



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 242883

Present:

- versus -

GERWIN GUNDA¹ and ELMER T.
REBATO,

PERALTA, C.J., Chairperson,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

Accused.

Promulgated:

ELMER T. REBATO,
Accused-Appellant.

SEP 03 2020

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DECISION

PERALTA, C.J.:

For resolution of this Court is the appeal of accused-appellant Elmer T. Rebato seeking the reversal of the Court of Appeals (CA) Decision² dated August 30, 2018, which affirmed with modifications the Decision³ of the Regional Trial Court (RTC), Branch 1, Borongan City, Eastern Samar, dated June 18, 2015, finding Rebato guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The accusatory portion of the Information, docketed as Criminal Case No. 12002, states:

That on September 6, 2008, at about 11:30 o'clock (*sic*) in the evening, at Brgy[.] 05, Llorente, Eastern Samar, and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and with treachery and evident premeditation, willfully, unlawfully, and feloniously stabbed to death [Fredelindo Gura Remo].

¹ Accused Gerwin Gunda is one of those charged in the subject information for Murder. He is at large. There are two pending orders for his arrest, one dated November 25, 2009 (Records, p. 81) and the other dated June 29, 2011 (*id.* at 145).

² *Rollo*, pp. 4-23. Penned by Associate Justice Pamela Ann Abella Maxino, and concurred in by Associate Justices Louis P. Acosta and Dorothy P. Montejo-Gonzaga.

³ *CA rollo*, pp. 43-60. Penned by Presiding Judge Elvie P. Lim.

Contrary to law.⁴

Upon arraignment, Rebato pleaded not guilty.

Version of the Defense

In view of Rebato's affirmative allegation of self-defense,⁵ the RTC conducted a reverse trial wherein the defense first presented its evidence and chronicled alleged factual antecedents.

On September 6, 2008, at around 11:00 p.m. in Brgy. 5, Llorente, Eastern Samar, Rebato was sitting outside Joyan's Bakeshop and listening to music from his MP4. He was with Edgar Carpio and Melchor Villaflor. The victim, Fredelindo G. Remo, together with siblings Jimmy Cabanatan and Jomar Cabanatan, who came from a drinking session about 15 to 20 meters away, approached and attacked Carpio and Villaflor. Afterwards, Remo attacked Rebato with the same water pump pipe, hitting the latter's right elbow, left hand and back. While Remo's group was attacking Rebato, someone from Remo's group said, "Let us kill him." Thereafter, Rebato ran inside the bakeshop, and Gerwin Gunda gave Rebato a small *bolo* locally called "*dipang*." Rebato used the *dipang* to stab Remo, who then ran away. Afterwards, Rebato went inside the bakeshop. Minutes later, Rebato heard people shouting that there was a dead body. When the policemen arrived, they asked the people inside the bakery to come out. When they asked who stabbed the dead person, Rebato admitted that it was him who stabbed Remo. Rebato was brought to the municipal building of Llorente, Eastern Samar, near the jail. He allegedly surrendered the bladed weapon he used to the policemen. After six days, Rebato was brought by policemen to the clinic of Dr. Myra Cecilia D. Grata and was physically examined.⁶

Version of the Prosecution

On the other hand, the prosecution presented the incident in this manner:

On September 6, 2008, at about 11:30 p.m. in Brgy. 5, Llorente, Eastern Samar, while Remo was walking home and passing by Joyan's Bakeshop, Rebato approached Remo from behind and stabbed the latter, twice. First, Remo was stabbed at the right portion of the stomach and, then, in his left chest. Afterwards, Remo ran towards his house, but was not able to get too far, and fell down.⁷

⁴ Records, p. 2.

⁵ *Id.* at 166.

⁶ CA *rollo*, p. 45.

⁷ *Id.* at 46.



Jimmy, who was about 10 to 15 meters away, witnessed the incident. Jimmy was with his three friends, who were about to start their drinking session, about 50 meters away from the bakery. Jomar, who was about 8 to ten 10 meters away from Rebato and Remo, also witnessed the incident.⁸

Remo sustained two stab wounds: a 2-centimeter in diameter wound below the right nipple of the midclavicular line, penetrating the chest cavity; and a 1.5-centimeter in diameter wound located at the left quadrant of the abdomen, penetrating the abdominal cavity. These wounds caused the immediate death of the victim due to excessive loss of blood, which was considered by the doctor as hypovolemic shock secondary to stab wound.

