry also pleaded guilty to the commission of the crime. Before the incident, Gerry, Edimar, Nestor, Lando Panggayong (Lando), and Maribel met at 3 o’clock in the afternoon of July 29, 1997 in a secluded place to discuss how to exact revenge against Pepito who was a member of Ronda Tanod of Dansolihon and who earlier boxed Gerry during Dansolihon’s fiesta. Edimar, Lando, and Nestor carried shotguns while Gerry was armed with a bolo.<sup>22</sup>

Gerry testified that they did not intend to rob Pepito. However, when Pepito fired his air gun at them, he commanded Edimar to shoot Pepito which he did. When they went inside the house, he hacked Pepito while Edimar took the couple’s air gun, fighting cock, hen and radio. He denied taking their goat and pigs.<sup>23</sup>

When they went out of the house, he saw Judith and her two children hogtied at the yard by Lando and his group. Thereafter, he and his other companions, except for Nestor who stayed behind, left and went to Edimar’s house in Salimbal forest where they stayed for one month before surrendering to the police authorities.

**Maribel Sinukat.** Maribel alleged that on July 29, 1997 at about 8 o’clock in the morning, she was washing her clothes when Carlito, Satorane and Edimar, Nestor and Gerry arrived and forced her to go with them to the house of Gerry in Dalican, Mambuaya. During their drinking spree, the group agreed to kill Pepito.<sup>24</sup>

She further testified that all the accused carried paleontods. She denied participating in the murder of Pepito and insisted that she was only forced to go with the group because her live-in partner, Satorane, threatened to kill her. She narrated that Edimar shot Pepito and the group stole the belongings of spouses Gunayan.<sup>25</sup>

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<sup>20</sup> Id.

<sup>21</sup> Id. at 2742.

<sup>22</sup> Id. at 2743.

<sup>23</sup> Id. at 2743-2744.

<sup>24</sup> Id. at 2745.

<sup>25</sup> Id.

**Edimar Panggayong.** Appellant Edimar likewise pleaded guilty and narrated that before the incident, he was instructed by one Usting de la Peña (Usting) to kill Pepito because the latter shot Usting's daughter, Judith, with an air gun. He further testified that Usting gave him ₱1,000.00 and promised to pay the balance of ₱3,000.00 as soon as they kill Pepito.<sup>26</sup>

On the evening of July 29, 1997, Edimar was at Binago, Salimbal forest together with Gerry, Nestor, and Lando drinking alcohol. Afterwards, they proceeded to Pepito's residence in Sta. Cruz, Mambuaya. He averred that Pepito aimed his gun at him while looking out from the window and focusing his flashlight at him. Thus, he shot Pepito and the latter fell down.<sup>27</sup>

Thereafter, Gerry and Lando went inside the house. When the two men returned outside, the group left and fetched Carlito, Satorane, and Maribel who were about 500 meters away from Mambuaya.<sup>28</sup>

**Arnold Araneta.** Appellant Arnold testified that on July 29, 1997, at around 5:30 in the afternoon, he was at the crossing to Lumbia Airport to visit his parents-in-law. He spent the night at his in-law's house and did not go home in Kawilihan, Mambuaya as it was already late. He went home the next day at around 9 o'clock in the morning.<sup>29</sup>

He denied Judith's testimony that they were neighbors. He averred that he was not familiar with Sta. Cruz, Dansolihon. He likewise denied knowing Maribel, Edimar, Carlito, Satorane, and Nestor. However, he testified that he knew Gerry as they were neighbors in Mambuaya. But he denied meeting him in the morning of July 29, 1997.<sup>30</sup>

**Danny Piano.** Appellant Danny recollected that on July 29, 1997, he was working at a construction site in Kitamban, Binuangan, Misamis Oriental. He denied Judith's testimony that they were neighbors but admitted that he was acquainted with spouses Gunayan. He likewise denied knowing the Panggayong brothers and Nestor. But he admitted that he knew Gerry, Dino, and Maribel.<sup>31</sup>

**Johnny Lopez.** Appellant Johnny testified that on July 29, 1997, he was at his house in Kawilihan, Mambuaya with his wife and three children. He denied participating in the commission of the crime or knowing the Panggayong brothers and Nestor, but he averred that he knew Gerry and Maribel.<sup>32</sup>

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<sup>26</sup> Id. at 2746.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id. at 2747.

<sup>31</sup> Id. at 2747-2748.

<sup>32</sup> Id. at 2748-2749.

**Rolando Lopez.** Appellant Rolando testified that on July 29, 1997 he was sleeping with his wife and children at their house in Kawilihan, Mambuaya. He denied Judith's testimony that they were neighbors as his residence is far from spouses Gunayan's house. He also averred that he had seen Pepito once during a fiesta and that he knew where Pepito's house was. Lastly, he admitted that he knew the Panggayong brothers, Nestor, Gerry, Maribel, Arnold, Johnny Lopez, Danny, Dino Piano (Piano), Fernando Piano (Fernando), Dino and Marque.<sup>33</sup>

**Jimmy Macana.** Appellant Jimmy averred that on July 29, 1997, at around 9 o'clock in the evening, he was sleeping at his home with his wife and three children in Dalican, Mambuaya. He denied knowing Pepito and Judith. He likewise belied the testimony of Judith that he stole their air gun. He denied knowing the Panggayong brothers and Nestor; however, he knew Dino, Fernando, Piano, Marque, Rolando, and Johnny.<sup>34</sup>

**Marque Clarin.** Appellant Marque testified that on July 29, 1997, he was sleeping at his house with his wife and children. He invoked a similar defense of alibi and denial.<sup>35</sup>

He averred that he only knew of Pepito's death when somebody related a story about his killing. He denied knowing the Panggayong brothers and Nestor. He likewise belied the testimony of Judith that they were friends.

