

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 245969

Present:
PERALTA, C.J.,
Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA,
GAERLAN, JJ.

- versus -

JOEL CATULANG y GUTIERREZ,
POLY BERTULFO y DELLORO,
AND CRISPOLO BERTULFO y
DELLORO,
Accused-Appellants.

Promulgated:

NOV 03 2020

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DECISION

CARANDANG, J.:

When there is a shadow of doubt on the guilt of the accused, it is the duty of the Court to acquit him. No less than the Constitution has afforded every man the presumption of his innocence. Unless his guilt is proven to be beyond reasonable doubt, an accused must be acquitted.

Before this Court is an appeal¹ assailing the Decision² dated October 19, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08389, which affirmed the Decision³ dated June 1, 2016 of the Regional Trial Court (RTC)

¹ Rollo, pp. 21-22.

² Penned by Associate Justice Sesinando E. Villon, with the concurrence of Associate Justices Edwin D. Sorongon and Rafael Antonio M. Santos; id. at 3-19.

³ Penned by Presiding Judge Eleanor R. Kwong; CA rollo, pp. 53-63.

of Caloocan City, Branch 128 finding accused-appellants Joel Catulang y Gutierrez (Joel), Poly Bertulfo y Delloro (Poly), and Crispolo Bertulfo y Delloro (Crispolo) guilty beyond reasonable doubt of committing murder under Article 248 of the Revised Penal Code (RPC).

Antecedents

The case stemmed from two separate Information, one charging Manuel Catulang y Villegas (Manuel), Joel, Poly and Crispolo of murder, the accusatory portion thereof reads:

That on or about the 7th day of September, 2008 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapons and icepick, conspiring together confederating and mutually helping with one another, with the use of superior strength, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one ROMEO CANTIGA y MANTALABA, by then and there, hitting his head, stabbing him repeatedly, mauling him, thereby inflicting the latter mortal wound which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.⁴

Another Information was charging Poly of attempted murder, the accusatory portion provides:

That on or about the 7th day of September, 2008 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one RODEL CAGUS y APOSTOL, by then and there, stabbing him on his back, thus, commencing directly by overt acts the commission of the crime of MURDER, but the herein accused nevertheless was not able to perform all the acts of execution which would constitute the said felony as a consequence, by reason or causes other than his own spontaneous desistance, that is due to timely arrival of their neighbors.

CONTRARY TO LAW.⁵

⁴ Records, p. 2.

⁵ Id. at 16.

Version of the Prosecution

The prosecution presented six witnesses namely: Lydia Cantiaga (Lydia), the wife of the victim, Jonathan Rebose (Jonathan), Police Chief Inspector Editha Martinez (PCI Martinez), Eutequio Seming Jr. (Eutequio), POI Mark Andrew Bartolome (POI Bartolome), and Norberto Deciembre (Norberto).

Testimony of Lydia Cantiga

As testified by Lydia, on the night of September 7, 2008, she and her husband Romeo Cantiaga (Romy) were watching television inside their house when they suddenly heard a commotion outside. They decided to check what was going on and ensure that their son Raffy was not involved in the commotion.⁶

The commotion was outside the house of Manuel. When they got there, Manuel suddenly went out of his house carrying a *dos por dos* and hit Romy on his left head causing Romy to fall on the ground. Thereafter, three men emerged from the house and dragged Romy inside the gate. The three men were later identified as Poly, Joel and Crispolo.⁷ It was identified in court that Manuel and Joel are brothers while Poly and Crispolo are brothers-in-law of Manuel.⁸

While being dragged, Romy was shouting "*Mamamatay ako, papatayin nila ako.*"⁹ Lydia was not able to do anything for fear that the four men will retaliate against her. She asked the bystanders within the vicinity to ask for help and then she followed the men dragging her husband.¹⁰

The men dragged Romy inside Manuel's house and closed the gate. Lydia peeped through the gate and saw the four men simultaneously mauling and kicking her husband. Thereafter, she saw them stabbing him with a bolo and screwdriver. She saw that Crispolo was holding a bolo, Poly was holding a screwdriver and Manuel and Joel were both armed with wood.¹¹

She ran for help and told the arresting officers that a group of men was mauling and stabbing her husband and that he was already dead.¹² She returned at the house of Manuel together with the Purok Leader Eutequio and barangay tanods Mendoza and Deciembre.¹³

⁶ TSN dated May 4, 2010; pp. 4-5

⁷ Id. at 6-7.

