



**Republic of the Philippines  
Supreme Court  
Manila**

**THIRD DIVISION**

**N O T I C E**

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated August 4, 2021, which reads as follows:*

**“G.R. No. 251921 (People of the Philippines, Plaintiff-Appellee, v. Lobriquito Paragatos, Jr. y Borden, Accused-Appellant.)** – This Court resolves an appeal<sup>1</sup> seeking to reverse and set aside the Decision<sup>2</sup> dated 27 November 2019 of the Court of Appeals (CA) in CA-G.R. HC No. 02504. The CA affirmed with modification the Decision<sup>3</sup> dated 19 January 2017 of Branch 41, Regional Trial Court (RTC) of Gandara, Samar in Criminal Case No. 12-0526, finding accused-appellant Lobriquito Paragatos, Jr. y Borden (accused-appellant) guilty beyond reasonable doubt for the crime of Murder.

**Antecedents**

On 13 December 2011, an Information against accused-appellant for Murder was filed,<sup>4</sup> the accusatory portion of which reads:

That on or about the 6<sup>th</sup> day of September, 2011 at about 9:00 o'clock in the morning of Barangay Buenavista, Municipality of San Jorge, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a round timber and a bolo locally known as "sundang", without justifiable reason and with deliberate intent to kill, with evident premeditation which qualify [sic] the offense to Murder, did then and there willfully, unlawfully, and feloniously attack, assault, struck, and stab one JOEY ABARRACOSO with the use of the said round timber and a bolo, which the accused had conveniently provided himself for the purpose, thereby hitting and inflicting upon the victim Joey Abarracoso serious and mortal stabbing wounds on the different parts of his body which were the direct and immediate cause of his untimely death.

<sup>1</sup> *Rollo*, pp. 15-16.

<sup>2</sup> *Id.* at 5-14; penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Dorothy P. Montejo-Gonzaga and Alfredo D. Ampuan of the Special Twentieth (20<sup>th</sup>) Division, Court of Appeals, Cebu City.

<sup>3</sup> CA *rollo*, pp. 61-69; penned by Presiding Judge Feliciano P. Aguilar.

<sup>4</sup> *Rollo*, p. 6.

Contrary to law.<sup>5</sup>

Upon arraignment, accused-appellant pleaded not guilty.<sup>6</sup> Trial on the merits then ensued after the pre-trial conference.<sup>7</sup>

### Version of the Prosecution

At around 9:00 a.m. on 06 September 2011, accused-appellant went to the farm of his sister-in-law, Norma Paragatos (Norma), in *Barangay Buenavista*.<sup>8</sup> Suspecting that Joey Abarracos (Joey), Norma's brother, destroyed accused-appellant's riceland, accused-appellant said "*dire na hiya makakaon luto*," translated as "Joey cannot eat rice anymore."<sup>9</sup>

Past 1:00 p.m., Norma went to the farm of Joey in *Barangay Lincoro*.<sup>10</sup> She saw Joey cutting grass, but accused-appellant suddenly appeared and stabbed him.<sup>11</sup> Fearing for her life, Norma hid in the grass; she came out of hiding when it was already dark.<sup>12</sup> Norma did not tell her husband about the incident because the latter is accused-appellant's brother.<sup>13</sup>

The following day, Norma went to *Barangay Lincoro* to report the incident and request assistance.<sup>14</sup> The police blotter states that, at around 1:50 p.m. of 06 September 2011 in *Barangay Lincoro*, accused-appellant stabbed Joey using a bladed weapon locally known as "sundang."<sup>15</sup> Meanwhile, at around 2:00 p.m. of the same day, Roberto Bertulfo (Roberto), Joey's neighbor, noticed bloodstains in Joey's yard while trying to gather firewood.<sup>16</sup> Roberto did not see any cadaver.<sup>17</sup> He reported the matter to the *barangay* chairman.<sup>18</sup> Authorities went to the place of the incident and recovered Joey's body past 3:00 p.m. on 07 September 2011.<sup>19</sup> That same day, Norma informed her husband that she witnessed Joey's killing.<sup>20</sup>

Joey's certificate of death states that his cause of death was shock and hemorrhage, intraabdominal, intrathoracic due to multiple stab wounds of

<sup>5</sup> *Id.*

<sup>6</sup> CA *rollo*, p. 36.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 85.