**Fernando Piano.** Appellant Fernando, a resident of Kawilihan, Mambuaya, averred that on July 29, 1997, he worked from one o'clock in the afternoon until four o'clock in the afternoon. Afterwards, he cooked dinner at home. He admitted being friends with spouses Gunayan but denied the accusations of murder and robbery against him.<sup>36</sup>

On July 30, 1997, at around 10 o'clock in the evening, Fernando saw his first cousin Gerry with Maribel and four other companions carrying firearms. He identified in court these four companions as Nestor, Edimar, Satorane, and Carlito. He admitted knowing Danny, Rogelio, Gerry, Rolando, Johnny, Jimmy, Marque, and Arnold.<sup>37</sup>

**Rogelio Natindim.** Appellant Rogelio recalled that on July 29, 1997 at around 9 o'clock in the evening, he was at home with his wife and children. He denied any participation in the crime. He averred that he is not friends with Pepito and he does not know Judith. He admitted that he knew Gerry, Dino, and Maribel.<sup>38</sup>

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<sup>33</sup> Id. at 2749-2750.

<sup>34</sup> Id. at 2750-2751.

<sup>35</sup> Id. at 2751.

<sup>36</sup> Id. at 2751-2752.

<sup>37</sup> Id. at 2752.

<sup>38</sup> Id. at 2753.

**Dino Natindim.** Dino swore that Rogelio and Gerry are his father and brother, respectively. On July 29, 1997, at around 9 o'clock in the evening, he was having dinner in the house of his employer Nestor Alovera in Purok Uno, Mambuaya, Cagayan de Oro City. He denied any participation in the commission of the crime. He likewise denied knowing the spouses Gunayan but admitted that he knew Marque, Jimmy, Danny, Arnold and Maribel.<sup>39</sup>

### **Ruling of the Regional Trial Court:**

On November 23, 2000, the RTC rendered a Judgment<sup>40</sup> convicting appellants for the crimes of Murder and Robbery.

The RTC held that all the accused are guilty beyond reasonable doubt of murder. The court *a quo* found the testimony of Judith as corroborated by the Autopsy Report of the National Bureau of Investigation Medico-Legal Officer and the testimonies of Gerry, Edimar, and Nestor, who admitted the crime, competent evidence that all the 15 accused conspired to commit the crimes charged.<sup>41</sup>

The prosecution also proved the following aggravating circumstances: (a) dwelling; (b) treachery; (c) nighttime; (d) cruelty; (e) with the aid of armed men; and (f) intoxication. However, as to accused Gerry, Edimar, and Nestor, their voluntary surrender qualified them to one mitigating circumstance which was offset by the aggravating circumstance of dwelling.<sup>42</sup>

The court *a quo* did not consider the defenses of denial and alibi of appellants Rogelio, Dino, Jimmy, Rolando, Johnny, Marque, Fernando, Danny, Arnold, Satorane and Carlito because it was not shown that it was not impossible for them to be at the scene of the crime at 9 o'clock in the evening of July 29, 1997 in Sta. Cruz, Dansolihon, Cagayan de Oro City. Moreover, they failed to corroborate their alibi testimonies with credible witnesses.<sup>43</sup>

Furthermore, Judith had no ill motive to falsely testify against them. Her testimony was candid, straightforward and spontaneous which merited the consideration of the court *a quo*.<sup>44</sup>

With regard to the crime of robbery with violence or intimidation against persons, the RTC ruled that all the accused were guilty beyond reasonable doubt. They acted with intent to gain and in conspiracy with each other, without consent and with violence and to the prejudice of Judith and her two children, took the following: (a) one air gun worth ₱3,000.00; (b) one FM radio worth ₱500.00; (c) one goat worth ₱600.00; (d) two pigs worth ₱3,000.00; (e) one (1)

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<sup>39</sup> Id. at 2753-2754.

<sup>40</sup> Id. at 2733-2761.

<sup>41</sup> Id. at 2751.

<sup>42</sup> Id. at 2758.

<sup>43</sup> Id. at 2757.

<sup>44</sup> Id.



fighting cock worth ₱500.00; and (f) one hen worth ₱100.00 for a total amount of ₱7,700.00. However, the RTC credited Gerry, Nestor, and Edimar with the mitigating circumstance of spontaneous plea of guilty which was offsetted against the aggravating circumstance of nighttime.

