Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* *- versus -* **EDUARDO UKAY *y* MONTON a.k.a. "Tata," TEODULO[*] UKAY *y* MONTON a.k.a. "Jun-Jun," GUILLERMO DIANON a.k.a. "Momong," and OCA UKAY *y* MONTON,** *Accused,* **EDUARDO UKAY *y* MONTON a.k.a. "Tata," TEODULO UKAY *y* MONTON a.k.a. "Jun-Jun," and GUILLERMO DIANON a.k.a. "Momong,"** *Accused-Appellants.*	**G.R. No. 246419** Present: PERLAS-BERNABE, *J.*, Chairperson, HERNANDO, INTING, DELOS SANTOS, and BALTAZAR-PADILLA,[**] *JJ.* Promulgated: SEP 16 2020

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D E C I S I O N

DELOS SANTOS, *J.*:

This is a Notice of Appeal in accordance with Section 2, Rule 125 in relation to Section 3, Rule 56 of the Rules of Court filed by accused-appellants Eduardo Ukay *y* Monton @ "Tata" (Eduardo), Teodulo Ukay *y* Monton @ "Jun-jun" (Teodulo), and Guillermo Dianon @ "Momong" (Guillermo; collectively, accused-appellants) assailing the Decision[1] of the Court of Appeals (CA), Cagayan de Oro City in CA-G.R. CR-HC No.

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[*] Also referred to as "Teodolo/Teoduolo" in some parts of the *rollo*.

[**] On leave.

[1] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Ruben Reynaldo G. Roxas and Evalyn M. Arellano-Morales, concurring; CA *rollo*, pp. 137-150.

01203-MIN rendered on November 23, 2018, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Davao City, Branch 11 dated March 11, 2013 finding Eduardo in Crim. Case No. 61,566-07 guilty beyond reasonable doubt of the crime of Frustrated Murder and likewise finding Eduardo, Teodulo, and Guillermo in Crim. Case No. 61,568-07 guilty beyond reasonable doubt of the crime of Murder.

The Facts

In Crim. Case No. 61,566-07, Eduardo and Oca Ukay (Oca) were charged in an Information with Frustrated Murder under the first paragraph of Article 248, in relation to Article 6 of the Revised Penal Code (RPC) and allegedly committed as follows:

> That on or about June 12, 2007, in the City of Davao, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with knives, with intent to kill, with treachery, willfully, unlawfully and feloniously conspired and confederated together in attacking, assaulting and stabbing one Jessie C. Gerolaga, thereby inflicting upon the latter the injuries, the nature and extent of which would have caused the death of said victim, thus performing all the acts of execution which would have produced the felony of murder as a consequence, but which nevertheless did not produce it by reason of causes independent of the said perpetrator's will, that is, by the timely and able medical assistance rendered to the victim which prevented his death.
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> CONTRARY TO LAW.[3]

Moreover, in Crim. Case No. 61,568-07, Eduardo, Teodulo, Guillermo, and Oca were charged with Murder under the first paragraph of Article 248 of the RPC and allegedly committed as follows:

> That on or about June 12, 2007, in the City of Davao, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together, armed with knives, with intent to kill, with treachery and taking advantage of superior strength, willfully, unlawfully and feloniously attacked, assaulted and stabbed one Anthony Aloba, thereby inflicting upon the latter fatal injuries which cause his death.
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> CONTRARY TO LAW.[4]

On arraignment, Eduardo, Teodulo, and Guillermo separately and individually pleaded not guilty to the charges.[5] Accused Oca, on the other

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2 Penned by Judge Virginia Hofileña-Europa; id. at 100-107.
3 Id. at 100-101.
4 Id. at 101.
5 *Rollo*, p. 5.

hand, was separately charged in Crim. Case No. 61,567-09.[6]

Version of the Prosecution

On June 9, 2007, Jessie Gerolaga (Jessie) was at his Aunt's house in Emily Homes, Cabantian, Davao City. Thereat, at around 10:00 in the evening of that day, Jessie was having a drinking spree with his cousin Anthony Aloba (Anthony). After a while, both men decided to head on to a convenience store just outside the house of their Aunt. When they arrived, they saw the group of accused-appellants namely, Eduardo, Teodulo, and Guillermo, together with Oca.

