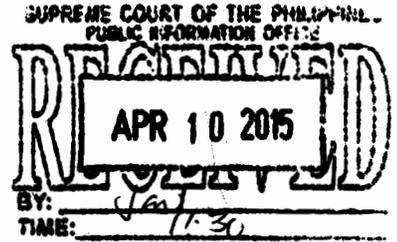




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated March 16, 2015, which reads as follows:*

**“G.R. No. 208280 (*People of the Philippines vs. Calixto Cabalce*). –** On appeal is the February 21, 2013 Decision<sup>1</sup> of the Court of Appeals (CA) which affirmed with modification the Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 22, of Narvacan, Ilocos Sur, finding appellant Calixto Cabalce guilty beyond reasonable doubt of murder.

Stated briefly, the evidence for the prosecution proved the following facts. On January 20, 2002, Cabalce was drinking with some friends at the house of then Barangay Captain Estanislao Supnet at Lapping, Nagbukel, Ilocos Sur. Barangay *Tanod* Chief Rodolfo Abellan, Sr. then heard three gunshots coming from Cabalce’s house. Abellan Sr. went to Cabalce’s house and told him not to fire his .38 caliber revolver because his neighbors were asleep and some were scared. Cabalce, however, did not listen so Abellan Sr. just went home. Cabalce followed Abellan Sr. and shouted outside his house, firing his gun and challenging Abellan Sr. to go out and face him. Rodolfo Abellan, Jr. (son of Abellan Sr.) stopped his father from going out of their house and in his place went out to talk to Cabalce to pacify him. However, instead of being pacified, Cabalce suddenly shot Abellan Jr. below the left breast, at point blank range, killing the 16-year-old boy. Seeing Cabalce shoot his son, Abellan Sr. went out and held Cabalce by the neck and called for help from the barangay captain, some councilmen and members of the barangay *tanod* who were nearby. Cabalce grappled with Abellan Sr. to get his .38 caliber revolver, but Marlo Abellan, managed to take the gun from him. Cabalce was then brought to the Nagbukel Police Station.<sup>3</sup>

In his defense, appellant presented only his testimony and claimed that on the night of January 20, 2002 he and his nephew Erwin Abellan, went to the house of Abellan Sr. to confront Abellan Sr. because of the

<sup>1</sup> *Rollo*, pp. 2-9. Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr. concurring. The assailed Decision was rendered in CA-G.R. CR-H.C. No. 04274.

<sup>2</sup> *CA rollo*, pp. 15-27. Penned by Judge Isidoro T. Pobre.

<sup>3</sup> *Rollo*, p. 4; TSN, May 26, 2004, pp. 2-9; TSN, November 7, 2007, pp. 2 & 4.

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latter's accusation that he was indiscriminately firing his gun. Erwin, however, stopped along the way and no longer went with appellant. Upon reaching the house of Abellan Sr., appellant confronted Abellan Sr. about his accusation. What happened next was the subject of two versions, but during cross-examination, appellant stuck with the story that the victim, Abellan Jr., suddenly rushed towards him and appeared like he was about to get something from his back. Appellant claimed that he was nervous so he was prompted to shoot Abellan Jr., thereby killing him.<sup>4</sup>

The RTC found Cabalce guilty of the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua* and to pay the heirs of Abellan Jr. ₱50,000 as civil indemnity, ₱55,000 as actual damages and ₱50,000 as moral damages.

The RTC found that the crime was committed with treachery as appellant employed ways and means or a method of execution to ensure commission of the crime without risk to himself. The RTC noted that appellant suddenly shot Abellan Jr. without any reason or provocation. Abellan Jr. was unarmed and was known to appellant to be a minor at the time. Evident premeditation was likewise present as it was shown that the killing was preceded by cool thought and reflection on the resolution to carry out the criminal intent. The RTC held that a sufficient space of time had elapsed to arrive at a calm judgment. After Abellan, Sr. confronted the appellant accusing him of indiscriminately firing his gun, appellant went to his house and took therefrom his caliber .38 revolver. He tucked this on his waist, and returned to the house where they were having a drinking spree with Abellan, Sr. and other people. When Abellan Sr. went home, appellant followed him with his gun now on his hand. As testified to by appellant himself, he shouted in front of Abellan Sr.'s house and insisted to talk to Abellan Sr. but Abellan Jr. told him that he (Abellan Jr.) will be the one to talk to his father as his father was lying drunk, face down on a wooden bench. When Abellan Jr. came out of their door and told appellant to let his father be and that he will be the one to talk to him, appellant shot Abellan Jr. killing the 16-year-old boy instantly. The RTC held that appellant's intent to kill was planned. He even followed his unknowing victim. But his would-be victim was not the one whom he shot but the son.

As to the aggravating circumstance of use of illegally possessed firearm, under Presidential Decree No. 1866 as amended by Republic Act No. 8294, if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm is considered a special aggravating circumstance which warrants the imposition of the death penalty.

<sup>4</sup> Id. at 4-5; TSN, August 17, 2009, pp. 3-10.