The *fallo* of the RTC Judgment reads:

IN THE LIGHT OF THE FOREGOING CONSIDERATION, this Court hereby renders Judgment finding all accused namely:

- |                      |                         |                          |
|----------------------|-------------------------|--------------------------|
| 1. Rogelio Natindim  | 6. Dino A. Natindim     | 11. Satorane Panngayong  |
| 2. Jimmy P. Macana   | 7. Danny A. Piano       | 12. Gerry Lopez Natindim |
| 3. Marque B. Clarin  | 8. Arnold A. Araneta    | 13. Edimar Panggayong    |
| 4. Rolando A. Lopez  | 9. Johnny O. Lopez      | 14. Maribel Sinukat      |
| 5. Fernando A. Piano | 10. Satorane Panggayong | 15. Nestor Labita        |

guilty beyond reasonable doubt of committing the crime of Murder as charged in conspiracy with each other, with the qualifying circumstance of evident premeditation and with the generic aggravating circumstance of:

1. with aid of armed men;
2. cruelty;
3. taking advantage of superior strength;
4. treachery;
5. dwelling
6. nighttime;
7. intoxication.

With one (1) mitigating circumstance of:

1. spontaneous plea of guilty;

Which offset one generic aggravating circumstance thus, leaving five (5) generic aggravating circumstances which under Par. 3 of Art. 63 of the Revised Penal Code, constrains this Court to impose the penalty in its MAXIMUM PERIOD and therefore sentences accused:

- |                      |                        |                          |
|----------------------|------------------------|--------------------------|
| 1. Rogelio Natindim  | 6. Danny Piano         | 11. Gerry Lopez Natindim |
| 2. Jimmy P. Macana   | 7. Arnold A. Araneta   | 12. Edimar Panggayong    |
| 3. Marque B. Clarin  | 8. Johnny O. Lopez     | 13. Nestor Labita        |
| 4. Rolando A. Lopez  | 9. Satorane Panggayong |                          |
| 5. Fernando A. Piano | 10. Carlito Panggayong |                          |

to death by lethal injection.

Accused Maribel Sinukat who was 17 years, 4 months and 2 days and Dino A. Natindim who was 17 years, 3 months and 3 days (both minors at the time of the incident on July 29, 1997), and are therefore entitled to a *previllege* (sic) mitigating circumstance of one degree lower and are individually sentenced to an indeterminate penalty of 10 years and 1 day Prision Mayor as minimum, to 17 years and 4 months and 1 day Reclusion Temporal as the maximum terms.

Maribel Sinukat and Dino Natindim are no longer entitled to a suspended sentence, having reached the age of 18 years old (Pp. vs. Casiguran, 2:45387 9 (sic), Nov. 7, 1979: Pp. vs. Mendez, 122, SCRA, 551).

This Court likewise orders all accused to jointly and severally pay ₱75,000.00 to Judith Gunayan and her two (2) children as civil indemnity ex delicto (sic); ₱75,000.00 in solidum as moral damages; to pay actual expenses of ₱15,000.00 for burial and to pay the cost.

Accused who have undergone preventive imprisonment, shall be credited in the service of their sentence consisting of deprivation of liberty with the full time during which they have undergone preventive imprisonment.<sup>45</sup>

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IN THE LIGHT OF THE FOREGOING CONSIDERATION, this Court renders Judgment finding the accused namely:

- |                      |                        |                          |
|----------------------|------------------------|--------------------------|
| 1. Rogelio Natindim  | 6. Danny Piano         | 11. Gerry Lopez Natindim |
| 2. Jimmy P. Macana   | 7. Arnold A. Araneta   | 12. Edimar Panggayong    |
| 3. Marque B. Clarin  | 8. Johnny O. Lopez     | 13. Nestor Labita        |
| 4. Rolando A. Lopez  | 9. Satorane Panggayong |                          |
| 5. Fernando A. Piano | 10. Carlito Panggayong |                          |

guilty beyond reasonable doubt of the crime charged and individually sentences the aforementioned accused to *Reclusion Perpetua*.

Accused Dino Natindim and Maribel Sinukat, being minors at the time of the incident in question, are entitled to a privileged mitigating circumstance of one degree lower and are therefore, individually sentenced to suffer an indeterminate penalty of 10 years and 1 day of Prision Mayor as minimum, to 17 years, 4 months and 1 day of Reclusion Temporal as maximum.

This Court likewise orders all accused to pay jointly and severally, Judith Gunayan and their two (2) children, ₱7,700.00 as actual damages and pay the cost.

Accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty with the full time during which they have undergone preventive imprisonment.

SO ORDERED.<sup>46</sup>

### **Ruling of the Court of Appeals:**

Appellants filed an appeal before the CA.

In its assailed Decision,<sup>47</sup> the CA affirmed the RTC's conviction of Marque, Rolando, Johnny, Danny, Rogelio, Jimmy, Carlito, Edimar, Nestor, Arnold, and Gerry for the crimes of Murder and Robbery. Judith's positive

<sup>45</sup> Id. at 2758-2759.

<sup>46</sup> Id. at 2761.

<sup>47</sup> CA *rollo*, Vol. II, pp. 956-1000.

identification of the above-mentioned accused was corroborated by Edimar, Nestor, and Gerry who pleaded guilty to the crimes charged.<sup>48</sup>

Moreover, their defenses of denial and alibi was belied by Judith's testimony that he knew Marque, Rolando, Johnny, Danny, Rolando, and Jimmy since their elementary days at Mambuaya Elementary School. Also, Judith testified that the distance of her residence to accused Marque, Rogelio, Jimmy, Fernando and Danny is only about one kilometer while the house of Rolando is just a mere 15-minute walk from her residence. Judith could therefore positively identify them since they were neighbors or close acquaintances.<sup>49</sup>

With regard to Carlito, Edimar, Nestor, Arnold, and Gerry, the CA ruled that they were correctly convicted of Murder by the trial court. The Information specifically alleged the qualifying circumstances of evident premeditation, treachery, taking advantage of superior strength and nighttime. It was sufficient that the qualifying circumstances were recited in the Information and duly proven by the prosecution and supported by the evidence on record.<sup>50</sup>

As to Satorane, the CA remanded his case to the RTC for further proceeding in accordance with Section 51 of Republic Act (R.A.) No. 9344 following the report that Satorane was a minor at the time of the commission of the crime.<sup>51</sup>

The appellate court ultimately affirmed the November 23, 2000 RTC Judgment but with the following modification as to Satorane:

**WHEREFORE**, premises considered, the Appeal is hereby **DENIED**, and the September 30, 2008<sup>52</sup> decision rendered by Branch 25, Regional Trial Court, 10th Judicial Region, Cagayan de Oro City is hereby **AFFIRMED** with **MODIFICATIONS**. For the Crime of Murder, [in] view of R.A. 9346, the Act Prohibiting the Imposition of the Death Penalty, Accused-Appellants are hereby sentenced to Reclusion Perpetua. For the Crime of Robbery, Accused-Appellants are hereby sentenced to Reclusion Perpetua, pursuant to Article 294 of the Revised Penal Code, as amended by R.A. 9346. The case as to accused-appellant Satorane Panggayong is hereby ordered **REMANDED** to the court of origin for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.<sup>53</sup>

Hence, the present appeal.<sup>54</sup>

Appellants Carlito, Edimar, Marque, Rolando, Johnny, Danny, Rogelio, Jimmy, Gerry, Nestor, and Arnold filed their respective appellants' brief while

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<sup>48</sup> Id. at 977.

<sup>49</sup> Id. at 982-984.

<sup>50</sup> Id. at 984-986.

<sup>51</sup> Id. at 986-998.

<sup>52</sup> Should read as November 23, 2000.

<sup>53</sup> CA *rollo*, Vol. II, pp. 999-1000.

<sup>54</sup> Id. at 1017.

plaintiff-appellee adopted its brief before the CA. Appellants all similarly raised the following issues:

### Issues

#### I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIMES CHARGED ALTHOUGH THE CIRCUMSTANCE THAT WILL QUALIFY THE CRIME INTO MURDER HAS NOT BEEN SPECIFICALLY ALLEGED IN THE INFORMATION.

#### II

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY EVEN THOUGH THERE WAS A PATENT ERRONEOUS APPRECIATION OF THE ATTENDANT CIRCUMSTANCES.

#### III

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANTS ARNOLD ARANETA, MARQUE B. CLARIN, ROLANDO LOPEZ, JOHNNY LOPEZ, DANILO PIANO, ROGELIO NATINDIM AND JIMMY MACANA GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF ROBBERY AND MURDER.<sup>55</sup>

Moreover, Arnold also assigned as errors the following:

#### IV

THE TRIAL COURT GRAVELY ERRED WHEN IT HELD THAT THE PROSECUTION OVERCOMES THE ACCUSED'S PRESUMPTION OF INNOCENCE.

#### V

THE TRIAL COURT GRAVELY ERRED WHEN IT CONVICTED ACCUSED OF MURDER EVEN WHEN THERE IS NO EVIDENCE PRESENTED TO SHOW THAT HE IS IN CONSPIRACY TO COMMIT THE CRIME OF MURDER OR EVIDENTLY PREMEDITATED.<sup>56</sup>

Lastly, Carlito and Edimar raised the following issue:

#### VI

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCES OF VOLUNTARY PLEA OF GUILTY AND VOLUNTARY SURRENDER IN FAVOR OF THE ACCUSED-APPELLANTS CARLITO PANGGAYONG AND EDIMAR PANGGAYONG.<sup>57</sup>

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<sup>55</sup> Id. at 132-133, 247, 314-315.

<sup>56</sup> Id. at 247.

<sup>57</sup> Id. at 315.

Dino, Fernando, and Rolando died during the pendency of this case, while accused Maribel escaped from detention and is presently at large.

### **Our Ruling**

Appellants' conviction is affirmed with modifications as to the penalty imposed and the nature and amounts of damages awarded.

The RTC and the CA's conclusions are to be accorded due respect as these were based on Judith's positive identification of the appellants as the malefactors and on her narration of their individual acts or participation in the commission of the crimes charged. The trial judge's evaluation of the credibility of a witness and of the witness' testimony is accorded the highest respect because he or she has the unique opportunity to observe directly the demeanor of the witness which enables him or her to determine whether the witness is telling the truth or not, more so when it is affirmed by the CA.<sup>58</sup> Such evaluation is, therefore, binding on the Court unless facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case.<sup>59</sup> Considering that appellants failed to prove that the RTC or the CA overlooked, misapprehended or misinterpreted some facts or circumstances, this Court affirms their finding that Judith's positive declarations on the identities of the appellants prevailed over the latter's denials and *alibi*.

Contrary to the contention of appellants, conspiracy exists in the present case. Under Article 8 of the Revised Penal Code (RPC), a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The State need not prove appellants' previous agreement to commit Murder<sup>60</sup> and Robbery because conspiracy can be deduced from the mode and manner in which they perpetrated their criminal act.<sup>61</sup> They acted in concert in killing Pepito and taking his properties, with their individual acts manifesting a community of purpose and design to achieve their evil purpose. All the fifteen accused as conspirators in this case are liable as co-principals. Hence, they cannot now successfully assail their conviction as co-principals in Murder and Robbery.