<sup>9</sup> *Id.*; also translated as "Joey will not eat rice or food anymore."

<sup>10</sup> *Id.* at 86.

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

<sup>12</sup> *Id.* at 67, 86.

<sup>13</sup> *Id.* at 38.

<sup>14</sup> *Id.* at 86.

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

<sup>16</sup> *Id.* at 39.

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

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 38.

<sup>20</sup> *Id.*

the chest and abdomen.<sup>21</sup> Joey sustained three stab wounds at his chest and abdomen.<sup>22</sup>

### Version of the Defense

The sole witness for the defense, accused-appellant himself, denied the charge against him.<sup>23</sup> He claimed that on 06 September 2011, he was at home, celebrating the birthday of his child with his family and two other visitors.<sup>24</sup> The visitors arrived at 8:00 a.m., but since accused-appellant was still cooking, the celebration started at 9:00 a.m.<sup>25</sup> The festivities lasted until the afternoon.<sup>26</sup>

Accused-appellant also denied confronting Norma on 06 September 2011.<sup>27</sup> He claimed to have first learned of Joey's demise on 07 September 2011 when someone carrying Joey's cadaver passed by his house.<sup>28</sup> He only learned that he was named as a suspect during Joey's wake.<sup>29</sup> While he confirmed that his rice plants were indeed destroyed,<sup>30</sup> accused-appellant claimed that he did not see who destroyed the same and had no suspect in mind.<sup>31</sup>

### Ruling of the RTC

After trial, the RTC found accused-appellant guilty beyond reasonable doubt of Murder. The *fallo* of the RTC's Decision reads:

**WHEREFORE**, above-premises considered, this Court finds above-named accused **Lobriquito Paragatos, Jr. y Borden Guilty** of the crime of **Murder** as charged beyond reasonable doubt and sentences him an imprisonment of **Reclusion Perpetua** and to pay **actual damages** in the amount of **Fifty Thousand Pesos (Php50,000.00)** to the heirs of deceased victim **Joey Abarraoso** and **moral damages** in the amount of **Twenty Thousand Pesos (Php20,000.00)**.

Accused is credited in full of his preventive imprisonment if he abides with the rules and regulation of a regular detainee during his confinement, otherwise only 4/5 of his period of detention.

<sup>21</sup> *Id.* at 86.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 40.

<sup>24</sup> *Id.* at 40–41.

<sup>25</sup> *Id.* at 40.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 41.

<sup>28</sup> *Id.* at 40.

<sup>29</sup> *Id.* at 41.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

August 4, 2021

**SO ORDERED.<sup>32</sup>** (Emphasis on the original)

The RTC accorded great weight to the testimony of the eyewitness, Norma, and ruled that the defense of alibi cannot prevail over positive, categorical testimony pointing to accused-appellant as the perpetrator of the crime.<sup>33</sup> The RTC found that as of 9:00 a.m., of 06 September 2011, or when accused-appellant confronted Joey, accused-appellant was already determined to kill the latter.<sup>34</sup> The period of time between the confrontation and the killing several hours after, afforded accused the opportunity to reflect upon the consequences of his act.<sup>35</sup>

**Ruling of the CA**

On 27 November 2019, the CA rendered a Decision, affirming with modification accused-appellant's conviction, removing the award of actual damages for lack of legal basis, and modifying the damages awarded to conform to the Court's pronouncement in *People v. Jugueta*,<sup>36</sup> to wit:

IN LIGHT OF ALL THE FOREGOING, the Decision dated January 19, 2017, of the Regional Trial Court, Branch 41, Gandara, Samar, in Criminal Case No. 12-0526, finding accused-appellant Lobriquito B. Paragatos, Jr. guilty beyond reasonable doubt of the crime of Murder, is AFFIRMED with MODIFICATION as to the award of damages.