Ruling of the RTC

After trial on the merits, the RTC convicted Rebato of the crime of Murder. The dispositive portion of the Decision, dated June 18, 2015, reads:

WHEREFORE, all the foregoing premises considered, this Court **finds** accused **Elmer T. Rebato GUILTY beyond reasonable doubt of the crime of MURDER**, and thereby imposing upon him the penalty of *reclusion perpetua*, with the corresponding accessory penalties provided under Article 41 of the Revised Penal Code, and ordering accused Elmer T. Rebato to pay the heirs of victim [Fredelindo Remo] the following:

- a. Civil indemnity for the death of [Fredelindo Remo] in the amount of ₱75,000.00;
- b. Moral damages in the amount of ₱50,000.00;
- c. Exemplary damages in the amount of ₱30,000.00; and
- d. Temperate damages in the amount of ₱25,000.00.

It appearing on record that accused has been detained on October 10, 2008, his period of detention shall be credited in the service of his sentence consisting of deprivation of liberty with the full time during which he has undergone preventive imprisonment pursuant to Article 29 of the Revised Penal Code.

SO ORDERED.⁹

The RTC ruled that the justifying circumstance of self-defense cannot be properly interposed because of the absence of the indispensable element of unlawful aggression on the part of the victim. The RTC held that Rebato fabricated his defense of self-defense when he testified that he only sustained injuries on his right elbow, left hand and back, despite being beaten alternately for several times using water pump pipes, by Remo and his two friends.¹⁰ The RTC also took into consideration the testimony of the doctor who examined

⁸ *Id.*

⁹ *Id.* at 60; emphases supplied.

¹⁰ *Id.* at 49.

Rebato's injuries, and who categorically declared that the injury could have probably been sustained from some other incident.¹¹

Based on the testimonies of Rebato and Dr. Grata, the element of unlawful aggression has not been clearly and convincingly established by the defense.

The RTC also gave weight and credence to the evidence of the prosecution, which was clearly supported by testimonial and documentary evidence.¹² It was established through testimonial evidence that Remo was walking home when Rebato, after having been handed over the *dipang*, swiftly and deliberately stabbed Remo, and fatally wounded him, which eventually caused the latter's death.¹³ Through these acts, the qualifying circumstance of treachery was attendant in the killing of Remo when the attack was swift, deliberate and unexpected, and affords the hapless victim no chance to resist or escape.¹⁴

As regards the aggravating circumstance of evident premeditation, this was not attendant in this case. The prosecution failed to establish that there was a previous decision on the part of the accused to commit the crime, and that there was evidence to show that sufficient time had elapsed for Rebato and his co-accused Gunda to decide to commit the crime and reflect on its consequences.¹⁵

Aggrieved, Rebato appealed to the CA.

Ruling of the CA

On appeal, in its Decision dated August 30, 2018, the CA affirmed the conviction by the RTC with modifications:

IN LIGHT OF ALL THE FOREGOING, the Court hereby AFFIRMS with MODIFICATIONS the assailed Decision dated June 18, 2015, of the Regional Trial Court (RTC), Branch 1, Borongan City, Eastern Samar, in Criminal Case No. 12002. Accused-appellant **Elmer T. Rebato is found guilty of the murder** of [Fredelindo Gura Remo], and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the heirs of [Fredelindo Gura Remo] the amounts of Seventy Five Thousand Pesos (PhP75,000.00), as civil indemnity, Seventy Five Thousand Pesos (PhP75,000.00), as moral damages, Seventy Five Thousand Pesos (PhP75,000.00), as exemplary damages, and Fifty Thousand Pesos (PhP50,000.00) as temperate damages.

¹¹ *Id.* at 50.

¹² *Id.* at 52.

¹³ *Id.* at 55.

¹⁴ *Id.*

¹⁵ *Id.* at 56.

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.