#### **A. Murder**

Murder is defined and punished under Article 248 of the RPC, as amended by R.A. No. 7659, which provides:

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

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<sup>58</sup> *People v. Pascual*, 541 Phil. 369, 377 (2007).

<sup>59</sup> *Atizado v. People*, 647 Phil. 427, 438 (2010) citing *People v. Domingo*, 616 Phil. 261, 269 (2009), *People v. Gerasta*, 595 Phil. 1087, 1097 (2008).

<sup>60</sup> *Id.* at 439; *People v. Cabrera*, 311 Phil. 33, 41 (1995).

<sup>61</sup> *People v. Factao*, 464 Phil. 47, 59 (2004).

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

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Appellants argue that they should not have been convicted of murder considering that no circumstances have been specifically alleged in the Information which would qualify the killing into murder. They cited *People v. Alba*<sup>62</sup> (*Alba*) where it was ruled that the circumstance must be alleged with specificity as a qualifying circumstance; otherwise, it can only be considered as a generic aggravating circumstance. Appellants contend that *People v. Gano*<sup>63</sup> clarified that *Alba* should be given a retroactive effect as it is more favorable to the accused. Hence, the ruling in *Alba* must be applied in the present case.

The argument deserves scant consideration.

Section 6, Rule 110 of the Rules of Court states:

Sec. 6. Sufficiency of complaint or information. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense; and the place where the offense was committed.

When the offense is committed by more than one person, all of them shall be included in the complaint or information.

The Information is sufficient if it contains the full name of the accused, the designation of the offense given by the statute, the acts or omissions constituting the offense, the name of the offended party, the approximate date, and the place of the offense. The herein Information complied with these conditions. Contrary to appellants' contention, the qualifying circumstance of "treachery" was specifically alleged in the Information. "The rule is that qualifying circumstances must be properly pleaded in the Information in order

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<sup>62</sup> 425 Phil. 666,677 (2002).

<sup>63</sup> 405 Phil. 573, 586-589 (2001).

not to violate the accused's constitutional right to be properly informed of the nature and cause of the accusation against him.”<sup>64</sup>

Notably, the Information alleged that with treachery, the appellants shot Pepito on the head with the use of a firearm and thereafter hacked him even though he was dying and helpless on the ground, to wit:

### **Criminal Case No. 97-1258**

That at around 9:00 o'clock in the evening of July 29, 1997 at Sitio Sta. Cruz, Dansolihon, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with evident premeditation, with treachery, by taking advantage of superior strength and under cover of night, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously shoot, with the use of a firearm, one Pepito Angga Gunayan, hitting the latter on the head, and as Pepito Angga Gunayan fell dying, the said accused did then and there willfully, unlawfully and feloniously hack and stab, with the use of bladed weapons, their victim inflicting upon the aforementioned Pepito A. Gunayan mortal wounds that eventually caused his death, to the great damage and prejudice of the wife and children of the deceased.<sup>65</sup> (Emphasis ours)

The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on the victim's part.<sup>66</sup> The two elements of treachery, namely: (1) that at the time of the attack, the victim was not in a position to defend himself or herself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him or her,<sup>67</sup> are both present in this case.

Pepito was unarmed and looking out the window to ascertain the noise outside when appellant Edimar shot him on his head which consequently knocked him on the floor. The prosecution also established that appellants consciously and deliberately adopted the mode of attack. They lurked outside Pepito's residence and waited for him to appear. When Pepito emerged from his window with a flashlight which he used to focus on and determine the people outside his house, appellant Edimar immediately shot him on the head with the use of a firearm. The location of the wound obviously indicated that the appellants deliberately and consciously aimed for the vital part of Pepito's body to ensure the commission of the crime. The attack was done suddenly and unexpectedly, leaving Pepito without any means of defense. More importantly, the subsequent hacking of Pepito when he lay lifeless on the floor indicated treachery since he was already wounded and unable to put up a defense.

Since treachery qualified the crime to murder, the generic aggravating circumstances of abuse of superior strength, in aid of armed men and nighttime

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<sup>64</sup> *People v. Asilan*, 685 Phil. 633, 650 (2012) citing *People v. Lab-ao* 424 Phil. 482, 497 (2002).

<sup>65</sup> Records, Vol. 1, p. 4.

<sup>66</sup> *People v. Abadies*, 436 Phil. 98, 105 (2002) citing *People v. Garcia*, 409 Phil. 152, 171 (2001).

<sup>67</sup> *People v. Ordon*a, 818 Phil. 670, 681 (2017) citing *People v. Abadies*, supra.

are absorbed by and necessarily included in the former. Unless the aggravating circumstance of nighttime was purposely sought and founded on different factual bases, then nighttime can be considered as a separate generic aggravating circumstance,<sup>68</sup> which is however not present in the case at bar. The prosecution failed to prove by sufficient evidence that nighttime was purposely and deliberately sought by the appellants. Thus, this Court holds that since treachery was alleged in the Information and duly established by the prosecution during trial, the appellants' conviction for the crime of Murder is proper.

