



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 29, 2022** which reads as follows:*

“G.R. No. 242403 (*People of the Philippines v. Rolan Calagos Lukban*) - This is an appeal filed by Rolan Calagos Lukban (accused-appellant) assailing the May 25, 2018 Decision¹ of the Court of Appeals (CA) in CA-G.R. CEB-HC No. 02468, which affirmed with modification the September 13, 2016 Decision² of the Regional Trial Court (RTC), Branch 28, Catbalogan City, Samar in Criminal Case No. 7815, finding accused-appellant guilty beyond reasonable doubt of Murder.

The Facts

Accused-appellant was charged with Murder in an Information that reads:

That on June 9, 2010, at about 8:15 in the evening, more or less, at Purok 5, Barangay Maulong, Catbalogan City, Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a long bladed weapon locally known as “binalhag”, with deliberate intent to kill, and with evident premeditation which qualifies the offense into murder, did, then and there, willfully, unlawfully and feloniously attack, assault and hack Segundino Calagos with the use of the said bladed weapon which the accused had conveniently provided himself for the purpose, thereby inflicting upon the victim multiple hacking wounds on his face and the different parts of his body which resulted to his death.

CONTRARY TO LAW.³

- over – ten (10) pages ...

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¹ *Rollo*, pp. 4-18. Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Edward B. Contreras and Louis P. Acosta, concurring.

² *CA Rollo*, pp.37-49. Penned by Judge Sibanah E. Usman.

³ *Id.* at 37.

A handwritten signature in the bottom right corner of the page.

When arraigned, accused-appellant pleaded not guilty to the charge. Trial ensued thereafter.

Version of the Prosecution

In his testimony, witness Antonio Gamas (Gamas) narrated that on June 9, 2010, at around 8:15 p.m., he was watching television with the victim, Segundino Calagos (Calagos), at accused-appellant's house when the latter's wife arrived bringing with her a newly bought pair of slippers for her husband. Accused-appellant tried the slippers on and became angry after finding that they were too big for him. Calagos intervened when the spouses got into an intense argument, which irked accused-appellant even more. Gamas further testified that since he was a *barangay tanod*, he ran to his house to get his baton. Upon his return, accused-appellant told him not to proceed and informed him that the victim was already dead. Gamas noticed that accused-appellant was holding a bloodied bladed weapon, which accused-appellant surrendered to him. Gamas checked the body of Calagos and saw the wound on the victim's cheek from the left ear to the neck. He was able to confirm that Calagos was already dead. Gamas went home to change to his uniform and when he returned, accused-appellant had already left the place.⁴

Dr. Senecia Q. Yong (Dr. Yong) testified that she conducted a post-mortem examination on the body of Calagos. Based on her autopsy, Calagos died because of massive loss of blood. Dr. Yong explained that the hacking wound "1" and hacking wound "2" were fatal wounds. The first wound produced by hacking made from the lobule of the right ear cutting across the base of the skull up to the lateral angle of the mouth. According to her, the assailant possibly inflicted the wound from behind the victim or at the side. The second wound was likewise fatal as it injured the external and internal carotid arteries, which connect to the brain and the ear.⁵

Version of the Defense

On the other hand, accused-appellant averred that, on the night of the incident, Calagos, who was armed with a *bente nueve* Rambo knife, stormed inside his house and tried to stab him three (3) times. When he asked Calagos why he would want to kill him, the latter replied that he does not want to see accused-appellant's face. Accused-appellant retaliated and was able to hit Calagos twice. When he hit Calagos in the

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⁴ Id. at 39-41.

⁵ Id. at 41-42.

left ear up to near the mouth, the latter fell down. Accused-appellant then took a bath and told his wife that they are going to leave because he was afraid that the relatives of Calagos would come after him. On cross-examination, accused-appellant admitted that he and his wife had a quarrel about the slippers that she bought because they were too big for him. While they were quarreling, Calagos went inside their house and tried to stab him with a fan knife. He then used a long bladed weapon and hacked Calagos on the face and neck.⁶

The RTC Decision

On September 13, 2016, the RTC rendered a Decision convicting accused-appellant of Murder. It found that accused-appellant failed to prove his claim of self-defense. Moreover, the RTC appreciated the circumstances of treachery, evident pre-meditation, and abuse of superior strength to qualify for the crime of Murder. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, this court finds accused ROLAN LUKBAN guilty beyond reasonable doubt of the crime of Murder and, thus, sentences him to suffer the penalty of *Reclusion Perpetua* to be served at the Abuyog Penal Colony, Abuyog, Leyte. The period of his preventive detention shall be credited in his favor. Furthermore, accused is hereby ordered to pay the heirs of Segundino Calagos in the amount of P80,000.00 as death indemnity; and P75,000.00 as moral damages. With cost de officio.