At the store, Anthony saw Guillermo arguing with the latter's wife, both were shouting at each other. To this, Anthony told Guillermo to be quiet. However, Guillermo punched Anthony and Eduardo, Teodulo, and Oca joined in trying to help Anthony when Warren Gerolaga (Warren), the brother of Jessie, arrived and tried to pacify and break the fight. Thereafter, Warren was able to grab Jessie and convinced the latter to just go home. Jessie obliged and together with Warren, they turned their backs from the group of accused-appellants and Oca on their way home. Unknown to Jessie and Warren, Oca and Eduardo were carrying knives with them. Thus, when Jessie and Warren had their backs turned, Oca suddenly stabbed Warren and he was hit on the shoulder. Jessie saw this and turned around to face Oca. Jessie tried to hit Oca, but the latter was able to slash Jessie's abdomen where the latter's intestines came out. Jessie tried to run, but Eduardo was able to catch him and stabbed him in the armpit. Jessie ran towards the opposite direction when he realized that his intestines were protruding from his stomach. He sat down on the ground from a distance and looked back at where the assailants were.

There, Jessie saw Oca and Eduardo stabbing Anthony while Teodulo and Guillermo were hitting Anthony with a stone. Anthony then fell to the ground. Thereafter, Warren came to Jessie to help and both were immediately brought to the Davao Medical Center. Anthony was left behind, but was later brought to the same hospital, but was declared dead on arrival.

Jessie and Warren survived the stabbing incidents. With regard to Jessie, the stabbed wound he sustained would have killed him had he not been given the proper medical attention.

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[6] Id.

Version of the Defense

In the evening of June 9, 2007, Eduardo, Teodulo, Guillermo, Oca, Cristituto Enanopria and their companions had a drinking spree at a store near Oca's house.

Guillermo's wife arrived and bellowed at him for spending his salary on drinking. Anthony, Jessie and one alias "Payat" passed by them. Anthony asked Guillermo what the problem was. Guillermo's wife said that it was about Guillermo's salary. Anthony unexpectedly held Guillermo by the collar. Jessie threw a stone at Guillermo while "Payat" held him. Guillermo fell into the canal.

While Guillermo was being mauled, Boyet Arroyo (Arroyo) suddenly arrived and hit him with a piece of wood. Guillermo was able to run away and hide behind a banana plant. Arroyo also boxed Eduardo. The latter was luckily able to run away to his boarding house.

Meanwhile, Teodulo called police assistance. When the police mobile arrived, he accompanied them to the place of the incident. With permission from the police, he went home.

The next day, Eduardo, upon the advice of the *purok* leader, reported the incident to the police station. He was, however, arrested and detained, as he was allegedly involved in the incident.

Teodulo, for his part, was invited to go to the police station. But upon arrival, he was also arrested and detained.

The RTC's Ruling

In a Decision[7] dated March 11, 2013, the RTC ruled that Eduardo, Teodulo, and Guillermo stand charged with Murder for the death of Anthony. Jessie positively testified that the group of Eduardo ganged up on Anthony. He testified that Eduardo and Oca took turns in stabbing Anthony. He also narrated that Guillermo hit Anthony with a stone, while Teodulo mauled and kicked Anthony. The concerted efforts on the part of Eduardo, Teodulo, Oca, and Guillermo, killed Anthony.

Hence, the RTC found, in Crim. Case No. 61,566-07, Eduardo guilty beyond reasonable doubt of the crime of Frustrated Murder and was

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[7] CA *rollo*, pp. 100-107.

sentenced with an indeterminate penalty of 10 years and 1 day of *prision mayor* as minimum to 12 years and 1 day of *reclusion temporal* as maximum.

In Crim. Case No. 61,568-07, the RTC found Eduardo, Teodulo, and Guillermo guilty beyond reasonable doubt of the crime of Murder and were sentenced to suffer the penalty of *reclusion perpetua*.

They were likewise sentenced to pay the heirs of Anthony the sum of ₱50,000.00 as reasonable actual damages and the further sum of ₱50,000.00 as civil indemnity for the death of Anthony.