However, evident premeditation as a qualifying circumstance cannot be appreciated in this case for failure of the prosecution to specifically allege in the Information the acts constituting it. Mere reference to evident premeditation is not sufficient because it is in the nature of a conclusion of law, not factual averments.<sup>69</sup> Section 9, Rule 110 of the Rules of Court requires that the acts or omissions complained of as constituting the offense must be stated in "ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense." This is to sufficiently apprise the accused of what he or she allegedly committed. Thus, the Information must state the facts and circumstances alleging the elements of a crime to inform the accused of the nature of the accusation against him/her so as to enable him/her to suitably prepare his/her defense.<sup>70</sup> In this case, however, the prosecution failed to specifically allege in the Information the acts constituting evident premeditation. Nevertheless, it can still be considered a generic aggravating circumstance, as in this case.

To be sure, both the RTC and the CA correctly found the presence of evident premeditation in the killing of the victim. Evident premeditation is attendant when the following requisites are proven during trial: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he/she clung to his determination; (3) a sufficient lapse of time between the determination and execution, to allow him/her to reflect upon the consequences of his/her act, and to allow his/her conscience to overcome the resolution of his will.<sup>71</sup> It presupposes a deliberate planning of the crime before executing it. The execution of the criminal act, in other words, must be preceded by cool thought and reflection. There must be showing of a plan or preparation to kill, or proof that the accused meditated and reflected upon his/her decision to execute the crime.<sup>72</sup>

In the case at bar, the following circumstances indicated the presence of evident premeditation: (1) the meeting of all the accused at 3 o'clock in the afternoon of July 29, 1997 at Binago Forest, Salimbal, Tinagpoloan to plan the killing of Pepito; (2) the act of buying and drinking alcohol and arming themselves with four homemade guns known as *paleontods*, an improvised

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<sup>68</sup> *People v. Berdida*, 123 Phil. 1368, 1379 (1966) and *People v. Ong*, 159 Phil. 212, 255-256 (1975).

<sup>69</sup> *People v. Delector*, 819 Phil. 310, 320 (2017).

<sup>70</sup> *Id.* at 320-321.

<sup>71</sup> *People v. Sanchez*, 636 Phil. 560, 582 (2010) citing *People v. Herida*, 406 Phil. 205, 215 (2001).

<sup>72</sup> *Id.* citing *People v. Guzman*, 524 Phil. 152, 172-173 (2007).



pistol and bolos; and (3) a sufficient lapse of time, that is, six hours from the time of their meeting at 3 o'clock in the afternoon until the time of killing of Pepito at 9 o'clock in the evening.

Undoubtedly, the appellants were determined to commit the crime. The commission of the crime was clearly not a product of accident, as it was evident that they planned to kill Pepito. However, being merely a generic aggravating circumstance, evident premeditation cannot qualify the killing into murder. To reiterate, since treachery was sufficiently alleged in the Information and duly proven by the prosecution, the killing of Pepito constitutes Murder and not merely Homicide as contended by the appellants. On the other hand, evident premeditation is to be considered merely as a generic aggravating circumstance which is necessary in the correct imposition of penalty.

Meanwhile, the generic aggravating circumstances of cruelty, dwelling and intoxication cannot be considered in this case. In *People v. Legaspi*,<sup>73</sup> the Court held that for both qualifying and aggravating circumstances to be considered in the case, they must be specifically alleged in the Information or Complaint, as provided in the amended Sections 8 and 9, Rule 110, of the Rules of Court. Otherwise, they will not be appreciated even if duly proved during the trial. Given that the Judgment of the court *a quo* was promulgated on November 23, 2000 wherein the ruling in *Legaspi* has not yet been issued, this Court gives this doctrinal rule a retroactive effect being favorable to the appellants.<sup>74</sup> Hence, only the qualifying circumstance of treachery which absorbs abuse of superior strength, in aid of armed men and nighttime, as well as the generic aggravating circumstance of evident premeditation, can be considered in the present case.

The RTC and the CA correctly disregarded the voluntary surrender claimed by appellants Edimar and Carlito as a mitigating circumstance since their surrender was not for the two crimes charged in this case but for the other cases of Robbery committed in Talakag. The surrender, to be deemed voluntary, must be spontaneous in which the accused voluntarily submits himself or herself to the authorities with an acknowledgment of his or her guilt and with the intent to save them from trouble and expense of effecting his/her capture. Moreover, the voluntary surrender must be by reason of the crime for which the accused is to be prosecuted which is not the case here.<sup>75</sup>

Nonetheless, even if we consider their voluntary surrender as a mitigating circumstance in addition to their voluntary confession of guilt, one mitigating circumstance may offset the generic aggravating circumstance of evident premeditation as to leave appellant Edimar with only one mitigating circumstance which is voluntary confession of guilt. Appellant Carlito is left with no other attending circumstance. This, however, will still not reduce by one degree the penalty imposed by the RPC for murder, that is, *reclusion*

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<sup>73</sup> 409 Phil. 254, 273 (2001)

<sup>74</sup> *People v. Ramirez*, 409 Phil. 238, 252 (2001).

<sup>75</sup> *People v. Semañada*, 103 Phil. 790, 797 (1958).