Accused-Appellant Lobriquito B. Paragatos, Jr. is found guilty of the Murder of Joey Abarracoso, and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the heirs of Joey Abarracoso the amounts of Seventy Five Thousand Pesos (PhP 75,000.00), as civil indemnity, Seventy Five Thousand Pesos (PhP 75,000.00), as moral damages, Seventy Five Thousand Pesos (PhP 75,000.00), as exemplary damages.

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

**SO ORDERED.<sup>37</sup>**

The CA found that Norma, the prosecution's eyewitness, was firm and unrelenting in her testimony identifying accused-appellant as the one who stabbed Joey.<sup>38</sup> Thus, contrasted with accused-appellant's denial and alibi, Norma's testimony deserves more weight.<sup>39</sup>

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<sup>32</sup> *Id.* at 69.

<sup>33</sup> *Id.* at 66–68.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> 783 Phil. 806 (2016) [Per J. Peralta].

<sup>37</sup> *Rollo*, pp. 13–14.

<sup>38</sup> *Id.* at 9.

<sup>39</sup> *Id.* at 12–13.

Further, the appellate court ruled that treachery attended Joey's killing because accused-appellant attacked the victim while the latter was unarmed and preoccupied cutting grass.<sup>40</sup> The qualifying circumstance of evident premeditation was also present since, as early as 9:00 a.m., accused-appellant already hinted to Norma that Joey will no longer eat rice.<sup>41</sup> Accused-appellant had four hours to reflect on the consequences of his actions; yet, he still clung to his plan.<sup>42</sup> Hence, this appeal.<sup>43</sup>

For purposes of this appeal, the Office of the Solicitor General (OSG)<sup>44</sup> and the Public Attorney's Office<sup>45</sup> manifested they were no longer filing supplemental briefs. Both prayed that the briefs submitted to the CA be considered in resolving the appeal.

### Issue

The sole issue is whether or not the RTC and the CA erred in affirming accused-appellant's conviction for Murder.

### Ruling of the Court

At the outset, We reiterate the established rule that, in criminal cases, an appeal throws the whole case wide open for review, and it becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are assigned as errors or not.<sup>46</sup> The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>47</sup>

The Court notes that there is a variance between the place and time of the commission of crime as stated in the Information (*Barangay* Buenavista at 9:00 a.m.) and as proven during trial (*Barangay* Lincoro, at around 1:00 p.m.) However, the place of commission is not an essential element of Murder.<sup>48</sup> As held by the Court in *People v. Mabuyo*,<sup>49</sup> the difference between the place alleged in the Information versus the place proved during trial does not preclude conviction, so long as the actual place of commission was within the jurisdiction of the trial court. Moreover, the exact time and

<sup>40</sup> *Id.* at 12.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 15–16.

<sup>44</sup> *Id.* at 23–27.

<sup>45</sup> *Id.* at 32–34.

<sup>46</sup> *Lahi v. People*, G.R. No. 210731, 13 February 2019 [Per J. Leonen].

<sup>47</sup> *People v. Palema*, G.R. No. 228000, 10 July 2019 [Per J. Leonen].

<sup>48</sup> 159-A Phil. 150 (1975) [Per J. Makalintal].

<sup>49</sup> *Supra*.

August 4, 2021

date the killing took place are not material elements of Murder.<sup>50</sup>

While the erroneous allegations in the Information do not affect the validity of the proceedings of this case, it behooves the prosecution and the defense to be mindful of the accuracy and sufficiency of the alleged facts and circumstances, especially since the liberty of the accused hangs on the balance. We take this as an opportunity to remind both public prosecutors and defense lawyers to thoroughly assess the allegations in the Information, in keeping with the constitutional right of the accused to be informed of the nature and cause of the accusation against them.

*Minor inconsistencies on marginal matters do not destroy the credibility of a witness; the conduct of Norma after witnessing the stabbing does not preclude the conviction of the accused*

Accused-appellant assails the credibility of Norma, the inconsistencies in her testimony, and her actions after witnessing the incident.<sup>51</sup>

We find no reason to disturb the common assessment of the RTC and the CA that Norma's testimony is clear and credible. It is settled that the trial court's evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance.<sup>52</sup> Trial courts have the unique advantage of personally scrutinizing the conduct, demeanor, and attitude of witnesses while testifying.<sup>53</sup> Due to their unique position, the trial courts' factual findings and appreciation of the witnesses' testimonies are given much respect, more so when their conclusions are affirmed by the Court of Appeals, as in this case.<sup>54</sup>

Indeed, Norma witnessed the incident in broad daylight.<sup>55</sup> She was familiar with accused-appellant because the latter is her brother-in-law.<sup>56</sup> She was only several meters away from where accused-appellant stabbed Joey.<sup>57</sup> Thus, her positive identification of accused-appellant as the perpetrator of the crime deserves great weight.

The alleged inconsistencies in Norma's statement, i.e., the time she

<sup>50</sup> See *People v. Delfin*, 738 Phil. 811 (2014) [Per J. Perez].

<sup>51</sup> *Rollo*, pp. 46–47.

<sup>52</sup> *People v. Ambatang*, 808 Phil. 237 (2017) [Per J. Leonen].

<sup>53</sup> *People v. Magallano*, G.R. No. 220721, 10 December 2018 [Per J. Leonen].

<sup>54</sup> *Id.*

<sup>55</sup> *Rollo*, p. 9.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

went to *Barangay* Lincoro, are too minor to reverse a conviction.<sup>58</sup> What ultimately matters is that Norma witnessed accused-appellant stab her brother.<sup>59</sup> It is settled that a few discrepancies referring to marginal details and not actually touching upon the central fact of the crime do not impair, but rather strengthen, the credibility of witnesses; these inconsistencies discount the possibility that the testimonies were rehearsed.<sup>60</sup>

Moreover, the fact that Norma did not testify on the specifics of the stabbing incident, such as the size of the weapon used and the words exchanged between accused-appellant and Joey, do not undermine Norma's credibility.<sup>61</sup> Human memory may be temporarily paralyzed by a startling event, especially if the same involves a person close to the witness, as in the case of Norma who witnessed the killing of her brother.<sup>62</sup> To stress, what matters is that Norma is consistent in her testimony that she saw accused-appellant stab Joey.

Accused-appellant also questions Norma's conduct after she was confronted by accused-appellant and after she witnessed the stabbing incident.<sup>63</sup> According to accused-appellant, Norma's instinct should have been to immediately report the matter to the authorities or to approach Joey right after the confrontation and the stabbing incident.<sup>64</sup>

We have consistently held that there is no standard form of behavior when confronted with a strange, startling, or frightful experience.<sup>65</sup> As aptly observed by the CA, Norma's reaction of hiding in the grass for several hours without approaching the victim or seeking assistance is not unusual.<sup>66</sup> Her instinct to hide was impelled by her fear that she will also be killed if accused-appellant saw her.<sup>67</sup> It is not surprising, then, that Norma did not immediately inform her husband of what she witnessed since accused-appellant is her husband's brother. Her decision to report the incident to the authorities the next day was adequately explained by the circumstances.

We also find nothing unusual in Norma's actions after she was confronted by accused-appellant. She went to her brother's farm to warn him, but unfortunately, it was then too late. Norma's decision to go to her brother and not immediately report the confrontation to the authorities is insufficient to destroy her credibility.

In fine, Norma's testimony, although uncorroborated, is sufficient to convict. We reiterate the principle that the testimony of a single witness, if

<sup>58</sup> *Supra* note 53.

<sup>59</sup> *Supra* note 52.

<sup>60</sup> *Supra* note 52, citing *People v. Bagaua*, 442 Phil. 245, 255 (2002) [Per J. Ynares-Santiago].

<sup>61</sup> See *CA Rollo*, p. 44; *CA Rollo*, pp. 48–49.

<sup>62</sup> *People v. Villanueva*, 333 Phil. 148 (1996) [Per J. Bellosillo].