⁸ TSN dated June 11, 2014, p. 3.

⁹ TSN dated August 24, 2010, p. 4-5.

¹⁰ Id.

¹¹ Id. at 6.

¹² Id.

¹³ TSN dated September 10, 2012, p. 4.

Testimony of Jonathan Rebose

Jonathan had a slightly different story. He testified that he was walking home with Russell and Raffy when they saw that Romy was hit by Manuel with a *dos por dos*. Thereafter, Joel and Poly dragged Romy inside the steel gate.¹⁴

Jonathan ran towards the house of Romy and informed his wife, Lydia, that Romy was being mauled. He further testified that Crispolo was holding a knife like a bolo while Poly was holding a screwdriver when they dragged Romy inside the gate of Manuel's house.¹⁵

He could no longer see what the four men were doing inside the house because there was no electricity inside.¹⁶ He said that he stayed at the place of incident for 30 minutes waiting to see what happened to Romy until he was fetched by his mother. The next day, he learned from Romy's son that Romy had passed away.¹⁷

Testimony of PCI Editha Martinez

PCI Martinez testified that when she was conducting an autopsy on the body of Romy, she found multiple stab wounds in the thorax, particularly three stab wounds, two of which penetrated the lungs which caused the instant death of the victim.¹⁸ She further testified that the stab wounds may have been caused by a sharp, pointed and bladed instrument which could possibly be a single bladed knife.¹⁹

Her autopsy also showed abrasion, contusion on the head, multiple abrasions, punctured wound on the thorax and fracture on four ribs.²⁰ There was also a hematoma on the forehead. She posited that the victim could have suffered blows to the head or came into contact with a hard surface object, which is consistent with the possibility of being mauled and kicked.²¹

Testimony of Eutequio Seming Jr.

Purok Leader Eutequio testified that upon arriving at the scene, he heard Crispolo shout "*Nandiyan na ba si Purok, susuko ako kay Purok.*"²² They entered the gate and saw the lifeless body of Romy on the ground. Manuel and Crispolo first surrendered to him and Crispolo pointed to him where the bolo can be found.²³ They were also able to retrieve a screwdriver inside the house. Thereafter, Poly and Joel surrendered as well. He saw that

¹⁴ TSN dated September 15, 2009, pp. 3-4, 6-7.

¹⁵ Id. at 13-14.

¹⁶ Id. at 11-12.

¹⁷ Id. at 18-20.

¹⁸ TSN dated November 21, 2011, pp. 9-12.

¹⁹ Id. at 11.

²⁰ Id. at 14.

²¹ Id. at 16.

²² TSN dated September 10, 2012, pp. 5-7.

²³ Id. at 12-13.

Manuel had wound on his palm while Joel had an injury on his forehead. All the four men appeared to be drunk.²⁴

Testimony of POI Mark Andrew Bartolome

He testified that he was the investigating officer on the case and that the arresting officers turned over the seized bolo and screwdriver to him. He testified that he did not have personal knowledge of the incident.²⁵

Testimony of Norberto Diciembre

Deciembre corroborated the testimony of Purok Leader Eutequio. He testified that they attended to the report of mauling at the house of Manuel. Upon arriving thereat, they saw the lifeless body of Romy on the floor with his face down. They also saw the four accused, who were half naked and appeared to be drunk. The four accused surrendered to them.²⁶

Version of the Defense

The defense avers a different version of the story. According to them, the four men were having a drinking session inside the house of Manuel on the evening of the same day.²⁷ Suddenly, Romy pushed the gate and went inside shouting “*Matatayang ba talaga kayo?*” while holding a *tres cantos* ice pick. Manuel got up from his seat and approached Romy, who suddenly stabbed him. Manuel tried to parry the thrust but he was hit on his right hand. Thereafter, the ice pick fell on the ground and Romy and Manuel grappled with each other.²⁸

While Romy was on top of Manuel, Poly came to Manuel’s rescue and stabbed Romy at the back while he was not looking. Romy turned to Poly while Manuel ran inside his house. Upon Romy turning to him, Poly stabbed Romy again on his chest but he can no longer remember how many stabs he inflicted upon Romy. Then, Romy fell on the ground. In his testimony, Poly admitted that he stabbed Romy because of fear that Romy might kill the four of them.²⁹

Thereafter, the barangay officials arrived and arrested the four men. Crispolo testified that he did not know what happened because he was inside the comfort room while the confrontation was happening. Joel also did not know what happened because he was asleep after having two bottles of Colt 45.³⁰

²⁴ Id. at 13-14.
²⁵ TSN dated February 27, 2013, pp. 5-6.
²⁶ TSN dated October 1, 2013, pp. 4-7.
²⁷ TSN dated June 11, 2014, pp. 4-5.
²⁸ Id. at 7-9.
²⁹ CA *rollo*, p. 59.
³⁰ Id. at 60-62.

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On November 2, 2014, accused Manuel was rushed to the hospital due to difficulty of breathing. He was pronounced dead on the same day as evidenced by his Death Certificate.³¹ Thus, the case against him is dismissed pursuant to Article 89(1) of the RPC, which provides that criminal liability is totally extinguished by the death of the accused.

Ruling of the Regional Trial Court

On June 1, 2016, RTC Branch 128, Caloocan City issued a Decision³² convicting Joel, Poly and Crispolo for the crime of murder while acquitting Poly for the crime of attempted murder. The dispositive portion reads:

WHEREFORE, finding the three (3) accused Joel Catulang y Gutierrez, Poly Bertulfo y Delloro, and Crispolo Bertulfo y Delloro, guilty beyond reasonable doubt for Murder, they are hereby sentenced to Reclusion Perpetua, with all the accessory penalties attached thereto.

They are likewise directed to jointly and severally pay the heirs of the deceased Romeo Cantiga y Mantalaba, as follows:

1. Thirty One Thousand Nine Hundred Fifty Pesos (P31,950.00), as actual damages;
2. Seventy Five Thousand Pesos (P75,000.00), as civil indemnity;
3. Seventy Five Thousand Pesos (P75,000.00), as moral damages; and
4. Thirty Thousand Pesos (P30,000.00), as exemplary damages.³³

RTC found that there was conspiracy among the four accused. Their concerted acts of attacking, dragging, mauling and stabbing the victim which resulted to the multiple stab wounds, abrasions, contusions and fractures on the victim's body support the theory of conspiracy. RTC resolved that these multiple injuries on the victim were inflicted by several persons.³⁴

Further, it ruled that there was no treachery and evident premeditation in the commission of the crime but there was presence of abuse of superior strength. The four men took advantage of their combined strength and attacked the victim who was alone and defenseless.³⁵

Aggrieved, Joel, Poly and Crispolo filed an appeal before the CA.³⁶

³¹ Records, p. 265.
³² Supra note 3.
³³ Records, p. 63.
³⁴ Id. at 62.
³⁵ Id. at 63.
³⁶ Id. at 319.

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Ruling of the Court of Appeals

On October 19, 2018, the CA denied the appeal and upheld the conviction of Joel, Poly and Crispolo for the crime of murder, *viz*:

WHEREFORE, premises considered, the instant appeal is **DENIED** for lack of merit. The assailed Decision dated June 1, 2016 rendered by Branch 128 of the Regional Trial Court of Caloocan City in Criminal Case No. C-80172, for Murder, is hereby **AFFIRMED**.³⁷ (Emphasis in the original)

CA did not give credence to their defenses of self-defense and defense of a relative because the element of unlawful aggression was no longer present when they hit Romy. Poly admitted that Romy was already unarmed when he stabbed him on the back. Such defenses were also belied by the number, nature and location of the injuries sustained by Romy. The gravity of his wounds is indicative of a determined effort to kill him and not just to defend themselves from an unlawful aggression.³⁸

Further, the CA agreed with the RTC that conspiracy and abuse of superior strength were present in the case. The four accused helped each other in boxing, attacking, and stabbing the victim to do their criminal intent of killing him. They likewise took advantage of their combined strength in attacking the victim who was alone and defenseless.³⁹

CA did not appreciate the mitigating circumstances of voluntary surrender. It lacks the element that the surrender must be spontaneous. Assuming that there was valid voluntary surrender, the same is in vain considering that the penalty imposed for the crime of Murder is *reclusion perpetua* which is an indivisible penalty. Regardless of any mitigating circumstance attending the commission of the crime, the indivisible penalty shall be applied.⁴⁰

Hence, this appeal.

