



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Cagayan de Oro City

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **March 8, 2023** which reads as follows:*

**“G.R. No. 259127 (PEOPLE OF THE PHILIPPINES, Plaintiff-appellee v. RECARDO APOLINAR BARRO, JR. a.k.a. “BOYET,” Accused-appellant).** – The presence of the qualifying circumstance raising the killing to the category of murder is the core issue in this appeal<sup>1</sup> assailing the Decision<sup>2</sup> dated December 15, 2020 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02262-MIN.

The antecedents follow.

Recardo Apolinar Barro, Jr. a.k.a. “Boyet” (Recardo) and his brother Reynato Gamo Barro, Jr. (Reynato) were charged with murder committed against Abundio Calimas Yparaguire<sup>3</sup> (Abundio) before the Regional Trial Court of Gingoog City, Branch 43 (RTC) docketed as Criminal Case No. 2017-6783,<sup>4</sup> to wit:

That on March 15, 2017, at more or less 4:30 in the afternoon, at Purok 2A, Barangay 19, Gingoog City, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping each other, with intent to kill, **treachery, and evident premeditation**, armed with a knife with which the accused were conveniently provided, did then and there willfully, unlawfully and feloniously, assault, attack, and stab [ABUNDIO], then **unaware, defenseless, and unarmed**, thereby inflicting upon the victim a mortal stab wound on his chest which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said [ABUNDIO], whose **killing was attended by the aggravating**

<sup>1</sup> See Notice of Appeal dated January 8, 2021; *rollo*, pp. 4-5.

<sup>2</sup> *Id.* at 9-22. Penned by Associate Justice Loida S. Posadas-Kahulugan, with the concurrence of Associate Justices Edgardo T. Lloren and Richard D. Moreno.

<sup>3</sup> “Yparaguire” in some parts of the records.

<sup>4</sup> *Rollo*, pp. 9-10 and 24-25.

**circumstance that it was committed inside his dwelling** located at the aforesaid address.

Contrary to and in violation of Article 248 of the Revised Penal Code of the Philippines.<sup>5</sup> (Emphasis supplied)

Recardo and Reynato pleaded not guilty. Trial then ensued. The prosecution presented the victim's son, Reymart Yparaguire (Reymart) as its sole witness. Reymart testified that on March 15, 2017 at around 4:30 p.m., he saw Reynato enter their house and wake up Abundio who was sleeping on the second floor. Reynato and Abundio were at the terrace when Recardo arrived and went upstairs to join the conversation. Thereafter, Recardo held Abundio and stabbed him on the chest. Immediately, Recardo and Reynato left the house. Reymart brought Abundio to the hospital but Abundio eventually died.<sup>6</sup>

Recardo and Reynato denied the accusation. Recardo claimed that he was drinking liquor at his uncle's house at the time of the incident. Later, Abundio invited Recardo to drink in his house. Thereat, Recardo told Abundio to look for another place because he will use the property next year. Abundio called Recardo crazy and retorted that he already bought the house and lot from him. A heated argument transpired. Recardo held the shirt of Abundio and pushed him on the wall. Abundio's other son, Lagat Yparaguire (Lagat), shouted at Recardo and threatened to stab him. Recardo decided to leave but Lagat challenged him to a fight. Recardo went back but Abundio blocked his way. Recardo stabbed Abundio on the chest thinking that the latter would harm him. Afterwards, Recardo voluntarily surrendered to the Office of the City Mayor. On the other hand, Reynato averred that he was not present at the scene when the crime happened.<sup>7</sup>

In a Judgment<sup>8</sup> dated November 14, 2018, the RTC found Recardo guilty of murder. The RTC appreciated the qualifying circumstance of treachery and ordinary aggravating circumstance of dwelling. Nonetheless, the RTC discounted the presence of evident premeditation absent evidence as to when Recardo came up with the determination to commit the crime. Lastly, the RTC acquitted Reynato for insufficiency of evidence and absent proof of conspiracy,<sup>9</sup> thus:

**There is no evidence to indicate that Reynato participated in the assault. His act of waking up Abundio and talking to him cannot be considered as part of the conspiracy. There is no evidence established that Recardo and Reynato conspired with each other.** In this particular case, there is no evidence to show that Reynato and Recardo were animated by one and the same purpose.

x x x x

<sup>5</sup> *Id.* at 10–11 and 24–25.

<sup>6</sup> *Id.* at 11–12 and 25–26.

<sup>7</sup> *Id.* at 12–13, 26–27, and 31.

<sup>8</sup> *Id.* at 24–32. Penned by Presiding Judge Mirabeaus A. Undalok.

<sup>9</sup> *Id.* at 27–32.

Reymart saw Recardo talking to his father Abundio. Later on, Recardo held him and pushed him against the wall and stabbed him once on the left chest. **The stabbing incident was preceded by a discussion between Abundio and Recardo. Obviously, the attack was sudden giving Abundio no opportunity to defend himself. As it unfolded, Recardo was already standing and facing Abundio. He held him up and pushed him against the wall and drove the knife to the left chest and sunk it.** Abundio did not survive the attack.

Abundio did not expect the attack would happen right inside his house. He just rose from a nap after Reynato woke him up. Recardo talked to him for a while and stabbed him as he was held up and pushed against the wall. Obviously, Recardo unleashed a treacherous attack on Abundio. The quick and swift attack on Abundio showed that the killing is (sic) deliberate. It has all the hallmarks of treachery.

x x x x

WHEREFORE, premises considered, the Court finds **Recardo Apolinar Barro, Jr. alias Boyet** guilty beyond reasonable doubt for MURDER and sentences him to *reclusion perpetua* with no eligibility for parole. He is also directed to pay the heirs of Abundio Calima Yparaguirre the following sums, to wit: [PHP] 100,000.00 as civil indemnity; [PHP] 100,000.00 as moral damages; [PHP] 100,000.00 as exemplary damages and [PHP] 30,000.00 as temperate damages with interest at 6% per annum from the finality of the judgment until fully paid.

For insufficiency of evidence, Reynato Gamo Barro, Jr. (alias Gogoy) is acquitted. BJMP-Gingoog City is hereby directed to release him from detention unless held for some other lawful cause.

Recardo Apolinar Barro, Jr. alias Boyet shall serve sentence at Davao Penal Colony, Dujali Davao del Norte. His preventive detention at the Bureau of Jail Management and Penology - Gingoog City shall be credited in full in the service of his sentence.

SO ORDERED.<sup>10</sup> (Emphasis supplied)

Aggrieved, Recardo elevated<sup>11</sup> the case to the CA docketed as CA-G.R. CR-HC No. 02262-MIN. Recardo argued that the prosecution failed to allege the specific facts constituting treachery and to prove the essential elements of murder. Also, the aggravating circumstance of dwelling was not present because the victim gave provocation when Abundio blocked Recardo's way after Lagat challenged him to a fight.<sup>12</sup>

In a Decision<sup>13</sup> dated December 15, 2020, the CA affirmed Recardo's conviction for murder. The CA explained that the Information recited facts constituting treachery. In any event, Recardo is deemed to have waived any objection against the sufficiency of the Information for his failure to question

<sup>10</sup> *Id.* at 29-32.

<sup>11</sup> See Appellant's Brief dated October 30, 2019; CA *rollo*, pp. 26-39.

<sup>12</sup> *Id.* at 32-38.

<sup>13</sup> *Rollo*, pp. 9-22.

during trial any defect in the charge. The CA also ruled that the prosecution proved treachery considering that the attack was carried out in a sudden and unexpected manner. The mode of attack deprived the victim of any real opportunity to defend himself. The CA also appreciated dwelling absent sufficient provocation from the victim. Lastly, the CA modified the amount of damages,<sup>14</sup> viz.:

A careful evaluation of the records reveals that the subject information sufficiently recited the facts that would constitute the crime of murder qualified by treachery. x x x

x x x x

Granting that the allegation was true, treachery is evidently established as the offended party, when stabbed, was “unaware, defenseless and unarmed” which is substantially the same with being “unarmed and unsuspecting victim.” (sic) The allegation is clear and sufficient enough for Recardo to prepare a suitable defense.

Moreover, case records show that Recardo did not object to the alleged defect in the information before the arraignment. Considering that Recardo entered a plea of not guilty and failed to move for the quashal of the information, he is deemed to have waived his right to question the same. x x x

x x x x

The prosecution did not only sufficiently alleged treachery in the information, it also successfully proven (sic) the allegations to be true.

x x x x

Considering that there was no provocation from Abundio and that the killing was committed inside Abundio’s house, the aggravating circumstance of dwelling is properly appreciated. Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefore.

x x x x

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit. The 14 November 2018 Judgment of the Regional Trial Court, Branch 43, Gingoog City, is AFFIRMED with MODIFICATIONS in that the heirs of the victim are entitled to [PHP] 75,000.00 as civil indemnity, [PHP] 75,000.00 as moral damages, and [PHP] 75,000.00 as exemplary damages. The heirs are likewise entitled to [PHP] 30,000.00 as temperate damages.

In addition, an interest rate of 6% per annum is likewise imposed on said on the abovementioned amounts from the date of finality of this Decision until full payment.

SO ORDERED.<sup>15</sup>

<sup>14</sup> *Id.* at 15–21.

<sup>15</sup> *Id.* at 16–21.

Hence, this appeal.<sup>16</sup> People opted not to file supplemental briefs considering that all the issues have already been exhaustively discussed in their pleadings before the CA.<sup>17</sup> Recardo reiterated<sup>18</sup> his arguments that the prosecution failed to establish the elements of murder qualified by treachery and the aggravating circumstance of dwelling.<sup>19</sup>

The appeal is partly meritorious.

We stress that the CA and the RTC's assessment on the credibility of the prosecution witnesses and the veracity of their testimonies are given the highest degree of respect,<sup>20</sup> especially if there is no fact or circumstance of weight or substance that was overlooked, misunderstood, or misapplied, which could affect the result of the case.<sup>21</sup> Moreover, the trial court had the best opportunity to determine the credibility of the prosecution witnesses, having evaluated their emotional state, reactions, and overall demeanor in open court. Here, Reymart positively identified Recardo as the perpetrator of the crime. Reymart was familiar with Recardo because they were neighbors. More importantly, Reymart was near the crime scene at the time the killing happened.<sup>22</sup> Well-settled is the rule that the most natural reaction of a witness to a crime is to strive to look at the appearance of the perpetrator and to observe the way the offense is perpetrated.<sup>23</sup> Also, Reymart had no motive to perjure against Recardo other than to see that justice is done. The earnest desire to seek justice is not served should Reymart abandon his conscience and prudence to blame one who is innocent of the crime.

Notably, Recardo raised for the first time on appeal before the CA that treachery and evident premeditation were not properly alleged in the Information which deprived him of the right to be informed of the nature and cause of the accusation.<sup>24</sup> In *People v. Solar*,<sup>25</sup> the Court held that it is insufficient for prosecutors to indicate in the Information that the act supposedly committed by the accused was done “with treachery” or “with evident premeditation” without specifically describing the acts done by the accused that made any or all such circumstances present. Yet, the failure of the accused to question the Information through a motion to quash or a bill of particulars constitutes a waiver of the defective statement of aggravating and qualifying circumstances, to wit:

In sum, the Court, continually cognizant of its power and mandate to **promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all**

<sup>16</sup> See Notice of Appeal dated January 8, 2021; *id.* at 4–5.

<sup>17</sup> See Manifestation dated August 30, 2022; *id.* at 36–38.

<sup>18</sup> See Supplemental Brief dated October 28, 2022; *id.* at 43–50.

<sup>19</sup> *Id.* at 44–47. See also CA *rollo*, pp. 32–38.

<sup>20</sup> *People v. Malignas*, 428 Phil. 834, 868–869 (2002) [Per J. Panganiban, *En Banc*].

<sup>21</sup> *People v. Oroasco*, 757 Phil. 299, 310 (2015) [Per J. Villarama, Jr. Third Division].

<sup>22</sup> *Rollo*, pp. 11–12, 17–18, and 25–29.

<sup>23</sup> *People v. Esoy*, 631 Phil. 547, 555 (2010) [Per J. Villarama, Jr. First Division].

<sup>24</sup> *Rollo*, pp. 16–17. See also CA *rollo*, pp. 32–37.

<sup>25</sup> G.R. No. 225595, August 6, 2019, 912 SCRA 271 [Per J. Caguioa, *En Banc*].

**courts**, hereby lays down the following guidelines for the guidance of the Bench and the Bar:

1. **Any Information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty — is present, must state the ultimate facts relative to such circumstance.** Otherwise, the Information may be subject to a motion to quash under Section 3(e) (*i.e.*, that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.

**Failure of the accused to avail any of the said remedies constitutes a waiver of his [or her] right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him [or her] if proven during trial.**

**Alternatively, prosecutors may sufficiently aver the ultimate facts relative to a qualifying or aggravating circumstance by referencing the pertinent portions of the resolution finding probable cause against the accused, which resolution should be attached to the Information in accordance with the second guideline below;**

2. Prosecutors must ensure compliance with Section 8(a), Rule 112 of the Revised Rules on Criminal Procedure that mandates the attachment to the Information the resolution finding probable cause against the accused. Trial courts must ensure that the accused is furnished a copy of this Decision prior to the arraignment;
3. Cases which have attained finality prior to the promulgation of this Decision will remain final by virtue of the principle of conclusiveness of judgment;
4. For cases which are still pending before the trial court, the prosecution, when still able, may file a motion to amend the Information pursuant to the prevailing Rules in order to properly allege the aggravating or qualifying circumstance pursuant to this Decision; [and]
5. For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has already waived his [or her] right to question the defective statement of the aggravating or qualifying circumstance in the Information, (*i.e.*, whether he previously filed either a motion to quash under Section 3(e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.<sup>26</sup> (Emphasis supplied)

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<sup>26</sup> *Id.* at 314–315.

In this case, the Information against Recardo was defective absent factual details describing the qualifying circumstances of treachery and evident premeditation. At most, the averment that the victim was “*unaware, defenseless, and unarmed*”<sup>27</sup> merely describes the vulnerable state of the victim and not the manner of the attack. However, Recardo waived such defects when he failed to avail of the proper remedies under procedural rules. Recardo did not question the insufficiency of the Information either through a motion to quash or a motion for bill of particulars. Recardo only raised the issue during appeal and not at the trial.<sup>28</sup> Accordingly, the qualifying circumstances of treachery and evident premeditation may be appreciated against Recardo if proven during trial.

Corollarily, treachery exists 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. In order for treachery to be appreciated, two requirements must be established: (1) the victim was in no position to defend himself or herself when attacked; and (2) the assailant consciously and deliberately adopted the methods, means, or form of one’s attack against the victim.<sup>29</sup> Contrary to the CA and the RTC’s findings, treachery should be ruled out for failure of the prosecution to establish with moral certainty that the victim was utterly oblivious to the impending attack, or that he had no opportunity to mount a meaningful defense. The facts revealed that a heated argument ensued between the parties when Recardo tried to regain possession of the real property from Abundio. Recardo held the shirt of Abundio and pushed him on the wall. Inarguably, Abundio already had an inkling of an impending peril to his life and still had the time and opportunity to prevent further attack from Recardo.<sup>30</sup> It is settled that treachery cannot be appreciated when the assault is preceded by a heated exchange of words between the attacker and the person attacked or when the victim is aware of the hostility of the assailant towards him or her.<sup>31</sup>

Whereas, evident premeditation has the following elements, to wit: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.<sup>32</sup> Specifically, the prosecution must prove that a *sufficient amount of time* had lapsed between the malefactor’s determination and execution.<sup>33</sup> The Court will not appreciate evident premeditation absent showing that there was enough time that had

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<sup>27</sup> *Rollo*, pp. 11 and 24.

<sup>28</sup> *Id.* at 17.

<sup>29</sup> *People v. Abina*, 830 Phil. 325, 361 (2018) [Per J. Del Castillo, First Division].

<sup>30</sup> *Rollo*, pp. 11–12, 18–19, 25–26, and 30–31.

<sup>31</sup> *People v. Escarlos*, 457 Phil. 580, 599 (2003) [Per J. Panganiban, *En Banc*], citing *People v. Reyes*, 420 Phil. 343, 353 (2001) [Per J. Mendoza, *En Banc*].

<sup>32</sup> *People v. Guillermo*, 361 Phil. 933, 950 (1999) [Per J. Mendoza, Second Division].

<sup>33</sup> *People v. Abierra*, 833 Phil. 276, 283 (2018) [Per J. Reyes, Jr., Second Division].

lapsed between the conception and execution of the crime to allow the accused to reflect upon the consequences of his or her acts.<sup>34</sup> Here, there is no evidence as to the period of time when Recardo resolved to commit the crime and had cool thought and reflection to arrive at a calm judgment. Reymart did not even testify on this matter. It must be emphasized that the premeditation to kill must be plain and notorious.<sup>35</sup> It must be sufficiently proven by evidence of outward acts showing the intent to kill. In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient. Verily, the CA and the RTC correctly discounted evident premeditation because there was no proof as to how and when the plan to kill was decided and what time had elapsed before it was carried out.<sup>36</sup>

Taken together, Recardo is liable only for homicide given the prosecution's failure to prove the alleged qualifying circumstances. Under Article 249 of the Revised Penal Code (RPC), the prescribed penalty for homicide is *reclusion temporal*. On this point, it must be recalled that Recardo voluntarily surrendered to the Office of the City Mayor. The prosecution did not dispute that the surrender was spontaneous and unconditional.<sup>37</sup> As such, the Court deems it proper to credit this mitigating circumstance in favor of the accused. Nevertheless, it is also undeniable that the crime happened in the dwelling of Abundio who has not given any provocation. As the CA and the RTC aptly observed, there was nothing on record which would indicate that Abundio's conduct provoked the attack. The act of Abundio in blocking Recardo may be construed to prevent him from accepting Lagat's challenge to fight and not provocation. Admittedly, Recardo stabbed Abundio on the chest on the mere thought that he might harm him.<sup>38</sup> Pursuant to paragraph 4, Article 64 of the RPC, when both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight. Applying the Indeterminate Sentence Law, and absent any other modifying circumstance, the maximum term of the indeterminate sentence should be taken from the medium period of the prescribed penalty or between 14 years, 8 months, and 1 day to 17 years and 4 months. On the other hand, the minimum term must be within the range of the penalty next lower in degree from that prescribed for the crime or *prision mayor*, in any of its periods, which has a range of 6 years and 1 day to 12 years. Thus, the Court modifies the penalty and imposed upon the accused the indeterminate sentence of 6 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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<sup>34</sup> *People v. Agramon*, 833 Phil. 747, 756–757 (2018) [Per J. Caguioa, Second Division]; *People v. Abierra*, 833 Phil. 276, 293 (2018) [Per J. Reyes, Jr. Second Division]; *People v. Garcia*, 467 Phil. 1102, 1107 (2004) [Per J. Ynares-Santiago, First Division]; *People v. Illescas*, 396 Phil. 200, 209 (2000) [Per J. Ynares-Santiago, First Division]; *People v. Baldimo*, 338 Phil. 350, 363 (1997) [Per J. Regalado, *En Banc*]; and *People v. De Guia*, 257 Phil. 957, 975 (1989) [Per J. Feliciano, Third Division].

<sup>35</sup> *People v. Chua*, 357 Phil. 907, 921 (1998) [Per J. Kapunan, Third Division].

<sup>36</sup> *Rollo*, p. 31.

<sup>37</sup> *Id.* at 13 and 31.

<sup>38</sup> *Id.* at 16, 18–19, and 28–31.

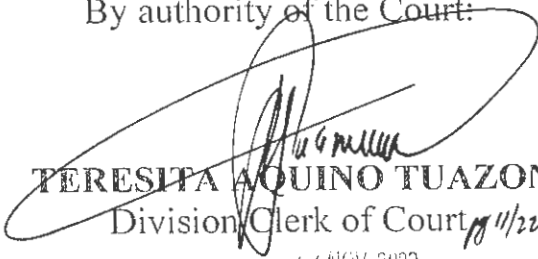


As to the civil liability of the accused, the Court deems it proper to award PHP 50,000.00 civil indemnity, PHP 50,000.00 moral damages, and PHP 50,000.00 temperate damages consistent with the prevailing jurisprudence. The Court likewise grants PHP 50,000.00 exemplary damages considering the presence of the aggravating circumstance of dwelling. The award of damages shall all earn legal interest at the rate of 6% per annum from finality of this Resolution until full payment.<sup>39</sup>

**FOR THESE REASONS**, the appeal is **DISMISSED**. The Decision dated December 15, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 02262-MIN is **AFFIRMED** with **MODIFICATION**. Recardo Apolinar Barro, Jr. a.k.a. "Boyot" is found **GUILTY** of homicide and is sentenced to suffer the indeterminate penalty of 6 years and 1 day of *prision mayor*, as minimum, to 14 years, 8 months and 1 day of *reclusion temporal*, as maximum. He is **DIRECTED** to pay the heirs of the victim PHP 50,000.00 civil indemnity, PHP 50,000.00 moral damages, PHP 50,000.00 temperate damages, and PHP 50,000.00 exemplary damages, all with legal interest at the rate of 6% per annum from the finality of this Resolution until full payment.

**SO ORDERED."**

By authority of the Court:

  
**TERESITA AQUINO TUAZON**  
Division Clerk of Court  
22/11/22  
22 NOV 2023

\*PUBLIC ATTORNEY'S OFFICE (reg)  
Regional Special & Appealed Cases Unit –  
Mindanao Station  
BJS Building, Tiano-San Agustin Sts.  
Cagayan de Oro City

\*OFFICE OF THE SOLICITOR GENERAL (reg)  
134 Amorsolo Street  
1229 Legaspi Village  
Makati City

\*RECARDIO APOLINAR BARRO, JR. (reg)  
Accused-Appellant  
c/o The Superintendent  
Davao Prison and Penal Farm  
B.E. Dujali, Davao del Norte

<sup>39</sup> *People v. Jugueta*, 783 Phil. 806, 852-853 (2016) [Per J. Peralta, *En Banc*]. See also *People v. Racal*, 817 Phil. 665, 685-686 (2017) [Per J. Peralta, Second Division].

Resolution

10

G.R. No. 259127  
March 8, 2023

THE SUPERINTENDENT (reg)  
Davao Prison and Penal Farm  
B.E. Dujali, Davao del Norte

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 43  
Gingoog City  
(Crim. Case No. 2017-6783)

COURT OF APPEALS (reg)  
Mindanao Station  
Cagayan de Oro City  
CA-G.R. CR-HC No. 02262-MIN

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*Please notify the Court of any change in your address.*

GR259127. 3/08/2023(226)URES

/u/vv