On appeal, the CA affirmed appellant's conviction for murder and increased the award of moral damages from ₱50,000 to ₱75,000. The CA upheld the finding of the trial court that treachery and evident premeditation attended the killing of Abellan Jr. On the matter of treachery, the CA noted that when the minor Abellan Jr. went out of their house on the night of January 20, 2002, he was unarmed and told appellant that "he will just be the one to talk to his father who was drunk dead and lying on a bench."<sup>5</sup> Then, appellant suddenly fatally shot Abellan Jr. below the breast. The CA did not consider appellant's claim that Abellan Jr. was "about to draw something from his back pocket"<sup>6</sup> as such claim was not proven with credible evidence. The CA added that Abellan Jr. had neither time to defend himself nor run in order to avoid appellant's shot. As regards the aggravating circumstance of evident premeditation, the CA noted that when Abellan Sr. confronted appellant about his indiscriminate firing on January 20, 2002, appellant was still unarmed. It was only after such confrontation that appellant went home and got his .38 caliber revolver. Appellant then returned to the place where they were drinking, followed Abellan Sr. to his house with his gun in hand, and shouted outside Abellan Sr.'s house insisting on talking with him. After Abellan Jr. went out of their house to tell appellant to leave his father alone, appellant suddenly shot Abellan Jr. sans any provocation. Furthermore, since the firearm appellant used was not registered under his name nor did he have a license application therefor, such possession/use of an unlicensed firearm was considered as a special aggravating circumstance.

Aggrieved by the appellate court's ruling, appellant filed the present appeal insisting that the lower courts erred in finding no credence to his claim of self-defense and finding him guilty of murder.

We find the appeal partly meritorious and modify appellant's conviction. Instead of murder, we find appellant guilty of the lesser crime of homicide.

The trial court and appellate court erred in considering the presence of treachery that qualifies the crime to murder. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the victim might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.<sup>7</sup> However, mere suddenness of an attack is not enough to constitute treachery when the means adopted does not positively tend to

<sup>5</sup> Id. at 6.

<sup>6</sup> Id.

<sup>7</sup> *People v. Cabtalan*, G.R. No. 175980, February 15, 2012, 666 SCRA 174, 186-187, citing REVISED PENAL CODE, Art. 14(16); *People v. Dela Cruz*, 626 Phil. 631, 640 (2010) and *People v. Amazan*, 402 Phil. 247, 264 (2001).

prove, as in this case, that the assailant thereby knowingly intended to ensure the accomplishment of his purpose without risk to himself arising from the defense which his victim might offer.<sup>8</sup> In the case before us, the evidence only tends to prove that appellant shot Abellan Jr. suddenly but there is no showing that appellant purposely adopted such method as to insure accomplishment of his purpose. Moreover, there can be no treachery as to qualify the crime to murder since Abellan Jr. was forewarned and put on guard that appellant intended to do harm as appellant was firing his gun<sup>9</sup> while challenging Abellan Sr. It could not be said that he was in no way expecting any violent or life-threatening episode when he went outside their door and asked the appellant “why, manong?”

Likewise, as regards the finding of evident premeditation, we do not agree with the appreciation of such aggravating circumstance. Based on the evidence presented by the prosecution, appellant seems to have intended to commit a crime against the person of Abellan Sr., *NOT* Abellan Jr. As held in *People v. Hilario*,<sup>10</sup> evident premeditation may not be taken into account when the person whom the defendant proposed to kill was different from the one who became his victim. When the person decided to kill a different person and premeditated on the killing of the latter, but when he carried out his plan he actually killed another person, it cannot properly be said that he premeditated on the killing of the actual victim.

There being no qualifying circumstances to qualify the killing to murder under Article 248<sup>11</sup> of the Revised Penal Code, appellant could not be found guilty of murder. Instead, he should have been found guilty only of homicide after he admitted to killing Abellan Jr. on a claim of self-defense but utterly failed to prove any unlawful aggression on the part of the victim. Applying the Indeterminate Sentence Law and considering the established fact that appellant is not a registered firearms owner nor has he applied for a firearms license, appellant is sentenced to an indeterminate sentence of eight (8) years and one (1) day of *prision mayor* as minimum to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as maximum. The award of damages is likewise modified. In line with recent jurisprudence, the award of moral damages must be reduced to ₱50,000<sup>12</sup> and appellant must likewise be ordered to pay exemplary damages

<sup>8</sup> *Tuburan v. People*, 479 Phil. 1009, 1017-1018 (2004).

<sup>9</sup> TSN, November 7, 2007, p. 7.

<sup>10</sup> 407 Phil. 15, 27 (2001).

<sup>11</sup> ART. 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;

x x x x

5. With evident premeditation;

x x x x

<sup>12</sup> *Ramos v. People*, G.R. No. 194384, June 13, 2013, 698 SCRA 504; *People v. Vilbar*, G.R. No. 186541, February 1, 2012, 664 SCRA 749.

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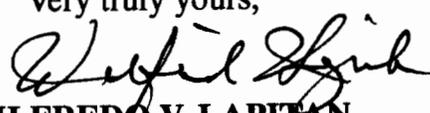
of ₱25,000. Additionally, we deem as fitting and proper the imposition of interest on all damages awarded in this case.

**WHEREFORE**, the February 21, 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04274 is **MODIFIED**. Appellant Calixto Cabalce is hereby found guilty beyond reasonable doubt of Homicide, and sentenced to suffer the penalty of eight (8) years and one (1) day of *prison mayor* as minimum to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as maximum. He is ordered to pay the heirs of Rodolfo Abellan, Jr. the amount of ₱50,000 as civil indemnity, ₱55,000 as actual damages, ₱50,000 as moral damages, and ₱25,000 as exemplary damages. Interest at the rate of 6% per annum on all damages awarded in this case reckoned from the finality of this Resolution until fully paid shall likewise be paid by the appellant.

Costs against appellant. (**Jardeleza, J.**, no part, due to his prior action as Solicitor General; **Brion, J.**, designated Member per Raffle dated January 5, 2015.)

**SO ORDERED.”**

Very truly yours,

  
**WILFREDO V. LAPITAN**

Division Clerk of Court *2/24/15*

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The Presiding Judge  
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