<sup>63</sup> *CA rollo*, pp. 45–46.

<sup>64</sup> *Id.* at 45–46, 52–53.

<sup>65</sup> *People v. Cirilo*, 400 Phil. 495 (2000) [Per J. De Leon, Jr.]; *supra* note 53.

<sup>66</sup> *Rollo*, p. 11.

<sup>67</sup> *Id.*

straightforward and categorical, may be the basis of a conviction.<sup>68</sup>

*Denial and alibi cannot prevail over the positive identification of an eyewitness; non-flight does not equate to innocence*

Going to accused-appellant's alibi, We find the same weak and unreliable. For the defense of alibi to prosper, it must be shown that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission.<sup>69</sup>

In this case, however, it was not physically impossible for accused-appellant to go to *Barangay Lincoro* in the afternoon of 6 September 2011. As admitted by accused-appellant, *Barangay Buenavista*, where accused-appellant allegedly celebrated the birthday of his child, is only two kilometers or twenty (20) minutes away from *Barangay Lincoro* where Joey's body was found.<sup>70</sup> Further, accused-appellant's alibi was not corroborated by any witness.<sup>71</sup> Thus, Norma's positive identification of accused-appellant must prevail over his bare, unsubstantiated denial.

Moreover, non-flight is not proof of innocence.<sup>72</sup> It does not preclude the possibility that accused-appellant is guilty of the crime.<sup>73</sup> The culprit of a crime may choose to remain within the area precisely to avoid raising suspicion.<sup>74</sup>

With the foregoing, We affirm the findings of the RTC and the CA that the prosecution proved beyond reasonable doubt the identity of accused-appellant as the perpetrator of the crime.

*The qualifying circumstance of evident premeditation was insufficiently alleged. At any rate, the evidence does not support the allegation that evident premeditation attended the killing*

Preliminarily, We point out that the Information is insufficient for failure to allege the ultimate facts constituting evident premeditation and

<sup>68</sup> *People v. Callao*, 828 Phil. 372 (2018) [Per J. Caguioa].

<sup>69</sup> *People v. Borja*, 815 Phil. 327 (2017) [Per J. Leonen].

<sup>70</sup> CA *rollo*, p. 41.

<sup>71</sup> *People v. Salazar*, G.R. No. 239138, 17 February 2021 [Per J. Leonen].

<sup>72</sup> *People v. Sumalinog, Jr.*, 466 Phil. 637 (2004) [Per J. Carpio].

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

August 4, 2021

treachery. An Information alleging a qualifying or aggravating circumstance must state the facts that made the circumstance present.<sup>75</sup> And unless the accused files a motion to quash under Section 3 (e), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for bill of particulars, the accused will be deemed to have waived his right to object to the defective statement.<sup>76</sup> In this case, it does not appear that accused-appellant objected to the sufficiency of the allegations in the Information before arraignment or at any stage of the proceedings.

Even assuming that the allegations in the Information were sufficient, We are unconvinced that the killing was preceded by evident premeditation or attended by treachery.

The RTC and the CA ruled that accused appellant's remark – “*dire na hiya makakaon luto*” or “Joey cannot eat rice anymore”<sup>77</sup> – manifested his determination to kill Joey.<sup>78</sup> Several hours lapsed, but accused-appellant clung to his determination.<sup>79</sup>

We have consistently held that a threat to kill, unsupported by any other evidence which would disclose the true criminal state of the accused-appellant, will only be construed as a casual remark naturally emanating from a feeling of rancor and not a resolution of the character involved in evident premeditation.<sup>80</sup> An expression of a determination to commit a crime is distinct from premeditation.<sup>81</sup>

Apart from the threat to kill, the second element of evident premeditation must be established, *i.e.*, the accused-appellant performed acts manifestly indicating that he clung to his determination.<sup>82</sup> Thus, the prosecution must show that, in between the utterance of the threatening remark and the killing, the accused made plans or sought the deceased to accomplish the killing.<sup>83</sup> The threat must be followed by subsequent acts revealing a firm and decided purpose to carry out said threat,<sup>84</sup> such as persistently following and locating the victim,<sup>85</sup> securing various paraphernalia,<sup>86</sup> and preparing a getaway vehicle.<sup>87</sup>

Aside from accused-appellant's remark, the prosecution failed to

<sup>75</sup> *People v. Solar*, G.R. No. 225595, 06 August 2019 [Per J. Caguioa].