SO ORDERED.⁷

The CA Ruling:

On May 25, 2018, the CA promulgated the assailed Decision,⁸ the *fallo* of which reads:

WHEREFORE, the Appeal is **DENIED**. The Decision dated 13 September 2016 of the Regional Trial Court, Branch 28, Catbalogan City, Samar in Criminal Case No. 7815, finding accused-appellant **Rolan Calagos Lukban GUILTY** beyond reasonable doubt of the crime of **MURDER is AFFIRMED with MODIFICATION**. **Rolan Calagos Lukban is SENTENCED** to suffer the penalty of *Reclusion Perpetua* without eligibility for parole. **Rolan Calagos Lukban is further ORDERED** to pay the heirs of the victim the following:

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⁶ Id. at 43-45.

⁷ Id. at 49.

⁸ *Rollo*, pp. 4-18.

- 1) Fifty Thousand Pesos (P50,000.00) as civil indemnity;
- 2) Fifty Thousand Pesos (P50,000.00) as moral damages;
- 3) Twenty-Five Thousand Pesos (P25,000.00) as temperate damages; and
- 4) Six Percent Interest (6%) per annum on all damages from the finality of judgment until such damages shall have been fully paid.

SO ORDERED.⁹

The CA agreed with the RTC that accused-appellant was not able to establish the elements of self-defense in killing the victim. It held that there was no unlawful aggression on the part of the victim to justify accused-appellant's act in hacking him. Likewise, it found that the means employed by accused-appellant was not commensurate to the nature and extent of the attack to be averted. However, the CA held that the prosecution failed to prove the qualifying circumstances of treachery and evident premeditation. Nonetheless, it appreciated the qualifying circumstance of abuse of superior strength considering that accused-appellant used a long bladed weapon, while no weapon was found on the part the victim.

Hence, accused-appellant filed a Notice of Appeal.¹⁰

In our Resolution dated November 28, 2018, we required the parties to submit their respective supplemental briefs, if they so desire, within thirty (30) days from notice.¹¹ On March 8, 2019, the accused-appellant, through the Public Attorney's Office, filed his Manifestation¹² stating that he no longer intends to file a supplemental brief, and that he is adopting his Appellant's Brief as his supplemental brief. Meanwhile, on November 5, 2019, the Office of the Solicitor General filed a Manifestation and Motion,¹³ stating that it is also adopting its Brief for the Appellee previously filed with the CA in CA-G.R. CR-HC No. 02468.

Issue

The sole issue is whether accused-appellant's guilt was proven beyond reasonable doubt.

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⁹ Id. at 17-18.

¹⁰ Id. at 19-20.

¹¹ Id. at 25-26.

¹² Id. at 27-29.

¹³ Id. at 37-39.

Our Ruling

The appeal is without merit.

In his Appellant's Brief, accused-appellant argued that the trial court erred in finding him guilty despite having established all the elements of self-defense. He asserted that there was unlawful aggression on the part of the victim when the latter attacked him with a *bente nueve* Rambo knife, placing his life in imminent danger. He contended that he could not be faulted for using the *binalhag*, a long bladed weapon, instead of a weapon at par with a *bente nueve* Rambo knife, because that was the only means available to save his life. In addition, accused-appellant stressed that the argument between himself and his wife cannot be considered a sufficient provocation to the victim's act of aggression. Lastly, he insisted that the trial court erred in finding him guilty of murder in the absence of any of the qualifying circumstances.¹⁴

The question of whether appellant acted in self-defense is essentially one of fact. Having admitted the killing, he must prove by convincing evidence the various elements of his chosen defense. On appeal, this burden becomes even more difficult as he must show that the courts below committed reversible error in appreciating the evidence and the facts, for basic is the rule that factual findings of trial courts, when affirmed by the appellate court, are binding upon the Supreme Court, unless the same are not supported by the evidence on record.¹⁵

When the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect.¹⁶ The assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination. These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies.¹⁷ The factual findings of the RTC, therefore, are accorded the highest degree of respect especially if the CA adopted and confirmed

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¹⁴ Id. at 31-32.