Issues

In their Brief, the accused-appellants raised the following assignment of errors:

- I. The Court *a quo* gravely erred in disregarding the claim of self-defense and defense of a relative on the part of Manuel Catulang and Poly Bertulfo, respectively.
- II. The Court *a quo* gravely erred in not appreciating the fact that accused-appellants voluntarily surrendered.

³⁷ Rollo, p. 19.

³⁸ Id. at 10.

³⁹ Id. at 7-8.

⁴⁰ Id. at 16-18.



- III. The Court *a quo* gravely erred in finding the accused-appellants guilty of murder despite the prosecution's failure to establish conspiracy among them.
- IV. The Court *a quo* gravely erred in failing to determine the individual culpability of the accused-appellants.
- V. The Court *a quo* gravely erred in convicting accused-appellants of murder despite the glaring and material inconsistencies in the prosecution witnesses's testimonies.
- VI. The Court *a quo* gravely erred in finding that the aggravating circumstance of abuse of superior strength attended the death of Romeo Cantiga.

The main issue raised by the accused-appellants is whether their guilt has been proven beyond reasonable doubt.

Ruling of this Court

The appeal is partly meritorious.

At the outset, we stress that, in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.⁴¹

Self-defense and defense of a relative; no unlawful aggression from the victim

In order for the claim of self-defense to be valid, the following elements must be present, to wit: (a) there must be unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the person defending himself.⁴²

On the other hand, a defense of a relative is valid when the following elements concur: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (c) he or she acts in defense of his or her spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree.⁴³

⁴¹ *Ramos v. People of the Philippines; People of the Philippines v. Ramos*, 803 Phil. 775, 783 (2017)

⁴² REVISED PENAL CODE, Article 11(1).

⁴³ REVISED PENAL CODE, Article 11(2).

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Upon review of the records, this Court upholds the finding of the CA that there was no valid self-defense and defense of a relative. As correctly held by the CA, the accused-appellants failed to establish that there was unlawful aggression on the part of Romy to justify the criminal act done by them.

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 weapon.⁴⁴ But based from the testimonies of Manuel and Poly, Romy was already unarmed when Poly stabbed him.⁴⁵ Manuel and Romy were grappling with each other when Poly stabbed Romy. There was no actual or imminent threat to the life, limb or right of Manuel or Poly. Manuel testified that while they were wrestling with each other, there were times that he was on top of Romy and that Romy was on his top.⁴⁶ This proves that both of them had equal strength in fighting each other and that Romy did not show any threat to him. Manuel did not testify that he was having a difficult time fighting Romy or that there was imminent peril to his life or limb. These circumstances belie the claim that there was unlawful aggression from the victim.

Unlawful aggression presupposes an actual, sudden, and unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude. In this case, the unlawful aggression ceased when Manuel was able to disarm Romy and they began to grapple with each other. Manuel and Poly's acts of attacking Romy amounted to retaliation, wherein the aggression that was begun by the injured party already ceased to exist when the accused attacked him. Thus, there was no unlawful aggression anymore on the part of the deceased.

Further, Poly continued to stab Romy on his chest despite the latter not having anything to defend himself from such attack.⁴⁷ Based from Poly's testimony, he initially stabbed Romy on the back while Romy and Manuel were grappling with each other. When Romy stood up and faced him, he continued to stab Romy in the chest, not remembering how many stabs he inflicted to the victim. As mentioned above, the unlawful aggression already ceased to exist when Manuel was able to disarm Romy, thus Poly's attacks to the victim was not reasonably necessary to prevent or repel the unlawful aggression. Hence, the claim of self-defense and defense of a relative by the accused-appellants Manuel and Poly must fail.

Presence of Conspiracy
was not established

With respect to the presence of conspiracy, jurisprudence provides that conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence

⁴⁴ *People v. Crisostomo*, 195 Phil. 162, 172 (1981).

⁴⁵ TSN dated June 11, 2014, pp. 19-20.

⁴⁶ Id. at 9.

⁴⁷ TSN dated September 23, 2014, p. 10.



of conspiracy is the unity of action and purpose. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt.⁴⁸

Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime.⁴⁹ It is not sufficient, however, that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. It is necessary that the assailants be animated by one and the same purpose.⁵⁰

The trial court, as affirmed by the CA, held that there was conspiracy among the accused-appellants. However, upon review of the records, we hold that the participation and involvement of Joel in the commission of the crime is inadequate to render him criminally liable as a conspirator.

In the case of *People v. Jesalva*,⁵¹ this Court ruled that in a conspiracy, it is necessary to focus on the overt acts of an accused before, during and after the criminal act in order to determine if he or she was a part of the conspiracy and may be held liable as a conspirator. Upon review of the facts, this Court believes that Joel's overt acts before, during and after the criminal act are inadequate to hold him criminally liable as conspirator for the crime of murder.

Before the criminal act, the defense witnesses, herein accused-appellants, testified that they were having a drinking session. There was no indication that they were planning or conniving to commit the murder. Joel was drinking with Manuel, Poly and Crispolo inside Manuel's house. The OSG argues that conspiracy was established through the testimonies of Lydia and Jonathan. But after a thorough review of the records, the Court holds that their testimonies were insufficient to prove that Joel conspired with the other accused-appellants in committing the murder. More so, there is no evidence that the accused-appellants had any enmity or grudge against the victim. In the absence of strong motives on their part to kill the deceased, it cannot safely be concluded that they conspired to commit the crime.

During and after the criminal act, the prosecution witnesses, particularly Lydia and Jonathan, testified that Joel's participation was merely to drag Romy inside the house. On the other hand, all the defense witnesses testified that Joel was asleep after drinking two bottles of Colt45 when the incident happened. Thus, the most that the prosecution could ascribe to Joel was his overt act of helping the other accused in dragging Romy inside the gate.

⁴⁸ *Quidet v. People*, G.R. No. 170289, 632 Phil. 1, 11 (2010).

⁴⁹ *People v. Campos*, 668 Phil. 315, 330 (2011), citing *People v. Martin*, 588 Phil. 355, 364 (2008).

⁵⁰ *People v. Vistido*, 169 Phil. 599, 606 (1977).

⁵¹ 811 Phil. 300 (2017).



Further, we find the version of Lydia's story incredulous. Her testimony does not corroborate the testimony of Jonathan. In her version, she was together with Romy when Manuel hit her husband with *dos por dos*. But according to Jonathan, he called for Lydia when he saw that Romy was attacked. This Court can only believe one version of the story and we find Jonathan's version more credible than Lydia's. Her presence at the time of the incident is doubtful.

Hence, this Court holds that the evidence of the prosecution is not strong enough to sustain a conviction as against Joel. Although the fact of dragging Romy inside the gate appeared to be an act of helping the other accused in perpetuating the crime, such is not sufficient to hold him principally liable as a conspirator in the crime of murder.

Where the quantum of proof required to establish conspiracy is lacking, the accused-appellant is responsible only for the consequences of his own acts. In this case, all that Joel did was to help the others drag Romy inside the gate and nothing else. Such act is not a crime. In criminal cases, the participation of the accused must be established by the prosecution by positive and competent evidence. It cannot be presumed. Lydia and Jonathan did not witness first-hand the commission of the crime. They only saw that Manuel hit Romy and that the latter was dragged inside the gate. There being no direct witnesses to the participation of Joel in the crime, he must be acquitted on reasonable doubt.

On the other hand, the evidence presented to support the conviction of Poly and Crispolo are adequate to overcome the burden of proving their guilt beyond reasonable doubt.

With respect to Poly, he admitted before the trial court stabbing Romy at the back once and in front twice which was supported by the medical report of PCI Martinez showing multiple stab wounds sustained by the victim.

As testified by PCI Martinez, the deceased received stab wounds caused by a sharp and pointed instrument like a knife and a blunt instrument like a screwdriver.

Q How many stab wounds did you observe?

A Can I refer sir to the autopsy report...I found three (3) stab wounds, sir.

Q And they penetrated both vital organs of the body of the victim?

A Two of the three stab wounds penetrated the lungs, sir.

Q From the time the injury was inflicted, how long would the victim live if possible, Madam Witness?

A Just a few minutes, sir.



Q Now, Madam Witness, what kind of instrument, if any could have been used in inflicting the injury that your(sic) observe?

A Any sharp, pointed bladed instrument, sir.

Q Based on the dimension of the wound, Madam Witness, can you give an idea of what kind of bladed instrument?

A Based on the dimensions of the stab wound that I found at the time of my examination, it is possible that a knife was used, sir.

Q Single bladed or double?

A Can I refer, sir to the anatomical sketch...a single bladed knife, sir.

x x x x

Q Let's go with each of the wounds. You observed a punctured wound, this is different from the stab wound you observed earlier?

A Yes, sir.

Q This would be caused by object such as either an ice pick or screwdriver, something like that?

A Yes, sir.

Q That would be a different instrument that could have caused the stab wound to the thorax?

A Yes, sir.


Q So it's possible that there is a second assailant with that weapon?

A It is possible, yes sir.⁵²

The prosecution witnesses testified that Poly was holding a screwdriver when he dragged Romy inside the gate. More so, the police were able to find a screwdriver inside the house of Manuel where the incident happened. Even without the theory of conspiracy, these facts support the finding that Poly participated in the commission of the crime of murder against Romy.

With respect to Crispolo, circumstantial evidence supports his conviction. These circumstances comprise of the following:

1. Purok Leader Eutequio testified that Crispolo surrendered to him and pointed to him the bolo used to stab Romy.
2. Jonathan testified that Crispolo was holding a bolo.
3. The post mortem examination of Romy showed a stab wound which could have been caused by a knife like a bolo, as testified by PCI Martinez.
4. The bolo was surrendered as evidence to the police as testified by PO2 Bartolome.

All these circumstances support the conviction of Crispolo. The defense failed to ascribe any ill-motive against the prosecution's witnesses to impute to them such a grave crime. Thus, we give credence to the testimonies of Jonathan, Purok Leader Eutequio, PCI Martinez and PO2 Bartolome. 

⁵² TSN dated November 21, 2011, pp. 10-15.

Therefore, we sustain the ruling of the RTC and CA finding Poly and Crispolo guilty of murder under Article 248 of the RPC.

There was abuse of superior strength

Further, abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.⁵³

This Court affirms the finding of the RTC and the CA that the killing of Romy was attended by abuse of superior strength. There was numerical superiority with the accused and the force exerted by them to commit the crime was out of proportion to the means of defense available to the victim. Romy was attacked by several men, particularly Manuel, Poly and Crispolo, who had weapons including *dos por dos*, screwdriver and bolo. The accused took advantage of their superior strength to assault and kill Romy who was alone and defenseless. The attack made by Manuel and Poly were likewise out of proportion to the means of defense available to Romy. As established by the prosecution, Romy was already unarmed when the accused attacked him. Thus, the circumstance of abuse of superior strength was properly appreciated by the RTC and the CA.

Voluntary surrender must be appreciated

Nonetheless, the mitigating circumstance of voluntary surrender must be given credence. For voluntary surrender to be appreciated, the following elements must concur: (a) the accused has not been actually arrested; (b) the accused surrenders himself to a person in authority or the latter's agent; and (c) the surrender is voluntary.

All these elements are present in the case as established by the testimony of Purok Leader Eutequio. *First*, accused-appellants were not yet arrested at the time that the barangay officials arrived at the scene. *Second*, Purok Leader Eutequio testified that Crispolo and Manuel surrendered to them

⁵³ *People v. Beduya*, 641 Phil. 399, 410-411 (2010).

when they arrived. As established, Purok Leader Eutequio is an agent of a person in authority for being a Barangay Tanod tasked to maintain public order and security within their purok or district. Lastly, Crispolo surrendered himself voluntarily, spontaneously and without any influence from the barangay tanods. Moreover, Crispolo even pointed to Purok Leader Eutequio where the bolo, used as weapon, could be located. The same elements were established with the other accused, Poly.

Penalty

The penalty in this case is governed by Article 248 of the RPC, as amended by Republic Act No. 7659, wherein murder is punishable by *reclusion perpetua* to death. With no generic aggravating circumstance and one generic mitigating circumstance of voluntary surrender, the proper penalty imposable on the accused, in accordance with Article 63(3) of the RPC, should be the minimum period, which is *reclusion perpetua*.

Hence, the penalty imposed by RTC and CA is affirmed, the same being in keeping with current law and jurisprudence.

However, on the award of damages, the Court deems it proper to modify the exemplary damages in accordance with the case of *People v. Jugueta*.⁵⁴ Likewise, with respect to the award of actual damages, the same must also be modified.

In *People v. Racal*,⁵⁵ the Court deleted the award of actual damages amounting to ₱30,000.00 and in lieu thereof, awarded temperate damages in the amount of ₱50,000.00. The Court therein held:

x x x The settled rule is that when actual damages 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. Conversely, if the amount of actual damages proven exceeds, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted. The rationale for this rule is that it would be anomalous and unfair for the victim's heirs, who tried and succeeded in presenting receipts and other evidence to prove actual damages, to receive an amount which is less than that given as temperate damages to those who are not able to present any evidence at all.⁵⁶

Hence, We sustain the award of ₱75,000.00 as civil indemnity, and ₱75,000.00 as moral damages but modify the exemplary damages from ₱30,000.00 to ₱75,000.00 in keeping with *People v. Jugueta*⁵⁷ and delete the award of actual damages amounting to ₱31,950.00 and in lieu thereof, award

⁵⁴ 783 Phil. 806 (2016).

⁵⁵ 817 Phil. 665 (2017).

⁵⁶ Id. at 685-686.

⁵⁷ Supra note 54.

temperate damages amounting to ₱50,000.00 in keeping with *People v. Racal*.⁵⁸

The award of damages shall likewise be subject to an interest of six percent (6%) *per annum* reckoned from the finality of this Decision until full payment.

WHEREFORE, the appeal is **PARTLY GRANTED**. Accused-appellant Joel Catulang y Gutierrez is **ACQUITTED** on reasonable doubt and is **ORDERED** to be **IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. The Decision dated October 19, 2018 of the Court of Appeals in CA-G.R. CR HC No. 08389 finding accused-appellants Crispolo Bertulfo y Delloro and Poly Bertulfo y Delloro **GUILTY** beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of *reclusion perpetua* is **AFFIRMED**. The damages awarded is likewise **AFFIRMED with MODIFICATION**:

- (1) The award of exemplary damages is **INCREASED** from ₱30,000.00 to ₱75,000.00; and
- (2) The award of actual damages is **DELETED** and in lieu thereof, temperate damages in the amount of ₱50,000.00 is awarded to the heirs of the victim.

The award of damages shall be subject to an interest of six percent (6%) *per annum* reckoned from the finality of this Decision until full payment.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, New Bilibid Prison for immediate implementation. The said Director is **DIRECTED** to report the action taken to this Court, within five (5) days from receipt of this Decision.

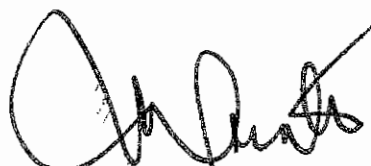
SO ORDERED.


ROSMARID. CARANDANG
Associate Justice

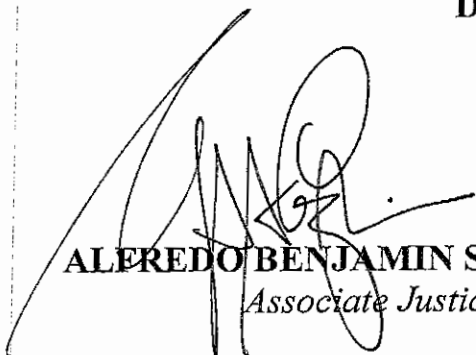
⁵⁸

Supra note 55.

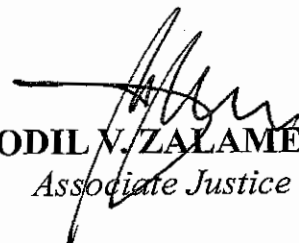
WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice



ALREDO BENJAMIN S. CAGUIOA
Associate Justice



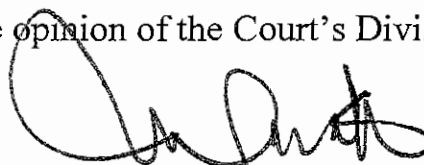
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
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