

## SECOND DIVISION

G.R. No. 271154 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee,  
v. FRANCIS PATRICIO y TORDA @ “KIKO”, Accused-appellant.

Promulgated:

FEB 24 2025

X-----X

### CONCURRING AND DISSENTING OPINION

LOPEZ, M., J.:

I register my concurrence with the *ponencia* which affirmed the conviction of the accused but for the lesser crime of homicide. For proper reference, there is a need to revisit the facts of the case.

The prosecution witnesses Jennifer De Castro (Jennifer) and Roy Espinosa, Jr. (Roy) testified that **they saw Francis Patricio (Francis) stabbing Jeffrey De Castro (Jeffrey) while being held by Nicholas Dimagiba (Nicholas) and Don Diego Pastrana (Diego)** in the nearby “*cara y cruz-an*” where people are already playing. Francis repeatedly stabbed Jeffrey with a knife. Jeffrey struggled and tried to defend himself by raising his lower arms, but was ultimately unable to resist the attack. Afterwards, Francis continued stabbing Jeffrey who was already crawling on the ground until he fell into the river. Jennifer got scared and ran to call help from her relatives. At the crime scene, Francis threatened Edwin Bana (Edwin) and said “*Edwin, wala kang nakita*” before all the accused fled. Yet, Edwin still called for help and prevented Jeffrey from further falling deep the river. The autopsy report revealed that Jeffrey sustained 14 stab wounds hitting vital organs such as liver and lungs resulting in his death.<sup>1</sup> Accordingly, Francis, Nicholas, and Diego were charged with murder before the Regional Trial Court (RTC), to wit:

That on or about the 13th day of November, 2015, in Quezon City, Philippines, [Francis, Nicholas, and Diego], conspiring together, confederating with and mutually helping one another, did then and there willfully, unlawfully[,] and feloniously, **with intent to kill and with treachery, attack, assault, and use personal violence upon the person of JEFFREY DE CASTRO y ALVIZ [(Jeffrey)]**, by then and there stabbing him on the different parts of his body, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his untimely death.

That [Francis, Nicholas, and Diego] consciously adopted sudden and unexpected attack upon the victim to ensure that he will not be able

<sup>1</sup> *Ponencia*, pp. 2–3.

**to defend himself**, thus [Francis, Nicholas, and Diego] committed the crime with the attendance qualifying circumstance of treachery.

CONTRARY TO LAW. (Emphasis supplied)

The RTC convicted the accused of murder and ruled that Francis, Nicholas, and Diego conspired to kill Jeffrey in a sudden and unexpected manner affording him no defense. The Court of Appeals (CA) also held that treachery was present since Jeffrey had no opportunity to resist the attack. Moreover, Diego and Nicholas held Jeffrey while he was being stabbed by Francis. The *ponencia* affirmed the judgment of conviction on the ground that “both witnesses – Jennifer and Roy – testified that when they saw the incident, Francis was already stabbing Jeffrey. They also saw how Francis delivered the blows continuously such that even after Jeffrey had already fallen and crawling on the ground, Francis still persisted in stabbing him.” The *ponencia* added that the conduct of Francis, Nicholas, and Diego “showed a conscious choice of the mode of attack precisely to facilitate the killing of Jeffrey, without exposing Francis and his cohorts to any danger of retaliation or resistance that may originate from the victim himself.”<sup>2</sup>

I disagree that treachery attended the commission of the crime.

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms which tend directly and specifically to insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is the unexpected and sudden attack without the slightest provocation on the part of the victim.<sup>3</sup> What is decisive in treachery is that the execution of the attack rendered it impossible or difficult for the victim to defend himself or herself, counter the attack, or retaliate.<sup>4</sup> In order for treachery to be appreciated, two requirements must be established: (1) the victim was in no position to defend himself or herself when attacked; and, (2) the assailant consciously and deliberately adopted the methods, means, or form of one’s attack against the victim.<sup>5</sup> Contrary to the CA and the RTC’s findings, treachery should be ruled out for failure of the prosecution to demonstrate how the accused commenced and executed the attack upon the victim, thus:

*In a catena of cases, the Court has consistently ruled that treachery cannot be appreciated where the prosecution only proved the events after the attack happened, but not the manner of how the attack commenced or how the act which resulted in the victim’s death unfolded. In treachery, there must clear and convincing evidence on how the aggression was made, how it began, and how it developed. Where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the victim began and developed, it cannot be established from the suppositions drawn only from the circumstances prior to the very*

<sup>2</sup> *Id.* at 9–10.

<sup>3</sup> *People v. Gutierrez*, 429 Phil. 124, 136 (2002) [Per J. Ynares-Santiago, *En Banc*].

<sup>4</sup> *People v. Almedilla*, 456 Phil. 719, 725 (2003) [Per J. Puno, Third Division].

<sup>5</sup> *People v. Abina*, 830 Phil. 352, 361 (2018) [Per J. Del Castillo, First Division].

8

moment of the aggression, that an accused perpetrated the killing with treachery. *Accordingly, treachery cannot be considered where the lone witness did not see the commencement of the assault.*<sup>6</sup> (Emphasis supplied)

Here, the prosecution witnesses neither saw the commencement of the assault nor the unfolding of the events that ultimately resulted in the death of the victim. The prosecution witnesses testified that “*when they saw the incident, Francis was already stabbing Jeffrey.*” This gap opens a wide possibility that the aggression might be initiated by the victim or that the attack happened during a chance encounter or at the spur of the moment, or preceded by heated altercations, or that the victim has been forewarned of the danger to his life.<sup>7</sup> It is a fundamental principle in criminal law that all doubts should be resolved in favor of the accused. It is the prosecution’s duty to prove beyond reasonable doubt each and every element of the crime charged.<sup>8</sup> Inarguably, there was reasonable doubt on how the aggression started, developed and ended. A single and continuous attack cannot be divided into stages to make it appear that treachery was involved. Treachery cannot happen midstream of an attack.<sup>9</sup> In *People v. Canete*,<sup>10</sup> the crime committed is homicide absent treachery at the inception of the continuous assault although the final fatal blow may be delivered under conditions exhibiting some of the features of *alevosia*.<sup>11</sup> The Court observed that “[o]ne continuous attack, xxx, cannot be broken up into two or more parts and made to constitute separate, distinct, and independent attacks so that treachery may be injected therein and considered as a qualifying or aggravating circumstance.” In *People v. Canillo*,<sup>12</sup> the Court reiterated that treachery must be present at the inception of an attack to qualify a killing to murder. A treacherous act that happens during an attack or subsequent to it cannot be appreciated as a qualifying or generic aggravating circumstance.<sup>13</sup>

In any event, the mere suddenness of the attack is not sufficient to hold that treachery is present. There must be a showing that the means of execution was deliberately or consciously adopted by the accused with a view of accomplishing the act without risk to the aggressor. In *People v. Caliao*,<sup>14</sup> the Court found the accused guilty of homicide only, not murder, because there was no showing that he made any preparation to kill the victim in such a manner as to insure the commission of the crime or make it impossible or difficult for the victim to retaliate or defend himself.<sup>15</sup> The Court explained that “*when aid was easily available to the victim, such as when the attendant circumstances show that there were several eyewitnesses to the incident,*

<sup>6</sup> *People v. Enriquez*, 854 Phil. 609, 616 (2019) [Per J. Caguioa, Second Division].

<sup>7</sup> *People v. Alegre*, 919 Phil. 413, 420–421 (2022) [Per J. Caguioa, Second Division]. See also *People v. Aquino*, 475 Phil. 427 (2004) [Per J. Callejo, Second Division]; *People v. Flores*, 304 Phil. 674 (1994) [Per J. Puno, Second Division].

<sup>8</sup> *Oliveros, Jr. v. People*, 897 Phil. 916, 916 (2021) [Per J. Caguioa, First Division].

<sup>9</sup> *People v. Gonzales*, 411 Phil. 893, 921 (2001) [Per J. Gonzaga-Reyes, *En Banc*].

<sup>10</sup> 44 Phil. 478 (1923) [Per J. Street].

<sup>11</sup> *Id.* at 481.

<sup>12</sup> 901 Phil. 454 (2021) [Per J. Leonen, Third Division].

<sup>13</sup> *Id.* at 454.

<sup>14</sup> 836 Phil. 966 (2018) [Per J. Martires, Third Division].

<sup>15</sup> *Id.* at 976.

*including the victim's family, no treachery could be appreciated because if the accused indeed consciously adopted means to insure the facilitation of the crime, he could have chosen another place or time.*" In *People v. Gayon*,<sup>16</sup> the Court ruled that there is no showing that the accused carefully and deliberately planned the killing in the manner that would ensure his safety and success. The testimony of the eyewitness confirmed that the victim was attacked at the place familiar to her and in the presence of other people who are related to the victim. The victim was with people who could have helped her repel the attack.<sup>17</sup>

In this case, it is difficult to agree with the CA and the RTC's conclusions that Francis, Nicholas, and Diego deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to themselves arising from the defense that Jeffrey might offer. Notably, the attack happened where there are several eyewitnesses which made external help easily available to repel the aggression. The facts revealed that Jennifer and Edwin called for help, and that the crime happened in a nearby *cara y cruz-an* where people are already playing. Had the accused deliberately intended that no risk would come to them, they should have chosen another time and place to attack the victim. The prosecution witnesses also did not establish with moral certainty that the victim was utterly oblivious to the impending attack, or that he had no opportunity to mount a meaningful defense. Jennifer testified that "*Jeffrey struggled and tried to defend himself by raising his lower arms...*" Taken together, treachery did not attend the killing of the victim, and the accused are liable only for homicide.

At most, the facts show that the killing of the victim was qualified with abuse of superior strength which is present when there is "*inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime.*"<sup>18</sup> On this point, it bears emphasis that 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. Unlike in treachery, where the victim was not given opportunity to defend himself/herself or repel the aggression, taking advantage of superior strength does not mean that the victim was completely defenseless. This qualifying aggravating circumstance is determined by the excess of the aggressor's natural strength over that of the victim, considering the momentary position of both and the employment of means weakening the defense, although not annulling it.<sup>19</sup> Here, during the stabbing incident, Francis had a clear advantage over Jeffrey as the latter was being restrained by Nicholas and Diego. Francis even prevented Edwin from coming to Jeffrey's aid. By their actions, the accused clearly made sure that they had the advantage when attacking Jeffrey. The balance of strength excessively tilted in favor of the accused who overwhelmed the victim with their synchronized

<sup>16</sup> 851 Phil. 1028 (2019) [Per J. Caguioa, Second Division].

<sup>17</sup> *Id.* at 1037.

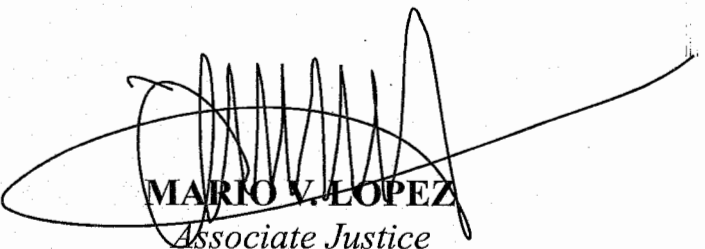
<sup>18</sup> *People v. Cabilig*, 165 Phil. 887, 609 (1976) [Per J. Antonio, *En Banc*].

<sup>19</sup> *People v. Batulan*, 858 Phil 77, 95 (2019) [Per J. Lazaro-Javier, Second Division].

assault. The autopsy report also corroborated the purposeful use of excessive force out of proportion to the means of defense available to the person attacked.<sup>20</sup> The number of stab wounds revealed the relative disparity in strength or force between Francis, Nicholas, and Diego, as assailants, and Jeffrey as the lone unarmed victim.

Nevertheless, the information only alleged treachery and not abuse of superior strength. It is fundamental that qualifying and aggravating circumstances are integral components of a crime that must be sufficiently alleged in the information and established during trial with proof beyond reasonable doubt.<sup>21</sup> The purpose is to give life to the accused's constitutional rights to be informed of the nature and cause of the accusation and to be presumed innocent.<sup>22</sup> This will also avoid surprise on the part of the accused and afford him or her the opportunity to suitably prepare his or her defense.<sup>23</sup> No matter how conclusive and convincing the evidence of guilt may be, the accused cannot be held liable for the qualified nature of a crime and be condemned to suffer a higher penalty.

To reiterate, the prosecution has the burden to prove all the elements of murder beyond reasonable doubt.<sup>24</sup> The Court cannot rely on mere suspicion. Accordingly, I vote to affirm the conviction of the accused but for the lesser crime of homicide sans allegation and proof of the aggravating circumstances of treachery and abuse of superior strength.

  
MARIO V. LOPEZ  
Associate Justice

<sup>20</sup> *People v. Villanueva*, 807 Phil. 245, 253 (2017) [Per J. Reyes, Third Division].

<sup>21</sup> RULES OF COURT, Rule 110, sec. 8 provides that:

Section 8. *Designation of the offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and **specify its qualifying and aggravating circumstances**. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it." Also, Section 9 provides that: "Section 9. *Cause of the accusation*. — The acts or omissions complained of as constituting the offense and **the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute** but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment. (Italics in the original, emphasis supplied)

<sup>22</sup> *People v. Aquino*, 435 Phil. 417, 425 (2002) [Per Curiam, En Banc].

<sup>23</sup> *Pielago v. People*, 706 Phil. 460, 469 (2013) [Per J. Reyes, First Division].

<sup>24</sup> *People v. Peña*, 353 Phil. 782, 794 (1998) [Per J. Davide, Jr., First Division].