



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

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BY: Henry  
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Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **June 10, 2020**, which reads as follows:

**“G.R. No. 230071 (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. ORLANDO V. GARCIA, accused-appellant).** — For this Court’s resolution is a Notice of Appeal<sup>1</sup> challenging the Decision<sup>2</sup> of the Court of Appeals, which affirmed the Regional Trial Court Decision<sup>3</sup> convicting Orlando V. Garcia (Garcia) of murder.

For the killing of Stewart Dy (Dy), Garcia was charged with murder, which is penalized under Article 248 of the Revised Penal Code. The Information against him read:

That on or about the 6<sup>th</sup> day of October, 2006, in the City of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and with the use of a motor vehicle, in the following manner: That ORLANDO GARCIA, being the driver and the person in charge of a black-colored Chevrolet Opra (*sic*) car with plate number ZCV-338, did, then and there, willfully, unlawfully and feloniously maneuver the said vehicle to a swerving motion from left to right, overtaking other vehicles, and accelerate the car at a fast pace with the intention of throwing STEWART DY y SY off the car, well-knowing that said STEWART DY y SY was sitting on the rear compartment of the car with nothing to grip on to, and was asking the accused to stop, as a consequence, said STEWART DY y SY fell on the ground and sustained fatal head injuries which directly caused his death.

CONTRARY TO LAW.<sup>4</sup>

<sup>1</sup> Rollo, pp. 15–17.

<sup>2</sup> Id. at 2–14. The September 26, 2016 Decision was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Florito S. Macalino and Rodil V. Zalameda (now a member of this Court) of the Special Eleventh Division of the Court of Appeals, Manila.

<sup>3</sup> CA rollo, pp. 36–43. The November 8, 2013 Decision was penned by Presiding Judge Zaldy B. Docena of the Regional Trial Court of Malabon City, Branch 170.

<sup>4</sup> Rollo, p. 3.

When arraigned, Garcia pleaded not guilty to the crime charged. Thus, trial ensued.<sup>5</sup>

The prosecution presented Rosalinda Andaya Sia (Sia), Roger Yatar (Yatar), Divina Dy (Divina), and Dr. Antonio Rebosa (Dr. Rebosa) as its witnesses. The testimony of Nilo Cabañero (Cabañero), who was among the security guards on duty during the incident, was dispensed with.<sup>6</sup>

The prosecution alleged that at around 2:45 p.m. on October 6, 2006, Garcia was with a companion, Emerita Pineda (Pineda), transacting at a bank in Barangay Potrero, Malabon City. Once done, they returned to the parking lot where they had left their car, a black Chevrolet-Optra, and were about to leave when a yellow Mitsubishi Adventure driven by Dy parked to their right. Just as Garcia maneuvered his car backwards, its left rear bumper hit the right fender of Dy's car.<sup>7</sup>

Enraged, Garcia stepped out of his car and yelled at Dy: "*Putang ina mo alam mo umaatras ako bigla kang sumulpot.*"<sup>8</sup> Dy alighted from his car and replied, "*Paano mo na sabi na bigla akong sumulpot eh nakahinto na ako.*"<sup>9</sup> After a while, Garcia retorted, "*Ano okey na sayo ang softdrinks?*"<sup>10</sup> to which Dy countered, "*Anong softdrinks? Ikaw nga may kasalanan ikaw pa ang nagagalit at sumisigaw!*"<sup>11</sup>

The squabble prompted Pineda to go back inside the bank to make a phone call. Garcia followed her shortly, while Dy also entered the bank to proceed with a transaction.<sup>12</sup>

Thereafter, Garcia and Pineda went back to their car and were about to leave. When Dy saw this, he returned outside and stood behind the Chevrolet-Optra to stop them in their tracks. However, Garcia did not stop reversing his car that he almost hit Dy, who had by then jumped onto the car and clung to its rear hood.<sup>13</sup>

Holding onto the car, Dy yelled and banged as Garcia drove on the highway, accelerating and swerving left and right that, eventually, Dy fell off. Alas, from the fall, he hit his head on a pavement. As Garcia sped away, Sia, a street sweeper, came to Dy's rescue, while Yatar, the bank security guard,

<sup>5</sup> Id.