<sup>76</sup> *Supra*.

<sup>77</sup> CA *rollo*, p. 85; also translated as “Joey will not eat rice or food anymore.”

<sup>78</sup> *Rollo*, p. 12; CA *rollo*, p. 68.

<sup>79</sup> *Id.*

<sup>80</sup> *People v. Fuentesuela*, 73 Phil. 553 (1942) [Per J. Moran]; *Rabor v. People*, 393 Phil. 29 (2000) [Per J. Kapunan]; *People v. Guerrero, Jr.*, 438 Phil. 118 (2002) [Per J. Quisumbing]; *People v. Sarmiento*, 118 Phil. 266 (1963) [Per J. Barrera]; *People v. Carpio*, 269 Phil. 112 (1990) [Per J. Medialdea].

<sup>81</sup> *People v. Carillo*, 77 Phil. 572 (1946) [Per J. Tuason].

<sup>82</sup> *Rabor v. People*, 393 Phil. 29 (2000) [Per J. Kapunan].

<sup>83</sup> *People v. Sarmiento*, 118 Phil. 266 (1963) [Per J. Barrera].

<sup>84</sup> *People v. Sison*, 371 Phil. 713 (1999) [Per J. Puno].

<sup>85</sup> See *People v. Renegado*, 156 Phil. 260 (1974) [Per J. Muñoz Palma].

<sup>86</sup> *People v. Ong*, 159 Phil. 212 (1975) [Per J. Fernandez].

<sup>87</sup> *People v. Estrada*, 130 Phil. 108 (1968) [Per J. Angeles].

August 4, 2021

prove any other act showing that accused-appellant clung to his determination and carefully planned the killing. Both the RTC and the CA merely assumed that the period between the remark and the killing evinced accused-appellant's premeditation. However, evident premeditation cannot be presumed from mere lapse of time.<sup>88</sup> It must be established by clear and positive evidence showing the planning and preparation stages prior to the killing.<sup>89</sup> The prosecution failed to adduce any such evidence. Thus, We conclude that evident premeditation was not sufficiently proved by the prosecution.

*Treachery was not alleged in the Information; hence it cannot be appreciated against accused-appellant*

The CA erred in ruling that the crime was qualified by treachery. Aggravating circumstances, even if proven during trial, cannot affect accused-appellant's liability when the Information fails to allege such circumstances.<sup>90</sup> This is pursuant to Section 9, Rule 110 of the Revised Rules of Criminal Procedure, which requires the prosecution to allege qualifying and aggravating circumstances in ordinary and concise language.

When the Information fails to allege, even defectively, a qualifying or aggravating circumstance, the accused is deprived of the opportunity to challenge the sufficiency of the allegations in the Information. After all, he cannot assail what is not alleged. Thus, the rule remains that a qualifying or aggravating circumstance not alleged in the Information cannot be appreciated against the accused.

In any case, We find that the prosecution failed to sufficiently prove treachery. For treachery to be appreciated, the following must be shown: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution was deliberately or consciously adopted.<sup>91</sup>

While the prosecution claimed that Joey was unarmed and preoccupied cutting grass when he was stabbed by accused-appellant,<sup>92</sup> it failed to establish that accused-appellant deliberately or consciously adopted the means of attack to ensure the execution of the criminal purpose without risk to himself, without the slightest provocation on Joey's part.<sup>93</sup> The

<sup>88</sup> *People v. Sison*, 371 Phil. 713 (1999) [Per J. Puno].

<sup>89</sup> *People v. Ordona*, 818 Phil. 670 (2017) [Per J. Leonen], citing *People v. Borbon*, 469 Phil. 132, 145 (2004) [Per J. Callejo, Sr.].

<sup>90</sup> *People v. Tigle*, 465 Phil. 368 (2004) [Per J. Carpio]; *People v. Padal, Jr.*, G.R. No. 232070, 02 October 2019 [Per J. Lazaro-Javier]; *People v. Lapore*, 761 Phil. 196 (2015) [Per J. Perez]; *People v. Legaspi*, 409 Phil. 254 (2001) [Per J. Melo].

<sup>91</sup> *People v. Oloverio*, 756 Phil. 435 (2015) [Per J. Leonen].

<sup>92</sup> *Rollo*, p. 12; CA *rollo*, pp. 68, 91.

<sup>93</sup> *People v. Celeste*, 401 Phil. 463 (2000) [Per J. Quisumbing].

August 4, 2021

suddenness of an attack, in and of itself, cannot be the basis of a finding of treachery.<sup>94</sup> Moreover, the mere fact that Joey was unarmed is not sufficient to prove treachery.<sup>95</sup>

### *Penalties and monetary awards*

Since no qualifying circumstance may be appreciated against accused-appellant, he is only guilty of Homicide, as punished in Article 249 of the Revised Penal Code:

ARTICLE 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*.

Applying the Indeterminate Sentence Law,<sup>96</sup> and in the absence of any mitigating or aggravating circumstances, accused-appellant is sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.<sup>97</sup>

The monetary amounts awarded by the CA must be modified pursuant to *People v. Jugueta*.<sup>98</sup> Since the crime committed is Homicide under Article 249 of the Revised Penal Code, the civil indemnity and moral damages awarded by the CA shall be reduced from Php75,000.00 each to Php50,000.00 each. No exemplary damages shall be awarded because no aggravating circumstance was proven during trial. Similarly, because Norma testified that she did not incur any expenses for the interment of her brother,<sup>99</sup> no temperate damages shall be awarded. Temperate damages are only awarded when some pecuniary loss has been suffered but its amount cannot be proved with certainty.<sup>100</sup>

<sup>94</sup> *Supra* note 91.

<sup>95</sup> *Supra* note 91, citing *People v. Lobino*, 375 Phil. 1065 1999 [Per J. Purisima].

<sup>96</sup> Act No. 4013, as amended, Sec. 1:

Sec. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

<sup>97</sup> See *People v. Dela Cruz*, G.R. No. 227997, 16 October 2019 [Per J. Zalameda]; *Supra* note 53.

<sup>98</sup> 783 Phil. 806, 852 (2016).

<sup>99</sup> CA Rollo, p. 63; *Rollo*, p. 13.

<sup>100</sup> Article 2224 of the Civil Code of the Philippines,

August 4, 2021

**WHEREFORE**, the appeal is **PARTIALLY GRANTED**. The Decision dated 27 November 2019 of the Court of Appeals in CA-G.R. HC No. 02504 is **MODIFIED**. Accused-appellant Lobriquito Paragatos, Jr. y Borden is found **GUILTY** beyond reasonable doubt of the crime of Homicide under Article 249 of the Revised Penal Code. He is hereby **SENTENCED** to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

Accused-appellant is likewise **ORDERED** to pay the heirs of Joey Abaracoso Php50,000.00 as civil indemnity and Php50,000.00 as moral damages. All monetary awards shall earn legal interest at the legal rate of six percent (6%) *per annum*<sup>101</sup> from the date of finality of this Resolution until fully paid.

**SO ORDERED.”** (Lopez, J., additional member per Special Order No. 2834 dated July 15, 2021.)

By authority of the Court:

*Misael Domingo C. Battung III*  
MISAELO DOMINGO C. BATTUNG III  
*Division Clerk of Court*  
G.R.  
6/15/22

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The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 41, Gandara  
6706 Western Samar

The Superintendent  
LEYTE REGIONAL PRISON  
Barangay Mahagna, Abuyog  
6510 Leyte

Mr. Lobriquito Paragatos, Jr. y Borden  
c/o The Superintendent  
LEYTE REGIONAL PRISON  
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G.R. No. 251921

(134)  
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<sup>101</sup> *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta].