



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 247961

Present:

- versus -

LEONEN, J.,  
Chairperson,  
HERNANDO,\*  
CARANDANG,\*\*  
DELOS SANTOS, and  
LOPEZ, J., JJ.

ROBERTO BAUTISTA, ROGER  
BAUTISTA, RONNIE BAUTISTA  
and ROLLY BAUTISTA,  
*Accused-Appellants.*

Promulgated:

June 16, 2021

*MistOCBatt*

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DECISION

DELOS SANTOS, J.:

The Case

This ordinary Appeal<sup>1</sup> challenges the Decision<sup>2</sup> dated February 22, 2018 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08361, which affirmed the Joint Decision<sup>3</sup> dated April 8, 2016 of the Regional Trial Court (RTC) of Vigan City, Ilocos Sur, Branch 20, finding accused-appellants Roberto Bautista (Roberto), Roger Bautista (Roger), Ronnie Bautista (Ronnie), and Rolly Bautista (Rolly) guilty beyond reasonable doubt of Murder in Criminal Case No. 6961-V, and convicting Rolly Bautista of Frustrated Murder with Direct Assault in Criminal Case No. 6962-V.

\* On official leave.

\*\* Designated as additional member in lieu of Associate Justice Henri Jean Paul B. Inting per Raffle dated January 6, 2020.

<sup>1</sup> *Rollo*, pp. 32-33.

<sup>2</sup> *Id.* at 3-31; penned by Associate Justice Henri Jean Paul B. Inting (now a Member of the Court), with Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser, concurring.

<sup>3</sup> *CA rollo*, pp. 68-114; penned by Judge Marita Bernales Balloguing.

Accused-appellants' conviction arose from the following sets of Information:

Criminal Case No. 6961-V

That on or about the 30<sup>th</sup> day of December, 2011, in the municipality of Bantay, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping one another, with treachery, evident premeditation and abuse of superior strength, and with intent to kill, did then and there willfully, unlawfully, and feloniously assault, attack and stab several times one RUFINO RAPACON, knowing him to be a Police Officer of Ilocos Sur, duly appointed and qualified while in the actual performance of his duties or on the occasion of such performance, thereby inflicting upon the latter several stab wounds on his body, which wounds necessarily produced death of said RUFINO RAPACON.

Contrary to law.

Criminal Case No. 6962-V

That on or about the 30<sup>th</sup> day of January, 2012, in the municipality of Bantay, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping one another, with treachery and abuse of superior strength and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and stab one FLORENCE RAPACON, knowing her to be a Police Officer of Ilocos Sur, duly appointed and qualified while in the actual performance of her official duties or on the occasion of such performance thereby inflicting upon the latter wounds on her body, thus performing all the acts of execution which would produce the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical attendance rendered to said FLORENCE RAPACON, which prevented her death.

Contrary to law.

Criminal Case No. 6963-V

That on or about the 30<sup>th</sup> day of December, 2011, in the municipality of Bantay, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-name[d] accused, with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and shoot one LEVI LIBERATO, thereby inflicting upon the latter wound on his leg, thus performing the acts of execution which would produce the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical attendance rendered to said LEVI LIBERATO which prevented his death.

Contrary to law.<sup>4</sup>

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<sup>4</sup> *Rollo*, pp. 4-6.

Accused-appellants Roberto, Roger, Rolly, and Ronnie, all surnamed Bautista, pleaded not guilty upon arraignment.<sup>5</sup>

### **The Facts**

#### *Version of the Prosecution*

On December 30, 2011, at around 10:30 in the evening, Eric Pajarillo (Eric) went to a basketball court in Barangay Cabaroan Daya, Bantay, Ilocos Sur. There, Roger suddenly ran towards him and punched him several times causing him to fall on the ground. After a while, Roberto, Ronnie, and Rolly (brothers of Roger) ganged up on Eric. When Ronnie attempted to stab Eric with a screwdriver, Waddong Mangaliman (Mangaliman; Eric's uncle) came to his rescue, and immediately prevented accused-appellants from hurting him.<sup>6</sup>