After the entry of judgment in this case shall have been made, let the original records be forthwith remanded to the trial court for appropriate action regarding the information against accused Gerwin Gunda.

SO ORDERED.¹⁶

The CA relied on the findings of the trial court regarding its appreciation of facts offered by both the prosecution and the defense.¹⁷ It ruled that Rebato did not act in incomplete self-defense, and that the prosecution was able to establish all the elements of Murder.¹⁸ It further ruled that the prosecution has sufficiently alleged treachery as a qualifying circumstance in the Information, without considering the absence of an explanation of the treachery therein.¹⁹

Hence, this appeal.

Issue

Whether the CA correctly upheld the conviction of accused-appellant Rebato for murder.

The Court's Ruling

The appeal is without merit.

The factual findings of the RTC, as affirmed by the CA, should be given respect.

The Court adheres to the long-standing principle that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect, and are binding upon this Court, particularly when affirmed by the CA.²⁰ These factual findings shall not be disturbed unless there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case.²¹

¹⁶ *Rollo*, p. 22; emphases supplied.

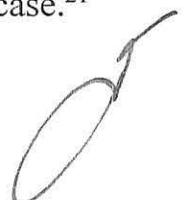
¹⁷ *Id.* at 12.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 17.

²⁰ *People v. BBB*, G.R. No. 232071, July 10, 2019.

²¹ *People v. Racal*, G.R. No. 224886, September 4, 2017, 838 SCRA 476, 487.



After a careful scrutiny of the records and evaluation of the evidence adduced by the parties, the Court finds no cogent reason to disturb the ruling of the CA, which affirmed with modifications the ruling of the RTC. There is no indication that the RTC overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. The Court gives utmost respect to the factual findings of the RTC, considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties.

Rebato failed to establish his affirmative allegation of self-defense in killing Remo.

Since self-defense is an affirmative allegation that can totally exculpate or mitigate the criminal liability of the accused, it is a well-settled principle that when it is invoked, the burden of evidence shifts to the accused to prove it by credible, clear and convincing evidence.²² The accused must rely on the strength of his own evidence and not on the weakness of the prosecution.²³ Self-defense cannot be appreciated when uncorroborated by independent and competent evidence, or when it is extremely doubtful by itself.²⁴

The three elements of self-defense are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the person defending himself.²⁵

Initially, the accused must prove unlawful aggression on the part of the victim.²⁶ Otherwise, there can be no self-defense, either complete or incomplete.²⁷

Both the prosecution and the defense presented conflicting accounts regarding the stabbing incident.

The witnesses for the prosecution testified that while Remo was walking home, Rebato attacked him from behind and stabbed him twice using a *dipang*. Based on the evidence of the prosecution, self-defense cannot be properly interposed because of the absence of unlawful aggression on the part of the victim. He was merely walking home when Rebato stabbed him.

²² *People v. Tica*, G.R. No. 222561, August 30, 2017, 838 SCRA 390, 397.

²³ *Id.*

²⁴ *Johnny Garcia Yap v. People*, G.R. No. 234217, November 14, 2018.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

On the other hand, Rebato testified that while he was listening to music, Remo, Jimmy and Jomar attacked him with water pump pipes, and threatened to kill him, to wit:

Q: Mr. Witness, what parts of your body were hit when these three (3) people were attacking you?

A: My right elbow, my left hand and on my back x x x.

Q: Were all of them holding weapons, Mr. Witness?

A: Yes, pipes, ma'am.

Q: **What injuries did you sustain from the attack?**

A: **Right elbow, and left hand, bruises from the strike of the pipe.**

x x x x

Q: **About your back.**

A: **Also on my back.**²⁸

QUESTIONS BY THE COURT:

Q: By the way, you said that **the three (3) persons attacked you by striking you with pipes and each of them have pipe[s] x x x and they were striking you simultaneously or alternately?**

A: **One at a time, alternately.**

Q: Can you tell us **how many times each one of these attacker[s] strik[ed] you with that pipe?**

A: **So many times.**

Q: Of that so **many** times that the three (3) persons striking you, your injuries were only on your hand and elbow?

A: Yes, Your Honor.

Q: Are you **saying** the other strike did not hit you?

A: Yes, Your Honor.²⁹

The RTC found that Rebato's affirmative allegation of self-defense as fabricated. The RTC found it incredible that Rebato only sustained injuries on his right elbow, left hand and back, even if he was allegedly beaten up alternately for several times by Remo, and siblings Jimmy and Jomar.

Further, Rebato's effort of fabricating his defense was demonstrated by the testimony of Dr. Grata, who examined his alleged injuries. She categorically declared that the injury could have probably been sustained from some other incident:

Q: Madam Witness, in your medico-legal report, the nature of the incident is written "alleged mauling incident", was this the same information given to you?

²⁸ TSN, Criminal Case No. 12002, March 2, 2010, p. 5; emphasis supplied.

²⁹ *Id.* at 18; emphases supplied.

A: Yes, that is the same information given to me.

X X X X

Q: The findings on the patient granulation tissue 0.5 cm, the wound, what does this mean[,] doctor?

A: It means on the right elbow of the patient, I found out that there is a granulation tissue about a heal scar.

Q: And the second findings, what does it mean[,] madam witness.

A: That there is no granulation tissue on the scar, it is a clear scar about 0.5 cm in the middle finger, the right hand of the patient.

Q: This granulation tissue, what could have been the cause of this injury, madam witness?

A: Because **I have examined the patient 6 days after the incident, it could possible [be] due to the other incident not necessary that incident that was stated in the medico[-]legal report.**

Q: But the scar is almost heal[ed]?

A: Yes, sir.

Q: How about this linear scar?

A: It was already [a] scar at the time of examination, 6 days after the incident.

Q: Did you examine the other part of his body?

A: Yes, I have examined the head, the chest and the other part of his body, and I have not found any other injury.

X X X X

Q: Do you affirm madam witness that these injuries which you found on the patient may also come from the same incident?

A: Probably, but it could probably c[o]me from any other incident.³⁰

Thus, it can be gleaned from the testimonies of Rebato and Dr. Grata that self-defense was not clearly and convincingly established by the defense.

Even assuming *arguendo* that Rebato's affirmative allegation of self-defense is not fabricated, there can still be no unlawful aggression.

In *People v. Nugas*,³¹ the Court discussed the two kinds of unlawful aggression:

[1] Actual or material unlawful aggression [is] an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. [2] Imminent unlawful aggression [is] an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent

³⁰

TSN, Criminal Case No. 12002, August 10, 2010, pp. 6-8; emphases supplied.

³¹

677 Phil. 168 (2011).

to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.³²

Rebato's testimony provides that after he was struck with water pump pipes outside the bakery, he ran inside the bakery where Gunda handed him the *dipang*. There is nothing to show that Remo followed him inside the bakery:

Q: What were you doing xxx outside of xxx Joyan's Bake Shop?

A: I was playing sounds of my MP4.

Q: Was there any unusual incident that happened while you were there outside Joyan's Bake Shop and playing music in your MP4?

A: Jimmy Cabanatan and Jomar, [Fredelindo] got near me and sa[id], "Let us kill him."

x x x x

Q: What was x x x your position when you were attacked by them?

A: When they approached me, I was sitting, but when they attacked me, I escaped, I got up and tried to escape.

x x x x

Q: Did you come to know why they attacked you with what kind of pole?

A: Water pump pipe.

Q: Did you come to know why they attacked you?

x x x x

A: While striking me with that pipe, I heard them saying[,] "[L]et us kill him[.]"

Q: Of course, that time [Fredelindo] was still alive?

A: Yes, he ran back.

Q: What happened next after [Fredelindo] ran?

A: I went inside the bakery.

Q: What did you do to [repel] the attack on your person?

A: While I was trying to escape from the strike, Gerwin Gunda approach[ed] me[,] who handed me a weapon.

Q: After Gerwin Gunda gave you a weapon, who was then attacking you?

A: [Fredelindo], Jimmy and Jomar.³³

When Rebato ran to the bakery where Gunda handed him the *dipang*, Remo did not follow him inside. Instead of remaining inside the bakery to

³² *Id.* at 177-178.

³³ TSN, Criminal Case No. 12002, March 2, 2010, pp. 3-5; emphasis supplied.

keep himself safe from Remo, Jimmy and Jomar, Rebato used the *dipang* handed to him to harm Remo. In this case, Rebato caused harm to Remo not as an act of self-defense, but as an act of vengeance. When Rebato went inside the bakery and Remo neither followed Rebato inside the bakery nor committed any acts of unlawful aggression, Remo did not anymore pose any imminent threat against Rebato. At this point, the unlawful aggression on Remo's part has already ceased.

The Court also considers the results of the medico-legal examination which shows that the victim sustained two stab wounds that are close to the victim's vital organs. Based on the number and location of the victim's wounds, it can be deduced that Rebato was determined to kill the victim and was not merely defending himself.

Rebato committed the crime of Murder, qualified by treachery.

The Information charged Rebato with the crime of Murder, which was alleged to have been attended by treachery and evident premeditation.

Article 248 of the RPC, as amended by Republic Act No. 7659, provides:

Article 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.

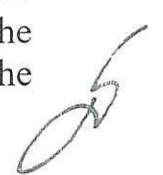
X X X X

5. With evident premeditation.

The elements of the crime of murder are: (1) a person was killed; (2) the accused killed the person mentioned in number (1); (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) the killing is not parricide or infanticide.³⁴

Article 14 (16) of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to ensure its execution, without risk to the offender arising from the defense which the offended party might make. The

³⁴ *People v. Racal*, G.R. No. 224886, September 4, 2017, 838 SCRA 476, 488-489.



two elements of treachery are: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.³⁵

On direct examination of witnesses Jimmy and Jomar, they testified that Remo was an innocent-passerby who was suddenly attacked and stabbed by Rebato on the right portion of his stomach and left side of his chest:

- Q: Please inform and describe to the court what was the manner of Elmer Rebato, action, when he killed [Fredelindo Remo] because you said he was the one who killed, please tell the court.
- A: [Fredelindo Remo] was attacked from behind by Elmer Rebato (witness demonstrating).

X X X X

- Q: I am asking whom did you first see, was it [Fredelindo Remo] or Elmer Rebato?
- A: Elmer Rebato.
- Q: What was Elmer doing?
- A: Getting near [Fredelindo Remo].

- Q: What was [Fredelindo Remo] doing at that time?**
- A: He was just passing by the bakery.**

X X X X

- Q: While [Fredelindo Remo] was walking, what did Elmer Rebato do?**
- A: He suddenly attacked [Fredelindo Remo].**
- Q: When you say "hinibang", what do you mean?
- A: He stabbed twice [Fredelindo Remo], sir.

- Q: What portion of the body was stabbed by Elmer Rebato on [Fredelindo Remo]?**
- A: [On] the right portion of the stomach and the left portion of the chest.**

X X X X

- Q: Did you notice if there was provocation on [the] part of [Fredelindo Remo]?**
- A: None, sir.**
- Q: What was the manner of [the] attack, was it sudden or what?**
- A: That was sudden, sir.**
- Q: Did you not notice whether [Fredelindo Remo] had the opportunity to defend himself insofar as you are concerned?**
- A: No, sir. [H]e did not know that he was being hurt.**

X X X X

³⁵ *Id.* at 489.

Q: How about Gerwin Gunda, did he participate in the killing of [Fredelindo Remo]?

A: Yes, sir.

Q: In what way [was he] involved in the incident?

A: He was the one who handed a weapon to [Rebato].

Q: How did it happen that Gerwin Gunda tended a weapon to Elmer Rebato, how were you able to see that?

A: It was sudden. When [Gunda] handed the weapon to Elmer, he attacked [Fredelindo Remo].

x x x x

Q: When Gerwin Gunda handed th[e] weapon to Elmer Rebato, where was [Fredelindo Remo]?

A: Timely, he was passing by on his way home.

Q: Was he alone?

A: Yes, Your Honor.

x x x x

Q: He was just an innocent passer-by?

A: Yes, Your Honor.³⁶

Q: What was [Fredelindo Remo] doing when he was stabbed by Elmer Rebato?

A: Walking.

Q: Who was with [Fredelindo Remo] when he was stabbed?

A: He was alone.

Q: Where did the accused enter xxx the scene?

A: On the side.

Q: What did the accused do when he saw [Fredelindo Remo]?

A: He stabbed, sir.

Q: Did you observe whether [Fredelindo Remo was] doing something against Elmer Rebato?

A: Nothing.

Q: Insofar as you are concerned, was [Fredelindo Remo] aware when he was attacked by [the] accused?

A: No, sir.³⁷

On the other hand, Dr. Grata testified on the Certificate of Death and Postmortem Report of Remo's death:

Q: Will you please state your examination and findings stated in the Post-Mortem Report?

A: It is stated in my Post-Mortem Report the pertinent doctor's findings, that there was a stab wound about 1.5 cm. in diameter.

³⁶ TSN dated June 15, 2011, Criminal Case No. 12002, pp. 5-14; emphases supplied.

³⁷ TSN dated July 6, 2011, Criminal Case No. 12002, p. 4; emphases supplied.

The first wound that I found during the Post-Mortem examination was about 2 cm. in diameter below the right nipple of the midclavicular line.

Q: Was that wound fatal?

A: The stab wound was penetrating to the chest cavity.

Q: Was that wound fatal?

A: It could be fatal.

Q: What other wound that you found out?

A: Another wound that I found during the Post-Mortem examination was a stab wound with the same size about 1.5 cm. in diameter also penetrating the abdominal cavity located at the left lower quadrant of the abdomen.

Q: Was that wound fatal also?

A: It was fatal because it is [a] penetrating wound.

X X X X

Q: Madam witness[,] these two (2) wounds sustained by the victim were in front of the body of the victim?

A: Yes, sir.

Q: So in other words the assailant must be in front of him?

A: Yes, sir.

Q: Or in other words they were facing each other, the assailant and the victim?

A: Yes, sir.³⁸

Dr. Grata testified as to the nature of the wounds inflicted on Remo, and that the stabbing was frontal.

To emphasize, Remo was an innocent-passerby, who was caught off guard, at the time of the attack. The stealth, swiftness and methodical manner by which the attack was carried out did not give Remo a chance to evade when Rebato stabbed Remo, below the latter's right nipple of the midclavicular line, and the left quadrant of his abdomen. There is no doubt that Rebato's sudden and unexpected attack upon the victim evidences treachery. The fact that Rebato was facing Remo when the latter was stabbed is of no consequence. Even a frontal attack could be treacherous when unexpected on an unarmed victim who would be in no position to repel the attack or avoid it.³⁹ Hence, the qualifying circumstance of treachery is properly appreciated in this case.

In the present case, the prosecution was able to establish that (1) Remo was stabbed and killed; (2) Rebato stabbed and killed him; (3) Remo's killing was attended by the qualifying circumstance of treachery, as testified to by witnesses for the prosecution; and (4) Remo's killing was neither parricide

³⁸ TSN dated October 25, 2011, Criminal Case No. 12002, pp. 4-5, 8.

³⁹ *People v. Joseph A. Ampo*, G.R. No. 229938, February 27, 2019.

nor infanticide. On the other hand, evident premeditation cannot be considered as an aggravating circumstance. In order for evident premeditation to be appreciated, it is indispensable to show concrete evidence on how and when the plan to kill was hatched or how much time had elapsed before it was carried out.⁴⁰

Here, evident premeditation was not established because the prosecution's evidence was limited to what transpired at 11:30 p.m. of September 6, 2008, when Remo was walking home, and he was suddenly stabbed by Rebato. The prosecution did not present any proof showing when and how Rebato planned and prepared to kill Remo.

The RTC and the CA correctly held that the crime committed was Murder under Article 248 of the RPC by reason of the qualifying circumstance of treachery.

Rebato has waived his right to question the defect in the Information filed against him.

In *People v. Rolando Solar y Dumbrique*,⁴¹ the Court established guidelines as to how qualifying circumstances, such as treachery, and other aggravating and attendant circumstances similar to it, should be properly alleged in the Information. The pertinent provision to this case states:

1. **Any Information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty — is present, must state the ultimate facts relative to such circumstance. Otherwise, the Information may be subject to a motion to quash under Section 3 (e) (i.e., that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.**

Failure of the accused to avail any of the said remedies constitutes a waiver of his right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him if proven during trial.

Alternatively, prosecutors may sufficiently aver the ultimate facts relative to a qualifying or aggravating circumstance by referencing the pertinent portions of the resolution finding probable

⁴⁰ *People v. Gerry Agramon*, G.R. No. 212156, June 20, 2018.

⁴¹ G.R. No. 225595, August 6, 2019.

cause against the accused, which resolution should be attached to the Information in accordance with the second guideline below.⁴²

The afore-mentioned principle is in accordance with the well-settled principle that an information which lacks certain essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein.⁴³ In effect, the failure to object is a waiver of the constitutional right to be informed of the nature and cause of the accusation.⁴⁴

Rebato did not question the insufficiency of the Information filed against him through a motion to quash or motion for bill of particulars. He voluntarily entered his plea during arraignment and proceeded with the trial. At that point in time, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the aggravating circumstance of treachery. The fact that he raised the issue of insufficiency of the Information in his appellant's brief filed before the CA is immaterial.

Proper penalty and award of damages.

Under Article 248 of the RPC, the penalty for the crime of murder shall be punished by *reclusion perpetua* to death. There being no other aggravating circumstances attendant to the commission of the crime, the penalty to be imposed for the crime of murder shall be *reclusion perpetua*.⁴⁵

With respect to Rebato's civil liability, the rule is that, when the penalty to be imposed for a crime is *reclusion perpetua*, the proper amounts should be: Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages. Further, the heirs of Remo shall be entitled to the amount of Fifty Thousand Pesos (₱50,000.00) as temperate damages, in accordance with the prevailing jurisprudence which fixes the amount of Fifty Thousand Pesos (₱50,000.00) as temperate damages in murder cases, when no documentary evidence of burial or funeral expenses is presented in court.⁴⁶ Temperate damages shall be in lieu of actual damages.⁴⁷

⁴² *Id.*; emphases supplied.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Article 63 of the RPC.

⁴⁶ *People v. Jugueta*, 783 Phil. 806, 853 (2016).

⁴⁷ *Id.* at 826.

The imposition of six percent (6%) interest per annum on all damages awarded from the time of finality of this Decision until fully paid, as well as the payment of costs, is likewise sustained.⁴⁸

WHEREFORE, the appeal is hereby **DISMISSED**. The Decision of the Court of Appeals dated August 30, 2018 in CA-G.R. CR HC No. 02336, finding accused-appellant Elmer T. Rebato **GUILTY** beyond reasonable doubt of the crime of Murder, is hereby **AFFIRMED**.

SO ORDERED.

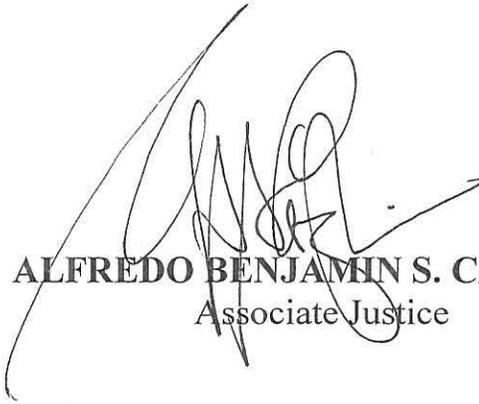


DIOSDADO M. PERALTA
Chief Justice

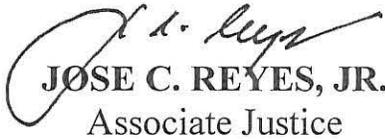
⁴⁸

Nacar v. Gallery Frames, et al., 716 Phil. 267, 280-281 (2013).

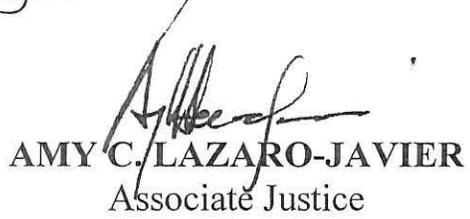
WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice

CERTIFICATION

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



DIOSDADO M. PERALTA
Chief Justice