<sup>6</sup> Id. at 4 and CA rollo, pp. 36-39.

<sup>7</sup> Id. at 4 and CA rollo, p. 37.

<sup>8</sup> Id. at 4.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id at 4-5.

<sup>12</sup> Id. at 5.

<sup>13</sup> Id.

and others later carried him on board an ABS-CBN mobile to the Manila Central University Hospital.<sup>14</sup>

Dy died after four (4) days in the hospital.<sup>15</sup>

Solely testifying for his defense, Garcia admitted that an altercation ensued between him and Dy, but he denied driving off while Dy was on top of his car. In his version of the events, Garcia had supposedly returned to the bank to call his manager about the collision, and Dy had also spoken with the manager. Finally, when Garcia allegedly asked Dy if he could leave, Dy agreed, and he drove away.<sup>16</sup>

In its November 8, 2013 Decision,<sup>17</sup> the Regional Trial Court convicted Garcia of murder. It found that the prosecution witnesses sincerely and categorically testified to what had happened.<sup>18</sup> It also found treachery in the way Garcia accelerated and swerved the car left and right, intending to throw Dy off the car.<sup>19</sup>

The dispositive portion of the ruling read:

**WHEREFORE**, in the light of the foregoing, Accused Orlando V. Garcia is found guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua*. The Accused is also ordered to pay the heirs of the victim the amount of Seventy Five Thousand Pesos (P75,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages, Thirty Thousand Pesos (P30,000.00) as exemplary damages and Two Hundred Sixty Six Thousand One Hundred Seventy Eight and Ninety Two Centavos (P266,178.92) as actual damages.

SO ORDERED.<sup>20</sup> (Emphasis in the original)

Aggrieved, Garcia appealed before the Court of Appeals. On May 30, 2014, the records of the case were transmitted to the Court of Appeals.<sup>21</sup>

In its September 26, 2016 Decision,<sup>22</sup> the Court of Appeals affirmed the Regional Trial Court Decision with modifications.

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<sup>14</sup> Id. at 3 and CA *rollo*, p. 37.

<sup>15</sup> Id. at 3.

<sup>16</sup> Id. at 5.

<sup>17</sup> CA *rollo*, pp. 36-43.

<sup>18</sup> Id. at 40.

<sup>19</sup> Id. at 42.

<sup>20</sup> Id. at 43.

<sup>21</sup> Id. at 5.

<sup>22</sup> *Rollo*, pp. 2-14.

The Court of Appeals found that all the elements of the crime of murder were proven beyond reasonable doubt.<sup>23</sup> It stressed that Yatar's and Sia's testimonies corroborated each other on all material points, "describing how the victim fell from the vehicle, what part of his body was hit, and the identity of the assailant."<sup>24</sup>

In modifying the trial court's ruling, the Court of Appeals increased the awards of damages. The dispositive portion of its Decision read:

**WHEREFORE**, the instant appeal is hereby **DENIED**. The November 8, 2013 Decision of the Regional Trial Court, Branch 170, Malabon City in Crim. Case No. 35933-MN is **AFFIRMED** with **MODIFICATIONS** that the moral and exemplary damages awarded by the Regional Trial Court to the Heirs of Stewart Dy are both increased to ₱75,000.00 and all monetary awards are subject to 6% interest *per annum* from the date of finality of this Decision until fully paid.

**SO ORDERED.**<sup>25</sup> (Emphasis in the original)

Thus, Garcia filed a Notice of Appeal.<sup>26</sup> Accordingly, the Court of Appeals gave due course to the appeal and elevated the case records to this Court.<sup>27</sup>

In its April 24, 2017 Resolution,<sup>28</sup> this Court noted the case records and directed the parties to file their respective supplemental briefs.

In its June 23, 2017 Manifestation,<sup>29</sup> the Office of the Solicitor General, on behalf of plaintiff-appellee People of the Philippines, manifested that it would not file a supplemental brief.<sup>30</sup>

Meanwhile, accused-appellant filed three (3) Motions for Extension<sup>31</sup> to file his supplemental brief. In its September 25, 2017 Resolution,<sup>32</sup> this Court granted all the motions, giving him a 90-day extension from July 13, 2017.

In his Supplemental Brief,<sup>33</sup> accused-appellant maintains his innocence and claims that Dy's death was an accident.<sup>34</sup> He contends that treachery was

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<sup>23</sup> Id. at 8-9.

<sup>24</sup> Id. at 12.

<sup>25</sup> Id. at 13.

<sup>26</sup> Id. at 15-17.

<sup>27</sup> Id. at 1.

<sup>28</sup> Id. at 20-21.

<sup>29</sup> Id. at 30-35.

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

<sup>31</sup> Id. at 22-25, 40-42, and 55-59.

<sup>32</sup> Id. at 60-62.

<sup>33</sup> Id. at 63-77.

not present and that no felony was committed when he was shifting lanes. He argues that there was no evidence that he knew of Dy's sudden presence on the rear hood of the car.<sup>35</sup>

This Court noted accused-appellant's Supplemental Brief in its January 17, 2018 Resolution.<sup>36</sup>

The sole issue for this Court's resolution is whether or not the Court of Appeals erred in convicting accused-appellant Orlando V. Garcia of murder.

This Court partly grants the appeal. Treachery did not exist in this case; hence, accused-appellant may only be convicted of homicide.

## I

The Regional Trial Court and the Court of Appeals convicted accused-appellant of the crime of murder, which is defined and punished under Article 248 of the Revised Penal Code:

ARTICLE 248. *Murder*.— Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

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<sup>34</sup> Id. at 63.

<sup>35</sup> Id. at 72.

<sup>36</sup> Id. at 82.

For an accused to be convicted of murder, the prosecution must prove the following elements:

- (1) that a person was killed;
- (2) that the accused killed him or her;
- (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and
- (4) that the killing is not parricide or infanticide.<sup>37</sup> (Citation omitted)

Without any of the qualifying circumstances under Article 248 of the Revised Penal Code, an accused may only be convicted of homicide, which is punished under Article 249 of the same Code:

ARTICLE 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*.

Here, in convicting accused-appellant, the lower courts found that he had intentionally killed Dy. The rule is settled that the trial court's findings of fact—especially when affirmed by the appellate court—are accorded great weight and respect upon review, except when:

. . . such findings are clearly arbitrary or erroneous as when they are tainted with bias or hostility or are so lacking in basis as to suggest that they were reached without the careful study and perceptiveness that should characterize a judicial decision.<sup>38</sup>

This Court finds no reason to disturb the lower courts' factual findings that there was an intent to kill, and that accused-appellant was behind the wheel when Dy hopped and held on to the car's trunk.

As the lower courts found, Yatar's and Sia's testimonies corroborated each other on all material points, satisfactorily detailing "how the victim fell from the vehicle, what part of his body was hit, and the identity of the assailant."<sup>39</sup> The courts found no ill motive for Yatar, a bank security guard on duty that day, and Sia, the street sweeper who came to Dy's rescue, to testify against accused-appellant.<sup>40</sup> It must be stressed that when not attended by ill motive, categorical and consistent positive identification—as in Yatar's and Sia's eyewitness accounts—prevails over the accused's self-serving defense of denial.

<sup>37</sup> *People v. Dimapilit*, 816 Phil. 523, 540 (2017) [Per J. Leonen, Second Division].

<sup>38</sup> *People v. Labarias*, 291 Phil. 511, 513 (1993) [Per J. Cruz, First Division].

<sup>39</sup> *Rollo*, p. 12, CA Decision.

