



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 7, 2022, which reads as follows:

“G.R. No. 257963 (*People of the Philippines v. Hever Macaraig* y Sinogba*). — This is an appeal¹ under Rule 124² of the Rules of Court challenging the July 23, 2020 Decision³ and the January 29, 2021 Resolution⁴ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 12308, affirming the June 27, 2018 Decision⁵ of the Regional Trial Court (RTC) of Manila, Branch 26, in Criminal Case No. 13-296675, which held accused-appellant Hever Macaraig y Sinogba (Macaraig) guilty for Murder. The CA also ruled that the accused-appellant is guilty of violating the Commission on Elections (COMELEC) gun ban in Criminal Case No. 13-296676.

Version of the Prosecution

Frederick Mejia, the *Barangay* Captain, averred that the CCTV⁶ camera installed in the area recorded the shooting incident, which occurred on April 23, 2013 at around 9:30 a.m. in Sta. Mesa, Manila.

Alexander Barcia was initially sitting on a fallen tree trunk (*putol na kahoy*) in front of his house⁷ then walked towards the middle of the street. Meanwhile, Macaraig went out of his house and shot Barcia at close range. The bullet entered the left side of Barcia’s front chest and exited on his back, slightly to the left of his spine. After Barcia fell on the ground, Macaraig

* Spelled as “Macaraeg” in some of the pleadings and documents.

¹ *Rollo*, pp. 3-6; *CA rollo*, p. 292.

² As amended by A.M. No. 00-5-03-SC.

³ *Rollo*, pp. 9-27. Penned by Acting Presiding Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Ramon A. Cruz and Perpetua Susana T. Atal-Paño.

⁴ *CA rollo*, pp. 285-286. Penned by Presiding Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Ramon A. Cruz and Perpetua Susana T. Atal-Paño.

⁵ *Rollo*, pp. 29-43. Penned by Presiding Judge Silvino T. Pampilo, Jr.

⁶ Closed circuit television.

⁷ *Rollo*, p. 12; TSN, March 5, 2014, pp. 8-14.

kicked him.⁸

Upon hearing the gunshot, Barcia's son, Aldrin, rushed outside and found his father sprawled on the ground. Aldrin also noticed that Macaraig, who was holding a gun, immediately went back inside his (Macaraig's) house. Aldrin tried to help his father stand up but was unable to do so. He then informed his mother about what happened and tried to find assistance. Subsequently, Barcia was brought to the hospital for medical treatment. Unfortunately, after six days, Barcia succumbed to death. The autopsy⁹ report indicated that the cause of Barcia's death¹⁰ was multi-organ failure resulting from the gunshot wound¹¹ on the trunk.¹²

Version of the Defense

Macaraig essentially denied the charge and insisted that he acted in self-defense. On April 23, 2013, at around 9:30 a.m., he heard someone shouting, "*Lumabas ka diyang, putang ina mo, tapusin na natin ito!*" When Macaraig peeked through his door, he saw Barcia with a gun tucked in his waist. This prompted Macaraig to also take out his gun from his house and asked Barcia the reason for the challenge. When Macaraig was approximately a meter away from Barcia, he saw the latter drawing his gun. Thus, Macaraig also pulled out his gun to defend himself but the weapon accidentally fired.¹³

Macaraig denied violating the COMELEC gun ban as the incident occurred in front of his house, and he surrendered his weapon to the authorities while inside his house.¹⁴

Macaraig stated that he and Barcia had known each other for a long time; that he is a retired soldier and had been in the military service for more than 23 years; and that he has a license and permit to carry¹⁵ the caliber .45 pistol which accidentally fired during the incident. However, he did not apply for exemption during the COMELEC gun ban.¹⁶ He conceded that Barcia did not pull out his gun. He also did not realize that Barcia got shot in the chest and did not bother to help the latter after he fell on the ground because the victim was still holding a gun. In the video surveillance shown to him, Macaraig identified himself as the one riding a bicycle. He claimed that he only went outside to confront Barcia for badmouthing him, however, the latter suddenly drew a gun.¹⁷

⁸ *Rollo*, p. 12; TSN, March 5, 2014, pp. 34-41, 51-52; September 17, 2014, p. 25.

⁹ Records, Vol. I, pp. 193-199; Autopsy Report; Autopsy conducted by Dr. Raquel B. Fortun.

¹⁰ Records, Vol. I, p. 6; Death Certificate of Alexander Samonte Barcia.

¹¹ *Rollo*, p. 12; TSN, April 30, 2014, pp. 9-13.

¹² *Rollo*, p. 30; TSN, March 4, 2014, pp. 10-11.

¹³ *Rollo*, p. 13; TSN, September 14, 2016, pp. 11, 27, 45, 47.

¹⁴ *Rollo*, p. 13; TSN, August 16, 2016, pp. 5-8.

¹⁵ Records, Vol. II, pp. 652-653, 656-657; TSN, September 14, 2016, p. 52.

¹⁶ TSN, September 14, 2016, p. 10.

¹⁷ *Rollo*, p. 14; TSN, September 14, 2016, pp. 49, 54-57.

Roselyn Asturias (Asturias) witnessed the incident while in front of the store of Rhea Macaraig. Barcia was sitting on a fallen tree trunk in front of his house while Macaraig was peeking through the front door. Barcia stood up and said, “*ano tapusin na natin ito,*” prompting Macaraig to go out of his house. Barcia, while trying to retrieve something from his jacket, approached Macaraig. Suddenly, she heard a gunshot, then Barcia fell down shouting, “*nakaupo lang ako binaril ako ni Mr. Macaraig.*” Barcia called out to his youngest child, Aldrin. Asturias approached Barcia and noticed that he was trying to hand something to Aldrin, who ran back inside their family’s house while hiding an object by his chest. When Aldrin returned, Asturias helped him pull Barcia up so he can lean on the tree trunk. Barcia continued to shout “*tulungan niyo ako, nakaupo lang ako sa kahoy binaril ako ni Macaraig.*” Asturias instructed Aldrin to call his mother while she (Asturias) sought the aid of their neighbors. They helped Barcia ride a tricycle which brought him to the hospital. Afterwards, the police arrived. However, Asturias did not give a statement out of fear. When the video footage was shown to her, Asturias identified herself as the one walking towards the scene of the crime.¹⁸

Demetria Macaraig (Demetria), a neighbor of Barcia and accused-appellant, was inside her store located in front of the houses of Barcia and Macaraig when she heard a gunshot. She saw Barcia lying down on the pavement asking for help. After Aldrin arrived, Barcia handed over something to him. She did not execute an affidavit pertaining to the incident because she was rattled at the time. She confirmed that Macaraig is the younger brother of her husband, Allen Macaraig, but that she is not aware of any previous quarrels between Barcia and accused-appellant.¹⁹

The Proceedings

In two separate Informations, Macaraig was charged with Murder²⁰ under Article 248 of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 7659,²¹ and with a violation of COMELEC Resolution No. 9561 in relation to Section 261 (q) of the Omnibus Election Code, and Sections 32 and 33 of RA 7166.²² The accusatory portions of the Informations read:

¹⁸ *Rollo*, pp. 14-15; TSN, March 16, 2016, pp. 9-16.

¹⁹ *Rollo*, p. 15; TSN, April 20, 2016, pp. 9-20; 21-23, 25, 30-31, 59.

²⁰ He was previously charged with Frustrated Murder in an Information dated April 24, 2013; records, Vol. I, pp. 10-11.

²¹ Entitled “AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES.” Approved: December 13, 1993.

²² Entitled “AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES.” Approved: November 26, 1991.

Criminal Case No. 13-296675 (Murder).²³

That on or about **April 23, 2013**, in the City of Manila, Philippines, the said accused, with intent to kill, evident premeditation and with treachery, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of **ALEXANDER BARCIA y SAMONTE represented by his wife, Aily Barcia**, by then and there suddenly shooting him with the use of a caliber .45 Armscor pistol, hitting him on the lower left part of his chest, thereby inflicting upon said **ALEXANDER BARCIA y SAMONTE** gunshot wound, which was the direct and immediate cause of his death thereafter.

Contrary to law.²⁴ (Emphases in the original)

Criminal Case No. 13-296676 (Violation of COMELEC Resolution No. 9561 in relation to Section 261 (q), Omnibus Election Code and Sections 32 & 33 of RA No. 7166)²⁵

That on or about **April 23, 2013**, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control **one (1) caliber .45 Armscor pistol with magazine and with Serial No. 880392 loaded with nine (9) live ammunitions, and one (1) empty shell**, by carrying the same along **Aciete St., North Nagtahan, Sta. Mesa, this City**, which is a public place and outside of his residence without first securing the written authority from the COMELEC, as provided for [by] the COMELEC Resolution No. 9561 in relation to Section 261 (q), Omnibus Election Code and Sections 32 & 33 of Republic Act [No.] 7166.

Contrary to law.²⁶ (Emphases in the original)

Upon motion of the prosecution, the two cases were consolidated.²⁷

During his arraignment, Macaraig entered a plea of “not guilty.”²⁸

During trial, the parties stipulated²⁹ that Macaraig has not applied for and was not granted an exemption from the ban on bearing, carrying, or transporting firearms or other deadly weapons during the election period in 2013.

The prosecution submitted the receipts³⁰ for the expenses incurred by Barcia’s family due to the shooting and death of the victim.

²³ Amended Information dated May 2, 2013.

²⁴ Records, Vol. I, pp. 4-5.

²⁵ Information dated April 24, 2013.

²⁶ Records, Vol. I, p. 12.

²⁷ *Rollo*, p. 11; records, Vol. I, p. 1.

²⁸ Records, Vol. I, p. 174. It is assumed that he pled not guilty to both crimes charged as the documents did not distinguish, and given that the cases were jointly tried. In addition, the accused-appellant did not protest if there is any defect or irregularity during his arraignment.

²⁹ Records, Vol. I, p. 260; TSN, April 30, 2014, p. 4.

³⁰ Records, Vol. I, pp. 364-417.

Ruling of the Regional Trial Court

In a Decision³¹ dated June 27, 2018, the RTC adjudged Macaraig guilty of Murder. Macaraig shot Barcia at close range, and even kicked the victim who was already sprawled on the ground.³² The trial court rejected Macaraig's claim of self-defense, as he is an ex-military person who should have exercised care in handling guns. Additionally, the video footage revealed that Barcia did not act violently which would impel Macaraig to fire his gun.³³

The RTC found that treachery attended the commission of the felony. Barcia had no means to defend himself and he did not manifest any threat on Macaraig's life as the victim was merely standing up before the shooting occurred.³⁴

Also, Barcia's acts cannot be considered as unlawful aggression since he was just sitting on the fallen tree trunk until he stood up and walked towards the middle of the road. There was no reasonable necessity of the means employed by Macaraig, since there was no weapon recovered from the crime scene which would prove the defense's allegation that Barcia drew his gun first.³⁵

The dispositive portion of the RTC's Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused **HEVER MACARAIG Y SINOGBA GUILTY** beyond reasonable doubt of the crime of **MURDER** qualified by treachery, and without any aggravating circumstance to offset the same, the Court hereby [sentences] him to suffer the penalty of Reclusion Perpetua, and to pay the heirs of deceased-victim Alexander Barcia y Samonte in the sum of Php 50,000.00 as civil indemnity, Php 50,000.00 as moral damages and Php 25,000.00 as exemplary damages; and to pay the cost of suit.

Considering that the accused is a detention prisoner, he is hereby credited with the full length of time that he has been under detention.

X X X X

SO ORDERED.³⁶

Macaraig appealed³⁷ to the CA arguing that there was no treachery because it was Barcia who initiated the fight. His act of shooting the victim cannot be considered as sudden since he was only defending himself. He had

³¹ *Rollo*, pp. 29-43.

³² *Id.* at 40.

³³ *Id.*

³⁴ *Id.* at 41.

³⁵ *Id.* at 41-42.

³⁶ *Id.* at 43.

³⁷ *CA rollo*, pp. 16-17.



no intent to kill since he only took out his gun when he saw Barcia in the act of drawing a gun.³⁸

He claimed that he acted in self-defense. When he saw Barcia draw his gun, he likewise drew his gun, and while his arm was on the upward swing, the gun accidentally fired. Also, there was lack of sufficient provocation on his part since Barcia was the one who shouted, "*Ano, tapusin na natin ito*" while standing outside Macaraig's house.³⁹

Meanwhile, the People, through the Office of the Solicitor General, asserted that Macaraig failed to establish that he acted in self-defense. Barcia's positioning in the middle of the road cannot be considered an attack since he did not steer near Macaraig's house although he could freely do so. The testimonies of Asturias and Demetria did not establish that Barcia possessed a gun or any other deadly weapon. Additionally, the video surveillance showed that Barcia did not act violently as to justify Macaraig's shooting. Hence, there was no unlawful aggression.⁴⁰

In addition, there was no reasonable necessity of the means employed by Macaraig to repel the alleged unlawful aggression, considering that the act of drawing a gun (assuming that Barcia did so) cannot be categorized as unlawful aggression. Although Macaraig claimed that he did not provoke Barcia, the fact remains that he shot the victim.⁴¹

The totality of evidence established with moral certainty that all elements of Murder qualified by treachery are present. In case the victim dies, intent to kill is presumed because of the deliberate act of the malefactor. Macaraig's claim of accident should not be considered, as his statements were self-serving, and considering his experience as an ex-military person. In any case, Macaraig's attack was sudden and unexpected, which rendered Barcia, who was not proved as armed with a gun, incapable of defending himself. Furthermore, the prosecution established that Barcia was merely standing in front of the house when Macaraig approached and shot him.⁴²

Ruling of the Court of Appeals

The CA, in its assailed July 23, 2020 Decision,⁴³ ruled that Macaraig failed to prove his claim of self-defense. The testimony of Asturias did not establish that Barcia possessed a weapon which would suggest unlawful aggression on the part of the victim. Additionally, there is no reasonable necessity of the means employed by Macaraig to repel the alleged

³⁸ Id. at 73-76.

³⁹ Id. at 80-84.

⁴⁰ Id. at 120-122.

⁴¹ Id. at 123-124.

⁴² Id. at 126-129.

⁴³ *Rollo*, pp. 9-27.

unlawful aggression.⁴⁴ It affirmed that treachery attended the killing, given that the attack was sudden and unexpected, leaving Barcia with no opportunity to mount a defense. Provocation on the part of Barcia was likewise not proven.⁴⁵

The appellate court did not find merit in Macaraig's claim that he had no intent to kill; and that the killing was due to the accidental firing of the gun considering that Macaraig was an ex-military soldier who is presumed to be an expert in handling firearms.⁴⁶ The severity of Barcia's gunshot wound demonstrated that there was intent to kill. Besides, instead of helping Barcia after he was shot, Macaraig kicked and left the victim in the middle of the street.⁴⁷

Relevantly, the CA noted that Macaraig was charged before the RTC with Murder and violation of the COMELEC gun ban. Yet, the RTC only discussed and ruled on the Murder case. The records did not state that the charge of violation of the COMELEC gun ban has been dismissed. In fact, the prosecution presented proof showing that Macaraig did not apply and was not granted exemption from the gun ban, given that it was election period at the time.⁴⁸ The appellate court held that an appeal in a criminal case opens the whole case for review, and it becomes the duty of the appellate court to correct errors as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not by the parties.⁴⁹

The CA ruled that Section 261 (q) of the Omnibus Election Code, as well as Sections 32 and 33 of RA 7166, prohibits any person, whether a member of the Philippine National Police or the Armed Forces of the Philippines, from bearing, carrying, or transporting firearms and other deadly weapons outside one's residence during the election period unless authorized by the COMELEC in writing.⁵⁰ Without the requisite exemption from COMELEC, Macaraig is guilty of violating the gun ban. Worse, he brought his gun outside of his house and used it to shoot the victim.⁵¹

The *fallo* of the CA Decision reads:

WHEREFORE, premises considered, the appeal is **DENIED** and the appealed Decision dated June 27, 2018 of the RTC, Branch 26, Manila in Criminal Cases Nos. 13-296675-76 is hereby **AFFIRMED with MODIFICATION** that in addition to accused-appellant Macaraig's conviction for murder in Criminal Case No. 13-296675, in Criminal Case No. 13-296676,

⁴⁴ Id. at 16-19.

