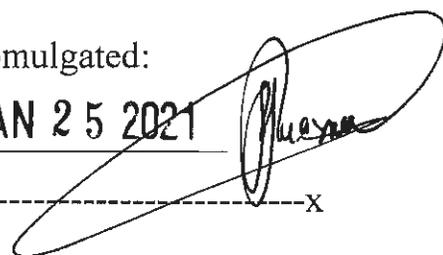


SECOND DIVISION

G.R. No. 245922 – PEOPLE OF THE PHILIPPINES, *appellee*, v.
DANILO TORO y DIANO @ “OTO,” *appellant*.

Promulgated:

JAN 25 2021



X-----X

CONCURRING OPINION

LOPEZ, J.:

I concur with the conviction of the accused for the lesser offense of Homicide. The prosecution failed to establish the qualifying circumstances of evident premeditation and treachery.

Procedurally, it must be emphasized that the Information charging the accused was defective because it did not allege the facts and circumstances constituting treachery, in violation of Sections 8¹ and 9² of Rule 110 of the Rules of Court. To merely state in the Information that treachery was attendant is not enough because it is not a factual averment but a conclusion of law.³ However, I concur that the accused is deemed to have waived this formal defect in the Information for his failure to file a Motion to Quash or a Motion for Bill of Particulars.⁴

Nevertheless, this is an opportune time for the Court to once again remind the prosecutors to follow the Constitution and Rules of Court in upholding the rights of the accused. The factual averments constituting the aggravating circumstances must be particularly alleged in the Information to ensure that the accused is properly apprised and afforded the opportunity to defend himself against the crime under which he is charged.

On the merits, well-settled is the rule that “[i]t is not only the central fact of a killing that must be shown beyond reasonable doubt; every qualifying or aggravating circumstance alleged to have been present and to have attended such killing, must similarly be shown by the same degree of proof.”⁵

¹ SEC. 8. *Designation of the Offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

² SEC. 9. *Cause of the Accusation*. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

³ *People v. Dasmariñas*, 819 Phil. 357, 360 (2017).

⁴ See *People v. Solar*, G.R. No. 225595, August 6, 2019.

⁵ *People v. Derilo*, 338 Phil. 350, 364 (1997).



For treachery to be appreciated, the following elements must concur: (a) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate; and, (b) said means of execution were deliberately or consciously adopted.⁶

In this case, there is reasonable doubt on the existence of the second element of treachery. The reasonable doubt springs from the failure of the prosecution witness to establish: (1) that the factual circumstances of the deceased being restrained and stabbed at the same time, constituted the commencement of the series of actions leading to the death of the accused; (2) that treachery was present at the inception of the attack, or at the commencement of each stage of attack, if any; and, (3) the failure of the lone witness to observe not only when and how the attack commenced, but also when and how it ended. These circumstances are important to show that the accused deliberately adopted the mode of execution to insure that the victim is deprived of the opportunity to defend himself.

Indeed, “treachery must be present at the inception of the attack on the victim, and if it was absent but the attack was continuous, the employment of treachery at a subsequent stage is not to be considered.”⁷ As elucidated in the case of *U.S. v. Balagtas*:⁸

In order that treachery may be considered as a qualifying circumstance to raise the classification of the crime, or as an aggravating circumstance to augment the penalty, it must be shown that the treacherous acts were present at and preceded the commencement of the attack which caused the injury complained of. After the commencement of such an attack and before its termination an accused person may have employed means or methods which were of a treacherous character, and yet such means or methods would not constitute the circumstance of *alevosia*. One continuous attack, x x x can not [*sic*] be broken up into two or more parts and made to constitute separate, distinct, and independent attacks so that treachery may be injected therein and considered as a qualifying or aggravating circumstance.⁹

In the recent case of *People v. Enriquez, Jr.*,¹⁰ the Court ruled that “treachery cannot be considered where the lone witness did not see the commencement of the assault,” *viz.*:

In a catena of cases, the Court has consistently held that treachery cannot be appreciated where the prosecution only proved the events after the attack happened, but not the manner of how the attack commenced or how the act which resulted in the victim’s death unfolded. In treachery, there must be clear and convincing evidence on how the aggression was made, how it began, and how it developed. **Where no particulars are known as**

⁶ *People v. Aquino*, 396 Phil. 303, 307 (2000).

⁷ Regalado, *Criminal Law Conspectus*, 3rd Ed., 2007, p. 108, citing *U.S. v. Balagtas*, 19 Phil. 164 (2011); *People v. Canete*, 44 Phil. 478 (1923).

⁸ 19 Phil. 164 (1911).

⁹ *Id.* at 172-173.

¹⁰ G.R. No. 238171, June 19, 2019.

to the manner in which the aggression was made or how the act which resulted in the death of the victim began and developed, it cannot be established from suppositions drawn only from circumstances prior to the very moment of the aggression, that an accused perpetrated the killing with treachery. Accordingly, treachery cannot be considered where the lone witness did not see the commencement of the assault.

In the instant case, the evidence presented by the prosecution only proved the events after the initial attack had already happened. The prosecution witnesses, Luisa and Jessica, did not see the manner of how the attack commenced or how the acts which resulted in the victim's death unfolded as the attack started inside the house of the victim. They merely saw Dela Cruz, already bloodied, coming out of his house. It was only at this point that they saw Enriquez stab the victim again with a bread knife. Thus, what happened inside the house is unknown to the prosecution witnesses. (Emphasis supplied; citations omitted.)

Here, the victim's son who was the lone prosecution witness, neither saw the commencement of the assault nor the unfolding of the events that ultimately resulted in the victim's death. He only chanced upon a slim portion or momentary episode of the attack against his father, after which he immediately ran and went back hours after witnessing the crime. Therefore, there is reasonable doubt how the aggression started, developed, and ended. There is doubt whether the victim was indeed deprived of the opportunity to defend himself.

Without knowing how the aggression ripened, the Court has no way to ascertain whether "the sudden attack [was] not preconceived and deliberately adopted, but [was] just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim, or when the killing [was] done at the spur of the moment."¹¹ Verily, the mode of attack must have been planned by the offender and must not have sprung from an unexpected turn of events.¹²

Also, evident premeditation is not attendant in this case. The prosecution failed to establish the time when the accused determined to commit the crime, the overt act manifestly indicating that he clung to his determination to commit the crime, and a sufficient lapse of time between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of his act.¹³ These essential requisites of evident premeditation are sorely absent from the prosecution evidence.

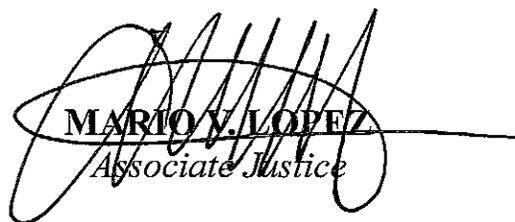
In sum, absent any other qualifying circumstance, the crime committed is only Homicide under Article 249 of the Revised Penal Code with the

¹¹ *People v. Cañaveras*, 722 Phil. 259, 270 (2013).

¹² *Id.*

¹³ *People v. Abadies*, 436 Phil. 98, 105-106 (2002); and *People v. Dadvivo*, 434 Phil. 684, 688 (2002).

penalty of *reclusion temporal*. The civil liabilities were also properly imposed pursuant to *People v. Jugueta*.¹⁴



MARIO V. LOPEZ
Associate Justice

¹⁴ 783 Phil. 806 (2016).