The CA's Ruling

In a Decision[8] dated November 23, 2018, the CA denied the appeal and affirmed with modification as to the amount of damages awarded in the Decision in Crim. Case Nos. 61,566-07 and 61,568-07 dated March 11, 2013 of the RTC of Davao City, Branch 11.

The CA did not find any compelling reason to reverse or modify the factual findings of the trial court. The testimonies of Jessie and Warren were given a high degree of respect and were not disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction.

Moreover, the CA ruled that the trial court did not err in finding that the injury sustained by Jessie and the killing of Anthony was attended with treachery. It has been held that when the assailant consciously employed means of execution that gave the person attacked no opportunity to defend himself, much less retaliate which tended directly and specially to insure his plan to kill the victim, the crime is qualified to Murder, in the case of Crim. Case No. 61,566-07, Frustrated Murder. The testimonies of Warren and Jessie show that the attack to them came without warning and was deliberate and unexpected, affording the hapless, unarmed, and unsuspecting victims no chance to resist or to escape. The CA is convinced of the treacherous nature of the assault.

Furthermore, the CA also held that the two (2) cases were attended by conspiracy. In Crim. Case No. 61,566-07, the CA found that the concerted acts of Eduardo and Oca to kill Jessie were plainly evident. On the other hand, in Crim. Case No. 61,568-07, the CA held that the acts of Eduardo,

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[8] Id. at 137-150.

Teodulo, and Guillermo were knitted seamlessly together in a web of a single criminal design to hurt and kill Anthony. The Court, in *Balauitan v. People*,[9] has ruled that where the acts of the accused, collectively and individually, clearly demonstrate the existence of a common design toward the accomplishment of the same unlawful purpose, conspiracy is evident.

The CA also upheld the finding of the trial court on the presence of the circumstance of taking advantage of superior strength. Eduardo and Oca were armed with knives together with the other two accused-appellants — Guillermo, who armed himself with a stone, and Teodulo. The CA is convinced that the four assailants used excessive force in mauling and stabbing Anthony who was then unarmed.

In compliance with the current jurisprudence, the CA modified the award of damages. The accused-appellants were adjudged to pay the heirs of Anthony ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and an additional ₱75,000.00 as exemplary damages for the crime of Murder. The actual damages incurred as proven by official receipts presented and offered by the prosecution is ₱48,466.31.

In Crim. Case No. 61,566-07, Eduardo was also adjudged to pay Jessie ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and an additional ₱50,000.00 as exemplary damages for the crime of Frustrated Murder. No actual damages has been offered, thus, the award of temperate damages in the amount of ₱25,000.00 is proper.

Accused-appellants filed a Notice of Appeal[10] dated December 28, 2018.

On October 14, 2019, the accused-appellants filed a Supplemental Brief with a prayer of acquittal, insisting that the attendant circumstance of treachery cannot be considered against them, as the same was not averred in the Information.

The Court's Ruling

The appeal lacks merit, but the Court holds that the conviction of the accused-appellants for Murder and Frustrated Murder cannot be upheld. They are properly liable only for Homicide and Frustrated Homicide.

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[9] 795 Phil. 468 (2016).
[10] *Rollo*, pp. 17-18.

It is a hornbook rule that an appeal of a criminal case throws the entire case up for review. It, therefore, becomes the duty of the appellate court to correct any error that may be found in the appealed judgment, whether assigned as an error or not.[11]

Accused-appellants were charged with Frustrated Murder and Murder qualified with treachery. To successfully prosecute the crime of Murder, Article 248 of the RPC states:

> ART. 248. *Murder* – Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion temporal* in its maximum period to death, if committed with any of the following attendant circumstances:
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> 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.

Jurisprudence dictates that the following elements must be established: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) that the killing is not parricide of infanticide.[12]

Information alleging treachery, when sufficient

An Information, to be sufficient, must contain all the elements required by the Rules on Criminal Procedure. In the crime of Murder, the qualifying circumstance raising the killing to the category of murder must be specifically alleged in the Information.[13]

Accused-appellants, in their Supplemental Brief, argue that treachery could not be considered in this case because the averments of treachery in the Informations were grossly inadequate. The Informations read as follows:

> In Criminal Case No. 61, 566-07
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> [T]he above-mentioned accused x x x, armed with knives, with intent to kill, with treachery, willfully, unlawfully and feloniously conspired and confederated together in attacking, assaulting and stabbing one Jessie C. Gerolaga, thereby inflicting upon the latter the injuries, the nature and extent of which would have caused the death of said victim, thus

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[11] *Candelaria v. People*, 749 Phil. 517, 530 (2014), citing *People v. Balacano*, 391 Phil. 509, 525-526 (2000).

[12] *People v. Kalipayan*, 824 Phil. 173, 183 (2018).

[13] *People v. Aquino*, 829 Phil. 477, 487 (2018).

> performing all the acts of execution which would have produced the felony of murder as a consequence, but which nevertheless did not produce it by reason of causes independent of the said perpetrator's will, that is, by the timely and able medical assistance rendered to the victim which prevented his death.[14]
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> In Criminal Case No. 61,568-07
>
> [T]he above-mentioned accused x x x, conspiring and confederating together, armed with knives, with intent to kill, with treachery and taking advantage of superior strength, willfully, unlawfully and feloniously attacked, assaulted and stabbed one Anthony Aloba, thereby inflicting upon the latter fatal injuries which caused his death.[15]

Accused-appellants cited *People v. Dasmariñas* (*Dasmariñas*),[16] where the Court ruled that:

> The failure of the [I]nformation supposedly charging murder to aver the factual basis for the attendant circumstance of treachery forbids the appreciation of the circumstance as qualifying the killing; hence, the accused can only be found guilty of homicide. To merely state in the [I]nformation that treachery was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law.

In *Dasmariñas*, the Court did not convict the accused of Murder, but only of Homicide because:

> The [I]nformation did not make any factual averment on how Dasmariñas had deliberately employed means, methods or forms in the execution of the act – setting forth such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged – that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make. As earlier indicated, to merely state in the [I]nformation that treachery was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law.[17]

Similarly, in the case at bar, treachery is the circumstance used to qualify the two (2) cases to Frustrated Murder and Murder. Accused-appellants argue that there is no sufficient averment in the Informations as to how the accused committed the killing with treachery. They maintain that the phrase "armed with knives" which is present in both Informations, is not an averment of treachery, but a mere declaration of the weapon used by the appellants. Neither is the phrase "attacked, assaulted, and stabbed" an

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[14] *Rollo*, pp. 4-5.
[15] Id. at 5.
[16] 819 Phil. 357, 360 (2017).
[17] Id. at 376-377.

averment indicating treachery.

Thus, accused-appellants *posit* that the insufficiency of the factual averment of treachery and their consequent conviction of Murder and Frustrated Murder, qualified by treachery, demonstrate a violation of their constitutional right to be informed of the nature and cause of the accusation against them.

A review of jurisprudence reveals that the ruling in *Dasmariñas* was subsequently reiterated in *People v. Delector*.[18] However, there is a separate line of decisions in which an allegation in the Information that the killing was attended "with treachery" is sufficient to inform the accused that he was being charged with Murder instead of simply Homicide like the cases of *People v. Batin*,[19] *People v. Lab-eo*,[20] *People v. Opuran*[21] and *People v. Bajar*.[22]

The Court, in *People v. Solar* (*Solar*),[23] finally clarified and resolved this issue. In this case, the Court recognized that there are two (2) different views on how the qualifying circumstance of treachery should be alleged.

> On one hand is the view that it is sufficient that the Information alleges that the act be committed "with treachery." The second view requires that the acts constituting treachery – or the acts which directly and specially insured the execution of the crime, without risk to the offending party arising from the defense which the offended party might make – should be specifically alleged and described in the Information.[24]

Furthermore, the Court, in *Solar*, held, finally, that in order for the Information alleging the existence of treachery to be sufficient, it must have factual averments on how the person charged had deliberately employed means, methods or forms in the execution of the act that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make. The Information must so state such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged. The Court ruled that:

> It is thus fundamental that every element of which the offense is composed must be alleged in the Information. No Information for a crime will be sufficient if it does not accurately and clearly allege the elements

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[18] 819 Phil. 310 (2017).
[19] 564 Phil. 249 (2007).
[20] 424 Phil. 482 (2002).
[21] 469 Phil. 698 (2004).
[22] 460 Phil. 683 (2003).
[23] *People v. Solar*, G.R. No. 225595, August 6, 2019.
[24] Id.

> of the crime charged. The test in determining whether the Information validly charges an offense is whether the material facts alleged in the complaint or Information will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered. To repeat, the purpose of the law in requiring this is to enable the accused to suitably prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.[25]

The Court also found opportunity in *Solar* to finally lay down the following guidelines for the guidance of the Bench and the Bar to follow:

> 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 [on] 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.
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> 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 cause against the accused, which resolution should be attached to the Information in accordance with the second guideline below.
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> 2. Prosecutors must ensure compliance with Section [8(a)], Rule 112 of the Revised Rules on Criminal Procedure that mandates the attachment to the Information the resolution finding probable cause against the accused. Trial courts must ensure that the accused is furnished a copy of this Decision prior to the arraignment.
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> 3. Cases which have attained finality prior to the promulgation of this Decision will remain final by virtue of the principle of conclusiveness of judgment.
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> 4. For cases which are still pending before the trial court, the prosecution, when still able, may file a motion to amend the Information pursuant to the prevailing Rules in order to properly allege the aggravating or qualifying circumstance pursuant to this Decision.

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[25] Id.

> 5. For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has already waived his right to question the defective statement of the aggravating or qualifying circumstance in the Information, (*i.e.*, whether he previously filed either a motion to quash under Section 3(e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.[26] (Citation omitted)

In the case at bar, while it is conceded that the Informations against accused-appellants are defective insofar as they merely alleged the existence of the qualifying circumstance of treachery without providing for factual averments which constitute such circumstance, it is nonetheless submitted that accused-appellants are deemed to have waived such defects, considering their failure to avail of the proper procedural remedies.

Defects in the Information may be waived

The Court, in *Solar*, noted that the right to question the defects in an Information is not absolute and defects in the Information with regard to its form may be waived by the accused if he fails to avail any of the remedies provided under procedural rules, either by: (a) filing a motion to quash for failure of the Information to conform substantially to the prescribed form; or (b) filing a motion for bill of particulars.

In *People v. Razonable*,[27] the Court held that if an Information is defective, such that it fails to sufficiently inform the accused of the nature and cause of the accusation against him, then it is the accused's duty to enforce his right through the procedural rules created by the Court for its proper enforcement. The Court explained:

> The rationale of the rule, which is to inform the accused of the nature and cause of the accusation against him, should guide our decision. To claim this substantive right protected by no less than the Bill of Rights, the accused is [duty-bound] to follow our procedural rules which were laid down to assure an orderly administration of justice. **Firstly, it behooved the accused to raise the issue of a defective [I]nformation, on the ground that it does not conform substantially to the prescribed form, in a motion to quash said [I]nformation or a motion for bill of particulars. An accused who fails to take this seasonable step will be deemed to have waived the defect in said [I]nformation. The only defects in an [I]nformation that are not deemed waived are where no offense is charged, lack of jurisdiction of the offense charged, extinction of the offense or penalty and double jeopardy.** Corollarily, we have ruled that objections as to matters of form or substance in the [I]nformation cannot be made for the first time on appeal. In the case at

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[26] Id.

[27] 386 Phil. 771 (2000).

> bar, appellant did not raise either in a motion to quash or a motion for bill of particulars the defect in the Information regarding the indefiniteness of the allegation on the date of the commission of the offense.[28] (Emphasis and underscoring supplied)

In the present case, the accused-appellants did not question the supposed insufficiency of the Information filed against them through either a motion to quash or a motion for bill of particulars. In fact, they voluntarily entered their plea during the arraignment and proceeded with the trial. Thus, they are deemed to have understood the acts imputed against them and waived any of the waivable defects in the Informations, including the supposed lack of particularity in the description of the attendant circumstances.

To reiterate one of the guidelines by the Court enunciated in *Solar*, the Court rules that the failure of the accused-appellants to file either a motion to quash or a motion for bill of particulars to correct the Informations constitutes a waiver of their right to question the defective statements of the aggravating or qualifying circumstance in the Informations, and consequently, the same may be appreciated against them if proven during trial.

In the case of *People v. Lopez*,[29] the Court held 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.

Now, the only issue that remains is whether or not the presence of treachery was sufficiently proven in this case.

Treachery, when exists

Anent the attendance of the qualifying circumstance of treachery, both the CA and the RTC ruled that treachery was present in the instant case. In its Decision, the CA rendered the following finding, to wit:

> These testimonies show that the attack came without warning and was deliberate and unexpected, affording the hapless, unarmed and unsuspecting Warren and Jessie no chance to resist or to escape. We are convinced of the treacherous nature of the assault. It has been held that when the assailant consciously employed means of execution that gave the person attacked no opportunity to defend himself, much less retaliate which tended directly and specially to insure his plan to kill the victim, the

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[28] Id. at 780.
[29] 400 Phil. 288 (2000).

> crime is qualified to murder, in the case of Criminal Case [N]o. 61,566-07, frustrated murder.[30]

We disagree.

We are not convinced that treachery, as a qualifying circumstance to sustain a conviction of Murder and Frustrated Murder, was proven by the prosecution.

In *Cirera v. People*,[31] the Court highlighted that unexpectedness of the attack does not always equate to treachery:

> A finding of the existence of treachery should be based on "clear and convincing evidence." Such evidence must be as conclusive as the fact of killing itself. Its existence "cannot be presumed." As with the finding of guilt of the accused, "[a]ny doubt as to [its] existence . . . [should] be resolved in favor of the accused."
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> The unexpectedness of an attack cannot be the sole basis of a finding of treachery even if the attack was intended to kill another as long as the victim's position was merely accidental. The means adopted must have been a result of a determination to ensure success in committing the crime.
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> In this case, no evidence was presented to show that petitioner consciously adopted or reflected on the means, method, or form of attack to secure his unfair advantage.
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> The attack might "have been done on impulse [or] as a reaction to an actual or imagined provocation offered by the victim." In this case, petitioner was not only dismissed by Austria when he approached him for money. There was also an altercation between him and Naval. The provocation might have been enough to entice petitioner to action and attack private complainants.
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> Therefore, the manner of attack might not have been motivated by a determination to ensure success in committing the crime. What was more likely the case, based on private complainants' testimonies, was that petitioner's action was an impulsive reaction to being dismissed by Austria, his altercation with Naval, and Naval's attempt to summon Austria home.
>
> Generally, this type of provocation negates the existence of treachery. This is the type of provocation that does not lend itself to premeditation. The provocation in this case is of the kind which triggers impulsive reactions left unchecked by the accused and caused him to commit the crime. There was no evidence of a modicum of premeditation indicating the possibility of choice and planning fundamental to achieve the elements of treachery.

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[30] *Rollo*, p. 13.

[31] 739 Phil. 25, 45-46 (2014).

In the case at bar, it is crystal clear from the testimonies of Jessie and Warren that prior to the stabbing, there was already a commotion that was happening involving the accused-appellants, Oca, Anthony and Jessie. Warren suddenly came in the middle of a heated argument involving his brother and tried to pacify the situation. Thereafter, when they turned their backs to leave, Warren was stabbed by Oca.

While the attack was sudden, such act cannot be equated to treachery because there was a provocation that triggers it. The manner of attack might not have been motivated by a determination to ensure success in committing the crime. What was more likely the case, based on the testimonies, was that the accused-appellants' action was an impulsive reaction to being pacified by Warren, the commotion in general involving the group and Warren's attempt to summon Jessie home.

Thus, in the absence of clear proof of the existence of treachery, the crime proven beyond reasonable doubt is only Homicide and Frustrated Homicide and, correspondingly, the penalty should be reduced.

Consequently, the accused-appellants could not be properly convicted of Murder, but only of Homicide and Frustrated Homicide, which is defined and penalized under Article 249 of the RPC, to wit:

> ART. 249. *Homicide*. – Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by [*reclusion temporal*].

The Penalty

Under Article 249 of the RPC, the penalty imposed for the crime of Homicide is *reclusion temporal*. Considering that no aggravating circumstances attended the commission of the crime, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the maximum penalty shall be selected from the range of the medium period of *reclusion temporal*, with the minimum penalty selected from the range of *prision mayor*. Thus, we impose the penalty of imprisonment for a period of 8 years and 1 day of *prision mayor* as minimum to 14 years, 8 months and 1 day of *reclusion temporal* as maximum.[32]

Article 250 of the RPC provides that a penalty lower by one degree than that which should be imposed for Homicide may be imposed upon a person guilty of Frustrated Homicide.

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[32] *People v. Aquino*, supra note 13, at 490.

The imposable penalty for Homicide is *reclusion temporal*. Article 50 of the RPC provides that the penalty to be imposed upon principals of a frustrated crime shall be the penalty next lower in degree than that prescribed by law for the consummated crimes. Thus, for frustrated homicide, the imposable penalty is one degree lower than that imposed in homicide[33] or *prision mayor*. There being no modifying circumstance, the maximum imposable penalty is within the range of *prision mayor* in its medium period or eight (8) years and one (1) day to 10 years. Applying the Indeterminate Sentence Law, the minimum term of the penalty is *prision correccional* in any of its periods. Thus, as modified, accused-appellant Eduardo is hereby sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum.

The Civil Liability

In compliance with the current jurisprudence,[34] the Court modifies the award of damages. Accused-appellants were adjudged to pay the heirs of Anthony ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and an additional ₱50,000.00 as exemplary damages. As regards the award of actual damages in the amount of ₱48,466.31, the same must be modified. It is settled that "when actual damages proven by receipts during the trial amount to less than the sum allowed by the Court as temperate damages, the awards of temperate damages is justified in lieu of actual damages which is of a lesser amount. Conversely, if the amount of actual damages proven exceeds, then temperate damages may no longer be awarded; actual damages based on receipts presented during trial should instead be granted,"[35] as in this case. Thus, we delete the award of ₱48,466.31 as actual damages; in lieu thereof, we grant temperate damages in the amount of ₱50,000.00.

In Crim. Case No. 61,566-07, Eduardo was also adjudged to pay Jessie ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and an additional ₱30,000.00 as exemplary damages for the crime of Frustrated Homicide. However, the award of temperate damages in the amount of ₱20,000.00 is deleted.

In addition, the amounts awarded as civil liability shall earn interest of 6% per annum reckoned from the finality of this Decision until full payment by the accused.

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[33] REVISED PENAL CODE, Art. 250 – *Penalty for Frustrated Parricide, Murder or Homicide.* – The courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime of parricide, murder or homicide, defined and penalized in the preceding articles, a penalty lower by one degree than that which should be imposed under the provisions of [Art.] 50.

[34] *People v. Jugueta*, 783 Phil. 806 (2016).

[35] *People v. Racal*, 817 Phil. 665, 685 (2017).

WHEREFORE, premises considered, the Decision of the Court of Appeals, Cagayan de Oro City in CA-G.R. CR-HC No. 01203-MIN rendered on November 23, 2018, which affirmed with modification the Decision of the Regional Trial Court of Davao City, Branch 11 dated March 11, 2013 is **SET ASIDE**. The Court finds accused-appellants Eduardo Ukay *y* Monton a.k.a. "Tata," Teodulo Ukay *y* Monton a.k.a. "Jun-jun," and Guillermo Dianon a.k.a. "Momong" in Crim. Case No. 61,568-07 **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE** and are hereby sentenced to a prison term of eight (8) years and one (1) day of *prision mayor* as minimum, to 14 years, eight (8) months and one (1) day of *reclusion temporal* as maximum. Moreover, the accused-appellants are **ORDERED** to indemnify the heirs of Anthony Aloba ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, an additional ₱50,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. Furthermore, the Court, likewise, finds accused-appellant Eduardo Ukay *y* Monton a.k.a. "Tata" in Crim. Case No. 61,566-07 **GUILTY** beyond reasonable doubt of the crime of **FRUSTRATED HOMICIDE** and is hereby sentenced to a prison term of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum. He is also **ORDERED** to pay Jessie Gerolaga ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and an additional ₱30,000.00 as exemplary damages for the crime of Frustrated Homicide.

All monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

EDGARDO L. DELOS SANTOS
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

(On Leave)
PRISCILLA J. BALTAZAR-PADILLA
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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

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

DIOSDADO M. PERALTA
Chief Justice