



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Baguio City

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **April 12, 2023** which reads as follows:*

**“G.R. No. 261069 (People of the Philippines, Plaintiff-Appellee v. Hizel Azores y Mutya alias “Hiya”, Accused-Appellant).** — There is no treachery even if the attack was unexpected by the victim, so long as the meeting between the assailant and the victim was merely accidental, and the decision to kill was made impulsively. There must be a showing that the accused reflected on the means, methods, and forms of killing the victim.

This Court resolves an Appeal<sup>1</sup> from the Decision<sup>2</sup> and Resolution<sup>3</sup> of the Court of Appeals (*CA*), which affirmed the Joint Decision<sup>4</sup> of the Regional Trial Court (*RTC*), finding Hizel Azores y Mutya alias “Hiya” (*Azores*) guilty beyond reasonable doubt of murder punished under Article 248 of the Revised Penal Code (*RPC*).

The Information<sup>5</sup> in Criminal Case No. 2016-194-I reads:

That on or about April 15, 2016, at about 4 o’clock in the afternoon, in Brgy. Anawan, Municipality of Polillo, Province of Quezon, and within the jurisdiction of this Honorable Court, the said accused, by means of and or with the presence of qualifying circumstance of treachery and the qualifying circumstance of evident premeditation and with evident intent to kill, did then and there willfully, unlawfully, and feloniously, assault and attack and shoot Ernie P. Azul using a loose firearm (.9mm caliber Armscor Pistol), suddenly and unexpectedly while not in the position to defend himself thereby inflicting upon him fatal gunshot which caused their instantaneous death.

CONTRARY TO LAW.<sup>6</sup>

<sup>1</sup> *Rollo*, pp. 3–4. Notice of Appeal dated April 8, 2021.

<sup>2</sup> *Id.* at 8–17. The December 7, 2020 Decision in CA-G.R. CR-HC No. 13029 was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Geraldine C. Fiel-Macaraig and Florencio M. Mamaug, Jr., Thirteenth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 19–20. The March 10, 2021 Resolution in CA-G.R. CR-HC No. 13029 was penned by Associate Justice Danton Q. Bueser, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 22–37. The February 18, 2019 Joint Decision in Criminal Case Nos. 2016-194-I and 2016-195-I was penned by Judge Agripino R. Bravo, Branch 65, Regional Trial Court, Infanta, Quezon.

<sup>5</sup> Records, pp. 2–3.

<sup>6</sup> *Id.*

Upon arraignment, Azores pleaded not guilty to the charge against him.<sup>7</sup> Trial on the merits then ensued.

Rolly Azul (*Rolly*) narrated that on April 15, 2016, at around 4:00 p.m., he was arguing with Azores over a carabao being pulled by the latter to the barangay hall.<sup>8</sup> The argument stemmed from Azores catching the said carabao grazing on his rice field.<sup>9</sup> During the confrontation, Rolly's brother, Ernie Azul (*Ernie*), approached to pacify Rolly and Azores.<sup>10</sup> However, Azores suddenly pulled out his gun and shot Ernie, who then fell on the ground.<sup>11</sup> Seemingly discontented, Azores went towards Ernie to fire more shots.<sup>12</sup>

Ernie's wife, Nimfa Azul (*Nimfa*), testified that on the said date, she and Ernie had just arrived home from the mountain when they heard Azores and Rolly having an argument.<sup>13</sup> Ernie instructed her to remain inside the house as he proceeded to appease Azores and Rolly.<sup>14</sup> As Ernie approached the two, Azores pulled out his firearm and shot him to the ground.<sup>15</sup> Azores then went closer to Ernie's body before shooting the latter multiple times more.<sup>16</sup>

Ultimately, Ernie was taken to the hospital where he was pronounced dead on arrival.

