



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 198110

Present:

SERENO, C.J.,  
*Chairperson,*  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, JJ.

- versus -

WILSON ROMAN,  
Accused-Appellant.

Promulgated:

**JUL 31 2013**

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DECISION

REYES, J.:

This is an appeal from the Decision<sup>1</sup> dated February 28, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03972, which affirmed with modification the Judgment<sup>2</sup> dated June 10, 2009 of the Regional Trial Court (RTC) of Iriga City, Branch 35, in Criminal Case No. IR-4231.

<sup>1</sup> Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Fernanda Lampas Peralta and Manuel M. Barrios, concurring; *rollo*, pp. 2-14.

<sup>2</sup> CA *rollo*, pp. 32-38.

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### The Antecedent Facts

On November 11, 1996, Wilson Roman (accused-appellant) was charged with Murder before the RTC of Iriga City, Branch 35. Upon arraignment on February 6, 2004, accused-appellant pleaded not guilty to the charge.<sup>3</sup> Thereafter, trial on the merits ensued.

The prosecution presented the following as witnesses: Elena Romero (Romero), Asterio Ebuenga (Ebuenga), Martin Borlagdatan (Borlagdatan), Elisea Indaya (Indaya), Ramil Baylon (Baylon), SPO1 Medardo Delos Santos and Dr. Teodora Pornillos (Dr. Pornillos). The defense, on the other hand, presented the testimony of the accused-appellant and Delia Tampoco (Tampoco).

Prosecution witness Romero testified that in the morning of June 22, 1995, she was at a wedding party in the house of a certain Andang Toniza in *Barangay Coguit*, Balatan, Camarines Sur, when she witnessed the accused-appellant hacks Vicente Indaya (victim) unrelentingly with a bolo. The victim was hit on his head, nape, right shoulder, base of the nape and right elbow before he fell on the ground and instantly died.<sup>4</sup>

Borlagdatan, who was also at the wedding party, testified that he was at the kitchen, getting rice to be served for the guests, when he heard someone shouting that somebody was hacked. When he went out to check what the commotion is about, he saw the victim lying on his stomach, drenched in his own blood, while the accused-appellant was standing in front of him, holding a bolo. Borlagdatan tried to seize possession of the bolo from the accused-appellant but the latter made a downward thrust, hitting his right thumb. He left the place and proceeded to the nearby health center to have his wound treated.<sup>5</sup>

The testimonies of Ebuenga and Ramil Baylon, who were also in attendance at the wedding party, corroborated the testimony of Borlagdatan.

Ebuenga testified that he was only two (2) feet away from the accused-appellant and the victim when the former hacked the latter at the back of his head, nape and left shoulder.<sup>6</sup> Baylon, on the other hand, demonstrated in open court how the incident transpired, with him acting as the accused-appellant and a court employee as the victim. With the court employee had his back to Baylon, the latter mimicked how the accused-

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<sup>3</sup> Id. at 32.

<sup>4</sup> Id. at 32-33.

<sup>5</sup> Id. at 33.

<sup>6</sup> Id.

appellant hacked the victim five (5) times. The accused-appellant continued to hack the victim even when he was already on his knees.<sup>7</sup>

Indaya, wife of the victim, testified that she learned of the incident from her sister-in-law, Consorcia Villaflor. They immediately proceeded to the crime scene and saw her husband lying on his stomach, with five (5) hack wounds at the back of his head. She further testified on the damages sustained by their family from the untimely demise of the victim, who is a father to eleven (11) children and the breadwinner of the household.<sup>8</sup>

Dr. Pornillos interpreted in open court the Necropsy Report<sup>9</sup> executed by Dr. Mario Bañal (Dr. Bañal), who conducted the post-mortem examination on the cadaver of the victim. She testified that the victim sustained seven (7) hack wounds. The first and second wounds were inflicted at the back of the head and at the posterior lobe, respectively, while the third and fourth wounds were found at the skull. The fifth and sixth wounds were inflicted at the left shoulder of the victim while the seventh wound was at the back portion, above the waist and along the spine. She further testified that the weapon used could be a bolo and that the assailant was positioned at the back of the victim. She also confirmed that the wounds could have been inflicted while the victim is already down on the ground.<sup>10</sup>

The accused-appellant proffered a different version of the incident. He testified that on June 22, 1995, he went to the house of his parents-in-law in *Barangay Coguit*, Balatan, Camarines Sur to bring the bamboos he towed from San Isidro, Balatan, Camarines Sur. On his way back, he met his close friend, Abundio Belbis (Belbis), who cajoled him to come with him to a wedding party at *Barangay Coguit*, Balatan, Camarines Sur. At the wedding venue, he saw the victim having a heated exchange of words with his brother-in-law, Geronimo Villaflor (Villaflor), who happened to be his friend. He pacified the two and told Villaflor to leave. Thereafter, he joined Belbis and had some drinks. After twenty (20) minutes, the victim suddenly appeared, loudly tapped their table and, while pointing at him, exclaimed, “*Son of a bitch, I’ll kill you! Why are you pacifying me[?] You are just like your friends.*” He stood up and turned to leave. While leaving, however, he heard a woman shouting, “*Wilson, you will be hacked!*” When he turned his head, he saw the victim running towards him with a bolo. Seeing the impending attack, he moved back, making him lean on the fence, but still he was hit on his left hand at the back of his palm. While wrapping his palm with a towel, the victim hit him once again but he was able to dodge. He got

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<sup>7</sup> Id. at 33-34.

<sup>8</sup> *Rollo*, p. 4.

<sup>9</sup> CA *rollo*, pp. 10-11.

<sup>10</sup> Id. at 34.

mad and lost control of himself so he pulled his bolo from the scabbard and hacked the victim.<sup>11</sup>

Tampoco, on the other hand, testified that when she saw the victim aiming to hack the accused-appellant, she shouted, “*Wilson, you will be hacked!*” With her warning, the accused-appellant was able to move back and avoid the attack. However, the victim moved and lunged at the accused-appellant again. The accused-appellant was hit once but was, thereafter, able to seize possession of the bolo from the victim and hacked the latter.<sup>12</sup>

### The Ruling of the RTC

On June 10, 2009, the RTC rendered a decision,<sup>13</sup> finding the accused-appellant guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

**WHEREFORE**, the prosecution having proven the guilt of the accused WILSON ROMAN beyond reasonable doubt for the felony of murder, he is hereby CONVICTED and sentenced to suffer imprisonment from twenty years and one day to forty years of *reclusion perpetua*. He is further ordered to indemnify the heirs of Vicente Indaya represented by Elisea B. Indaya the following amount: 1)For the death of Vicente Indaya – Pesos:One Hundred Thousand ([P]100,000.00); 2)actual Damages in the amount of Pesos: Fifty Thousand ([P]50,000.00); 3)Moral Damages in the amount of Pesos: Fifty Thousand ([P]50,000.00); and the cost of suit.

SO ORDERED.<sup>14</sup>

The RTC ruled that the prosecution was able to establish all the elements constitutive of the crime charged. Specifically, it was able to prove the identity of the accused-appellant as the perpetrator of the crime through the categorical testimonies of Romero, Ebuenga, Borlagdatan and Baylon who personally witnessed the hacking of the victim. Further, the qualifying circumstance of treachery was also sufficiently established by the consistent accounts of the witnesses that the accused-appellant attacked and hacked the victim from behind, while he was unarmed and defenseless, until he was down on the ground.<sup>15</sup>

The RTC also dismissed the plea of self-defense proffered by the accused-appellant. It ruled that the accused-appellant’s bare claim that the unlawful aggression initially came from the victim cannot stand against the

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<sup>11</sup> Id. at 34-35.

<sup>12</sup> Id. at 35.

<sup>13</sup> Id. at 32-38.

<sup>14</sup> Id. at 38.

<sup>15</sup> Id. at 36.

overwhelming evidence presented by the prosecution showing that it was him who attacked and repeatedly hacked the victim to his death. It noted the variance between the testimonies of the accused-appellant and his witness, Tampoco, as to where the bolo that was used in the crime came from.<sup>16</sup> The accused-appellant testified, thus:

“Q What did you do, if any?

A I was able to pull my bolo out of the scabbard and hacked him.”<sup>17</sup>

On the other hand, Tampoco testified:

“Q While Wilson Roman, the accused was in that position, what [did] Vicente Indaya do if any?

A What Vicente Indaya did was to move to where I was standing and then Vicente Indaya lunged at Wilson Roman.

Q Then after that what happened?

A Wilson Roman was able to seize the bolo.

Q Before Wilson Roman was able to seize the bolo held by Vicente Indaya, was Wilson Roman hit by that bolo?

A Yes, sir.

Q You said that accused Wilson Roman was able to seize the bolo from the victim, Vicente Indaya and Wilson Roman hacked Indaya, that’s why he died?

A Yes, sir.”<sup>18</sup>

As regards the civil liability, the RTC ordered the accused-appellant to indemnify the heirs of the victim with actual and moral damages.<sup>19</sup>

### The Ruling of the CA

On appeal, the CA affirmed with modification the ruling of the RTC in a Decision<sup>20</sup> dated February 28, 2011, disposing thus:

**WHEREFORE**, in view of all the foregoing, the assailed Decision of the Regional Trial Court dated June 10, 2009 is hereby **AFFIRMED with MODIFICATION** on the damages. Accordingly, accused-appellant Wilson Roman is directed to pay the heirs of Vicente Indaya the amount of [P]50,000.00 as civil indemnity, [P]50,000.00 as moral damages,

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<sup>16</sup> Id. at 37.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> *Rollo*, pp. 2-14.

[P]25,000.00 as temperate damages and [P]30,000.00 as exemplary damages. The award of actual damages of [P]50,000.00 is deleted.

**SO ORDERED.**<sup>21</sup>

The CA ruled that the RTC correctly dismissed the accused-appellant's plea of self-defense to extricate himself from criminal liability. It pointed out that the eyewitnesses' accounts confirmed that the accused-appellant was the unlawful aggressor and not the victim. It was established during the trial that the victim was only walking in the yard when the accused-appellant attacked him from behind.

Further, the CA noted that the disparity of the wounds sustained by the accused-appellant and the victim militates against the claim of self-defense. While the accused-appellant sustained a superficial cut at the back of his palm, measuring an inch, the victim was inflicted with seven (7) hack wounds on his head, neck and shoulder, all of which were mortal.<sup>22</sup>

The CA, however, modified the award of damages, ratiocinating thus:

In consonance with the Supreme Court's pronouncements, WE reduce the award of civil indemnity given by the trial court from [P]100,000.00 to [P]50,000.00 while the amount of [P]50,000.00 as moral damages is maintained.

As to actual damages, the heirs of the victim of murder are not entitled thereto because said damages were not duly proved with a reasonable degree of certainty. To be entitled to actual damages, it is necessary to prove the actual amount of loss with reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.

In the present case, no proof was presented that the heirs of Vicente Indaya actually spent the amount of [P]50,000.00 awarded by the court *a quo*. However, under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved. Thus, in lieu of actual damages, the award of [P]25,000.00 as temperate damages is proper.

Likewise, exemplary damages is warranted when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying. In this case, since the qualifying circumstance of treachery was established, WE award the amount of [P]30,000.00 as exemplary damages.<sup>23</sup> (Citations omitted)

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<sup>21</sup> Id. at 13.

<sup>22</sup> Id. at 9-10.

<sup>23</sup> Id. at 12-13.

On March 10, 2011, the accused-appellant, through the Public Attorney's Office, filed a Notice of Appeal<sup>24</sup> with the CA, pursuant to Section 13(c), Rule 124 of the Revised Rules of Criminal Procedure, as amended by A.M. No. 00-5-03-SC.

### **The Issues**

The issues for consideration of this Court in the present appeal are the following:

- (1) Whether the accused-appellant may properly invoke self-defense; and
- (2) Whether the qualifying circumstance of treachery exists.

The accused-appellant contends that the prosecution was not able to establish his guilt beyond moral certainty. He argues that he should not be held criminally liable for the death of the victim as he only acted in self-defense from the unlawful aggression exerted by the latter. He was just walking when he was suddenly attacked by the victim with a bolo and that he swung his own bolo only to save himself from the impending danger to his person.<sup>25</sup>

The accused-appellant further asseverates that there was a reasonable necessity for him to use his bolo to repel the unlawful aggression of the victim as it is the only weapon available to him at the time of the attack. He adds that the unlawful aggression was exerted by the victim without any provocation on his part.<sup>26</sup>

Even granting that the theory of self-defense is unavailing to him, the accused-appellant contends that he should only be convicted of the lesser crime of homicide for failure of the prosecution to establish the presence of treachery. He claims that the evidence on record failed to show that there was a conscious effort on his part to adopt a particular means, method or form of attack to ensure the commission of the crime, without affording the victim any opportunity to defend himself. And, considering that treachery cannot be presumed, he opines that any doubt as to its existence must be resolved in his favor.<sup>27</sup>

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<sup>24</sup> Id. at 15.

<sup>25</sup> CA *rollo*, p. 57.

<sup>26</sup> Id. at 58.

<sup>27</sup> Id. at 60.

For their part, the Office of the Solicitor General (OSG) maintains that the accused-appellant's guilt for the crime of murder was proven beyond reasonable doubt. The testimonies of the prosecution witnesses were positive, clear and consistent in that the victim was unarmed when he was attacked from behind by the accused-appellant.<sup>28</sup>

The OSG likewise refutes the accused-appellant's claim of self-defense. It argues that the evidence presented by the accused-appellant do not clearly and convincingly establish the presence of unlawful aggression on the part of the victim. The mere fact that the victim was engaged in a heated argument with another person so much so that the accused-appellant pacified them does not constitute unlawful aggression within the contemplation of the law.<sup>29</sup>

Finally, the OSG maintains that the qualifying circumstance of treachery was clearly established by the eyewitnesses' consistent accounts that the accused-appellant, without provocation, suddenly attacked the victim with his bolo from behind, the latter being defenseless and totally unaware of the impending danger to his person.<sup>30</sup>

### **The Court's Ruling**

#### **The accused-appellant's guilt was proven beyond reasonable doubt.**

Absent any showing that the lower court overlooked circumstances which would overturn the final outcome of the case, due respect must be made to its assessment and factual findings. Such findings of the RTC, when affirmed by the CA, are generally binding and conclusive upon this Court.<sup>31</sup>

In the instant case, the records are replete with evidence establishing the accused-appellant's guilt for the crime charged. The testimonies of the prosecution witnesses, Romero, Borlagdatan and Baylon, were positive, clear and consistent in all material points. They uniformly declared that they were at the scene of the crime at the time it was committed and identified the accused-appellant as the assailant who hacked the victim to his death. Specifically, Baylon relayed in his testimony how the accused-appellant hacked the unsuspecting victim from behind with a bolo. He recounted that the accused-appellant continued hacking the victim even as the latter was

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<sup>28</sup> Id. at 85-86.

<sup>29</sup> Id. at 91-92.

<sup>30</sup> Id. at 92-93.

<sup>31</sup> *People v. Del Rosario*, G.R. No. 189580, February 9, 2011, 642 SCRA 625, 633.



already kneeling on the ground.<sup>32</sup> Baylon's testimony was corroborated by several eyewitnesses: Romero, Ebuenga and Borlagdatan, all of whom confirmed the veracity of his account.

Further corroborating the eyewitnesses' testimonies is the Necropsy Report issued by Dr. Bañal. In the said report, it was confirmed that all of the wounds suffered by the victim were located at his back, mostly in the head, inflicted by a sharp-edged object which is presumably a bolo.<sup>33</sup>

Remarkably, the accused-appellant did not impute any ill-motive on the part of the prosecution witnesses which could have impelled them to falsely implicate him in a serious crime like murder. Where there is no evidence that the witnesses of the prosecution were actuated by ill-motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit.<sup>34</sup>

With the overwhelming evidence presented against the accused-appellant, this Court entertains no doubt on his guilt.

**The accused-appellant failed to establish the elements of self-defense.**

In his vain attempt to extricate himself from criminal liability, the accused-appellant interposed a plea of self-defense. In his version of the incident, he claims that the victim was the unlawful aggressor and that he simply acted in self-defense in order to avert an impending harm. He avers that he earned the ire of the victim when he intervened in his altercation with Villaflor while at a wedding reception. A few minutes after that, he claims that the victim came back and loudly tapped the table where he and his friends were having some drinks. The victim hurled invectives against him and threatened to kill him but he simply stood up and turned to leave the place. As he was leaving, however, he heard someone shouting that he is about to be hacked. Turning his head, he saw the victim running towards him, aiming to hit him with a bolo. He was able to avoid the attack but he was still hit in the palm as the victim continued to thrust his bolo. It was then that he removed the bolo from his scabbard and hit the victim.<sup>35</sup>

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<sup>32</sup> CA rollo, p. 34.

<sup>33</sup> Id.

<sup>34</sup> *People v. De Leon*, 408 Phil. 589, 597 (2001), citing *People v. Lumacang*, 381 Phil. 266, 279 (2000) and *People v. Manegdeg*, 375 Phil. 154, 174 (1999).

<sup>35</sup> CA rollo, p. 35.

It bears emphasizing that self-defense, like alibi, is an inherently weak defense for it is easy to fabricate. Thus, it must be proven by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it.<sup>36</sup> In order for self-defense to be appreciated, the accused must prove by clear and convincing evidence the following elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.<sup>37</sup>

It is a statutory and doctrinal requirement that, for the justifying circumstance of self-defense, unlawful aggression as a condition *sine qua non* must be present. There can be no self-defense, complete or incomplete, unless the victim commits an unlawful aggression against the person defending himself.<sup>38</sup> There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of a weapon.<sup>39</sup>

In *People v. Nugas*,<sup>40</sup> this Court expounded on the nature of unlawful aggression as the key element of self-defense:

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

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

<sup>36</sup> *People v. Bracia*, G.R. No. 174477, October 2, 2009, 602 SCRA 351, 372.

<sup>37</sup> *People v. Del Castillo*, G.R. No. 169084, January 18, 2012, 663 SCRA 226, 242, citing REVISED PENAL CODE, Article 11, Section 1.

<sup>38</sup> *People v. Bracia*, supra note 36, at 370, citing *People v. Ansowas*, 442 Phil. 449, 459 (2002).

<sup>39</sup> *People v. Ansowas*, id.

<sup>40</sup> G.R. No. 172606, November 23, 2011, 661 SCRA 159.

holstered, accompanied by an angry countenance, or like aiming to throw a pot.<sup>41</sup> (Citations omitted)

In *Del Castillo*, the Court discussed the implication of a plea of self-defense, viz:

The rule consistently adhered to in this jurisdiction is that when the accused's defense is self-defense he thereby admits being the author of the death of the victim, that it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court. The rationale for the shifting of the burden of evidence is that the accused, by his admission, is to be held criminally liable unless he satisfactorily establishes the fact of self-defense. But the burden to prove guilt beyond reasonable doubt is not thereby lifted from the shoulders of the State, which carries it until the end of the proceedings. In other words, only the *onus probandi* shifts to the accused, for self-defense is an affirmative allegation that must be established with certainty by sufficient and satisfactory proof. He must now discharge the burden by relying on the strength of his own evidence, not on the weakness of that of the Prosecution, considering that the Prosecution's evidence, even if weak, cannot be disbelieved in view of his admission of the killing.<sup>42</sup> (Citations omitted)

Unfortunately for the accused-appellant, his claim of self-defense shrinks into incredulity when scrutinized alongside the positive and consistent testimonies of the prosecution witnesses as to what transpired during the incident. It is worth noting that the incident transpired in broad daylight, in the midst of a wedding reception at that, within the clear view of a number of guests. Thus, it is of no wonder that the testimonies of all the prosecution witnesses are consistent in all material points, particularly how the attack was made upon the defenseless victim. They all confirmed that before the crime was consummated, the victim was only walking in the yard, unarmed. There was not the least provocation done by the victim that could have triggered the accused-appellant to entertain the thought that there was a need to defend himself. The victim did not exhibit any act or gesture that could show that he was out to inflict harm or injury. On the contrary, the witnesses all point to the accused-appellant as the unlawful aggressor who mercilessly hacked the unwary victim until he collapsed lifeless on the ground.

Further, as correctly observed by the CA, the severity, location and the number of wounds suffered by the victim are indicative of a serious intent to inflict harm on the part of the accused-appellant and not merely that he wanted to defend himself from an imminent peril to life. The CA noted:

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<sup>41</sup> Id. at 167-168.

<sup>42</sup> Supra note 37, at 243-244.

As clearly shown by the evidence at hand, his cut was superficial which only measures one (1) inch. In stark contrast, Vicente Indaya suffered seven (7) hack wounds on his head, neck and shoulder, all located at the back and Dr. Teodora Pornillos described all of them as fatal. It is, therefore, difficult to believe that accused-appellant hacked Vicente Indaya merely to defend himself or to disarm the latter. The severity, location and number of wounds sustained by the victim are eloquent evidence that accused-appellant was resolute on his intent to kill Vicente Indaya.<sup>43</sup>

Moreover, in the incident report executed by the police officers, only one (1) bolo, specifically that which was used in the hacking, was reported to have been recovered from the crime scene.<sup>44</sup> This belies the accused-appellant's claim that the victim was also armed at the time of the incident.

### **Crime was qualified by treachery.**

The accused-appellant contends that even supposing he should be found guilty of killing the victim, he should be convicted only of homicide, not murder, for failure of the prosecution to establish treachery.

There is treachery when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from the defense which the offended party might make.<sup>45</sup> It takes place when the following elements concur: (1) that at the time of the attack, the victim was not in a position to defend himself; and (2) that the offender consciously adopted the particular means of attack employed.<sup>46</sup>

The CA correctly appreciated the presence of the qualifying circumstance of treachery, viz:

WE also concur with the lower court's appreciation of the qualifying circumstance of treachery. The essence of treachery is the sudden and unexpected attack by the aggressors on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the part of the victims. Verily, what is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.

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<sup>43</sup> *Rollo*, pp. 9-10.

<sup>44</sup> *CA rollo*, p. 14.

<sup>45</sup> REVISED PENAL CODE, Article 16, Section 14.

<sup>46</sup> *People v. Amazan*, 402 Phil. 247, 264 (2001).

The record shows that Vicente Indaya, while walking in the yard, was suddenly and repeatedly attacked with a bolo from behind. The manner and mode of attack adopted by accused-appellant, to OUR minds, bespeak of treachery. To be sure, the victim, who was then unarmed and unsuspecting, was deprived of any real chance to mount a defense, thereby ensuring the commission of the crime without risk to accused-appellant. This is also buttressed by the fact that the wounds sustained by the victim were all located at the back. On this score, WE agree with the trial court's finding of treachery.<sup>47</sup> (Citations omitted)

At the time that the crime was about to be committed, the victim does not have the slightest idea of the impending danger to his person. He was not facing the accused-appellant and unarmed, hence, lacked the opportunity to avoid the attack, or at least put up a defense to mitigate the impact. On the one hand, the accused-appellant was armed and commenced his attack while behind the victim. The presence of treachery cannot be any clearer.

### **Penalty and Award of Damages**

The RTC and the CA did not err in finding the accused-appellant guilty beyond reasonable doubt of the crime of murder qualified by treachery. However, modifications have to be made with respect to the penalty imposed and the amount of civil indemnity awarded to the heirs of the victim.

In its Judgment dated June 10, 2009, the RTC convicted the accused-appellant with the crime of murder and sentenced him to suffer the penalty of "imprisonment from twenty years and one day to forty years of *reclusion perpetua*."<sup>48</sup> On appeal, the CA affirmed the decision of the RTC with modification only as to the damages.<sup>49</sup>

Under Article 248 of the Revised Penal Code, as amended, the crime of murder is punishable by *reclusion perpetua* to death. Pursuant to Article 63, paragraph 2 of the same Code, if the penalty prescribed by law is composed of two indivisible penalties, the lesser penalty shall be imposed if neither mitigating nor aggravating circumstance is present in the commission of the crime.<sup>50</sup> In the present case, no aggravating circumstance attended the commission of the crime. Thus, the lesser penalty of *reclusion perpetua* is the proper penalty which should be imposed upon the accused-appellant.

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<sup>47</sup> Rollo, p. 11.

<sup>48</sup> CA rollo, p. 38.

<sup>49</sup> Rollo, p. 13.

<sup>50</sup> *People v. Bensig*, 437 Phil. 748, 764 (2002).

The RTC, however, sentenced the accused-appellant to an imprisonment of twenty (20) years and one (1) day to forty (40) years of *reclusion perpetua*, giving the impression that the penalty of *reclusion perpetua* can be divided into periods when in fact it is a single and indivisible penalty. In *People v. Diquit*,<sup>51</sup> this Court held that *reclusion perpetua* is an *indivisible* penalty, it has no minimum, medium, and maximum periods. It is imposed in its entirety regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime.<sup>52</sup> Consequently, in this case, the CA should have rectified the error committed by the RTC as to the penalty imposed on the accused-appellant. The CA should have been more circumspect in scrutinizing the appealed decision, specifically the propriety of the penalty imposed, since the very purpose of appeal is to amend or correct errors overlooked by the lower court. In this case, therefore, the accused-appellant should simply and appropriately be sentenced to suffer the penalty of *reclusion perpetua*, without any specification of duration.<sup>53</sup>

Further, modification has to be made with respect to the amount of civil indemnity awarded to the heirs of the victim.

In *People v. Asis*,<sup>54</sup> this Court held:

When death occurs due to a crime, the following may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.

Conformably with existing jurisprudence, the heirs of Donald Pais are entitled to civil indemnity in the amount of ₱75,000.00, which is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. Likewise, moral damages in the amount of ₱50,000.00 shall be awarded in favor of the heirs of the victim. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.<sup>55</sup> (Citations omitted)

The award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. It requires only the establishment of the fact of death as a result of the crime and that the accused-appellant is responsible thereto.<sup>56</sup> However, in order to

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<sup>51</sup> G.R. No. 96714, January 27, 1992, 205 SCRA 501.

<sup>52</sup> Id. at 508.

<sup>53</sup> *People v. Bensig*, supra note 50, at 765.

<sup>54</sup> G.R. No. 177573, July 7, 2010, 624 SCRA 509.

<sup>55</sup> Id. at 530-531.

<sup>56</sup> *People v. Molina*, G.R. No. 184173, March 13, 2009, 581 SCRA 519, 542.

conform with the prevailing jurisprudence, the civil indemnity awarded to the heirs of victim must be raised to ₱75,000.00.<sup>57</sup>

The awards of moral damages in the amount of ₱50,000.00, temperate damages in the amount of ₱25,000.00 and exemplary damages in the amount of ₱30,000.00, of the CA are all in accordance with existing jurisprudence<sup>58</sup> and are thus sustained.

Moral damages in the sum of ₱50,000.00 can be awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.<sup>59</sup> The award of temperate damages, on the other hand, is warranted when the court finds that some pecuniary loss was suffered but its amount cannot be proved with certainty.<sup>60</sup> Considering that the death of the victim definitely caused his heirs some expenses for his wake and burial, though they were not able to present proof, temperate damages in the amount of ₱25,000.00 was properly awarded to them.

Exemplary damages, on the other hand, may also be imposed when the crime was committed with one or more aggravating circumstances.<sup>61</sup> The presence of treachery was sufficiently established by the testimonies of the prosecution witnesses, recounting how the victim was surprised by the accused-appellant's attack from behind. It has been repeatedly reiterated in the records that the victim was unarmed and defenseless at the time of the attack. The results of the post-mortem examination of the cadaver of the victim further confirmed the veracity of the accounts of the witnesses particularly that the attack was done when the victim had his back against the accused-appellant. Given the clear presence of the qualifying aggravating circumstance of treachery, the award of exemplary damages of ₱30,000.00<sup>62</sup> is in place.

**WHEREFORE**, the Decision dated February 28, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 03972, finding Wilson Roman **GUILTY** beyond reasonable doubt of murder is hereby **AFFIRMED with MODIFICATION** in that Wilson Roman is hereby sentenced to suffer the indivisible penalty of *reclusion perpetua* and that the award of civil indemnity is hereby raised to ₱75,000.00.

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<sup>57</sup> *People v. Malicdem*, G.R. No. 184601, November 12, 2012, 685 SCRA 193, 206.

<sup>58</sup> *People v. Laurio*, G.R. No. 182523, September 13, 2012, 680 SCRA 560; *People v. Asis*, supra note 54.

<sup>59</sup> *People v. Laurio*, id. at 572.

<sup>60</sup> NEW CIVIL CODE, Article 2224.

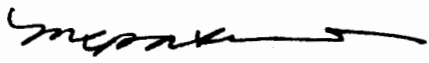
<sup>61</sup> NEW CIVIL CODE, Article 2230.


<sup>62</sup> *People v. Asis*, supra note 54, at 531.

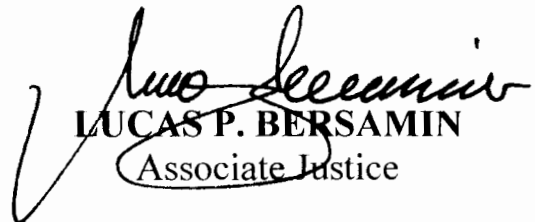
**SO ORDERED.**

  
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

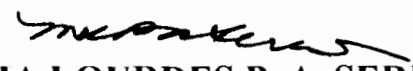
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

### **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice