

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 233194

- versus -

Present:

PERALTA, C.J., Chairperson,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

ALMAR LAGRITA y FLORES and
REX MIER (ACQUITTED),
Accused.

Promulgated:

ARVIN ALBARAN,
Accused-Appellant.

SEP 14 2020

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DECISION

PERALTA, C.J.:

Before us is an appeal of accused-appellant Arvin Albaran from the Decision¹ dated May 8, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01340-MIN, which affirmed with modifications the Judgment² dated February 21, 2013 of the Regional Trial Court (RTC), Branch 11, Davao City, finding him and co-accused Almar Lagrita guilty beyond reasonable doubt of the crime of Murder, and acquitting co-accused Rex Mier.

Appellant, together with Lagrita and Mier, were charged with murder in an Information dated April 23, 2007, the accusatory portion of which reads:

¹ Penned by Associate Justice Perpetua T. Atal-Paño, with Associate Justices Romulo V. Borja and Oscar V. Badelles concurring; *rollo*, pp.3-7.

² Per Judge Virginia Hofileña-Europa; Docketed as Criminal Case No. 61,284-07; CA *rollo*, pp. 46-53.

That on or about April 21, 2007, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the accused Almar Lagrita, armed with an ipil-ipil firewood, conspiring and confederating with all the other above-named accused, with intent to kill and with treachery, willfully, unlawfully and feloniously struck with said Ipil-ipil firewood the nape of one Reynald Giron, which caused the latter's death.

Contrary to law.³

Upon arraignment, all three accused,⁴ duly assisted by their respective counsels, entered a plea of not guilty. Trial thereafter ensued.

The prosecution presented the testimonies of Police Chief Inspector Alex Uy (*PCI Uy*), PO3 Gennie Palma (*PO3 Palma*), Rogelio Giron, Angela Abariento, Jomar Pesania (*Pesania*),⁵ and Benjie Lapuz (*Lapuz*).⁶ Their testimonies established the following facts:

At 9:30 in the evening of April 21, 2007, Reynald Giron (*victim Reynald*) together with Lapuz, who was seated beside him, and Pesania, were having a conversation in front of Jeffrey store located at Phase 2, Molave Homes, Indangan, Davao City.⁷ Later, the group of Lagrita, Mier and appellant arrived at the store.⁸ Reynald and Lapuz then stood up thinking that the group would buy something.⁹ Lagrita went behind Reynald and suddenly, with a piece of firewood, struck the latter on the lower portion of the back of his neck causing him to fall on the ground.¹⁰ Mier, with appellant standing by, warned Reynald's companions, Pesania and Lapuz, saying "*ayaw Kalampag*" (*don't react or resist*).¹¹ Lagrita, using the same firewood, also struck Lapuz hitting him on his forehead, right shoulder, and neck. Lapuz then fell down on his buttocks while parrying the attack.¹² Lagrita, appellant and Mier fled the scene together. Lapuz then helped Reynald who was then bleeding from his neck.¹³ While Pesania ran to the house of his uncle-in-law Rodil Giron, who is the brother of Reynald, to inform him of what happened, and together they went back to the crime scene,¹⁴ and saw Reynald lying face down on the ground and was no longer breathing.

³ Records, p. 1.

⁴ Lagrita was arraigned on May 7, 2007, *id.* at 20; Mier on July 31, 2009, *id.* at 97; Appellant Albaran on September 4, 2009, *id.* at 112.

⁵ Sometimes spelled as "Pisana" in some parts of the records.

⁶ Sometimes spelled as "Lapus" in some parts of the records.

⁷ TSN, September 3, 2007, pp. 14-15; TSN, September 23, 2007, p. 34; TSN, September 14, 2007, pp. 5-8.

⁸ TSN, September 3, 2007, p. 16.

⁹ TSN, September 14, 2009, p. 12.

¹⁰ TSN, September 3, 2007, p. 22; TSN, September 23, 2007, pp. 37-41.

¹¹ TSN, September 3, 2007, p. 22; TSN, September 8, 2009, p.16.