Eric's cry for help was heard from a nearby house where the victims, husband and wife Senior Police Officer I Rufino Rapacon (SPO1 Rufino) and SPO1 Florence Rapacon (SPO1 Florence), were residing. SPO1 Rufino immediately rushed towards the basketball court. He was followed by his pregnant wife SPO1 Florence, who carried her 9mm service firearm. On her way, SPO1 Florence met Eric and his sister, Gema, who were in a hurry to go home.<sup>7</sup>

From a distance of about 3 to 5 meters from a well-lighted area, SPO1 Florence saw her husband in a kneeling position, with his hands held up by Ronnie and Roberto. All four accused-appellants were simultaneously stabbing SPO1 Rufino. Ronnie stabbed SPO1 Rufino's head with a screwdriver, while Roberto and Rolly used a knife in stabbing the victim's torso, and Roger abruptly thrust a broken bottle into the victim's body.<sup>8</sup>

SPO1 Florence fired warning shots, pleading for the accused-appellants to stop. When she saw Ronnie stab her husband mercilessly, she shot Ronnie in the lower portion of his body. Out of nowhere, Rolly stabbed her from behind. Immediately, SPO1 Florence held Rolly's hand deterring him from further squeezing the knife into her body. In the ensuing struggle, both of them fell on the ground. Eventually, SPO1 Rufino was able to contain Rolly's attack, stabbing him in his right shoulder using the knife which she pulled from the right side of her body.<sup>9</sup>

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<sup>5</sup> Id. at 6.

<sup>6</sup> Id. at 6-7.

<sup>7</sup> Id. at 7.

<sup>8</sup> Id.

<sup>9</sup> Id. at 8.

After a few minutes, responding police officers arrived. SPO1 Rufino was brought to the nearest hospital, but was declared dead on arrival. On the other hand, SPO1 Florence stayed at the hospital for 4 days. On December 31, 2011, she had a forced labor through caesarean procedure. The following day, the newly-born infant died.<sup>10</sup>

### *Version of the Defense*

At around 9:00 in the evening of December 30, 2011, Roger and Roberto, along with their friends, were having a drinking spree at Barangay Cabaroan, Daya, Bantay, Ilocos Sur. Moments later, SPO1 Rufino arrived asking Roberto to accompany him to accused-appellant's brother, a barangay captain, to ask for an apology. In response, Roberto told SPO1 Rufino to do it the following day as he was already drunk.<sup>11</sup>

At around 10:30 in the evening, Roberto went out of his house to render his tour of duty as a barangay tanod, with his brothers, Ronnie, Roger, and Rolly, who were also barangay tanods. At the barangay plaza, they saw Eric, who was very drunk, causing trouble. Few minutes after, SPO1 Rufino arrived and pointed his gun towards accused-appellants. Roberto tried to calm down SPO1 Rufino, who instead pointed the gun at him. Fearing that SPO1 Rufino might pull the trigger, Roberto grappled for the possession of the gun. In the ensuing grapple, SPO1 Rufino secured the gun and immediately pointed it at Roberto. At that instant, Ronnie, Roger, and Rolly came to Roberto's aid. Ronnie then stabbed SPO1 Rufino with a screwdriver.<sup>12</sup>

When SPO1 Florence arrived and shot at them, Rolly stabbed her with a knife. Levi and Daisy Leberato then arrived and contained Rolly. Thereafter, Roberto ran towards his brother Ronnie and brought him to Metro Vigan Cooperative Hospital.<sup>13</sup>

### **The RTC Ruling**

On April 8, 2016, the RTC rendered a Joint Decision finding accused-appellants guilty beyond reasonable of murder and frustrated murder with direct assault, and disposed thus:

**WHEREFORE**, with the foregoing disquisitions, judgment is here rendered as follows:

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<sup>10</sup> Id.