Azores admitted shooting Ernie, albeit in self-defense. He testified that on the said date, he saw a carabao grazing on his rice field, which led him to bring the same to the barangay hall.<sup>17</sup> On his way there, he was confronted by Rolly who claimed to be the owner of the carabao.<sup>18</sup> He then let go of the leash over the carabao and ran away after Rolly pulled out a *bolo*.<sup>19</sup> As he fled, Ernie suddenly came towards his direction and fired a gunshot but missed.<sup>20</sup> This prompted Azores to retaliate by shooting Ernie with his father's gun.<sup>21</sup> Then, he ran away and fetched his family to bring them to the town proper for protection.<sup>22</sup> On their way there, they were chased by the nephews of Ernie, Jun and Gary Azul.<sup>23</sup> When the two caught

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<sup>7</sup> *Id.* at 79.

<sup>8</sup> Records, p. 21.

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

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

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

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

<sup>13</sup> TSN, February 5, 2018, p. 7.

<sup>14</sup> TSN, September 27, 2016, pp. 4-5.

<sup>15</sup> *Id.* at 6

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

<sup>17</sup> TSN, October 12, 2016, pp. 3-4.

<sup>18</sup> *Id.* at 4-5.

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

<sup>20</sup> TSN, November 17, 2016, p. 29.

<sup>21</sup> *Id.* at 18-37.

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

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

him in the road, they hacked him and hit him on his arm.<sup>24</sup> He then went inside a nearby compound to hide and avoid further injury.<sup>25</sup> When the police authorities arrived, he voluntarily surrendered to them.<sup>26</sup>

The RTC disposed the case as follows:

**WHEREFORE**, premises considered, this Court decrees the following:

In Criminal Case No. **2016-195-1**, for the alleged Violation of the COMELEC Gun Ban in 2016, due to insufficiency of evidence, the accused HIZEL MUTYA AZORES is hereby **ACQUITTED**.

In Criminal Case No. **2016-194-1**, this Court finds the accused, HIZEL MUTYA AZORES, **GUILTY** beyond reasonable doubt of the offense of MURDER, and is hereby sentenced to suffer the penalty of imprisonment of RECLUSION PERPETUA, without the eligibility of parole, and for him to suffer all the accessory penalties and to pay the costs of suit.

Likewise, said accused is hereby ordered to pay the amount of Php30,000.00 representing actual damages; Php75,000.00 civil indemnity ex delicto; and to pay exemplary damages in the amount of Php30,000.00, to the heirs of the victim. All damages awarded shall earn interest at the rate of 6% per annum from the date of finality of this Decision until full payment.

The accused is **ORDERED** to be immediately transferred to the National Penitentiary in Muntinlupa City, Metro Manila.

SO ORDERED.<sup>27</sup> (Emphasis in the original)

Hence, Azores appealed his conviction.<sup>28</sup>

The CA affirmed the Joint Decision of the RTC, to wit:

All told, We find no reversible error in the Joint Decision of the trial court as to the guilt of the appellant.

**WHEREFORE**, the appeal is hereby **DENIED**.

SO ORDERED.<sup>29</sup> (Emphasis in the original)

Other than bare and self-serving allegations, the CA noted that Azores presented no evidence to suggest any attack or assault that placed his life in

<sup>24</sup> *Id.*

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

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

<sup>27</sup> *Id.* at 37.

<sup>28</sup> CA rollo, pp. 53-66.

<sup>29</sup> Rollo, p. 16.

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imminent or actual danger.<sup>30</sup> Further negating the tale of self-defense was the autopsy report, which showed that Ernie sustained multiple (not merely single) gunshot wounds in different areas of his body.<sup>31</sup>

Anent the appreciation of voluntary surrender as a mitigating circumstance, the CA observed that the reason for Azores' surrender was merely the inevitability of his arrest and the need to ensure his safety and that of his family.<sup>32</sup>

The CA likewise characterized the attack on Ernie as sudden and unexpected. In concluding that the attack was attended by treachery, the CA invoked the case of *People v. Bugarin*,<sup>33</sup> wherein this Court has ruled that even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it.<sup>34</sup>

Aggrieved, the accused filed the instant Appeal.<sup>35</sup>

In praying for his acquittal before this Court, Azores reiterates the following:

I.

THE LOWER COURT ERRED IN NOT APPRECIATING SELF DEFENSE IN FAVOR OF THE ACCUSED OR THE LEAST CONSIDER IT AS A MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF DEFENSE;

II.

THE LOWER COURT FAILED TO CONSIDER THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER; AND

III.

THE LOWER COURT ERRED IN CONSIDERING THE AGGRAVATING CIRCUMSTANCE OF TREACHERY.<sup>36</sup>

### **This Court's Ruling**

The Appeal is partially meritorious.

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<sup>30</sup> *Id.* at 13.

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

<sup>32</sup> *Id.* at 15.

<sup>33</sup> 807 Phil. 588 (2017) [Per J. Peralta, Second Division].

<sup>34</sup> *Rollo*, p. 16.

<sup>35</sup> *Id.* at 3.

<sup>36</sup> *Id.* at 47-63.

To begin with, the question of whether Azores acted in self-defense is factual in nature. Azores' version of facts requires a recalibration of the prosecution witnesses' testimonies to determine whether they would lead to the conclusion that Azores merely acted in self-defense.

Time and again, this Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect.<sup>37</sup> This is so because the trial court has the unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination.<sup>38</sup> Accordingly, the findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight were overlooked, misapprehended, or as to materially affect the disposition of the case.<sup>39</sup>

While questions of fact have been entertained by this Court in justifiable circumstances, Azores manifestly failed to establish that the instant case falls within the allowable exceptions. Here, the RTC and the CA noted the following which, in totality, negated Azores' plea of self-defense: *first*, Azores failed to show any attack or assault that placed his life in imminent or actual danger; *second*, the nature, number and locations of the wounds sustained by Ernie clearly show an intent to kill and not merely to prevent or repel an attack; and *third*, there was no showing of sufficient provocation by Ernie.

Not being a trier of facts but of law, this Court must necessarily concede to the concurrent findings of the CA and the RTC in rejecting Azores' plea of self-defense.

Notwithstanding the foregoing, We find the need to downgrade the crime committed by Azores from murder to homicide. After trial, the RTC found Azores guilty of the crime of murder, qualified by treachery. The CA later affirmed this finding.

This Court disagrees.

There is nothing on the records to support the conclusion that treachery was sufficiently proven in the case at bar. Treachery cannot be presumed; it must be proved by clear and convincing evidence, or as conclusively as the killing, if such be the crime itself.<sup>40</sup> Hence, sustaining the

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<sup>37</sup> *People v. Dayaday*, 803 Phil. 363, 370–371 (2017) [Per J. Caguioa, First Division].

<sup>38</sup> *People v. Macaspac*, 806 Phil. 285 (2017) [Per J. Bersamin, Third Division].

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

<sup>40</sup> *People v. Tiozon*, 275 Phil. 407, 431 (1991) [Per J. Davide, Jr., Third Division].

conviction entails showing that not only did accused-appellant kill the victim, but that it also be attended by treachery.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and especially ensure its execution, without risk to himself or herself arising from the defense which the offended party might make.<sup>41</sup> Two conditions must concur for treachery to be appreciated, namely: *first*, the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or herself or to retaliate; and *second*, said means, methods, or forms of execution were deliberately or consciously adopted by the assailant.<sup>42</sup>

The facts established in the instant case do not sufficiently show that Azores consciously or deliberately adopted the particular means, methods, or forms of attack against Ernie which gave the latter no opportunity to defend himself.

*First*, it appears that Azores' acts resulted from a sudden impulse or a spur of the moment decision, rather than a planned and deliberate action.

It has been repeatedly held that chance encounters, impulse killing or crimes committed at the spur of the moment are generally not attended by treachery for lack of opportunity of the accused to deliberately employ a treacherous mode of attack.<sup>43</sup> Here, Azores had a heated altercation with Ernie's brother before he shot Ernie. When Ernie slumped to the ground after getting shot once, Azores moved closer and proceeded to shoot Ernie multiple times more. The RTC found this instance sufficient to characterize the crime committed as murder, to wit:

What is clear to the Court is that the accused might have thought that he would be ganged up by the brothers and having been impelled by fear, pulled his gun and shot Ernie. It could have stopped there, since Ernie already dropped to the ground upon the first shot, signifying that he was already injured. **But the accused did not stop with the first shot, because he unloaded four bullets more to the body of the maimed victim,**

<sup>41</sup> Paragraph 16, Article 14 of the Revised Penal Code provides:  
Art. 14. *Aggravating circumstances.* — The following are aggravating circumstances:

....

16. That the act be committed with treachery.

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 arising from the defense which the offended party might make.

<sup>42</sup> *People v. Gonzalez, Jr.*, 411 Phil 893, 915 (2001) [Per J. Gonzaga-Reyes, *En Banc*].

<sup>43</sup> *People v. Alegre y Nazara*, G.R. No. 254381, February 14, 2022 [Per J. Hernando, Second Division].

*proposed*

**making sure that the latter would not make it alive. This is murder, no less.**<sup>44</sup> (Emphasis supplied)

It bears noting that the mere fact that the multiple gunshot wounds were inflicted on the victim does not, *ipso facto*, prove treachery. Not only must there be a showing that such form of attack had purposely been adopted by accused.<sup>45</sup> There must likewise be evidence showing that the accused reflected on the same.<sup>46</sup> If the decision to kill was sudden, there is no treachery, even if the position of the victim was vulnerable, because it was not deliberately sought by the accused, but was purely accidental.<sup>47</sup>

Here, the RTC itself noted that Azores might have shot Ernie under the impression that he would be ganged up by the brothers. Indeed, the killing could have been done on impulse, as a reaction to an actual or even imagined provocation.<sup>48</sup> This suggests that Azores' acts were decided upon rashly rather than deliberately and after reflection.

True, the CA correctly noted that “[t]he qualifying circumstance of treachery does not even require that the perpetrator attack the victim from behind.”<sup>49</sup> Indeed, “[e]ven a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it.”<sup>50</sup> However, we have likewise ruled that treachery is not attendant where the attack was frontal, indicating that the victim was not totally without opportunity to defend himself, and all surrounding circumstances indicate that the attack was the result of a rash and impetuous impulse of the moment rather than a deliberate act of will.<sup>51</sup>

*Second*, the meeting between Azores and Ernie was casual. Where the meeting between the accused and the victim was merely accidental and the attack was done impulsively, there is no treachery even if the attack was sudden and unexpected by the victim.<sup>52</sup>

Here, Ernie's wife herself testified she and Ernie had just arrived home from the mountain prior to the incident.<sup>53</sup> Ernie approached Azores only to pacify the latter and Ernie's brother who were having a heated altercation.<sup>54</sup> Meanwhile, no evidence was presented by the prosecution to show that Azores knew prior to the attack that Ernie would arrive. Absent

<sup>44</sup> *Rollo*, pp. 32–33.

<sup>45</sup> *People v. Macalisang*, 130 Phil. 728 (1968) [Per J. Sanchez, *En Banc*].

<sup>46</sup> *People v. Tumaob*, 353 Phil. 331, 337 (1949) [Per J. Tuason, *En Banc*].

<sup>47</sup> *People v. Cadag, et al.*, 112 Phil. 314, 319–320. (1961) [Per J. De Leon, *En Banc*].

<sup>48</sup> *People v. Sabanal*, 254 Phil. 433, 436–437 (1989) [Per J. Cruz, First Division].

<sup>49</sup> *Rollo*, p. 16.

<sup>50</sup> *Id.*

<sup>51</sup> *People v. Tugbo, Jr.*, 273 Phil. 346, 352 (1991) [Per J. Narvasa, First Division].

<sup>52</sup> *People v. Bacho*, 253 Phil. 451 (1989) [Per J. Padilla, Second Division].

<sup>53</sup> TSN, February 5, 2018, p. 7.

<sup>54</sup> TSN, September 27, 2016, pp. 4–5.

the knowledge of Azores that he would encounter Ernie, he would have no opportunity to plan the way, method, or means with which to execute the felony.

To reiterate, the suddenness of attack does not, by itself suffice to support a finding of treachery, even if the purpose was to kill, so long as the decision was made suddenly, and the victim's helpless position was accidental.<sup>55</sup>

Besides, Ernie was even aware of Azores' ill feelings against him. There can be no treachery when the victim is aware of the hostility of the assailant towards the former.<sup>56</sup> In this case, a heated argument between Azores and Ernie's brother preceded the killing. More importantly, the Ernie's wife testified that, as far as she knew, Azores was harboring grudge over Ernie and had even threatened the latter's life, to wit:

Q: Prior to April 15, 2016, did you know if the accused was harboring grudge (sic) against your husband?

A: As far as I know, there was, Your Honor. My husband is farming a land and Hizel wanted to grab it.

Q: But there was no actual confrontation between the accused and your husband regarding that matter?

A: Hizel used to threaten my husband, Your Honor.

Q: Considering that you are very much aware of the said incident between your husband and Hizel, why did you still allow your husband to be near to Hizel, the fact that he was then mad and with argument with your brother-in-law?

A: It did not enter our minds that Hizel will do that matter, Your Honor.<sup>57</sup>

In his testimony, Ernie's brother further alluded to the grudge by Azores against Ernie owing to a land dispute, to wit:

Q: What would be the reason why the accused shot your brother if you know?

A: He was mad over a boundary dispute, sir.

Q: Is it the same land where your carabao was being pulled?

A: Yes, sir.

Q: Who is directly involved with the boundary dispute with the accused?

A: My brother, sir.

....

<sup>55</sup> *People v. Guzman*, 542 Phil. 152 (2007) [Per J. Chico-Nazario, Third Division]

<sup>56</sup> *People v. Reyes*, 420 Phil. 343, 353 (2001) [Per J. Mendoza, *En Banc*].

<sup>57</sup> TSN, February 5, 2018, p. 11.



- Q: And it did not occur to your mind why he shoot (sic) your brother and not you when in fact you have confrontation with him?
- A: He having threatening (sic) my deceased brother for a long time already, we just did not come to the authorities, sir.<sup>58</sup>

Indeed, Ernie's awareness of Azores' ill feelings towards him, by itself, is not sufficient to rule out treachery. Nonetheless, where the victim would have been alerted to the impending lethal attack due to the preceding heated argument between him and the accused, with the latter even uttering threats against the former, treachery cannot be appreciated as an attendant circumstance.<sup>59</sup> Clearly, Azores' hostility against Ernie could have forewarned the latter of possible danger to his life and prompted him to, for instance, bring a weapon for purposes of defending himself should the need arise. This only supports the RTC's inference that Azores might have shot Ernie out of fear that the latter might likewise attack him.

*Lastly*, there was no appreciable time intervening between the firing of the multiple gunshots.

For treachery to be appreciated, it must be shown that the treacherous acts were present and preceded the commencement of the attack which caused the injury complained of.<sup>60</sup> Thus, it has been held that even if the deceased was shot while he was lying wounded on the ground, it appearing that the firing of the shot was a mere continuation of the assault in which the deceased was wounded, with no appreciable time intervening between the delivery of the blows and the firing of the shot, it cannot be said that the crime was attended by treachery.<sup>61</sup>

Here, Azores could not have consciously adopted that method of attack, that is, shooting Ernie while he was lying on the ground, since the assault began face to face. As the aggression was continuous, Azores had no time to prepare for, or even to think of, that method of attack.

Indeed, treachery is absent where the wounding of the victim while lying on the ground was merely incidental to the ensuing pursuit and is not intended to ensure the safety of the attacker.<sup>62</sup> Notwithstanding that the shooting was sudden, unexpected and committed on a helpless victim, in the absence of a showing that such mode of attack was adopted consciously and that the assailant knowingly intended to ensure the accomplishment of his criminal purpose, and where the shooting was only an aftermath of another incident, treachery is not present.<sup>63</sup>

<sup>58</sup> TSN, June 18, 2018, p. 11.

<sup>59</sup> *People v. Macaspac*, *supra* note 32.

<sup>60</sup> *U.S. v. Balagtas*, 19 Phil. 164, 172 (1911) [Per J. Trent. *En Banc*].

<sup>61</sup> *People v. Badon*, 367 Phil. 448, 465 (1999) [Per J. Melo. First Division].

<sup>62</sup> *People v. Clemente, et al.*, 128 Phil. 268, 278 (1967) [Per J. J.B.L. Reyes, *En Banc*].

<sup>63</sup> *People v. Tapeno*, 247-A Phil. 13, 22 (1988) [Per J. Gutierrez, Jr., Third Division].

Taking into consideration all the factors previously laid down leads to the conclusion that treachery did not attend the killing of Ernie. All told, any doubt as to the existence of treachery must be resolved in favor of the accused-appellant. The crime should only be considered homicide which is defined and penalized under Article 249 of the Revised Penal Code.<sup>64</sup>

Contrary to the conclusion of the CA, this Court finds that the mitigating circumstance of voluntary surrender must be credited in favor of the accused-appellant. The circumstances revolving Azores' arrest clearly show a manifestation on his part to freely submit himself to the authorities for the killing of Ernie. On cross-examination, he testified:

Q: That was the time you shot Ernie and you brought your family, together with you riding in your motorcycle and proceeded into Pob., Polillo, Quezon, is that right?

A: Yes, sir.

Q: And these June and Gary caught up with you in Sitio Bigyan, Brgy. Sibulan, Polillo, Quezon?

A: Opo, inabutan po.

Q: **Will you agree with me, Mr. Witness, that you were about to escape during that time, together with your family, correct?**

A: **No, sir.**

Q: **So where were you going at that time?**

A: **To the municipal hall, sir.**

Q: **For purposes of what?**

A: **To surrender, sir.**

....

Q: You also said that when you reached Sitio Bigyan, you made your family alight from the motorcycle and you proceeded to NAPOCOR. Why did you proceed to NAPOCOR and left your wife and children?

A: Bago ko po ibinaba yung pamilya ko, kami po ay hinataw na nila ng taga pero naiwas ko po ang motor kaya sa kamay po ako tinamaan. Kaya ko po inibaba ang mag-iina ko ay baka po maaksidente laang kami dahil hirap na po akong mag drive dahil sa sugat sa aking kamay.

Q: And who hit you with a bolo, Mr. Witness??

A: Dalawa po silang magkaangas, hindi ko na po matandaan kung sino ang nagda drive at kung sino sa kanila ang nakaangkas na s'yang tumaga sa akin, pero silang dalawa po, Gary at June ang magkasama.

....

<sup>64</sup> Article 249 of the Revised Penal Code provides: "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."

*protest*

- Q: So why did you proceed to NAPOCOR and left your family in Sitio Bigyan, Mr. Witness?**
- A: Ako po ay nagpahabol na sa kanila para po hindi na masaktan yong pamilya ko. Nakaharang po sila sa daan kaya hindi na po kami makaderetso sa bayan, kaya ibinaba ko po yong mag-iina ko at pinatago at ako po'y nagpahabol na lang, hinabol pa rin nila ako hanggang NAPOCOR, ako po'y pumasok at doon ako nagtago."**
- Q: Matapos kang magtago ano pa ang nangyari?
- A: Nang makapasok po ako sa planta ay Nakita ko pong inaabangan po ako ni Gary at ni June doon sa labas ng gate ng planta and dala pa rin po nila ang itak kaya't nagpasya po akong hindi na lumabas ng planta ng NAPOCOR.
- Q: Ano po ang sumunod na nangyari?**
- A: Makalipas po ang isang oras may Nakita po akong dumating na sasakyan ng pulis at doon po ay nagpasya po akong lumabas ng planta at sumuko sa kanila, doon din po naabutan ng mga pulis iyong magkapatid na tumaga sa aking kamay na sina Gary Azul at June Azul at sinabi ko po sa mga pulis na sila ang tumaga sa aking kamay kaya't mayroon po akong sugat.**
- Q: Matapos mong sumuko sa mga pulis ano pa ang nangyari?**
- A: Sumama po ako sakanila ng maayos para sumuko at para po sampahan na din ng habla ang magkapatid na sina June Azul at Gary Azul.**
- Q: Mayroon po bang sumunod na nangyari?
- A: Wala na po.<sup>65</sup> (Emphasis supplied)

For voluntary surrender to be appreciated, the following requisites must be present, namely: *first*, the offender has not been actually arrested; *second*, the offender surrendered himself to a person in authority or the latter's agent; and *third*, the surrender was voluntary.<sup>66</sup>

All the foregoing elements are present in the case as established by Azores' testimony, which the prosecution failed to refute. *First*, Azores was not yet arrested at the time that the police officers arrived at the scene. *Second*, Azores surrendered to them when they arrived. *Lastly*, Azores surrendered himself voluntarily, spontaneously and without any influence from the police officers. In fact, he was already on his way to the municipal hall to surrender himself when Ernie's relatives chased and hacked him with a bolo. He then hid inside the NAPOCOR building only to avoid further injury, not to evade the law.

Since this Court downgraded accused-appellant's crime to homicide, Azores may now benefit from the attendant mitigating circumstance. When

<sup>65</sup> TSN, November 17, 2016, pp. 25-37; and Judicial Affidavit of Hizel Mutya Azores dated April 18, 2016, records, pp. 137-138.

<sup>66</sup> *People v. Manzano*, 827 Phil. 113 (2018) [Per J. Martires, Third Division].

only one mitigating circumstance attended the commission of the felony, the penalty shall be imposed in its minimum period.<sup>67</sup> Applying the Indeterminate Sentence Law, the maximum penalty shall be *reclusion temporal* in its minimum period, while the minimum penalty shall be *prision mayor* in any of its periods. Thus, he is to suffer the indeterminate penalty of six years and one day of *prision mayor*, as minimum, to twelve years and one day of *reclusion temporal*, as maximum.

On the matter of damages, this Court finds that the amount imposed upon the accused-appellant for the charge of homicide must be modified, following the ruling in *People v. Jugueta*.<sup>68</sup> This Court hereby awards damages as follows: (a) PHP 50,000.00 as civil indemnity; and (b) PHP 50,000.00 as moral damages. In cases of homicide, exemplary damages are awarded only if an aggravating circumstance was proven during the trial, even if not alleged in the Information.<sup>69</sup> In addition, this Court awards actual damages of PHP 30,000.00. Finally, the amounts awarded shall earn interest of six percent per annum reckoned from the date of finality of this Resolution until full payment.

**FOR THESE REASONS**, the Appeal is **PARTIALLY GRANTED**. The assailed December 7, 2020 Decision and March 10, 2021 Resolution of the Court of Appeals in CA-G.R. CR-HC No. 13029 are **AFFIRMED with MODIFICATIONS**. This Court finds accused-appellant Hizel Azores y Mutya **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE**, as defined and penalized under Article 249 of the Revised Penal Code, with the mitigating circumstance of voluntary surrender. He is **SENTENCED** to suffer the indeterminate penalty of eight years and one day of *prision mayor*, as minimum, to 14 years, eight months and one day of *reclusion temporal*, as maximum. He is further **ORDERED** to pay the heirs of victim, Ernie Azul y Porosa the amounts of: (a) PHP 50,000.00 as civil indemnity; (b) PHP 50,000.00 as moral damages; (c) PHP 50,000.00 as exemplary damages; and (d) PHP 30,000.00 as actual damages. All monetary awards shall earn legal interest of six percent (6%) per annum due from the date of finality of this Resolution until fully paid.

**SO ORDERED.”**

<sup>67</sup> Paragraph 2, Article 64 of the Revised Penal Code provides:  
“Art. 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

xxx

2. When only a mitigating circumstances is present in the commission of the act, they shall impose the penalty in its minimum period.”

<sup>68</sup> 783 Phil. 806, 848–854 (2016) [Per J. Peralta, *En Banc*].

<sup>69</sup> *People v. Doca*, G.R. No. 233479, October 16, 2019 [Per J. Lazaro-Javier, Second Division].

*peralta*

By authority of the Court:

TERESITA AQUINO TUAZON  
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA  
Deputy Division Clerk of Court <sup>mm</sup> 12/21

21 DEC 2023

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THE DIRECTOR GENERAL (reg)  
Bureau of Corrections  
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 65  
Infanta, Quezon  
(Crim. Case No. 2016-194-I)

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\*with a copy of the CA Decision dated December 7, 2020  
*Please notify the Court of any change in your address.*  
GR261069. 4/12/2023(151)URES