*perpetua* to death. Regardless of the number of ordinary mitigating circumstances and despite the absence of an aggravating circumstance, the penalty cannot be reduced to any degree.<sup>76</sup> The reduction applies only when the sentence imposed by law is a divisible penalty which is either a single divisible penalty or three different penalties which are divisible into three periods which is not the case herein. Hence, the contention of the appellants that the penalty for Edimar and Carlito should be within the range of *prision mayor* as minimum to *reclusion temporal* as maximum is without basis in law.

Article 248 of the RPC provides that the presence of the attending circumstance of treachery qualified the killing into murder which is punishable by *reclusion perpetua* to death. Article 63 of the same Code provides that if the penalty is composed of two indivisible penalties, as in the instant case, and there is an aggravating circumstance the higher penalty should be imposed. Since evident premeditation can be considered as an ordinary aggravating circumstance, treachery, by itself, being sufficient to qualify the killing, the proper imposable penalty - the higher sanction - is death. However, in view of the enactment of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty for the killing of Pepito is *reclusion perpetua* without eligibility for parole. The penalty thus imposed by the RTC and affirmed by the appellate court on each appellant is correct.

As to their civil liabilities,<sup>77</sup> since their penalty of death is reduced to *reclusion perpetua* because of R.A. No. 9346, the appellants shall be jointly and severally liable to pay civil indemnity in the total amount of ₱100,000.00, moral damages in the total amount of ₱100,000.00, and exemplary damages in the total amount of ₱100,000.00.

As to actual damages, settled is the rule that when actual damages proven by receipts during the trial amount to less than the sum allowed by the Court as temperate damages,<sup>78</sup> the award of temperate damages is justified in lieu of actual damages which is of a lesser amount.<sup>79</sup> Since the amount of actual damages proved during the trial, that is, ₱15,000.00, is less than the amount of temperate damages of ₱50,000.00 fixed by prevailing jurisprudence<sup>80</sup> for Murder, it is proper to award temperate damages in lieu of actual damages.

In addition, the monetary awards payable by the appellants are subject to interest at the rate of six percent (6%) per *annum* from the finality of this Decision until fully paid.

## **B. Robbery**

<sup>76</sup> *People v. Castañeda*, 60 Phil. 604, 609 (1934).

<sup>77</sup> *People v. Jugueta*, 783 Phil. 806 (2016).

<sup>78</sup> *People v. Racal*, 819 Phil. 665, 685 (2017) citing *People v. Jugueta*, *supra*.

<sup>79</sup> *Id.* citing *People v. Villanueva*, 456 Phil. 14, 29 (2003); *Quidet v. People*, 632 Phil. 1, 19 (2010); *People v. Villar*, 757 Phil. 675, 682 (2015).

<sup>80</sup> *People v. Jugueta*, *supra* at 853.

Article 294 of the RPC as amended by R.A. No. 7659 reads:

ART. 294. *Robbery with violence against or intimidation of persons - Penalties.*- Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

XXXX

5. The penalty of prision correccional in its maximum period to prision mayor in its medium period in other cases.

Notably, the appellants were charged with separate crimes of Murder and Robbery and not the complex crime of Robbery with Homicide. A conviction for Robbery with Homicide requires that Robbery is the main purpose and objective of the malefactors and the killing is merely incidental to the Robbery. If, originally, the malefactors did not comprehend Robbery, but Robbery follows the Homicide either as an afterthought or merely as an incident of the Homicide, then the malefactor is guilty of two separate crimes, that of Homicide or Murder and Robbery, and not of the special complex crime of Robbery with Homicide.<sup>81</sup>

In this case, the original intention of the appellants was to kill Pepito to exact revenge from Pepito for assaulting appellant Gerry. In fact, appellant Edimar immediately shot Pepito on his head when the latter looked out from his window to ascertain the people outside his house. This shows that the appellants did not intend to commit Robbery at the outset. Nonetheless, Robbery was committed incidentally by the appellants when Jimmy took Pepito's air gun and FM radio while Rogelio took the bolo after hacking the body of Pepito. Subsequently, appellant Edimar shouted "Attack!" thereby giving the other appellants the signal to ransack the other valuables of the spouses Gunayan, namely, a goat, two pigs, a fighting cock and a hen without the consent and at gun point and with use of bolos against Judith and her children.

Conspiracy having been established as earlier discussed, the appellants are guilty of Robbery under Article 294(5) of the RPC punishable by *prision correccional* in its maximum period to *prision mayor* in its medium period. The RTC and CA therefore erred when they applied the penalty prescribed by law for Robbery with Homicide when the present case charged the appellants with separate crimes of Murder and Robbery.

Absent any aggravating and mitigating circumstance, the penalty shall be applied in its medium period. In this case, the penalty prescribed by law *i.e. prision correccional* in its maximum period to *prision mayor* in its medium

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<sup>81</sup> *People v. Daniela*, 449 Phil. 547, 564 (2003) citing *People v. Salazar*, 342 Phil. 745, 765-766 (1997).

period has three periods namely: (a) minimum - four (4) years, two (2) months and one (1) day to six (6) years, one (1) month and ten (10) days; (b) medium - six years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days; and (c) maximum - eight (8) years and twenty-one (21) days to ten (10) years.

Applying the Indeterminate Sentence Law, the maximum of the imposable penalty shall be eight (8) years and twenty (20) days taken from the medium period of the imposable penalty. The minimum of the penalty shall be within the full range of *arresto mayor* maximum to *prision correccional* medium which is one degree lower than that prescribed by law. Hence, the minimum of the penalty to be imposed shall be four (4) years and two (2) months. In sum, the appellants shall be sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and twenty (20) days of *prision mayor*, as maximum.

However, as regards appellants Gerry, Nestor, and Edimar, they are to be credited with the mitigating circumstance of voluntary confession of guilt. Hence, the maximum of the penalty imposed shall be in the minimum period, that is, within four (4) years, two (2) months and one (1) day to six (6) years, one (1) month and ten (10) days. Thus, appellants Gerry, Nestor, and Edimar shall be sentenced to four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to six (6) years, one (1) month and ten (10) days of *prision mayor* as maximum.

In addition, the appellants shall be jointly and severally liable to pay Judith Gunayan and her two children actual damages in the total amount of ₱7,700.00 and to pay the legal cost. The monetary award shall be subject to interest at the rate of six percent (6%) per *annum* from the finality of this Decision until fully paid.

**WHEREFORE**, the appeal is **DISMISSED**. The October 14, 2011 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00088-MIN is **AFFIRMED** with **MODIFICATIONS**, to wit:

**Criminal Case No. 97-1258 (Murder):**

1) Appellants Rogelio Natindim, Jimmy Macana, Marque Clarin, Danny Piano, Arnold Araneta, Johnny Lopez, Carlito Panggayong, Gerry Natindim, Edimar Panggayong and Nestor Labita are **SENTENCED** to *reclusion perpetua* without eligibility for parole.

2) Criminal Case No. 97-1258 is **DISMISSED** insofar as accused Dino Natindim, Fernando Piano and Rolando Lopez are concerned, in view of their demise during the pendency of their appeal. Further, as to them, the appealed November 23, 2000 Judgment and the assailed October 14, 2011 Decision of the Court of Appeals are set aside. Their criminal and civil liabilities for the

crime of Murder are hereby extinguished on account of their death pending appeal accordance with Article 89(1) of the Revised Penal Code.

3) Appellants Rogelio Natindim, Jimmy Macana, Marque Clarin, Danny Piano, Arnold Araneta, Johnny Lopez, Carlito Panggayong, Gerry Natindim, Edimar Panggayong and Nestor Labita, are hereby **ORDERED** to jointly and severally pay the heirs of Pepito Gunayan, namely Judith Gunayan and her two children, temperate damages in the total amount of ₱50,000.00, civil indemnity in the total amount of ₱100,000.00, moral damages in the total amount of ₱100,000.00 and exemplary damages in the total amount of ₱100,000.00. The monetary awards are subject to interest at the rate of six percent (6%) per *annum* from the finality of this Decision until fully paid.

**Criminal Case No. 97-1257 (Robbery):**

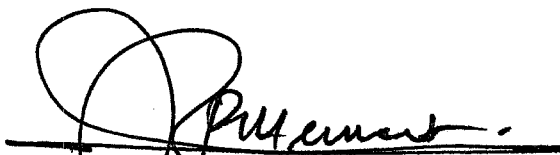
1) Appellants Rogelio Natindim, Jimmy Macana, Marque Clarin, Danny Piano, Arnold Araneta, Johnny Lopez and Carlito Panggayong are **SENTENCED** to the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to eight (8) years and twenty (20) days of *prision mayor* as maximum.

2) Appellants Gerry Natindim, Nestor Labita and Edimar Panggayong are hereby credited with the mitigating circumstance of voluntary confession of guilt and are **SENTENCED** to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to six (6) years, one (1) month and ten (10) days of *prision mayor* as maximum.

3) Criminal Case No. 97-1257 is **DISMISSED** insofar as accused Dino Natindim, Fernando Piano and Rolando Lopez are concerned in view of their demise during the pendency of their appeal. Further, as to these deceased appellants, the November 23, 2000 Judgment and the assailed October 14, 2011 Decision of the Court of Appeals are set aside. The criminal and civil liabilities for the crime of Robbery are hereby extinguished on account of their death pending appeal in accordance with Article 89 (1) of the Revised Penal Code.


4) Appellants Rogelio Natindim, Jimmy Macana, Marque Clarin, Danny Piano, Arnold Araneta, Johnny Lopez, Carlito Panggayong, Gerry Natindim, Edimar Panggayong and Nestor Labita are hereby **ORDERED** to jointly and severally pay the heirs of Pepito Gunayan, namely Judith Gunayan and her two children actual damages in the total amount of ₱7,700.00 and to pay the cost. The monetary awards are subject to interest at the rate of six percent (6%) per *annum* from the finality of this Decision until fully paid.

**SO ORDERED.**




**RAMON PAUL L. HERNANDO**  
Associate Justice

**WE CONCUR:**



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



**HENRI JEAN PAUL B. INTING**  
Associate Justice



**EDGARDO L. DELOS SANTOS**  
Associate Justice



**RICARDO R. ROSARIO**  
Associate Justice

**ATTESTATION**

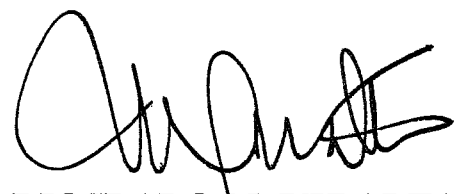
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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

**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.



**DIOSDADO M. PERALTA**  
Chief Justice

CERTIFIED TRUE COPY

*MisPDCBott*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court  
Third Division  
FEB 16 2021