<sup>11</sup> Id. at 8-9.

<sup>12</sup> Id. at 9.

<sup>13</sup> Id.



- 1) In Criminal Case No. 6961-V, the four accused-ROBERTO, ROGER, RONNIE AND ROLLY all surnamed BAUTISTA are hereby found **GUILTY beyond reasonable doubt** of the crime of **MURDER**, sentencing them to suffer the penalty of **reclusion perpetua without eligibility of parole**. They are hereby ordered to indemnify the heirs of Rufino Rapacon the sum of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages.
- 2) In Criminal Case No. 6962-V, the accused ROLLY BAUTISTA is hereby found **GUILTY beyond reasonable doubt** of the crime of **Frustrated Murder with Direct Assault**. The Court hereby sentences him to suffer the indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of *prision mayor* as minimum to SEVENTEEN (17) YEARS[,] FOUR (4) MONTHS AND ONE (1) DAY of *reclusion temporal* as maximum. He is ordered to pay the victim Florence Rapacon the sum of P81,430.73 as actual damages representing her hospital bills, P40,000.00 by way of moral damages and P20,000.00 as exemplary damages.
- 3) Crim. Case No. 6963-V is hereby **DISMISSED** for lack of evidence.

COSTS DE OFFICIO.

**SO ORDERED.**<sup>14</sup>

In convicting accused-appellants of murder qualified by abuse of superior strength, the RTC ruled that accused-appellants, who were all armed with deadly weapons (*i.e.*, Roberto and Rolly each had a knife, Roger had a broken bottle, and Ronnie had a screwdriver) simultaneously stabbed the victim, taking advantage of their superior strength to ensure the victim's death. The RTC, however, did not consider the element of direct assault charged in the information, for failure of the prosecution to prove that SPO1 Rufino was in the performance of his official duty as a police officer at the time he was killed.<sup>15</sup>

In Criminal Case No. 6962-V, the RTC dismissed the theory of conspiracy, finding that only Rolly stabbed SPO1 Florence. The RTC considered the qualifying circumstance of treachery, emphasizing that Rolly went behind SPO1 Florence while she was facing her helpless husband, and was not in a position to defend herself. The RTC was convinced that Rolly adopted means to avoid any risk to himself that SPO1 Florence might have made.<sup>16</sup>

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<sup>14</sup> CA *rollo*, pp. 113-114.

<sup>15</sup> *Id.* at 106-109.

<sup>16</sup> *Id.* at 104-106.

The RTC characterized the crime against SPO1 Florence as a complex crime of frustrated murder with direct assault, the prosecution having established beyond reasonable doubt that she was in the performance of her duty as police officer when she was attacked by Rolly.<sup>17</sup>

Aggrieved, accused-appellants appealed to the CA arguing that the prosecution failed to establish conspiracy in the killing of SPO1 Rufino. Also, they faulted the RTC with error in appreciating the elements of abuse of superior strength in the killing of SPO1 Rufino, and treachery in the assault of SPO1 Florence.<sup>18</sup>

### The CA Ruling

In the challenged Decision dated February 22, 2018, the CA affirmed the RTC Joint Decision, with modification as to monetary awards. The *fallo* of the Decision reads:

WHEREFORE, the appeal is DENIED.

The Joint Decision dated April 8, 2016 of the Regional Trial Court, Branch 20, Vigan City, Ilocos Sur in Criminal Case Nos. 6961-V, 6962-V and 6963-V finding accused-appellants Roger Bautista, Roberto Bautista, Ronnie Bautista and Rolly Bautista guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code for the death of SPO1 Rufino Rapacon; and convicting accused-appellant Rolly Bautista of Frustrated Murder with Direct Assault, defined and penalized under Article 248 in relation to Articles 6 and 158 of the Revised Penal Code for the fatal wound sustained by SPO1 Florence Rapacon is AFFIRMED with MODIFICATIONS as to the monetary awards. Accused-appellants are ORDERED to pay the heirs of SPO1 Rufino Rapacon the following:

- a) One Hundred Thousand Pesos (Php100,000.00) as civil indemnity for the death of Rufino;
- b) One Hundred Thousand Pesos (Php100,000.00) as moral damages;
- c) One Hundred Thousand Pesos (Php100,000.00) as exemplary damages; and
- d) Fifty Thousand Pesos (P50,000.00) as temperate damages

with interest of six percent (6%) per *annum* from the date of finality of judgment until fully paid.

Likewise, accused-appellant Rolly Bautista is ORDERED to pay the victim SPO1 Florence Rapacon the sum of Php75,000.00 as civil indemnity, Php75,000.00 by way of moral damages and another Php75,000.00 as exemplary damages in addition to the actual damages of Php81,430.73 she incurred. The same amount shall have an interest of six percent (6%) per *annum* from the date of finality of judgment until fully paid.

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<sup>17</sup> Id. at 107-109.

<sup>18</sup> Id. at 51.

SO ORDERED.<sup>19</sup>

Hence, this Appeal.

For purposes of this Appeal, the Public Attorney's Office manifested that it is no longer filing a supplemental brief, and prayed that accused-appellants' brief submitted to the CA be considered in resolving the appeal.<sup>20</sup>

Once again, accused-appellants raised the following errors:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF MURDER (CRIMINAL CASE NO. 6961-V) DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH CONSPIRACY AMONG THE ACCUSED-APPELLANTS.

II

THE COURT *A QUO* GRAVELY ERRED IN FAILING TO DETERMINE THE INDIVIDUAL CULPABILITY OF THE ACCUSED-APPELLANTS.

III

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE AGGRAVATING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH ATTENDED THE KILLING OF RUFINO RAPACON.

IV

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT ROLLY BAUTISTA OF FRUSTRATED MURDER WITH DIRECT ASSAULT (CRIMINAL CASE NO. 6962-V) DESPITE THE PROSECUTION'S FAILURE TO PROVE THE EXISTENCE OF TREACHERY WITH EVIDENCE BEYOND REASONABLE DOUBT.<sup>21</sup>

### **The Court's Ruling**

The appeal is partly meritorious only as regards the appreciation of the qualifying circumstances of abuse of superior strength in the killing of SPO1 Rufino, and treachery in the assault on SPO1 Florence, in Criminal Case No. 6961-V and Criminal Case No. 6962-V, respectively.

*Conspiracy attends the killing of SPO1 Rufino.*

It is undisputed that SPO1 Rufino was killed and that accused-appellants killed him. In denying culpability, accused-appellants could only belabor on the supposed lack of evidence that they conspired to kill the

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<sup>19</sup> Id. at 180-181.

<sup>20</sup> *Rollo*, pp. 39-42.

<sup>21</sup> *CA rollo*, pp. 50-51.

victim, *i.e.*, that no witness testified about the exact sequence of events which led to the death of SPO1 Rufino; that no evidence was offered to prove that they had a prior agreement to kill SPO1 Rufino; and, that the simultaneous attacks on SPO1 Rufino do not automatically establish the presence of conspiracy.

Accused-appellants' stance fails to convince.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.<sup>22</sup> The essence of conspiracy is the unity of action and purpose.<sup>23</sup> There is conspiracy if at the time of the commission of the offense, the malefactors show that they were "animated by the same criminal purpose and were united in their execution, or where the acts of the malefactors indicate a concurrence of sentiments, a joint purpose and a concerted action."<sup>24</sup>

While the element of conspiracy must be proved beyond reasonable doubt as the crime itself, its existence need not, at all times, be established by direct evidence. Proof of prior agreement among the malefactors to commit the crime charged is not necessary, as conspiracy may be inferred from the conduct of the accused before, during, and after the commission of the crime, where such conduct reasonably shows community of criminal purpose or design.<sup>25</sup>

In this case, the RTC and the CA correctly inferred from the collective acts of accused-appellants that conspiracy exists, thus:

[F]irst, accused-appellants Roberto and Ronnie were the ones who held SPO1 Rufino; second, accused-appellants Roberto and Rolly each used knives, while accused-appellants Ronnie and Roger used a screwdriver and a broken bottle, respectively, in stabbing the victim to death; third, accused-appellant Ronnie stabbed SPO1 Rufino in the forehead, while accused-appellants Roberto, Rolly, and Roger stabbed the left and back portions of SPO1 Rufino's torso; and last, several wounds were suffered by SPO1 Rufino which resulted in his untimely death. As can be inferred from these acts, accused-appellants clearly manifested a concurrence of their wills, common intent, and design to end the life of SPO1 Rufino. Therefore, the act of one of the accused-appellants is the act of all accused-appellants, making all of them guilty of Murder.<sup>26</sup>

Undoubtedly, accused-appellants armed with knives, broken bottle, and screwdriver, all participated in the material execution of the crime by

<sup>22</sup> *Siton v. Court of Appeals*, 281 Phil. 536, 541 (1991).

<sup>23</sup> *Quidet v. People*, 632 Phil. 1, 11 (2010).

<sup>24</sup> *People v. Aquino*, 390 Phil. 1176, 1184-1185 (2000).

<sup>25</sup> *People v. Taborada*, 284-A Phil. 736, 742 (1992).

<sup>26</sup> *Rollo*, p. 22.

stabbing SPO1 Rufino. Under the circumstances, there is no evidence to negate their material participation in the killing of the victim. As conspiracy has been adequately proven in this case, all accused-appellants are considered as co-principals regardless of the extent and character of their respective blows on the victim.<sup>27</sup>

The Court finds no compelling reason to disturb the congruent findings of the RTC and the CA. It is time-honored rule that the assessment of the trial court with regard to the credibility of witnesses deserves the utmost respect, if not finality, for the reason that the trial judge has the prerogative, denied to appellate judges, of observing the demeanor of the declarants in the course of their testimonies.<sup>28</sup> Indeed, the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions based on its findings are generally binding and conclusive upon the Court, especially so when affirmed by the appellate court. Such factual findings should not be disturbed on appeal, unless there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case.<sup>29</sup> In this case, there is no indication that both courts overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case.

*(Criminal Case No. 6961-V)*

*The crime committed is only homicide; Abuse of Superior Strength not established.*

To warrant a conviction for murder, the following essential elements must be present: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) that the killing is not parricide or infanticide.<sup>30</sup> One of the circumstances mentioned in Article 248, which qualifies the killing of the victim to murder, is abuse of superior strength.

While the prosecution successfully proved that accused-appellants conspired to kill SPO1 Rufino, it failed to establish the qualifying circumstance of abuse of superior strength. Both the lower courts concluded that accused-appellants, having intent to kill SPO1 Rufino, employed abuse of superior strength to ensure the execution and success of the crime. The RTC underscored on superior strength of accused-appellants, they all being armed with deadly weapons. The CA adopted the RTC's conclusions, adding that the inequality of strength and forces between the parties rendered SPO1 Rufino helpless.

<sup>27</sup> *People v. Drew*, 422 Phil. 614, 628 (2001).

<sup>28</sup> *People v. Chua*, 444 Phil. 757, 766-767 (2003).

<sup>29</sup> *People v. Iroy*, 628 Phil. 145 (2010).

<sup>30</sup> *People v. Lagman*, 685 Phil. 733, 743 (2012).

The conclusions of the RTC and the CA lack basis. The fact that accused-appellants, all armed with dangerous weapons, ganged up on SPO1 Rufino does not automatically merit the conclusion that the victim's killing was attended by the qualifying circumstance of abuse of superior strength.