¹² TSN, September 3, 2007, p. 24; TSN, September 23, 2007, pp. 39-40.

¹³ TSN, September 23, 2007, p. 41.

¹⁴ *Id.* at 24.

PO3 Palma and another policeman of the Buhangin Police Precinct were dispatched to the crime scene and they saw overturned chairs and disarrayed pieces of firewoods. It was learned that Lagrita, Mier and appellant were the suspects in striking or hitting the victim. The policemen went to Lagrita's house and invited him to the station for questioning and later turned him over to the investigation officer. PO3 Palma recovered from the crime scene the piece of firewood with traces of blood which was allegedly used in striking Reynald's nape.¹⁵

PCI Uy, a Medico-Legal Officer of Davao City, conducted an autopsy on Reynald's corpse. He found a contusion and lacerated wounds at the back area of the head, but found no external injuries like contusion or wound as well as internal injuries in the body.¹⁶ He certified that the cause of Reynald's death was intracranial hemorrhage secondary to traumatic blunt injuries.¹⁷

Rogelio¹⁸ and Angela,¹⁹ victim Reynald's brother and sister, respectively, testified on the expenses incurred for the funeral and burial of Reynald, but were not able to present all the receipts thereof.

On the other hand, the defense presented a totally different scenario.

Lagrita testified that he only started living in Molave Homes, Indangan, Davao City on April 4, 2007 and had stayed there for only two weeks.²⁰ At 9:00 p.m. of April 21, 2007, he was at home waiting for the call of his wife when a patrol car passed by and the policemen asked him if he knew a certain Rex Mier who had a tattoo.²¹ He denied knowing him, but he was still brought to the station since he had a tattoo on his right arm and was detained.²² Later, witnesses Pesania and Lapuz arrived at the station and confirmed that he was not Rex Mier, but claimed that he was also with the latter. He was shocked to learn of the murder charge.²³ He denied knowing Pesania and Lapuz as he met them only at the police station.

Mier narrated that at 8:00 p.m. of April 21, 2007, he was on his way home to New Corella, Davao del Norte, coming from Cabantian, Davao, and decided to stop by Molave Homes, Indangan, to visit his older brother Reynaldo Mier who, however, was not around.²⁴ He then went to Jeffrey's

¹⁵ TSN, September 4, 2007, pp. 5-15.

¹⁶ TSN, September 3, 2007, pp. 6-7.

¹⁷ Records, p. 12.

¹⁸ TSN, October 8, 2007, p. 4.

¹⁹ TSN, November 19, 2007, p. 10.

²⁰ TSN, October 6, 2008, p. 4.

²¹ *Id.* at 9-10.

²² *Id.* at 11-12.

²³ *Id.* at 14.

²⁴ TSN, May 31, 2010, pp. 6-8.

store at 9:30 p.m. to buy cigarettes and saw five (5) people drinking, which included Lapuz, a co-worker at Molave Homes where he used to work.²⁵ He then proceeded home at 10:00 p.m. He only learned of the murder charge against him upon his arrest on his wedding day.²⁶

Appellant admitted that he knew his co-accused Mier, being his cousin, but denied knowing his co-accused Lagrita. On the night of April 21, 2007, he was on his way home from his aunt's house and passed by Jeffrey's store in Molave Homes to buy noodles.²⁷ He saw people drinking outside the store and was invited by the victim for a drink, but he refused. When he was about to leave, victim Reynald prevented him and suddenly punched him on his left jaw. He fell on the ground and Reynald started kicking him. He then saw pieces of firewood piled at the store and took one piece and hit Reynald on his chest.²⁸ When Reynald turned his back on him to get a piece of wood, he struck the former's nape.²⁹ He was then attacked by Reynald's companions so he tried to strike them back and ran away. He did not intend to kill Reynald, but was merely defending himself, and denied conspiring with the other co-accused.³⁰

On February 21, 2013, the RTC issued its Judgment, the dispositive portion of which reads:

Wherefore, in view of all the foregoing, judgment is hereby rendered finding Almar Lagrita and Arvin Albaran GUILTY beyond reasonable doubt of the crime of MURDER as penalized under Art. 248 of the Revised Penal Code. They are hereby sentenced to suffer the penalty of *reclusion perpetua*.