<sup>40</sup> *Id.* at 11–12.

Accused-appellant's claim that Dy's death was an accident is nothing but a flimsy excuse. It is improbable that he could not have seen Dy behind the car trying to stop him, and later clinging to the car's rear hood. To begin with, accused-appellant was reversing his car; he had to cautiously keep an eye on the car's rear. Besides, when Dy got on the trunk, the car's weight would have shifted, and accused-appellant would have certainly noticed this. He would have known what was happening to Dy.

However, the prosecution failed to prove treachery as a qualifying circumstance to sustain accused-appellant's conviction of murder.

## II

Article 14 (16) of the Revised Penal Code defines treachery:

ARTICLE 14. *Aggravating Circumstances.* — The following are aggravating circumstances:

.....

16. That the act be committed with treachery (*alevosia*).

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.

In *Cirera v. People*,<sup>41</sup> this Court further discussed treachery:

The requisites of treachery are:

- (1) [T]he employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and
- (2) Deliberate or conscious adoption of such means, method, or manner of execution.

*A finding of the existence of treachery should be based on "clear and convincing evidence".* Such evidence must be as conclusive as the fact of killing itself. Its existence "cannot be presumed". As with the finding of guilt of the accused, "[a]ny doubt as to [its] existence . . . [should] be resolved in favor of the accused".

<sup>41</sup> 739 Phil. 25 (2014) [Per J. Leonen, Third Division].

*The unexpectedness of an attack cannot be the sole basis of a finding of treachery even if the attack was intended to kill another as long as the victim's position was merely accidental.* The means adopted must have been a result of a determination to ensure success in committing the crime.<sup>42</sup> (Emphasis supplied, citations omitted)

Here, there was no proof that accused-appellant consciously adopted the “particular means, method[,] or form of attack”<sup>43</sup> to ensure the execution of the crime without putting himself at risk.

This Court in *Cirera* elucidated on the nuance between a “swift and unexpected attack on the unarmed victim”<sup>44</sup>—the oft-cited essence of treachery—and what may be an impulsive attack in response to an “actual or imagined provocation[.]”<sup>45</sup> The latter negates treachery:

The attack might “have been done on impulse [or] as a reaction to an actual or imagined provocation offered by the victim.” In this case, petitioner was not only dismissed by Austria when he approached him for money. There was also an altercation between him and Naval. The provocation might have been enough to entice petitioner to action and attack private complainants.

Therefore, the manner of attack might not have been motivated by a determination to ensure success in committing the crime. What was more likely the case, based on private complainants’ testimonies, was that petitioner’s action was an impulsive reaction to being dismissed by Austria, his altercation with Naval, and Naval’s attempt to summon Austria home.

Generally, this type of provocation negates the existence of treachery. This is the type of provocation that does not lend itself to premeditation. The provocation in this case is of the kind which triggers impulsive reactions left unchecked by the accused and caused him to commit the crime. There was no evidence of a modicum of premeditation indicating the possibility of choice and planning fundamental to achieve the elements of treachery.<sup>46</sup> (Citations omitted)

Here, intent to kill may be presumed from Dy’s death through accused-appellant’s acts. It is also undisputed that Dy was unarmed and had no means to defend himself when he was clinging to the car’s rear hood.

However, as in *Cirera*, accused-appellant and Dy had a prior altercation. Accused-appellant attempted to end their feud when he drove away, but Dy purposely stood behind his car to stop him. This may have angered accused-appellant more when he had wanted to leave.

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<sup>42</sup> Id. at 44–45.

<sup>43</sup> *People v. Ordon*, 818 Phil. 670, 681 (2017) [Per J. Leonen, Third Division] citing *People v. Abadies*, 469 Phil. 132, 105 (2002) [Per J. Callejo, Sr., Second Division].

<sup>44</sup> Id.

<sup>45</sup> *Cirera v. People*, 739 Phil. 28, 46 (2014) [Per J. Leonen, Third Division].

<sup>46</sup> Id.



Moreover, accused-appellant did not deliberately plan for Dy to cling to the car's rear hood. This Court fails to see any premeditation on accused-appellant's part that supports a finding of treachery. On the contrary, the totality of the prosecution witnesses' testimonies demonstrates that this was the impulsive reaction to a provocation, which, as contemplated in *Cirera*, negates treachery.

Without treachery, then, the crime proven beyond reasonable doubt is only homicide.

### III

Finally, this Court appreciates the lack of "intention to commit so grave a wrong as that committed"<sup>47</sup> as a mitigating circumstance in accused-appellant's favor.

This circumstance may be considered in view of the offender's intent at the moment the criminal act is committed.<sup>48</sup> "While intent to kill may be presumed from the fact of the death of the victim, this mitigating factor may still be considered when attendant facts and circumstances so warrant,"<sup>49</sup> as in this case.

Here, accused-appellant could not have caused Dy's death had Dy not placed himself in that situation. He had wanted to drive away, but Dy was insistent and hopped by himself onto the car. When he swerved his car, accused-appellant showed his intent to throw Dy off the car; alas Dy hit his head in the process, leading to his demise. Yet, it does not appear that accused-appellant had deliberately sought to kill Dy.

Accordingly, the penalty must be reduced. The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal*, or 12 years and one (1) day to 20 years of imprisonment.<sup>50</sup> Considering the presence of a mitigating circumstance, the penalty shall be imposed in its minimum period. Furthermore, applying the Indeterminate Sentence Law, accused-appellant shall be sentenced to an indeterminate penalty of six (6) years and one (1) day of *prision mayor* (the penalty next lower in degree) to 12 years and one (1) day of *reclusion temporal* in its minimum period.

<sup>47</sup> REV. PEN. CODE, art. 13(3).

<sup>48</sup> *People v. Sabalberino*, G.R. No. 241088, June 3, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65176>> [Per J. Peralta, Third Division].

<sup>49</sup> *Urbano v. People*, 596 Phil. 902, 914 (2009) [Per J. Velasco, Jr., Second Division].

<sup>50</sup> REV. PEN. CODE, art. 27.

June 10, 2020

Per recent jurisprudence,<sup>51</sup> accused-appellant is ordered to pay Dy's heirs the awards of civil indemnity and moral damages worth ₱50,000.00 each. The award of ₱266,178.92 as actual damages is sustained.

**WHEREFORE**, the Court of Appeals' September 26, 2016 Decision in CA-G.R. CR-HC No. 06817 is **MODIFIED**.

Accused-appellant Orlando V. Garcia is found **GUILTY** beyond reasonable doubt of homicide, punished under Article 249 of the Revised Penal Code. He is sentenced to suffer the penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to 12 years and one (1) day of *reclusion temporal*, as maximum. He is also **DIRECTED** to pay the heirs of Stewart Dy civil indemnity and moral damages worth ₱50,000.00 each, as well as actual damages worth ₱266,178.92.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Resolution until their full satisfaction.<sup>52</sup>

**SO ORDERED.**" (Lopez, J., designated additional Member vice Zalameda, J., per Raffle dated February 3, 2020.)

Very truly yours,

*Misael C. Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court *8/4*  
*7/3/2020*

PUBLIC ATTORNEY'S OFFICE  
Special & Appealed Cases Service  
DOJ Agencies Building  
East Avenue cor. NIA Road  
Diliman, 1104 Quezon City

COURT OF APPEALS  
CA G.R. CR HC No. 06817  
1000 Manila

OFFICE OF THE SOLICITOR GENERAL  
134 Amorsolo Street  
Legaspi Village, 1229 Makati City

<sup>51</sup> See *People v. Jugueta*, 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

<sup>52</sup> See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 170, 1470 Malabon City

CSSupt. Gerardo F. Padilla  
Superintendent  
New Bilibid Prison North  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

Mr. Orlando V. Garcia  
c/o The Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

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