Jurisprudence provides that for abuse of superior strength to be appreciated, "[t]he evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked."<sup>31</sup>

In this case, there is no clear showing that accused-appellants deliberately and specifically sought the use of knives, screwdriver, and a broken bottle, so as to be able to take advantage of their superior strength against SPO1 Rufino. As can be gleaned from the testimonies of the prosecution witnesses, there was already an ensuing affray between Eric and accused-appellants. One of the accused-appellants stepped on his neck, while Ronnie attempted to stab him with a screw driver. Fortunately, Eric's uncle, Mangaliman, came to his rescue, and immediately prevented accused-appellants from further harming him. The prosecution also established that SPO1 Rufino came to the crime scene after hearing Eric's cry for help. In fact, SPO1 Florence categorically declared that she met Eric on her way to following her husband SPO1 Rufino to the crime scene. By this turn of events, it cannot be reasonably deduced that accused-appellants deliberately and specifically sought the use of deadly weapons so as to be able to take advantage of their superior strength. As accused-appellants' conviction cannot be made to rest on such possibility, the killing of the victim cannot be qualified by abuse of superior strength, which must be proved with the same quantum of evidence as the crime itself, that is, beyond reasonable doubt.<sup>32</sup> Thus, accused-appellants are guilty of only homicide, not murder.

*(Criminal Case No. 6962-V)*

*The crime committed is the complex crime of Frustrated Homicide with Direct Assault; Treachery not established.*

In affirming Rolly's conviction for Frustrated Murder with Direct Assault for the fatal wound inflicted on SPO1 Florence, the CA appreciated the qualifying circumstance of treachery. The CA ruled in this wise:

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<sup>31</sup> See *People v. Miraña*, 831 Phil. 215 (2018), citing *People v. Villamueva*, 807 Phil. 245, 253 (2017); citation omitted.

<sup>32</sup> See *People v. Bisó*, 448 Phil. 591, 601 (2003).

In the case at bar, the presence of *alevosia* is unquestionable. Accused-appellant Rolly suddenly and unexpectedly stabbed the unsuspecting SPO1 Florence from behind. When accused-appellant Rolly saw SPO1 Florence shoot his brother, accused-appellant Ronnie, the former quickly went at the back of the basketball court in order to stab the victim from behind. In other words, accused-appellant Rolly did not attack SPO1 Florence frontally where the latter could have an opportunity to defend herself as she was carrying her service firearm. However, accused-appellant Rolly attacked SPO1 Florence from behind – to ensure the killing of SPO1 Florence without risk to himself. If it were not for the immediate medical attention given, SPO1 Florence might have succumbed to the fatal wound she sustained.<sup>33</sup> (Underscoring supplied)

The CA erred in concluding that the assault on SPO1 Florence was attended by the qualifying circumstance of treachery simply because the attack was “sudden and unexpected,” and that Rolly attacked the victim “from behind – to ensure the killing of SPO1 Florence without risk to himself.” Just because the attack is sudden and unexpected, it does not always follow that it is tainted with treachery.<sup>34</sup>

There is treachery when the offender, in the commission of any of the crimes against a person, employs means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.<sup>35</sup> Reduced to its elements, treachery presupposes the following: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender.<sup>36</sup>

While the first element was met, the second requisite is wanting.

In *People v. Vilbar*,<sup>37</sup> the Court emphasized that treachery cannot be appreciated simply because the attack was sudden and unexpected:

[T]he circumstance that an attack was sudden and unexpected on the person assaulted did not constitute the element of *alevosia* necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself.<sup>38</sup>

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<sup>33</sup> *Rollo*, p. 25.

<sup>34</sup> *People v. Sabanal*, 254 Phil. 433, 436 (1989).

<sup>35</sup> *People v. Sibbu*, 808 Phil. 276, 289 (2017).

<sup>36</sup> *People v. Bugarin*, 807 Phil. 588, 600 (2017). (Underscoring supplied)

<sup>37</sup> 680 Phil. 767 (2012).

<sup>38</sup> *Id.* at 786.

Similar to the foregoing, the prosecution in this case merely showed that Rolly stabbed SPO1 Florence from behind suddenly and unexpectedly, but failed to prove that he consciously adopted such mode of attack without risk to himself.

As established by the prosecution, Rolly, upon seeing SPO1 Florence shoot his brother, (Ronnie), quickly went at the back of the basketball court and then stabbed SPO1 Florence from behind. Considering these prior and simultaneous circumstances, as portrayed by the prosecution, there are no indications that Rolly deliberately planned to stab the victim at that moment and place. The quickness of his act in defending his brother confirms that the attack he made on SPO1 Florence was neither preconceived nor deliberately adopted. Such swiftness necessarily negates that he reflected on the means, method, or form of the attack to secure his unfair advantage. A reasonable conclusion, thus, that Rolly, upon seeing SPO1 Florence shoot his brother, acted quickly and decided to stab the victim from behind, is not hard to deduce. Following the rule that treachery must be indubitably proved beyond reasonable doubt as the crime itself,<sup>39</sup> Rolly cannot be convicted of the crime charged in its qualified form.

*Component crimes of Frustrated  
Homicide and Direct Assault.*

It is undisputed that Rolly intended to kill SPO1 Florence when he used a knife in quickly stabbing SPO1 Florence from behind. He even tried to squeeze the knife into her body, making an upward motion. The injury sustained by SPO1 Florence was also proven to be fatal which could have caused her death were it not for the timely medical attention rendered by her doctor.<sup>40</sup>

Article 6 of the RPC provides that “a felony is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.” From this definition of a frustrated felony in relation to the definition of homicide under Article 249 of the RPC, the elements of frustrated homicide are the following: (1) the accused intended to kill the victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die by reason of causes independent of the perpetrator; and (3) none of the qualifying circumstances for murder under Article 248 of the RPC, is present. In this case, all the elements attend. The component crime of frustrated homicide was sufficiently established.

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<sup>39</sup> *People v. Narit*, 274 Phil. 613 (1991).

<sup>40</sup> *Rollo*, p. 23.



Also, the component crime of direct assault cannot be denied. Direct assault may be committed in two ways: *first*, by “any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition;” and *second*, by any person or persons who, without a public uprising, “shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance.”<sup>41</sup>

In this case, Rolly committed the second form of assault, the elements of which are: “(1) that there must be an attack, use of force, or serious intimidation or resistance upon a person in authority or his agent; (2) the assault was made when the said person was performing his duties or on the occasion of such performance; and (3) the accused knew that the victim is a person in authority or his agent, that is, that the accused must have the intention to offend, injure or assault the offended party as a person in authority or an agent of a person in authority.”<sup>42</sup>

As established by the prosecution, SPO1 Florence, armed with her service firearm, responded to a commotion at the crime scene upon hearing Eric’s cry for help. Upon reaching the area and seeing that SPO1 Rufino being attacked by accused-appellants, SPO1 Florence fired warning shots to stop them. Unheeded, SPO1 Florence shot the lower portion of Ronnie’s body. As aptly observed by the CA, SPO1 Florence’s actions are clearly indicative that she was performing her duties as a police officer, rather than as a wife of SPO1 Rufino; otherwise, she could have immediately shot to death her husband’s attackers without any warning shots.<sup>43</sup>

In fine, Rolly is guilty of the complex crime of direct assault with frustrated homicide in Criminal Case No. 6962-V.

### ***Penalty and Award of Damages***

#### *Criminal Case No. 6961-V* *Homicide*

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

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<sup>41</sup> Article 148, Revised Penal Code.

<sup>42</sup> *People v. Ex-Mayor Estonilo, Sr.*, 745 Phil. 331, 355 (2014).

<sup>43</sup> *Rollo*, p. 27.

of *reclusion temporal*, with the minimum penalty selected from the range of *prision mayor*. Thus, the proper penalty of imprisonment shall be eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

As regards the amount of damages in the crime of homicide, accused-appellants are ordered to pay the heirs SPO1 Rufino the following amounts: ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages. The monetary awards shall earn interest at the rate of six percent (6%) per *annum* from the date of the finality of this Decision until fully paid.<sup>44</sup>

*Criminal Case No. 6962-V*  
*Direct Assault with Frustrated Homicide*

Article 48 of the RPC requires that the penalty for a complex crime is the maximum penalty of the graver offense. Under Article 249 of the RPC, the penalty for homicide is *reclusion temporal*. For frustrated homicide, the impossible penalty is one degree lower than that imposed in homicide or *prision mayor*. On the other hand, the penalty for direct assault is *prision correccional*. Thus, the proper penalty to be imposed for the complex crime of direct assault with frustrated homicide is *prision mayor* in its maximum period, subject to the Indeterminate Sentence Law.

There being no modifying circumstance, the maximum impossible penalty is within the medium range of *prision mayor* in its maximum period, or ten (10) years, eight (8) months and one (1) day to ten (10) years and sixteen (16) months [or eleven (11) years and four (4) months]. Applying the Indeterminate Sentence Law, the minimum term of the penalty is *prision correccional* in any of its periods. Thus, as modified, Rolly is hereby sentenced to suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to eleven (11) years of *prision mayor*, as maximum.

Pursuant to *People v. Jugueta*,<sup>45</sup> accused-appellants are ordered to pay SPO1 Florence the following amounts: ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, in addition to ₱81,430.73 actual damages she incurred. In addition, an interest at the rate of 6% per *annum* shall be imposed on all damages awarded from the date of finality of this judgment until fully paid.

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<sup>44</sup> *People v. Caballero*, 788 Phil. 692 (2016).

<sup>45</sup> 783 Phil. 806 (2016).

**WHEREFORE**, the appealed Decision dated February 22, 2018 of the Court of Appeals in CA-G.R. CR HC No. 08361 is **AFFIRMED** with **MODIFICATIONS**, as follows:

1.) In Criminal Case No. 6961-V, accused-appellants Roger Bautista, Roberto Bautista, Ronnie Bautista, and Rolly Bautista are guilty beyond reasonable doubt of Homicide, and sentenced to suffer the penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, and further **ORDERED** to pay the heirs SPO1 Rufino Rapacon the following amounts: ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

2.) In Criminal Case No. 6962-V, accused-appellant Rolly Bautista is guilty beyond reasonable doubt of Direct Assault with Frustrated Homicide, and sentenced to suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to eleven (11) years of *prision mayor*, as maximum, and further **ORDERED** to pay SPO1 Florence Rapacon the amounts: ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, in addition to ₱81,430.73 actual damages she incurred.

In addition, an interest at the rate of six percent (6%) per *annum* shall be imposed on all damages awarded from the date of finality of this judgment until fully paid.

**SO ORDERED.**



**EDGARDO L. DELOS SANTOS**  
Associate Justice

**WE CONCUR:**

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice  
Chairperson

(On Official Leave)  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**ROSMARI D. CARANDANG**  
Associate Justice

  
**JHOSEP LOPEZ**  
Associate Justice

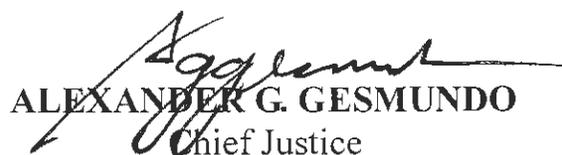
**ATTESTATION**

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 MARIO VICTOR F. LEONEN**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

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

  
**ALEXANDER G. GESMUNDO**  
Chief Justice