¹⁵ *Gatan v. Vinarao*, 820 Phil. 257, 266 (2017).

¹⁶ *People v. Dayaday*, 803 Phil. 363, 370-371 (2017).

¹⁷ *People v. Macaspac*, 806 Phil. 285, 290 (2017).

these,¹⁸ unless some facts or circumstances of weight were overlooked, misapprehended or misinterpreted as to materially affect the disposition of the case.¹⁹

Moreover, the accused, claiming self-defense, must rely on the strength of his own evidence and not on the weakness of the prosecution. Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.²⁰ An accused who pleads any justifying circumstance in Article 11 of the Revised Penal Code admits to the commission of acts that show the commission of a crime. It thus becomes his burden to prove the justifying circumstance with clear and convincing evidence; otherwise, his conviction for the crime charged follows.²¹

For accused-appellant to exonerate himself on the ground of self-defense under Article 11, paragraph 1, of the Revised Penal Code, he must establish the following facts, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.²² The indispensable requisite for either of these justifying circumstances is that the victim must have mounted an unlawful aggression against the accused or the stranger. Without such unlawful aggression, the accused is not entitled to the justifying circumstance.²³

In this case, there was no clear, credible, and convincing evidence that the victim, Calagos, was the one who instigated the fight, and that accused-appellant was merely fending off the attack. Witness Gamas testified that Calagos went inside the house to pacify accused-appellant who was quarrelling with his wife. Moreover, the weapon allegedly used by Calagos was never presented in Court to prove his aggression. In addition, we note that the means employed by accused-appellant, the use of a *binahag*, a long bladed weapon, was unreasonable considering that no weapon was found on Calagos. Hence, the both the trial court and the appellate court correctly rejected accused-appellant's plea of self-defense.

Murder is defined and penalized under Article 248 of the Revised Penal Code (RPC), as amended, which provides:

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¹⁸ *People v. Delector*, 819 Phil. 310, 317-318 (2017).

¹⁹ *People v. Macaspac*, supra.

²⁰ *People v. Tica*, 817 Phil. 588, 594-595 (2017).

²¹ See *Velasquez, et al. v. People*, 807 Phil. 438, 449-450 (2017).

²² See *People v. Dulin*, 762 Phil. 24, 36 (2015).

²³ *People v. Fontanilla*, 680 Phil. 155, 160 (2012).

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 perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Thus, the elements of murder are: (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 RPC; and (4) that the killing is not parricide or infanticide.²⁴

The RTC found the presence of treachery, evident premeditation and taking advantage of superior strength to qualify the crime to murder. The Court, however, agrees with the CA that the circumstances of treachery and evident premeditation are absent in this case. The essence of treachery hinges on the aggressor's attack sans any warning, done in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.²⁵ In this case, there was no indication that Calagos did not have the opportunity to defend himself or to retaliate. As held by the CA, 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, as in this case, it can in no way be established from mere suppositions that the killing was perpetrated by treachery.²⁶

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²⁴ *Cirera v. People*, 739 Phil. 25, 38 (2014).

²⁵ *People v. Golem Sota*, 821 Phil. 887, 908-909 (2017).

²⁶ See *People v. Tubongbanua*, 532 Phil. 434, 449 (2006).

Treachery cannot be appreciated where there is nothing in the record to show that accused had pondered upon the mode or method to insure the killing of the deceased or remove or diminish any risk to himself that might arise from the defense that the deceased might make.²⁷ When there is no evidence that the accused had, prior to the moment of the killing, resolved to commit the crime, or there is no proof that the death of the victim was the result of meditation, calculation or reflection, treachery cannot be considered.²⁸

There is also no basis for the Court to appreciate the qualifying circumstance of evident premeditation. There is evident premeditation when the following elements concur: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.²⁹ The execution of the criminal act must be preceded by cool thought and reflection.³⁰ Thus, there must be proof showing when and how accused planned, and prepared for the crime. It is imperative to prove that a sufficient amount of time had indeed lapsed between the malefactor's determination and execution.³¹ Here, evident premeditation was not established. Considering the short period of time when Gamas went to his house to get his baton until he returned to accused-appellant's house, there appears to be no lapse of a sufficient length of time for accused-appellant to reflect upon his determination to commit the crime. The prosecution did not establish when and how accused-appellant planned and prepared to kill Calagos.

Furthermore, the Court finds that the qualifying circumstance of abuse of superior strength is not present in this case. Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. 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. The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.³²

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²⁷ *People v. Catbagan*, 467 Phil. 1044, 1082 (2004).

²⁸ *Tuburan v. People*, 479 Phil. 1009, 1018 (2004).

²⁹ *People v. Moreno*, 828 Phil. 293, 317 (2018).

³⁰ *People v. Isla*, 699 Phil. 256, 270 (2012).

³¹ *People v. Racal*, 817 Phil. 665, 682 (2017).

³² See *People v. Villamueva*, 807 Phil. 245, 253 (2017).

In this case, there was no indication that accused-appellant purposely used a greater force to his advantage in attacking the victim. It must be recalled that accused-appellant was in an intense argument with his wife when Calagos intervened. It was then that accused-appellant suddenly got the bladed weapon to attack Calagos. To our mind, in choosing a long bladed knife as his weapon, there was no conscious attempt on his part to use or take advantage of his superior strength. Likewise, even if the ages of accused-appellant, who was 24 years old, and the victim, who was 65 years old at the time of the commission of the crime were considered, still abuse of superior strength was not proven. It was not established that accused-appellant purposely took advantage of his physical superiority to commit the crime. Considering that the disparity in the ages of the victim and accused-appellant, and the latter's use of a long bladed weapon, could not be considered as aggravating circumstances of abuse of superior strength that would qualify the killing, the crime committed was only Homicide, not Murder.

Article 249 of the *RPC* punishes homicide with *reclusion temporal*. In the absence of any aggravating circumstances, the medium period of *reclusion temporal* – from 14 years, eight months and one day to 17 years and four months – is the proper imposable penalty. Pursuant to the *Indeterminate Sentence Law*, the minimum of the indeterminate sentence should be derived from *prision mayor* (i.e., from six years and one day to 12 years), the penalty next lower than *reclusion temporal*, while the maximum of the indeterminate sentence should be 14 years, eight months and one day. In short, the indeterminate sentence of the accused-appellant is 10 years of *prision mayor*, as the minimum, to 14 years, eight months, and one day of *reclusion temporal*, as the maximum.

In the case of *People v. Jugueta*,³³ the proper amounts of damages in the case of Homicide are: ₱50,000.00 for moral damages and ₱50,000.00 for civil indemnity. Also, temperate damages of ₱50,000.00 should further be granted to the heirs of Calagos considering that they were presumed to have spent for the interment of the deceased. It would be unjust to deny them recovery in the form of temperate damages just because they did not establish with certainty the actual expenditure for the interment of their late-lamented family members.³⁴ In addition, all the amounts allowed herein shall earn interest of six percent (6%) *per annum* reckoned from the finality of this Resolution until full settlement.

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³³ 783 Phil. 806 (2016).

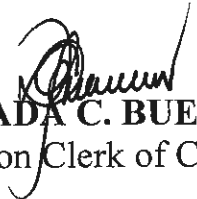
³⁴ See *People v. Isla*, supra note 30 at 271.

WHEREFORE, the Court **FINDS** and **DECLARES** accused--appellant Rolan Calagos Lukban **GUILTY** beyond reasonable doubt of Homicide, and accordingly, **SENTENCES** him to suffer the indeterminate sentence of ten (10) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum; and **ORDERS** him to pay the heirs of the late Segundino Calagos ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages, plus legal interest of six percent (6%) *per annum* from the finality of this Resolution until full settlement.

The accused-appellant shall further pay the costs of suit.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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