They are, likewise, sentenced to pay the heirs of the deceased Reynald Giron, jointly and severally, the amount of FIFTY THOUSAND (P50,000.00) PESOS as civil indemnity and the further sum of THIRTY[-] FIVE THOUSAND FIVE HUNDRED THIRTY-FOUR [PESOS] and FIFTY-FOUR CENTAVOS (P35,534.54) as actual damages.

Accused Rex Mier is hereby ACQUITTED for failure of [the] prosecution to establish his guilt beyond reasonable doubt.

The City Warden of the Davao City Jail is hereby ordered to release Rex Mier from detention immediately unless he is being held for another crime.

SO ORDERED.³¹



²⁵ *Id.* at 8-10.

²⁶ *Id.* at 11.

²⁷ TSN, March 14, 2011, p. 4.

²⁸ *Id.* at 6-7.

²⁹ *Id.* at 7-8.

³⁰ *Id.* at 9-10.

³¹ CA rollo, pp. 52-53.

The RTC gave credence to the testimonies of prosecution witnesses Pesania and Lapuz that they saw Lagrita hit Reynald on the nape causing the latter to fall on the ground unconscious and died. It found their testimonies to be positive and straightforward. The RTC did not accept appellant's claim of self-defense finding that even if Reynald first attacked him, there was unreasonable necessity of striking Reynald on the nape with a wood which was fatal.

The RTC found the presence of treachery when Lagrita picked up a piece of firewood and struck Reynald on the nape knowing that it would incapacitate the latter; and the attack was sudden and Reynald was hit from behind.

The RTC ruled that the prosecution failed to establish conspiracy among the accused. However, since appellant admitted that he hit Reynald with a piece of firewood without intending to cause his death, the RTC held that Lagrita and appellant acted on their own volition. On the other hand, it found that Mier was not categorically mentioned by the witnesses as having hit Reynald and was not shown to have conspired and participated in the killing.

Lagrita and appellant filed a Notice of Appeal. However, the Appellant's Brief filed with the CA pertained only to appellant Albaran.

On May 8, 2017, the CA rendered its assailed Decision, the decretal portion of which reads:

WHEREFORE, the appeal is DENIED. The February 21, 2013 Judgment of the Regional Trial Court, Branch 11, Davao City in Criminal Case No. 61,284-07 for MURDER is AFFIRMED with MODIFICATIONS. The accused are ORDERED to pay, jointly and severally, the victim's heirs P50,000.00 as moral damages, P30,000.00 as exemplary damages, and P75,000.00 as civil indemnity, in addition to the award of actual damages of P35,534.54. All monetary awards shall earn an interest of 6% per annum from the finality of this judgment until fully paid.³²

The CA rejected appellant's allegations of unlawful aggression on the part of victim Reynald as it was not corroborated by any evidence other than his self-serving testimony which was short of the required clear and convincing evidence. It found unmeritorious appellant's contention that his testimony should be given more credence than that of the prosecution's version which is replete with inconsistencies; and found the testimonies of the prosecution witnesses to be consistent and coherent on substantial points and the noted discrepancies were sufficiently explained and justified.

³² Rollo, p. 26.

The CA, nevertheless, ruled that granting, in line with appellant's defense, that it was the victim who started the commotion, the unlawful aggression had already ceased to exist when he struck the victim's nape.

The CA found the presence of treachery as the attack on Reynald was done not only in an unexpected and swift manner but with the means that would make him improbable to perceive it.

Dissatisfied, appellant files the instant appeal.

Appellant and the Office of the Solicitor General were required to submit their Supplemental Briefs, if they so desire.³³ However, both parties filed their respective Manifestations that they are no longer filing Supplemental Briefs, thus adopting the allegations and arguments in their respective Briefs filed with the CA.

Appellant contends that the CA erred in convicting him despite the failure of the prosecution to prove his guilt beyond reasonable doubt and when it failed to appreciate his claim of self-defense.

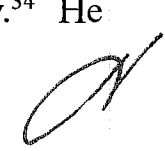
Appellant argues that prosecution witnesses Pesania and Lapuz gave conflicting testimonies on material points, *i.e.*, on the malefactors, and the attending circumstances prior to the striking of a piece of firewood on the victim Reynald. As to Pesania, appellant claims that during his testimony on September 8, 2009, he categorically declared that it was Lagrita who struck Reynald on the nape with the use of a piece of firewood. However, when he was asked during the earlier hearing held on September 3, 2007 as to who he was referring to when he said that they immediately struck without saying anything, his answer was Tata Mier. With respect to Lapuz, appellant avers that while Lapuz identified Lagrita as the one who struck Reynald, he had also said that appellant struck them. Hence, appellant alleges that with the cited material inconsistencies, it can be gainfully said that these witnesses' account on the occurrence which led to the demise of Reynald cannot be appreciated against him.

We are not convinced.

We have gone over the records of the case and found that the alleged inconsistencies cited by appellant were properly explained by the witnesses in their subsequent testimonies. As to Pesania, he declared in his testimony on September 3, 2007, that it was Tata Mier who struck them. Upon a follow up question on him, he declared that Tata Mier struck nobody.³⁴ He

³³ Resolution dated October 2, 2017, *id.* at 33.

³⁴ TSN, September 3, 2007, p. 16.



was then asked to explain the contradiction of his statement and he said that he was nervous.³⁵ However, after he was no longer feeling nervous,³⁶ he had unequivocally identified Lagrita as the one who struck Reynald.³⁷ In fact, when he was called again to testify two years after the arrest of appellant and Mier, he never wavered in his identification of Lagrita as the one who struck Reynald despite the intense cross examinations of the two defense counsels.

On the other hand, we found that Lapuz had also consistently identified Lagrita as the one who struck Reynald and him. While he had mentioned once that appellant had struck them, he clarified that it was because the accused were in a group and they were together.³⁸ However, he clearly declared throughout his testimony that it was Lagrita who struck Reynald. In fact, he tapped Lagrita's shoulder when he was asked to identify the latter.³⁹

While Pesania and Lapuz had positively identified Lagrita as the one who struck Reynald with a piece of firewood that caused his death on the night of April 21, 2007, appellant, however, testified and insisted that he was the one who struck Reynald in self-defense. He stated that on the night of April 21, 2007, he passed by a store on his way home to buy noodles when he noticed five people drinking outside the store. He was then invited by the victim Reynald, who was already intoxicated, for a drink but he refused; that Reynald got angry and punched him and continued to kick him even when he was already on the ground. He fell down near the pieces of wood that the store was selling, picked up a piece of firewood and hit Reynald on the chest; and that when Reynald turned his back and took a piece of wood, he then struck him on the nape.⁴⁰

Appellant's narration was not at all proven by the evidence on record. Notably, the alleged drinking session among the victim Reynald and his companions never happened. Witness Pesania denied that they were drinking on that fateful night,⁴¹ which found corroboration from PO3 Palma when he testified that he only saw upturned chairs and disarrayed pieces of firewood at the crime scene,⁴² and the firewood used in striking Reynald. We quote, with approval, the CA's disquisition on this matter, thus:

It bears noting that when PO3 Jennie Palma and his team arrived at the crime scene, it was still in disarray. The said authorities saw firewood and chairs scattered. Even the weapon used was still there. Apparently, the scene was left as it was after the commotion. Yet, the authorities, upon inspecting the area, found neither glasses nor liquor bottles or anything that

³⁵ *Id.* at 19.

³⁶ *Id.* at 20.

³⁷ *Id.* at 21.

³⁸ TSN, September 14, 2009, p. 24.

³⁹ TSN, September 14, 2009, p. 6; TSN, September 23, 2007, pp. 35-36.

⁴⁰ TSN, March 14, 2011, pp. 7-8.

⁴¹ TSN, September 8, 2009, pp. 14, 39.

⁴² TSN, September 4, 2007, p. 7.

would indicate that there were people drinking there at that time. It is also highly unlikely, if not absurd, that the said victims or the store owner took pains to hide the liquor bottles but left everything else in a mess. In short, the evidence clearly supports the witnesses' attestations that they were not drinking at the time of the incident.

Consequently, accused-appellant did not adequately establish, at the outset, that the victims were indeed drinking then. Such failure is fatal because it belies the accused-appellant's version of events upon which his claim of self-defense is mainly anchored. The evidence on record shows not even the slightest suggestion that the victims were drinking at the time of the fateful incident. Thus, the truthfulness of accused-appellant's story is aptly disrupted. Evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself.⁴³

Furthermore, appellant's allegation that he also hit Reynald on the chest with a piece of firewood was also belied by PCI Uy's Medico-Legal Report dated April 30, 2007 where he stated that there were no remarkable findings noted on the chest and abdomen and other extremities of Reynald, but only contusion and lacerated wound along the posterior midline of the occipital region.⁴⁴ Such finding even corroborated the prosecution witnesses' testimonies that Reynald was only hit on the nape once by Lagrita.

Another factor that would militate against appellant's version is the fact that even when he learned the day after such fateful encounter that the person he allegedly struck with a firewood died,⁴⁵ he did not voluntarily surrender himself to the police or the authorities to prove his innocence. In fact, he was only arrested two years after the incident. Jurisprudence has repeatedly declared that flight is a veritable badge of guilt and negates the plea of self-defense.⁴⁶ The flight of an accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established "for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence."⁴⁷

Verily, the issue of credibility, when it is decisive of the guilt or innocence of the accused, is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances.⁴⁸ It has been appropriately emphasized that "[w]e have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance."⁴⁹

⁴³ *Rollo*, p. 18. (Citations omitted)

⁴⁴ *Records*, p. 30.

⁴⁵ *TSN*, March 14, 2011, p. 15.

⁴⁶ *People v. Danilo Japag and Alvin Liporada*, G.R. No. 223155, July 23, 2018.

⁴⁷ *Id.*

⁴⁸ *Medina, Jr. v. People*, 724 Phil 226, 238 (2014).

⁴⁹ *Id.*, citing *Salonga*, *Philippine Law on Evidence*, 3rd Ed., 1964, p. 774, quoting *New Jersey Vice Chancellor Van Fleet in Dagggers v. Van Dyck*, 37 N.J. Eq. 130.

We, therefore, find the evidence presented by the prosecution to be more credible than that of the appellant. As the RTC found, witnesses Pesania and Lapuz were positive and straightforward in declaring that appellant's group arrived at the store where they, together with victim Reynald, were having a conversation; that without provocation, Lagrita struck Reynald's nape with a piece of firewood which caused the latter's death. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.⁵⁰ The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.⁵¹ Here, we find no cogent reason to deviate from the findings of both lower courts.

Moreover, the records failed to show any ill motive on the part of the prosecution witnesses to falsely testify against all the accused. Jurisprudence also tells us that where there is no evidence that the witnesses for 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.⁵² In fact, Lagrita⁵³ and Mier⁵⁴ even declared that they did not know nor had any fight with the two prosecution witnesses before the fateful incident happened on April 21, 2007.

The RTC did not find conspiracy in the killing of Reynald. It found Lagrita as the one who hit Reynald with a piece of firewood that caused the latter's death and found him guilty of murder. It also convicted appellant of murder based on his admission of killing Reynald in self-defense which was not proved. It then acquitted Mier for failure of the prosecution to prove his guilt beyond reasonable doubt. On the other hand, while the CA discussed the failure of appellant to prove his claim of self-defense, it did not make any finding of fact on whether there was conspiracy among the accused, thus affirming the RTC finding of the absence of conspiracy.

We find that conspiracy attended the killing of Reynald.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It comes to life at the very instant the plotters agree, expressly or implied, to commit the

⁵⁰ *People v. Lusabio, Jr. et al.*, 619 Phil. 558, 584 (2009), citing *People v. Escultor*, 473 Phil. 717, 730 (2004).

⁵¹ *People v. Ballesta*, 588 Phil. 87, 103 (2008).

⁵² *People v. Dadao, et al.*, 725 Phil. 298, 310-311 (2014).

⁵³ TSN, October 6, 2008, p. 18.

⁵⁴ TSN, May 31, 2010, p. 15.

felony and forthwith, to actually pursue it.⁵⁵ Conspiracy need not be proved by direct evidence. It may be inferred from the concerted acts of the accused, indubitably revealing their unity of purpose, intent and sentiment in committing the crime.⁵⁶ Thus, it is not required that there was an agreement for an appreciable period prior to the occurrence, it is sufficient that the accused acted in concert at the time of the commission of the offense and that they had the same purpose or common design, and that they were united in its execution.⁵⁷

In this case, it was established that appellant, together with Lagrita and Mier, arrived at Jeffrey's store where Reynald and his companions were conversing. Lagrita then went at the back of Reynald and without any warning, hit him with a piece of firewood which caused him to fall on the ground. Appellant and Mier were standing in front of the victim and his companions, and undoubtedly, their presence gave Lagrita the moral support he needed as they were of equal number with the victim's group. Their act of staying in close proximity while the crime is being executed served no other purpose than to lend moral support by ensuring that no one could interfere and prevent the successful perpetration thereof.⁵⁸ In fact, appellant did not prevent Lagrita from hitting the victim with a piece of firewood, while Mier even uttered "*ayaw Kalampag*" (*don't react or resist*).⁵⁹ Notably, after the victim fell on the ground, Lagrita also hit Lapuz. Appellant, together with Lagrita and Mier, ran together.⁶⁰

While it was only Lagrita who struck Reynald which caused his death, appellant and Mier are also liable since the act of Lagrita is the act of all co-conspirators. Indeed, one who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetration thereof is criminally responsible to the same extent as the actual perpetrator, especially if they did nothing to prevent the commission of the crime.⁶¹ Hence, appellant's liability is based on his being a co-conspirator. However, since Mier had already been acquitted by the RTC which is already final and executory, only appellant should be held liable as a co-conspirator.

We agree with the RTC and the CA that treachery attended the commission of the crime that qualified the killing of Reynald to murder. Paragraph 16, Article 14 of the Revised Penal Code defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its

⁵⁵ *People v. Sinda*, 400 Phil. 440, 449 (2000), citing See Article 8, Revised Penal Code; *People v. Quittlong*, 354 Phil. 372, 390 (1998).

⁵⁶ *People v. Albao*, 350 Phil. 573, 602 (1998); *People v. Leangsiri*, 322 Phil. 226, 242 (1996); *People v. Salison, Jr.*, 324 Phil. 131, 146 (1996); *People v. Sumampong*, 352 Phil. 1080, 1087 (1998).

⁵⁷ *People v. Hubilla, Jr.*, 322 Phil. 520, 532 (1996); *People v. Obello*, 348 Phil. 88, 103-104 (1998).

⁵⁸ *People v. Lababo*, G.R. No. 234651, June 6, 2018, 865 SCRA 609, 629, citing see *People v. Campos, et al.*, 668 Phil. 315, 331 (2011).

⁵⁹ TSN, September 3, 2007, p. 22; TSN, September 8, 2009, p. 16.

⁶⁰ TSN, September 14, 2009, pp. 20-21.

⁶¹ *People v. Lababo*, *supra* note 58.

execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.⁶²

Here, Reynald was just talking with Pesania and Lapuz in front of the store when appellant, Lagrita and Mier arrived. Lagrita then went at Reynald's back and without any warning, hit him on his nape with a piece of firewood. Reynald was completely unaware that such attack was coming, hence, he had no opportunity at all to defend himself. Lagrita deliberately and consciously adopted such mode of attack in order to avoid any risk to himself which may arise from any defense that Reynald might make.

Since there is treachery that attended the killing of Reynald, the RTC and the CA correctly convicted appellant of murder. Article 248 of the Revised Penal Code prescribes that the penalty for Murder is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance in the commission of the offense, the RTC correctly imposed the penalty of *reclusion perpetua* conformably to Article 63 of the Revised Penal Code.

As to the award of damages, we deem it proper to modify the CA's award of moral and exemplary damages to ₱75,000.00 each in line with our ruling in *People v. Jugueta*.⁶³ The CA's award of ₱75,000.00 as civil indemnity is sustained.

The CA affirmed the RTC's award of actual damages in the amount of ₱35,534.54. The settled rule is that when actual damages are proven by receipts during the trial amount to less than the sum allowed by the Court as temperate damages, the award of temperate damages is justified in lieu of actual damages which is of a lesser amount.⁶⁴ Prevailing jurisprudence now fixes the amount of ₱50,000.00 as temperate damages in murder cases. Hence, we find it proper to award Reynald's heirs the amount of ₱50,000.00 as temperate damages, in lieu of actual damages.

The difference between the modified awards herein granted and that of the CA's shall be the sole liability of appellant Albaran.⁶⁵

⁶² *People v. Racal*, 817 Phil. 665, 677 (2017), citing *People v. Las Pinas, et al.*, 739 Phil. 502, 524 (2014).

⁶³ 783 Phil. 806 (2016).

⁶⁴ *People v. Racal*, *supra* note 62, at 685.

⁶⁵ Sec. 11. *Effect of appeal by any of several accused.* —

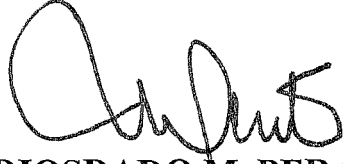
(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

We sustain the CA's award of interest at the rate of six percent (6%) *per annum* on all monetary awards imposed.

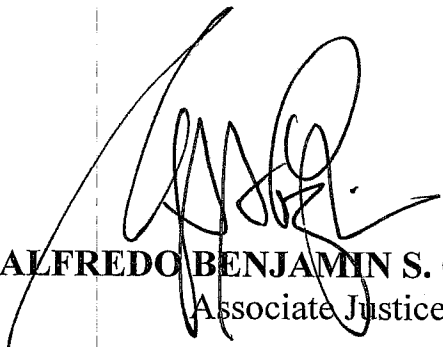
WHEREFORE, the instant appeal is **DENIED**. The Decision dated May 8, 2017 of the Court of Appeals in CA-G.R. CR HC No. 01340-MIN is **AFFIRMED**. Appellant Arvin Albaran is found guilty beyond reasonable doubt as a co-conspirator in the crime of murder. He is hereby **ORDERED** to **SOLIDARILY PAY**, with co-accused Almar Lagrita, the victim's heirs the amounts of ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, ₱75,000.00 as civil indemnity and ₱35,534.54 as temperate damages.

However, appellant Arvin Albaran is further **ORDERED** to **PAY** the amounts of ₱25,000.00 moral damages, ₱45,000.00 exemplary damages and ₱14,465.46 temperate damages. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* reckoned from the finality of this Decision until their full payment.

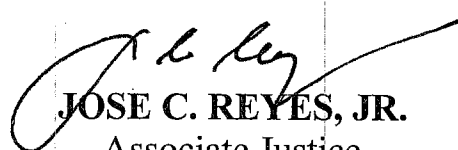
SO ORDERED.


DIOSDADO M. PERALTA
Chief Justice

WE CONCUR:



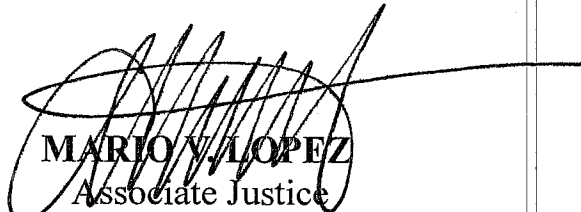
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



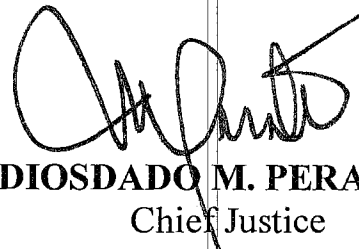
AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
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.



DIOSDADO M. PERALTA
Chief Justice

