Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **March 28, 2022**, *which reads as follows:*

"G.R. No. 243505 (*George Lumondaya a.k.a. "Langlang" v. People of the Philippines*). – This Court resolves a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated January 23, 2018 and Resolution[3] dated October 17, 2018 of the Court of Appeals (*CA*) in CA-G.R. CR No. 01087-MIN affirming the Judgment[4] dated March 5, 2013 of the Regional Trial Court, Branch 9, Dipolog City (*RTC*) convicting George Lumondaya (*George*) for the crime of homicide but modifying the Judgment as to the award of damages.

Antecedents

George, together with Samuel Lumondaya, Jr. a.k.a. *"Junjun"* (*Samuel*) and Frederick Tomogsok a.k.a. *"Nonoy,"* (*Frederick*) were charged with the crime of murder for the death of Evelio C. Balwit (*Evelio*) in an Information[5] dated June 28, 2006, the accusatory portion of which reads:

> That on April 3, 2006 at about 9:00 o'clock in the evening at Banbanan, Dapitan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent to kill a person and without justifiable cause or reason thereof, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab with the use of a knife one EVELIO C. BALWIT hitting the different parts of his body resulting to his death.
>
> That as a result of the criminal act of the accused, the heirs of the deceased suffered the following damages, to wit:

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1 *Rollo*, pp. 18-46.

2 Penned by Associate Justice Perpetua T. Atal-Paño, with Associate Justices Edgardo A. Camello and Walter S. Ong, concurring; *id.* at 48-66.

3 *Id.* at 68-70.

4 Records, pp. 132-146.

5 *Id.* at 1-2.

Loss of earning capacity ----------	₱50,000.00
Death Indemnity ----------	50,000.00
Total	₱100,000.00

CONTRARY TO LAW with the aggravating circumstance of treachery the fact that Frederick Tomogsok and George Lumondaya helped one another in mauling first the victim [–] a method they employed in order to cripple and weaken him thus ensuring the safety of Samuel Lumondaya, Jr. from the victim['s] retaliation who then successfully stabbed the victim several times that caused his instantaneous death.[6]

On September 6, 2006, George was arraigned and pleaded not guilty[7] while Samuel and Frederick remained at large.[8] After pre-trial,[9] trial on the merits ensued.

Virginia Balwit (*Virginia*), the victim's wife, testified that around nine in the evening of April 3, 2006, she and Evelio were about to sleep when someone outside their house called Evelio and asked him to come out. Evelio obliged and went outside the house while she opened the window and peeped outside. From where she was standing, Virginia saw her husband being ganged up by three persons whom she recognized as George, Samuel, and Frederick. She saw George and Frederick mauling her husband, and thereafter Samuel stabbed Evelio with a hunting knife. Upon seeing what happened to Evelio, Virginia hurriedly went downstairs and ran towards her husband who was lying on the ground, lifeless. She shouted for help while the three malefactors scampered away. Some neighbors and relatives arrived and brought the body of Evelio to his mother's house. The next day, police officers and Dr. Cita H. Adaza (*Dr. Adaza*), the City Health Officer of Dapitan City, arrived and examined the body of the deceased.[10]

Dr. Adaza testified that the post-mortem examination of the body of the victim revealed that Evelio sustained a contusion on the left side of his upper lip, one stab wound in the anterior chest at the right mid axillary area, and a lacerated wound in the occipital area. The immediate cause of his death was the stab wound in his anterior chest as it penetrated the whole thoracic area which encloses his lungs, arteries, and veins. The massive loss of blood also contributed to his instantaneous death.[11]

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6 *Id.*
7 *Id.* at 16-17.
8 *Rollo*, p. 23.
9 Records, pp. 27-28.
10 *Rollo*, pp. 23, 183-184.
11 *Id.* at 24, 184.

After the prosecution rested its case, George filed a Demurrer to Evidence[12] with leave of court[13] alleging that the prosecution failed to prove the existence of conspiracy among the accused, as well as the presence of the qualifying circumstances of treachery and evident premeditation.[14]

In a Resolution[15] dated November 21, 2008, the RTC denied the demurrer to evidence for lack of merit. The trial court held that while the evidence suggested the presence of conspiracy, it ruled out the presence of treachery and evident premeditation in the commission of the crime. Thus, the crime charged was downgraded to homicide and George was allowed to post bail for his provisional liberty.[16]

By reason of the denial of the demurrer to evidence, the trial continued for the presentation of the evidence for the defense.[17]

Edilberto Quizo (*Edilberto*) testified and narrated that at around 5:00 in the afternoon of April 3, 2006, he was at the house of Presco Enguito (*Presco*) joining the celebration of a graduation party. They ate, drank, and sang. Thereafter an altercation between Frederick and Evelio broke out. He stated that at 7:00 in the evening, Evelio arrived at the house of Presco where he ate and drank. Thereafter, Evelio uttered some unruly words to Frederick which the latter heard, causing him to get mad. Frederick then punched Evelio. Evelio likewise kept on challenging Samuel and at 8:00 in the evening, Samuel and Evelio were already fighting each other. At about 9:00 in the evening, Samuel arrived at the house of Evelio and challenged the latter to a fight. At that time, Edilberto was in the kitchen of his house watching the stabbing incident. He noticed that Samuel brought a weapon with him. Thereafter, Evelio died.[18]

Robert Enguito (*Robert*) likewise took the witness stand and testified, among other things, that at around 9:00 in the evening of April 3, 2006, he was at the porch of his house fronting the road which was also in front of Presco's house, and therein saw Samuel and Evelio boxing each other in the road. However, he did not see Frederick and George. He did not also see Presco as he was already sleeping. That evening, he did not notice any person inside the house of Presco. He added that at 4:00 in the afternoon of April 3,

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12 Records, pp. 54-61.
13 *Id.* at 50-51.
14 *Id.* at 57-61.
15 *Id.* at 65-72.
16 *Id.* at 83-84.
17 *Id.* at 72.
18 *Id.* at 136.

2006, he saw Presco preparing to go fishing and that after seeing the alleged stabbing incident at night, he went inside his house.[19]

George testified that he is one of the accused in this case. His co-accused, Samuel, is his elder sibling, while Frederick is his cousin. He admitted that their whereabouts are unknown. He claimed that he was not present when Evelio was stabbed to death by Samuel on April 3, 2006. At about 5:00 in the afternoon of said date, he was in his house sleeping. At 6:00 in the evening, he went to the house of Presco because there was a celebration. At 7:00 in the evening, he arrived at the house of Presco and noticed that Frederick and Evelio were drinking. Thereafter, Frederick boxed Evelio and afterward Frederick ran away. At about 8:00 in the evening, he went home and did not go out of his house anymore. At about 9:00 in the evening, he was in his house, lying down. At about 2:00 in the early morning, he learned about the death of Evelio because the police arrived and fired their guns.[20]

On March 5, 2013, the RTC rendered a Judgment[21] finding George guilty beyond reasonable doubt of the crime of homicide. It disposed as follows:

> **WHEREFORE,** in the light of all the foregoing, the Court finds **accused George Lumondaya GUILTY** of the crime of **HOMICIDE** as defined and penalized under Article 249 of the Revised Penal Code and **he is sentenced to serve the indeterminate penalty of 8 years and 1 day of *prision mayor* as minimum to 14 years, 8 months and 1 day of *reclusion temporal* as maximum.**
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> The accused is further ordered to pay the following to the heirs of Evelio Balwit:
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> 1)PhP75,000.00 as civil indemnity;
> 2)PhP25,000.00 as moral damages; and
> 3)PhP25,000.00 as exemplary damages.
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> As regards co-accused Samuel Lumondaya and Frederick Tomogsok who are still at large, let alias warrant of arrest issue against them.
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> **SO ORDERED.**[22]

The RTC held that the defenses of denial and alibi interposed by George cannot prevail over the positive and straightforward testimony of Virginia who testified that she saw George and Frederick mug and assault her husband,

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19 *Id.* at 135-136.
20 *Id.* at 136-137.
21 *Id.* at 132-146.
22 *Id.* at 144, 146.

while Samuel stabbed him to his death. Since George and his cohorts acted in concert in bringing about the death of the victim, the RTC ruled that all of them are deemed equally guilty of the crime committed. As such, George cannot escape liability even if it was Samuel who actually stabbed the victim which led to his instantaneous death. Since the circumstances of treachery and evident premeditation were not duly proved, the RTC held George liable only for the crime of homicide.[23]

Asserting his innocence, George appealed before the CA.[24]

On January 23, 2018, the CA rendered a Decision[25] affirming the Judgment of the RTC which convicted George for the crime of homicide, but modified the damages imposed upon him.

The CA ruled that George's guilt for the crime of homicide had been sufficiently proved. Even if Virginia was the lone witness to the crime, the CA gave credence to her testimony for being straightforward, detailed, consistent, and not impelled by any improper motive. The CA agreed with the RTC that conspiracy existed among the accused in killing the victim. It found implausible the defenses of denial and alibi interposed by George for his failure to establish the physical impossibility for him to be present at the crime scene at the time the stabbing incident occurred. His alleged lack of motive to kill the victim could not be believed as he was positively identified by the witness as one of the persons who ganged up on and mauled Evelio. His non-flight could not support his professed innocence as no law or jurisprudence holds that non-flight *per se* is a conclusive proof of innocence. It also found the testimony of the defense witnesses unworthy of belief.[26]

Anent the damages awarded, the CA modified the same pursuant to prevailing jurisprudence by decreasing the award of civil indemnity from ₱75,000.00 to ₱50,000.00, increasing the award of moral damages from ₱25,000.00 to ₱50,000.00, and deleting the award of exemplary damages in the absence of any aggravating circumstances. A six percent (6%) interest was likewise imposed on the monetary awards from the date of finality of the Decision until fully paid.[27]

George moved for reconsideration but the CA denied it in a Resolution[28] dated October 17, 2018.

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23 *Id.* at 137-144.
24 CA *rollo*, p. 10
25 *Rollo*, pp. 48-66.
26 *Id.* at 55-63.
27 *Id.* at 64-65.
28 *Id.* at 68-70.

Hence, this petition.

Issue

The issue presented for this Court's resolution is whether the CA gravely erred in holding that George's guilt for the crime of homicide had been proven beyond reasonable doubt.

Our Ruling

Petitioner faults the CA in affirming the trial court's decision which convicted him of homicide. He contends that Virginia's uncorroborated testimony could not be believed especially so when her claim of her husband being mauled first before he was stabbed contradicts with the result of the post-mortem examination of the victim's body that showed his injuries, one being a fatal stab wound and two being merely minor injuries. He also insists that the prosecution failed to establish conspiracy in the commission of the crime considering that: (a) it was not proved that he was aware of Samuel and Frederick's plan to kill Evelio; (b) it was established that he and Evelio had no grudge against each other before the latter was killed; (c) he was unarmed that fateful night; (d) assuming that the account of Virginia is true, his only participation therein is in the mauling of Evelio; and (e) the mauling of Evelio was not shown to be indispensable to the killing of Evelio. As such, only Samuel must be held liable for homicide for the killing of Evelio since it stands undisputed that he alone was responsible for the stabbing of Evelio which resulted in his death. At the very most, his liability should only be for slight physical injuries. Petitioner also laments the failure of the CA to give credence to the testimony of the defense witnesses who confirmed that he was not present at the crime scene on the date in question. The fact that he did not go into hiding clearly demonstrates his lack of culpability for homicide.[29]

The Office of the Solicitor General (*OSG*) counters that the petition must fail as it raises questions of fact, and not of law, as required by the Rules. However, even if the Court were to weigh the evidence presented by the parties all over again, they contend that the CA correctly affirmed the conviction of petitioner for homicide since all the elements of the crime had been proven beyond reasonable doubt inasmuch as: (a) the victim's death was duly established; (b) the victim's mauling and stabbing was not shown to have been justified; (c) intent to kill was shown by the fact that petitioner and the two other malefactors ganged up on the victim; and (d) none of the qualifying

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29 *Id.* at 29-43.

circumstances of murder, parricide, and infanticide attended the killing of the victim.[30]

Contrary to the claim of petitioner, the OSG insists that conspiracy among the accused had been proved beyond reasonable doubt. The distinct but simultaneous acts of petitioner and his co-accused in beating and then stabbing the victim show that they acted in concert and are united in purpose in bringing about the death of the victim. Being co-conspirators in the killing of Evelio, the extent and character of their participation, as well as the identity of the person who stabbed Evelio, are no longer relevant since all of them are liable as co-principals. Even if motive to kill on his part were not duly proved, the same would not absolve petitioner of liability as motive is not an element of a crime. Likewise, the testimony of a lone witness like Virginia, whom both the trial and appellate courts found to be straightforward, consistent, and trustworthy, is sufficient to support his conviction. Thus, petitioner's defenses of denial and alibi cannot prevail over the positive declarations of Virginia who staunchly declared that the former was at the scene of the crime and was one of the victim's assailants. His non-flight after the stabbing incident does not also prove his innocence. No fault can be attributed to the CA for disregarding the testimonies of the defense witnesses considering that their testimonies do not even corroborate petitioner's defenses of denial and alibi, and are actually unworthy of belief.[31]

We deny the instant petition.

The Rules of Court states that a review of appeals before this Court is not a matter of right, but of sound judicial discretion. It requires that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by *certiorari* for it is not the Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.[32] As a matter of sound practice and procedure, the Court defers and accords finality to the factual findings of trial courts. To do otherwise would defeat the very essence of Rule 45 and convert the Court into a trier of facts, which is not its intended purpose under the law.[33]

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.[34] For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue

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30 *Id.* at 87-100.
31 *Id.* at 190-196.
32 *Spouses Miano v. Manila Electric Company*, 800 Phil. 118, 122 (2016).
33 *Heirs of Villanueva v. Heirs of Mendoza*, 810 Phil. 172, 178 (2017).
34 *Far Eastern Surety & Insurance Co. Inc. v. People*, 721 Phil. 760, 767 (2013). (Citation omitted).

must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[35]

The rule, however, admits of exceptions. The Court will not hesitate to review the factual findings of the lower courts in any of the following instances:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) The findings of the Court of Appeals are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and

(10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[36]

A cursory reading of the present petition reveals that it invites an examination of the probative value of the evidence presented by the parties insofar as petitioner urges the Court that his testimony and those of his witnesses should be given weight. According to him, it was grave error for the CA to have relied on the lone and uncorroborated testimony of Virginia, especially so when it contradicts with the findings of Dr. Adaza. In short, petitioner posits that the ruling of the CA is based on a misapprehension of facts in order to justify the re-calibration by this Court of the facts of this case all over again.

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[35] *Tongonan Holdings and Development Corporation v. Atty. Escaño, Jr.*, 672 Phil. 747, 756 (2011). (Citations omitted).

[36] *Pascual v. Burgos*, 776 Phil. 167, 182-183 (2016), citing *Medina v. Mayor Asistio, Jr.*, 269 Phil 225 (1990).

A circumspect reading of the decisions of both the trial and appellate courts as well as the records of this case, shows, however, that the factual circumstances of this case as espoused by both parties have been carefully weighed and appreciated. No material and relevant matter had been overlooked and the guilt of petitioner for the crime of homicide had been duly established beyond reasonable doubt.

There is no denying that Virginia was the sole witness presented by the prosecution who testified to have witnessed the killing of Evelio. This, however, does not make her account unbelievable.

It is well settled that the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and has been delivered spontaneously, naturally, and in a straightforward manner. This is because witnesses are to be weighed, not numbered.[37] Corroborative evidence is deemed necessary only when there are reasons to warrant the suspicion that the witness falsified the truth or that their observation had been inaccurate.[38]

In this case, Virginia was steadfast and unwavering in declaring that she saw petitioner, Frederick, and Samuel help one another in rendering Evelio defenseless by mauling and throwing punches at him before Samuel stabbed him in the chest. She remained resolute even under cross-examination.[39] There is likewise no reason to doubt if she correctly identified the three assailants considering that Virginia is familiar with their faces having known them for quite some time, they being residents of Banbanan, Dapitan City, the place where Virginia and the victim reside.[40]

Petitioner tries to make an issue of the statement given by Virginia during her direct examination where she stated that only petitioner and Frederick mauled the victim before he was stabbed by Samuel, but changed the same on cross-examination where she stated all three participated in boxing the victim. Such inconsistency, however, refers only to minor and trivial matter which does not detract from the fact that all accused were present and aided one another in hurting the victim and ultimately killing him. Minor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of witnesses, as well as their positive identification of the accused as the perpetrators of the crime.[41]

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37 *People v. Hillado*, 367 Phil. 29, 45 (1999). (Citations omitted).
38 *People v. Jalbonian*, 713 Phil. 93, 104 (2013). (Citations omitted).
39 *See* TSN, February 21, 2008, pp. 10-11, 16.
40 *Id.* at 8.
41 *People v. Cabtalan*, 682 Phil. 164, 168 (2012).

Even if the victim were not covered in bruises, the same would not at all show that there is no truth to the eyewitness account of mauling as petitioner wants this Court to believe. Suffice it to state that the autopsy report,[42] which shows that the victim sustained contusion on his lip and a lacerated wound on his scalp that is half an inch long, as well as multiple stab wounds on the chest, lends credence to the testimony of Virginia that Evelio was mauled and stabbed to death.

As such, there is no reason for this Court to depart from the well-established rule that the evaluation of the credibility of witnesses as well as their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to examine their demeanor, conduct, and attitude under grueling examination,[43] especially so when the testimony under scrutiny is supported by the evidence on record.

Furthermore, the CA correctly rejected the defenses of denial and alibi proffered by petitioner. His bare denial cannot prevail over the positive and affirmative declarations of the prosecution witness.[44] A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters.[45]

Moreover, petitioner's defense of alibi[46] could not prosper as he miserably failed to prove that it was physically impossible for him to be at the *locus criminis* at the time the crime was committed. He himself testified that the house of his uncle where he was staying was only *"more or less 200 meters"* away from the house of the victim.[47]

The testimonies of petitioner's witnesses were also correctly not given probative value by the CA. The Court quotes with approval the disquisition of the CA on this point:

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42 Exhibit "B-1," Folder of Exhibits, p. 48.

43 *Labosta v. People*, G.R. No. 243926, June 23, 2020.

44 *People v. Vargas*, 327 Phil. 387, 397 (1996).

45 *People v. Mateo*, 582 Phil. 369, 384 (2008).

46 In *People v. Ganaba*, 829 Phil. 306 (2018), the Court held that for the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission. Also, in *People v. Añonuevo*, 330 Phil. 553 (1996), Court ruled that the excuse must be so airtight that it would admit of no exception. Where there is the least possibility of the accused's presence at the crime scene, the alibi will not hold water.

47 TSN, May 27, 2011, pp. 5-6; TSN, February 9, 2012, p. 5.

George further posits that the RTC erred in not appreciating the testimony of his witnesses even though their credibility were not challenged.

Again, the position of George fails to convince this Court.

With regard to Robert Enguito, he is not a disinterested corroborating witness for George. Robert Enguito admitted that he is the uncle of Samuel, George's brother. It is settled jurisprudence that an alibi becomes less plausible when it is corroborated by relative and friends who may not be impartial.

As to the testimony of Edilberto Quizo, the argument of the OSG as to why his testimony is not credible is in point, to wit:

> 2. With respect to Edilberto Quizo, while he may appear to be a disinterested witness, he cannot be considered a credible one. During his cross examination, when the prosecutor confronted him with statements he made in his counter-affidavit, he admitted that he had stated therein that he has no personal knowledge on the death of the victim. He further admitted that only half of his declarations therein are true. The general rule that contradictions between the testimony of a witness and his statements in an affidavit do not necessarily discredit him is not without exception, as when the omission in the affidavit refers to a very important detail of the incident that one relating it as an eyewitness could not be expected to fail to mention, or **when the narration in the sworn statement substantially contradicts the testimony in court**. Here, it is respectfully submitted that the contradiction regarding Edilberto's lack of personal knowledge of the circumstances surrounding the death of the victim is a substantial one. It is not one trivial or minor matter that can simply be set aside in weighing the credibility and veracity of Edilberto's testimony because the same is necessary in determining appellant's guilt. (Emphasis in the original)

A witness who openly admitted lying under oath cannot be considered a credible witness. Consequently, his testimony cannot likewise be considered credible.[48]

Petitioner next questions his liability for the death of Evelio. According to him, if Virginia's testimony is to be believed, the most that he should have been found guilty of is only for slight physical injuries since his participation is merely confined to throwing punches at the victim.

In convicting petitioner for homicide, both the trial and appellate courts ruled that conspiracy existed in this case. As such, the extent of their respective participation was found immaterial, since the act of one is the act of all.

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[48] *Rollo*, pp. 62-63.

Article 8 of the Revised Penal Code (*RPC*) provides that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[49] In *People v. Escobal*,[50] citing *Macapagal-Arroyo v. People*,[51] the Court pointed out the two forms of conspiracy, *viz.*:

> In terms of proving its existence, conspiracy takes two forms. The first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime. However, conspiracies are not always shown to have been expressly agreed upon. Thus, we have the second form, the implied conspiracy. An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.[52]

To be considered a co-conspirator in both forms of conspiracy, it is necessary that an overt act be performed as a direct or indirect contribution to the execution of the crime committed.[53] Overt or external act has been defined as some physical activity or deed, demonstrating the intention to commit a particular crime, as opposed to a mere planning or preparation, which if carried out to completion following its natural course, without being frustrated by external impediments nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense.[54] In *People v. Lizada*,[55] the Court explained what an overt act entails:

> It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.[56]

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49 Article 8. *Conspiracy and proposal to commit felony.* – Conspiracy and proposal to commit felony are punishable only in cases in which the law specially provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

50 820 Phil. 92 (2017).

51 790 Phil. 367 (2016).

52 *Id.* at 419-420.

53 *Rimando v. People*, 821 Phil. 1086, 1097 (2017), citing *Bahilidad v. People*, 629 Phil. 567 (2010).

54 *Rait v. People*, 582 Phil. 747, 753 (2008). (Citations omitted).

55 444 Phil. 67 (2003). (Citations omitted).

56 *Id.* at 99.

As correctly found by both the trial and appellate courts, implied conspiracy between petitioner, Frederick, and Samuel can be inferred from the mode and manner by which they carried out the killing of Evelio.

While the reason which impelled petitioner to go with Frederick and Samuel to Evelio's house is unclear, it cannot be denied that theirs was not a chance encounter. They purposely sought out Evelio by going to his house. By petitioner's own account, he witnessed the altercation between Frederick, his cousin, and Evelio earlier that day. Thus, it can reasonably be deduced that he knew that there was animosity between the two. When his co-accused started punching Evelio in front of his house later that day, petitioner did nothing to stop them. On the contrary, he joined them in beating Evelio up. Thus, even if petitioner were not the one who stabbed Evelio, there would be no question that his participation in boxing the latter was instrumental in rendering Evelio helpless and defenseless, thereby aiding Samuel to deliver the fatal stab wound on Evelio's chest which ultimately resulted in his death. When Evelio was already lifeless, all three fled the scene of the crime together.

This pronouncement is consistent with *People v. Solar*[57] where the Court likewise found the presence of conspiracy between the accused, who were together at the scene of the crime and thereafter, fled together after one of them mauled the victim and the other hit the victim with a baseball bat, which resulted in his death:

> In the present case, both the RTC and CA correctly inferred from the collective acts of the assailants that conspiracy exists despite the absence of direct evidence to the effect. As the CA correctly held:
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> > x x x In this case, implied conspiracy between the accused can be deduced from the mode and manner in which they perpetrated the killing. First, Rolando and Mark Kenneth were together at the crime scene. Second, Rolando mauled the victim after Mark Kenneth hit him with a baseball bat. Third, as soon as they achieved their common purpose, both accused fled together. All these acts point to the conclusion that the accused conspired to commit the crime.[58]

Moreover, in *People v. Lababo*,[59] the Court ruled that standing guard or providing moral support in the commission of the crime is sufficient proof of conspiracy for so long as the accused did nothing to prevent the crime from being committed. Thus:

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57 G.R. No. 225595, August 6, 2019, 912 SCRA 271.
58 *Id.*
59 832 Phil. 1056 (2018).

> Indeed, one who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetration thereof is criminally responsible to the same extent as the actual perpetrator, especially if they did nothing to prevent the commission of the crime.[60]

As such, there is more reason to hold petitioner liable as a co-conspirator in this case as his presence in the scene of the crime was not merely passive. On the contrary, he took an active part in mauling the victim which *"increased the odds against the victim."*[61] He did not even lift a finger to stop Samuel from stabbing the victim. In other words, the assailants' collective acts showing their community of purpose point to no other conclusion than that they conspired to bring the crime to fruition.

Since it has been sufficiently proved that petitioner and his co-accused conspired in the commission of the crime, all of them are liable as co-principals regardless of the extent and character of their respective participation thereof because in the contemplation of the law, the act of one is the act of all. As such, it is inconsequential whether petitioner delivered a fatal blow or not.[62] Petitioner is equally liable for the death of Evelio.[63]

From the foregoing, petitioner was correctly found guilty of homicide.

Article 249 of the RPC defines the crime of homicide and provides the penalty therefor, thus:

> Art. 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*.

To successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[64]

The prosecution has established all the foregoing elements.

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60 *Id.* at 1076.
61 *Id., People v. Campos*, 668 Phil. 315, 330-331 (2011).
62 *Supra* note 55.
63 See *People v. Maralit*, 247-A Phil. 505, 513 (1988).
64 *Balina v. People*, G.R. No. 205950, January 12, 2021. (Citations omitted).

One. The fact of Evelio's death is conclusively established by the Certificate of Death[65] issued by the Office of the Civil Registrar General of Dapitan City, as well as the Autopsy Report[66] prepared by Dr. Adaza.

Two. The mauling and stabbing of Evelio, which led to his death, was not shown to have been justified by any circumstance as it was neither alleged nor proved that such violence was employed to protect the life and limb of petitioner and his co-accused.

Three. Intent to kill is conclusively presumed by reason of the death of the victim due to the deliberate act of the malefactors. In this case, intent to kill is shown by the acts of petitioner and his co-accused of aiding each other in rendering the victim defenseless before he was stabbed in the chest by Samuel. Even assuming that there was no intent to kill, the crime is still homicide because with respect to crimes of personal violence, the penal law looks particularly to the material results following the unlawful act and holds the aggressor responsible for all the consequences thereof.[67]

Four. The killing of Evelio was not attended by any of the qualifying circumstances of murder, parricide, or infanticide.

It is established that qualifying circumstances must be proved with the same quantum of evidence as the crime itself, that is, beyond reasonable doubt.[68]

Here, no competent evidence was presented to show that treachery or evident premeditation, as alleged in the Information, attended the killing of Evelio to qualify the crime to murder. Article 14, paragraph 16 of the RPC states that there is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself or herself arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which deprived the person attacked the opportunity to defend himself or herself or to retaliate; and (2) said means, methods, or forms of execution were deliberately or consciously adopted by the assailant.[69] The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself or

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65 Exhibit "A," Folder of Exhibits, p. 47.
66 Exhibit "B" to "B-2," pp. 48-49.
67 *Wacoy v. People*, 761 Phil. 570, 580 (2015).
68 *People v. Agramon*, 833 Phil. 747, 755 (2018). (Citations omitted).
69 *People v. Duran, Jr.*, 820 Phil. 1049, 1065 (2017).

herself and thereby ensuring its commission without risk to himself or herself.[70]

Treachery cannot be appreciated in this case for lack of evidence to show that petitioner and his co-accused carefully and deliberately planned the killing in such a way that would ensure their safety and success, especially taking into account that Evelio was attacked right in front of his residence, a place familiar to him, and in the presence of his wife who could have come to his aid and helped him repel the attack.[71]

There is likewise no basis for the Court to appreciate the qualifying circumstance of evident premeditation. "The requisites for the appreciation of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the 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."[72] The essence of this circumstance of evident premeditation is that the execution of the criminal act be preceded by cool thought and reflection upon the resolve to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[73] Evident premeditation was not established in this case for lack of evidence showing when and how petitioner and his co-accused planned and prepared to kill Evelio;[74] as well as how much time had elapsed before the plan to kill was carried out.[75]

The crime committed cannot likewise qualify as parricide[76] considering that the victim is not the father, mother, child, ascendant, descendant, or spouse of the petitioner and his co-accused; or infanticide[77] since the victim is not a child less than three days of age.

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70 *People v. Escote, Jr.*, 448 Phil. 749, 786 (2003).

71 See *People v. Gayon*, G.R. No. 230221, April 10, 2019, 901 SCRA 459, 470.

72 *People v. Macaspac y Isip*, 806 Phil. 285, 293 (2017). (Citations omitted).

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

74 *Supra* note 69, at 471.

75 *Supra* note 66, at 756-757.

76 **Article 246.** *Parricide.* - Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death.

77 **Article 255.** *Infanticide.* - The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.
If the crime penalized in this article be committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of prision correccional in its medium and maximum periods, and if said crime be committed for the same purpose by the maternal grandparents or either of them, the penalty shall be prision mayor.

Anent the penalty, the CA correctly imposed the indeterminate penalty of eight (8) years and one day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, as the same is consistent with Article 249 of the RPC and prevailing jurisprudence on the matter.[78] Following the guidelines laid down in *People v. Jugueta*[79] and *People v. Tulagan*,[80] the Court finds the CA also correctly imposed damages in the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, plus legal interest of six percent *per annum* on all damages awarded from the date of finality of this Resolution until fully paid. In addition, the Court deems it proper to order petitioner to also pay the heirs of Evelio the amount of ₱50,000.00 by way of temperate damages in accordance with the pronouncement in *People v. Jugueta*.[81] The award of temperate damages in homicide cases is proper when no evidence of burial and funeral expenses is presented in the trial court[82] as in this case. In addition, the temperate damages payable by the petitioner is likewise subject to interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until fully paid.[83]

WHEREFORE, the petition is **DENIED** for lack of merit. The challenged Decision dated January 23, 2018 and Resolution dated October 17, 2018 of the Court of Appeals in CA-G.R. CR No. 01087-MIN is **AFFIRMED with MODIFICATION**. Petitioner George Lumondaya a.k.a *"Langlang"* is **GUILTY** beyond reasonable doubt of the crime of Homicide as defined and penalized under Article 249 of the Revised Penal Code. He is sentenced to serve the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

Petitioner George Lumondaya a.k.a *"Langlang"* is ordered to pay the heirs of Evelio C. Balwit ₱50,000.00 as civil indemnity *ex delicto*; ₱50,000.00 as moral damages; and ₱50,000.00 as temperate damages. All monetary awards herein shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.

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78 See *People v. Aquino*, 829 Phil. 477, 489-490 (2018); *People v. Isorena*, 807 Phil. 245 (2017).
79 783 Phil. 806 (2016).
80 G.R. No. 227363, March 12, 2019, 896 SCRA 307.
81 *Supra* note 77.
82 *Id.*
83 See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

SO ORDERED."

By authority of the Court:

MisDCBatt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court 11/3/22

Atty. Joseph Lester S. Patay
Counsel for Petitioner
PATAY LAW & NOTARIAL OFFICE
Room 1, 2/F Young Printing Press Bldg.
Quezon Avenue, Miputak
7100 Dipolog City

COURT OF APPEALS
CA G.R. CR No. 01087-MIN
9000 Cagayan de Oro City

PUBLIC ATTORNEY'S OFFICE
Regional Special & Appealed Cases Unit
3rd Floor, Taft Commercial Center
Metro Colon, Carpark, Osmena Boulevard
Brgy. Kalubihan, 6000 Cebu City

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 9, Dipolog City
(Criminal Case No. 14069)

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