⁴⁵ Id. at 19-20.

⁴⁶ Id. at 20-21.

⁴⁷ Id. at 21-22.

⁴⁸ Id. at 22.

⁴⁹ Id.

⁵⁰ Id. at 24.

⁵¹ Id. at 25.

accused-appellant Macaraig is found **GUILTY** beyond reasonable doubt and is hereby sentenced to suffer the penalty of imprisonment for a period of one (1) year as minimum to two (2) years as maximum without the benefit of **PROBATION**. In addition, he shall be **DISQUALIFIED** to hold any public office and **DEPRIVED** of his right of suffrage.

The rest of the decision stands.

SO ORDERED.⁵²

Macaraig asked for a reconsideration⁵³ which the CA denied in a Resolution⁵⁴ dated January 29, 2021.

Dissatisfied, Macaraig appealed⁵⁵ before the Court.

Issue

The issue is whether Macaraig is guilty beyond reasonable doubt of Murder and violation of the COMELEC gun ban.

Our Ruling

The appeal has no merit.

“It must be stressed that an appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors, whether they are assigned or unassigned, in the appealed judgment.⁵⁶ Generally, findings of fact by the lower court are accorded great respect and even finality when affirmed by the CA.”⁵⁷ In the case at bench, both the RTC and the CA held that based on the facts, relevant laws, and jurisprudence, Macaraig committed Murder as charged.

Murder Charge

Jurisprudence consistently discussed the concept of self-defense in this wise:

[S]elf-defense is an affirmative allegation and offers exculpation from liability for crimes only if satisfactorily proved. It requires (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed by the

⁵² Id. at 26.

⁵³ CA rollo, pp. 231-249.

⁵⁴ Id. at 285-286.

⁵⁵ Rollo, pp. 3-6; CA rollo, p. 292.

⁵⁶ *People v. Mariano*, supra, citing *People v. Dahil*, 750 Phil. 212, 225 (2015), which cited *People v. Balagat*, 604 Phil. 529, 534 (2009).

⁵⁷ *People v. Mariano*, G.R. No. 247522, February 28, 2022, citing *People v. De Guzman*, 630 Phil. 637, 644 (2010), which cited *Valdez v. People*, 563 Phil. 934, 945 (2007).

accused to repel it; and (c) lack of sufficient provocation on his part.⁵⁸ By invoking self-defense, the burden is placed on the accused to prove its elements clearly and convincingly. While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded.⁵⁹

To elucidate on the concept of unlawful aggression, *Cambe v. People*⁶⁰ is instructive:

*People v. Nugas*⁶¹ explains that the unlawful aggression must be actual and material. It pertains to an offensive act of using physical force or weapon which positively determines the intent of the aggressor to cause the injury, thus:⁶²

Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. **The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat.** Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. **Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw**

⁵⁸ *People v. Pereira*, G.R. No. 220749, January 20, 2021, citing REVISED PENAL CODE, Art. 11. Justifying circumstances. – The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

x x x x

⁵⁹ *People v. Pereira*, supra, citing *People v. Gutierrez*, 625 Phil. 471, 481 (2010).

⁶⁰ *Cambe v. People*, G.R. Nos. 254269 & 254346, October 13, 2021.

⁶¹ *Id.*, citing *People v. Nugas*, 677 Phil. 168, 177-178 (2011).

⁶² *Id.*, citing *People v. Nugas*, 677 Phil. 168, 177-178 (2011); *Ganal v. People*, G.R. No. 248130, December 2, 2020.

a pot.⁶³ (Emphases supplied)

There was no imminent danger to Macaraig's life as the video footage did not show that Barcia tried to physically harm him. Barcia did not mount any physical, actual, or imminent unlawful attack against Macaraig. This is notwithstanding Macaraig's insistence that Barcia possessed a gun purportedly tucked inside his jacket. Notably, Macaraig's statements regarding the location of Barcia's alleged weapon were inconsistent. Macaraig initially claimed that Barcia drew his gun, but later on stated that the gun was kept hidden inside the victim's jacket.⁶⁴ In fine, the defense never established that the victim was in possession of a gun or that Barcia was the unlawful aggressor.

If at all, the perceived "aggression" that Barcia exhibited was verbal when he said, "*tapusin na natin ito*," which can hardly be considered as unlawful physical aggression as defined by law. Further, assuming that Barcia indeed possessed a gun, Macaraig's act of immediately drawing his gun (whether it accidentally fired or not), was not justified.

Even conceding the fact that Barcia verbally harassed Macaraig, still, there was no reasonable necessity of the means employed by Macaraig to prevent or repel the claimed aggression. Macaraig's act of drawing his loaded gun was not proportionate to the alleged verbal "aggression" on the part of Barcia.

Macaraig even kicked Barcia after the shooting. He did not help the victim after realizing what had happened. This finding further discredits Macaraig's argument that what transpired was an accidental firing or an act of self-defense.

Relevantly, according to the Spot Report⁶⁵ of the police officers, after the victim was rushed to the hospital, Macaraig casually sat down in a nearby store, as if waiting for the arrival of the authorities. Senior Police Officer 1 Jonathan Rojas who responded to the shooting, testified that Macaraig admitted that he shot Barcia because he was "already fed up" with the victim.⁶⁶

Hence, judging between Macaraig's self-serving declarations and the video footage and assertions of the prosecution witnesses, the Court is inclined to sustain the prosecution's claims. Lest it be forgotten, Barcia did not immediately perish. He was able to give a short statement while he was still in the hospital. In his Affidavit,⁶⁷ Barcia expressly stated that Macaraig suddenly

⁶³ Id.

⁶⁴ *Rollo*, p. 14; TSN, September 14, 2016, pp. 49, 54-57.

⁶⁵ Records, Vol. I, p. 17.

⁶⁶ TSN, June 10, 2014, pp. 16-18, 24.

⁶⁷ Records, Vol. I, pp. 18-19; handwritten affidavit taken while Barcia was in the Emergency Room of De

shot him even when he was not doing anything to the accused-appellant. Apart from this, the severity and the location of the gunshot wound do not fully support Macaraig's claim that the gun accidentally fired.⁶⁸ As aptly noted by the trial court and the appellate court, Macaraig was a former military personnel. Thus, there is an expectation that he knows how to properly handle a firearm.

Notably, the RTC and the CA uniformly found that the prosecution's version of the story prevails over that of the defense. The Court sees no reason to depart from these findings absent a compelling reason to do so. To stress, "when the issue involves the credibility of witnesses, the findings of the trial court carry great weight and respect because of its unique opportunity to observe the witnesses when they are placed on the stand to testify."⁶⁹ As such, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance [that] would affect the result of the case."⁷⁰

The lower court's assessment of the credibility of the testimonies of the prosecution witnesses should perforce be respected. Curiously, the defense witnesses insisted that Barcia hid something in his jacket, and that he handed over that "something" to Aldrin after he got shot. However, they admitted that they were not certain of what that "something" was, as they did not specifically see Aldrin carry a gun back into the house.⁷¹ Aldrin denied going back inside their house because Barcia gave him something,⁷² or that Asturias assisted him in giving succor to his father.⁷³ In any case, no gun supposedly belonging to the victim was recovered from his person⁷⁴ or from the scene. Macaraig's argument that Barcia initiated the aggression undeniably crumbles due to this uncertainty.

Since self-defense was not proven, the Court must ascertain if, as charged by the prosecution, Macaraig murdered Barcia. In light of this, Article 248 of the RPC describes the felony of Murder as follows:

Article 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 of persons

Ocampo Hospital on April 23, 2013.

⁶⁸ See *Oliveros, Jr. v. People*, G.R. No. 242552, March 3, 2021.

⁶⁹ *People v. Zapata*, G.R. No. 241952, March 17, 2021, citing *People v. Gerola*, 813 Phil. 1055, 1063 (2017), which cited *People v. Gahi*, 727 Phil. 642, 658 (2014).

⁷⁰ *Id.*

⁷¹ TSN, March 16, 2016, pp. 19-20.

⁷² TSN, April 30, 2014, p. 17; March 21, 2017, pp. 7-8, 11.

⁷³ TSN, March 21, 2017, p. 8.

⁷⁴ TSN, March 5, 2014, pp. 46-47.

to insure or afford impunity.

To successfully prosecute an accused for Murder, the following elements must be proven: “(1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) the killing is not parricide or infanticide.”⁷⁵

The first requisite undoubtedly exists in view of the demise of Barcia. The death of the victim cannot be categorized as either parricide or infanticide since there is no filial relationship between Macaraig and Barcia, satisfying the fourth requisite. With regard to the second requisite, as earlier discussed, Macaraig caused the death of Barcia, and he admitted to it although he claimed self-defense and accident to support his cause.

As to the third requisite, further assessment is needed before affirming that treachery, as alleged in the Information, attended the killing which qualifies it to Murder. The elements of treachery are the following: “(1) the means of execution employed gives the person no opportunity to defend himself[./herself] or retaliate; and (2) the means of execution were deliberately or consciously adopted.”⁷⁶

To explain, “[t]reachery exists when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself[./herself] arising from the defense which the offended party might make x x x.”⁷⁷ The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, denying the latter any chance to protect himself[./herself], and thereby ensuring its commission without posing any risk to the aggressor.”⁷⁸ In the case at bench, while the defense averred that the victim verbally provoked Macaraig (thus indirectly stating that the victim should have expected the attack), the prosecution insisted otherwise.

The case of *People v. Alegre (Alegre)*⁷⁹ instructs:

It has been repeatedly held that ‘chance encounters, impulse killing or crimes committed at the spur of the moment or **that were preceded by heated altercations are generally not attended by treachery for lack of opportunity of the accused to deliberately employ a treacherous mode of attack.**’⁸⁰ Stated otherwise, there can be no treachery when the attack is preceded by a heated exchange of words between the accused and the victim, or when the

⁷⁵ *People v. Macalindong*, G.R. No. 248202, October 13, 2021 citing *People v. Maron*, G.R. No. 232339, November 20, 2019.

⁷⁶ *Peñaranda v. People*, G.R. No. 214426, December 2, 2021, citing *People v. Peralta*, 403 Phil. 72, 87-88 (2001).

⁷⁷ *People v. Alegre*, G.R. No. 254381, February 14, 2022, citing REVISED PENAL CODE, Art. 14, par. 16.

⁷⁸ *Id.*, citing *People v. Guro*, G.R. No. 230619, April 10, 2019.

⁷⁹ *Id.*

⁸⁰ *Id.*, citing *People v. Menil*, G.R. No. 233205, June 26, 2019.

victim is aware of the hostility of the assailant towards the former.⁸¹

Here, Alegre had a heated altercation with Pascua before he finally lost his patience and shot him. When Pascua slumped to the ground after getting shot in the neck, Alegre moved closer and proceeded to shoot him in the head. Upon realizing what he had just done, he ran and attempted to escape, but was eventually caught by Tagle.

Based on the attendant facts, Alegre's acts were more of a result of a sudden impulse or a spur of the moment decision due to his previous heated altercation with the victim, rather than a planned and deliberate action. There is no showing that he consciously employed a particular mode of attack in order to facilitate the killing without any risk to himself. It appears that Alegre shot Pascua because he got fed up and was carried away by the anger arising from his confrontation with the deceased. Further, it bears noting that Alegre shot Pascua in their workplace and in the presence of Tagle and Magpusao. If Alegre deliberately intended that no risk would come to him, he could have chosen another time and place to attack Pascua to ensure success in committing the crime. The records are also bereft of any indication that Alegre went to Century Glass Center knowing that Pascua would actually be there. Moreover, it is clear that Pascua was aware of Alegre's hostility against him and that there was a possibility of an impending attack.

Given the circumstances, the Court finds that treachery was wanting in this case. In the absence thereof, Alegre can only be convicted of Homicide, not Murder.⁸²

Alegre cannot squarely apply in this case given the factual circumstances and considering what the RTC found, *viz.*:

From the evidence at hand and as seen on the CCTV footage, it is evident from the duration of time that deceased victim Barcia begun sitting [on] a broken piece of tree/wood at 9:39:42 and has remained seated until 9:40:15 mark which is 33 seconds in total. Barcia stood up at 9:40:16 mark and made a few steps, reached the middle of the road at 9:40:19 mark and remained x x x standing there until 9:40:25 which is 10 seconds. Accused went out of his house and [faced] the victim in 9:40:27 mark and fired his gun in 9:40:30 which is only 3 seconds. Accused remained standing and evidently kicked the victim until the 9:40:34 mark, hence, it took him 8 seconds in total time from the moment he approached and faced the victim. Accused fired his gun immediately at a close range after facing Barcia. Further, it is not the first time that the accused and the deceased victim had disagreements or altercations and that has been shown in the records of the Barangay that has been presented in court. The act of drawing and firing a gun by the accused appears to have been done with intent to kill, treachery, and evident premeditation, considering that the victim was unarmed and completely had no opportunity to defend himself from the attack as he was facing the accused at a very close distance x x x.⁸³

As earlier stated, the defense witnesses insisted that Barcia verbally assaulted Macaraig. Conversely, Aldrin, Barcia's son, stated that he did not

⁸¹ Id.

⁸² Id.

⁸³ *Rollo*, pp. 39-40.

hear any heated exchange before the shooting occurred. However, based on the video footage as described by the RTC, Barcia was initially sitting on the piece of wood and then he walked towards the middle of the road. The question now is whether a heated exchange ensued since the time stamps (in the footage) suggest that after Barcia purportedly challenged Macaraig, the latter went out of his house then simply shot Barcia at close range. This finding weakens the defense's argument that a heated argument preceded the shooting.

Regardless, it was not an established fact that Barcia verbally harassed Macaraig, especially when Aldrin denied hearing anything of the sort. It should be considered that Aldrin is Barcia's son, and "[his] close relationship with the victim makes [his] testimony more credible for it would be unnatural for [him] who [is] interested in vindicating the crime to charge and prosecute just some fall guy other than the real culprit."⁸⁴

Conversely, the defense witnesses maintained that Barcia verbally challenged Macaraig. However, the testimonies of the defense witnesses should be taken with a grain of salt. The RTC found that one of them (Demetria) was related to Macaraig so there is a likelihood that she could have told a version of the story aiding Macaraig's defense. As an added thought, "jurisprudence has held that courts give less probative weight to a defense of alibi when it is corroborated by friends and relatives. One can easily fabricate an alibi and ask friends and relatives to corroborate it. When a defense witness is a relative of an accused whose defense is alibi, courts have more reason to view such testimony with skepticism."⁸⁵ The same logic can be applied in this case, in that the defense witnesses supported Macaraig's claim of self-defense. Furthermore, Asturias' testimony should be considered with caution, as she readily admitted that she did not see what Barcia purportedly turned over to Aldrin after the shooting occurred.

Even granting that Barcia verbally dared the accused-appellant, the victim could not have expected that he would be immediately shot by Macaraig without any warning. This is considering that their past encounters, although one or two allegedly amounted to physical harm, did not involve fatally wounding each other. In the case at bar, Barcia could not have been forewarned of what lay ahead, especially when there was no prior encounter earlier that same day. Even if Barcia verbally challenged Macaraig, the former must not have expected that it would result in the latter fatally shooting him since it has not happened in the past. Barcia must have believed that even if they would engage in a verbal fight, it would not progress to a casualty. Thus, a "prior verbal altercation" would not always result in the downgrading of the

⁸⁴ *People v. Corpuz y Daguio*, G.R. No. 220486, June 26, 2019 citing *People v. Dayaday*, 803 Phil. 363, 371-372 (2017).

⁸⁵ *People v. Bancud*, G.R. No. 249853, September 14, 2021, citing *People v. Sumalinog, Jr.*, 466 Phil. 637, 651 (2004).

felony from murder to homicide.⁸⁶ The timing of the “prior verbal altercation” is thus significant. The matter would have been different if the circumstances established that Barcia and Macaraig indeed engaged in a verbal tussle, or even a physical fight, earlier that same day. In fine, assessment should be made on a case-to-case basis as the factual milieu in one case cannot squarely apply to similar cases at all times.

In like manner, even assuming that Barcia was armed with a gun, he did not have the time to position his firearm since Macaraig’s attack was so sudden. The victim had no inkling about the impending danger in order to at least mount a defense.⁸⁷ In fact, Macaraig shot Barcia at close range. To reiterate, it was not established that Barcia also possessed a weapon that day. These observations negate the defense’s arguments of self-defense and the absence of the qualifying circumstance of treachery.

Moreover, the shooting could not have been a spur-of-the-moment act by Macaraig, as he knowingly armed himself with a gun when he dedicated time and effort to retrieve the weapon from his cabinet and bring it with him as he was exiting his house. This is notwithstanding his claim that he decided to do so because Barcia was allegedly armed with a gun as well. It can be said that Macaraig acted “with logic, cunning, deliberateness, or strategy,”⁸⁸ as he consciously adopted the means of attack, *i.e.*, using a gun, to inflict harm upon the victim without much risk to himself. Pertinently, too, jurisprudence provides that intent to kill is presumed if the victim dies as a result of the deliberate act of the offender.⁸⁹

Apart from this, the place of the incident was not crowded. Aldrin denied that Barcia shouted at Macaraig, or that there were any bystanders at the time.⁹⁰ Withal, Barcia could not have sought immediate aid from other people to ward off any attack. He had to shout for help after he got shot.⁹¹

Therefore, as discussed, the presence of treachery qualified the killing to Murder. Consequently, Macaraig’s conviction for Murder should be upheld as the elements of the felony have been proven beyond reasonable doubt.⁹²

As for evident premeditation, although the Information alleged that such circumstance attended the commission of the crime, the prosecution failed to prove the same. To prove evident premeditation, the following must be present: “(1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused has clung to his determination; (3) a lapse of time between the decision to commit the crime

⁸⁶ See *People v. Archivido y Abengoza*, G.R. No. 233085, September 21, 2020.

⁸⁷ See *People v. Pulgo*, 813 Phil. 205, 217 (2017).

⁸⁸ See *People v. Macalindong*, G.R. No. 248202, October 13, 2021.

⁸⁹ *Oliveros, Jr. v. People*, G.R. No. 242552, March 3, 2021.

⁹⁰ TSN, March 21, 2017, pp. 9-10.

⁹¹ See *People v. Aguila*, G.R. No. 238455, December 9, 2020.

⁹² RULES OF COURT, Rule 133, Sec. 2.

and its actual execution enough to allow the accused to reflect upon the consequences of his acts.”⁹³ Here, in addition to the prosecution’s deficient assertions during the course of the trial, the recognized facts and evidence did not show that Macaraig previously or meticulously planned to kill Barcia and clung to his determination to do so. Hence, evident premeditation cannot be appreciated as an additional aggravating circumstance, although Macaraig’s prior encounters with Barcia could have contributed to the former’s ire and resolve to hurt the latter in some way.

Regarding the penalty for Murder, there being no other aggravating circumstance as alleged in the Information and subsequently proven during trial, the imposition of the lower penalty of *reclusion perpetua* is proper pursuant to Article 63 of the RPC.⁹⁴ Additionally, in view of Administrative Matter No. 15-08-02-SC, the phrase “*without eligibility for parole*” need not be specified in the dispositive portion of the judgment.⁹⁵

Also, in view of *People v. Jugueta*,⁹⁶ when the penalty consists of indivisible penalties (*i.e.*, for murder) and the penalty imposed is *reclusion perpetua*, the awards for civil indemnity, moral damages, and exemplary damages should be fixed at ₱75,000.00 each. Hence, the awards for civil indemnity, moral damages, and exemplary damages should all be increased to ₱75,000.00 each. In addition, the amount of ₱210,846.75⁹⁷ as actual damages should be awarded to the heirs of the victim given that the expenses resulting from Barcia’s death were substantiated by receipts. Also, all the monetary awards should be subject to the legal interest of six percent (6%) per *annum* from the finality of the judgment until fully paid.⁹⁸

COMELEC Gun Ban Violation

As mentioned, an appeal opens the whole case for review, and this includes the evaluation of Macaraig’s liability for the charge of violating the COMELEC gun ban. According to jurisprudence:

In violations of the Gun Ban, the accused must be ‘in possession of a firearm ...outside of his residence within the period of the election gun ban imposed by the COMELEC sans authority[.]’⁹⁹

⁹³ *People v. Toro y Diano*, G.R. No. 245922, January 25, 2021 citing *People v. Sebastian*, 428 Phil. 622 (2002).

⁹⁴ *People v. Pigar*, G.R. No. 247658, February 17, 2020, citing REVISED PENAL CODE, Art. 63.

⁹⁵ *Id.*, citing Guidelines for the Proper Use of the Phrase “without eligibility for parole” in Indivisible Penalties, August 4, 2015; See also *People v. Ursua*, 819 Phil. 467, 476 (2017).

⁹⁶ *People v. Jugueta*, 783 Phil. 806, 847-848 (2016).

⁹⁷ Records, Vol. I, pp. 364-417; TSN, November 5, 2014, p. 40; December 10, 2014, pp. 8-11.

⁹⁸ *Nissan Gallery-Ortigas v. Felipe*, 720 Phil. 828, 840 (2013) citing *Nacar v. Gallery Frames and/or Felipe Barley, Jr.*, 716 Phil. 267, 281-283 (2013) which cited BSP-MB Circular No. 799 dated May 16, 2013.

⁹⁹ *Dela Cruz v. People*, 776 Phil. 653, 691 (2016), citing *Escalante v. People*, G.R. No. 192727, January 9, 2013, 701 Phil. 332 (2013).

In *Abenes v. Court of Appeals*,¹⁰⁰ this court enumerated the elements for a violation of the Gun Ban: “1) the person is bearing, carrying, or transporting firearms or other deadly weapons; 2) such possession occurs during the election period; and, 3) the weapon is carried in a public place.”¹⁰¹ This court also ruled that under the Omnibus Election Code, the burden to show that he or she has a written authority to possess a firearm is on the accused.¹⁰²

In this case, the prosecution established that Macaraig possessed and fired a gun outside his residence without the requisite valid authority during the period designated by the COMELEC.

Macaraig’s name was not included in the Certificate of Authority¹⁰³ (to carry firearms during the election period) and based on a Certification¹⁰⁴ dated March 28, 2014 from the Committee on the Ban on Firearms and Security Personnel (under the COMELEC), Macaraig has not applied for and was not granted an exemption from the gun ban. Additionally, the parties already stipulated that Macaraig did not have the authority to carry his firearm outside of his residence. Thence, Macaraig should answer for this crime as well.

With regard to the penalty for this offense, Section 264 of the Omnibus Election Code provides:

SECTION 264. Penalties. — Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage x x x.

In this respect, the CA’s imposition of the penalty of imprisonment for a period of one year as minimum to two years as maximum, should be modified to an indeterminate penalty of imprisonment from one year and six months as minimum to two years as maximum in accordance with relevant laws and jurisprudence.¹⁰⁵

Yet, even with the imposition of the proper penalty for violating the COMELEC gun ban, the records revealed that Macaraig has already served the prison sentence. Nonetheless, the Court should still impose the appropriate penalty, since it necessarily includes his disqualification for probation and the accessory penalty of disqualification to hold public office, as well as the deprivation of the right of suffrage pursuant to the aforementioned provision of the Omnibus Election Code.

¹⁰⁰ *Dela Cruz v. People*, supra, citing *Abenes v. Court of Appeals*, 544 Phil. 614 (2007).

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Records, Vol. I, p. 242.

¹⁰⁴ Id. at 246.

¹⁰⁵ *Manibog v. People*, G.R. No. 211214, March 20, 2019; See also *Castillo v. People*, G.R. No. 241802 (Notice), November 5, 2018 and *Galang v. People*, G.R. No. 247337 (Notice), September 2, 2019.

WHEREFORE, the instant appeal is hereby **DISMISSED**. The July 23, 2020 Decision and the January 29, 2021 Resolution of the Court of Appeals in CA-G.R. CR-HC No. 12308 are hereby **AFFIRMED with MODIFICATIONS**.

For committing the felony of Murder beyond reasonable doubt, the penalty of *reclusion perpetua* is imposed upon accused-appellant Hever Macaraig y Sinogba. However, the monetary awards in favor of the heirs of the victim are modified in that the amounts of civil indemnity, moral damages, and exemplary damages are all increased to ₱75,000.00 each. In addition, accused-appellant Hever Macaraig y Sinogba is ordered to pay the heirs of the victim the amount of ₱210,846.75 as actual damages. The total amount of all the monetary awards shall earn legal interest at the rate of six percent (6%) per *annum* from the date of the finality of this Resolution until fully paid.

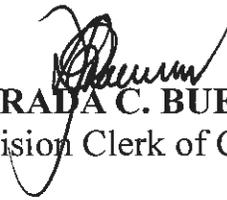
Furthermore, for a Violation of COMELEC Resolution No. 9561 in relation to Section 261 (q), Omnibus Election Code and Sections 32 and 33 of Republic Act No. 7166, the penalty of accused-appellant Hever Macaraig y Sinogba is modified to an indeterminate penalty of imprisonment from one year and six months, as minimum, to two years as maximum, and is **DISQUALIFIED** from applying for probation. He is further **DISQUALIFIED** from holding public office and **DEPRIVED** of the right to suffrage. The subject firearm is **CONFISCATED** and **FORFEITED** in favor of the government.

The Office of the Solicitor General's manifestation and motion, pursuant to the Resolution dated February 23, 2022; the accused-appellant supplemental appellant's brief, pursuant to the Resolution dated February 23, 2022; the letter dated April 8, 2022 of CSO4 Cesar T. Grecia, Chief Administrator, Inmate Documents and Processing Division, Bureau of Corrections, Muntinlupa City, in compliance with the Resolution dated February 23, 2022; and the letter dated April 21, 2022 of CSO4 Cesar T. Grecia, Chief Administrator, Inmate Documents and Processing Division, Bureau of Corrections, Muntinlupa City, in compliance with the Resolution dated February 23, 2022, are all **NOTED**;

The letter dated December 2, 2021 of Mrs. Aily C. Barcia, widow of deceased Alexander S. Barcia, victim of murder in Crim. Case No. 13-296675-76, addressed to the Judicial Records Office, this Court, is **NOTED**, and her request for certified copies of the Orders dated July 13, 2018 (741-742), July 20, 2018 (752-754), October 19, 2018 (759-760), October 19, 2018 (762-764), and Notice of Order (761), as seen in the table of contents in the rollo of CA-G.R. CR HC No. 12308, is **GRANTED**; and Mrs. Aily C. Barcia or her duly authorized representative is directed to **COORDINATE** with the Judicial Records Office, this Court, and **PAY** the necessary fees therefor.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court _{9/7/22}

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

122-I
SEP 27 2022

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(CA-G.R. CR-HC No. 12308)

The Hon. Presiding Judge
Regional Trial Court, Branch 26
1000 Manila
(Crim. Case Nos. 13-296675 to 76)

Public Information Office (x)
Library Services (x)
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No. 12-7-1-SC)

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