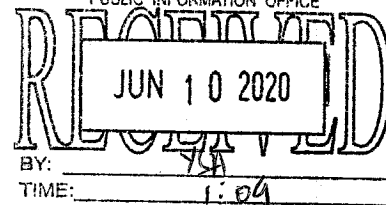




Republic of the Philippines  
Supreme Court  
Manila

## THIRD DIVISION

## NOTICE

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 22, 2020**, which reads as follows:

**“G.R. No. 245950 (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. REYNALDO PATRIARCA, accused-appellant). — The Court NOTES:**

- (1) the letter dated September 12, 2019 of CSupt. Robert A. Veneracion of San Ramon Prison and Penal Farm, Zamboanga City, confirming the confinement therein of accused-appellant;
- (2) the Office of the Solicitor General’s Manifestation (in Lieu of Supplemental Brief) dated August 13, 2019 stating that it would no longer file a supplemental brief and adopts its appellee’s brief as its supplemental brief; and
- (3) accused-appellant’s Manifestation (in Lieu of Supplemental Brief) dated October 3, 2019 stating that he would no longer file a supplemental brief, believing that he has thoroughly discussed his arguments in the appellant’s brief.

This Court resolves Reynaldo Patriarca’s (Patriarca) appeal assailing the Decision<sup>1</sup> of the Court of Appeals, which affirmed the Regional Trial Court Decision<sup>2</sup> convicting him of murder.

In an Information filed on April 25, 2007, Patriarca was charged with the crime of murder for killing Akmad Vicente Utto (Akmad).<sup>3</sup> The accusatory portion read:

<sup>1</sup> *Rollo*, pp. 5–18. The Decision dated December 7, 2018 in CA-G.R. CR HC No. 01816 was penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Tita Marilyn B. Payoyo-Villordon and Loida S. Posadas-Kahulugan of the Twenty-Second Division of the Court of Appeals, Cagayan De Oro City.

<sup>2</sup> *CA rollo*, pp. 46–60. The November 6, 2017 Decision was penned by Presiding Judge Lily Lydia A. Laquindanum of Branch 24, Regional Trial Court of Midsayap, Cotabato.

<sup>3</sup> *Id.* at 47.

That on or about 6:00 o'clock (*sic*) in the morning of August 27, 2006, at Sitio Tinago, Barangay Malinao, Municipality of Banisilan, Province of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with, (*sic*) with intent to kill, did then and there, willfully, unlawfully, feloniously and with treachery and evident premeditation, suddenly and immediately attack, assault, and shot the person of AKMAD VICENTE UTTO, who was unaware of the attack, thereby hitting and inflicting upon the latter fatal gunshot wounds on his chest and head, which caused his instantaneous death thereafter.

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

A warrant of arrest was issued on May 2, 2007, but the case was archived for the failure to arrest Patriarca. Later, an alias Warrant of Arrest was issued, and Patriarca was detained on February 2, 2010. Upon arraignment, Patriarca pleaded not guilty to the murder charge. Trial thus ensued.<sup>5</sup>

The prosecution presented as its witnesses Mechel Utto (Mechel), who was Akmad's wife, and Japet Utto (Japet), their eldest child.<sup>6</sup>

Based on their testimonies, the prosecution alleged that the crime happened on the early morning of August 27, 2006. At around 5:30 to 6:00 a.m., while Akmad, his wife Mechel, and their three (3) children were sleeping, Patriarca called Japet out from outside their house.<sup>7</sup> Apparently, Patriarca was ordering Japet "to get the dog and give it to him."<sup>8</sup> When Japet went downstairs, however, he saw that Patriarca had a gun. He relayed what he had seen to his father, who then went out to face Patriarca. Akmad asked Patriarca if he would shoot him, but without answering the question, Patriarca shot Akmad in the chest.<sup>9</sup>

Upon hearing the gunshot, Mechel ran downstairs and saw her husband lying on the ground. She and Japet saw how Patriarca went near Akmad to shoot him again in the head. After a while, Patriarca left.<sup>10</sup>

For the defense, only Patriarca testified.<sup>11</sup>

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<sup>4</sup> Id. at 46.

<sup>5</sup> Id. at 47.

<sup>6</sup> *Rollo*, p. 7.

<sup>7</sup> Id.

<sup>8</sup> *CA rollo*, p. 47.

<sup>9</sup> Id. at 47-48.

<sup>10</sup> Id. at 48.

<sup>11</sup> Id. at 47.

He admitted that he shot Akmad, but only to defend himself. He testified that he knew the victim and his family—Akmad worked on his land while Mechel was his niece. When the spouses arrived in Cotabato, he stated, he provided them with a house and allowed them to farm on his land. All was well up until the spouses requested to cultivate another of Patriarca's lands. Patriarca pointed to a property, but since that area was still untapped, he suggested that Akmad clean it first. However, Akmad demanded that Patriarca give them a cleaned land instead. To settle their differences, Patriarca referred the matter to the barangay.<sup>12</sup>

Eventually, they agreed that Akmad would clean another lot instead. When they went home, the spouses threw away everything Patriarca had given them. Someone later informed Patriarca about how Akmad had declared in a drinking spree that he would kill Patriarca.<sup>13</sup>

On the evening of August 26, 2006, the night before the incident, Patriarca confronted Akmad. He told him that if he really wanted to kill him, he and his family better leave his property.<sup>14</sup>

This time armed with a homemade gun, Patriarca returned the following day to check if the family had already left. While Patriarca was calling them out, Akmad suddenly burst through the house's door and was about to attack him with a bolo, prompting him to pull his gun out and shoot Akmad in the chest. Afraid of retaliation from Akmad, who was already lying on the ground, Patriarca shot him again in the head.<sup>15</sup>

In its November 6, 2017 Decision,<sup>16</sup> the Regional Trial Court found Patriarca guilty of murder. It mainly found that the justifying circumstance of self-defense was absent, as all its elements were lacking in this case.

First, the trial court ruled, there was no unlawful aggression on the victim's part. It found Patriarca's actions—bringing a gun<sup>17</sup> and confronting Akmad on his supposed death threat—to have negated his honest intention of merely verifying if Akmad and his family were still in the house. To the trial court, it was, in fact, Patriarca who was the aggressor.<sup>18</sup>

Second, the trial court held that by again shooting Akmad in the head when he had already fallen, Patriarca resorted to means disproportionate to the alleged aggression. To the trial court, he could have just run to avert any

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<sup>12</sup> Id. at 48.

<sup>13</sup> Id.

<sup>14</sup> Id. at 48–49.

<sup>15</sup> Id. at 49.

<sup>16</sup> Id. at 46–60.

<sup>17</sup> Id. at 51.

<sup>18</sup> Id. at 51–52.

more peril to his life instead of making sure that the victim was killed.<sup>19</sup> It further noted that no bolo was recovered from the crime scene, which, when coupled with the two (2) gunshot wounds on Akmad, negated Patriarca's claim of self-defense.<sup>20</sup>

Third, the trial court noted, Patriarca failed to prove that there was lack of sufficient provocation on his part because it was he who went to the victim's house.<sup>21</sup>

Moreover, the trial court found that treachery was present in the killing because Akmad was deprived of putting up any defense when Patriarca shot him. This was since there was just about 1.5 to two (2) meters between them and the victim was caught unaware when Patriarca suddenly shot him while his son was around, the trial court observed.<sup>22</sup>

Further, the trial court found evident premeditation in Patriarca's determination to kill Akmad, which he then carried out. He showed his resolve to kill Akmad from when he learned that Akmad was planning to kill him, coupled with Akmad's threat if his requested land was not given. Thus, from the moment Patriarca was threatened by the victim, he had enough time to get even and clung to his determination to kill the victim, as shown in him confronting Akmad and returning the next morning with a gun.<sup>23</sup>

The Regional Trial Court disposed as follows:

**WHEREFORE**, finding accused *Reynaldo Patriarca* GUILTY by proof beyond reasonable doubt of the crime of MURDER, defined and penalized under Art. 248 of the Revised Penal Code, he is hereby sentenced to suffer the penalty of **Reclusion Perpetua** with all the accessory penalties provided for under Article 41 of the Revised Penal Code.

He is further ordered to pay the heirs of the victim the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as temperate damages.

Considering that accused is a detention prisoner, he shall be credited with the period of his detention during his preventive imprisonment.

**SO ORDERED.**<sup>24</sup> (Emphasis in the original)

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<sup>19</sup> Id. at 54-55.

<sup>20</sup> Id. at 55.

<sup>21</sup> Id. at 56.

<sup>22</sup> Id. at 57.

<sup>23</sup> Id. at 58-59.

<sup>24</sup> Id. at 59-60.

Upon appeal before the Court of Appeals, Patriarca argued that the prosecution failed to prove his guilt beyond reasonable doubt.<sup>25</sup> He pointed out that there was imminent unlawful aggression on the part of the victim because he acted as if he would attack Patriarca.<sup>26</sup> He further contended that he did not expect such act from the victim because of his disadvantage in terms of physical strength.<sup>27</sup> Considering that he was 55 years old then and the victim was 24 years old, it was easy for the latter to catch up even if he ran away.<sup>28</sup>

Further, Patriarca claimed that he employed means of reasonable necessity to prevent Akmad's unlawful aggression.<sup>29</sup> In his testimony, he narrated that the victim swiftly went out, grabbed a bolo from his waist, and ran toward him.<sup>30</sup>

Patriarca likewise argued that there was no provocation on his part. He asserted that he simply called out Akmad, who suddenly came out with a bolo.<sup>31</sup>

Patriarca further averred that the qualifying circumstances of treachery and evident premeditation were not proven.<sup>32</sup>

In arguing that the elements of treachery were absent, he claimed that he was not shown to have consciously and deliberately adopted the means, methods, or form of attack against Akmad. He also asserted that the prosecution did not prove that his attack was sudden and unexpected, depriving Akmad of any chance to defend himself and ensuring that the act was committed without risk to Patriarca. It was the victim who attacked him first, he pointed out.<sup>33</sup>

Patriarca also stressed that the records did not show that he was vindictive and that he wanted to retaliate. He added that it was reasonable for him to bring a weapon, there being a threat on his life.<sup>34</sup>

In denying the presence of evident premeditation, he asserts that the prosecution failed to establish that prior to the incident, he had made a

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<sup>25</sup> Id. at 28.

<sup>26</sup> Id. at 34.

<sup>27</sup> Id. at 35.

<sup>28</sup> Id. at 31.

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

<sup>30</sup> Id. at 36.

<sup>31</sup> Id. at 37.

<sup>32</sup> Id.

<sup>33</sup> Id. at 38.

<sup>34</sup> Id. at 39.

decision or deliberate resolve to kill and that he clung on to his plan even after a sufficient lapse of time.<sup>35</sup>

Patriarca submitted that even if some elements of self-defense were lacking, he was still entitled to the mitigating circumstance of incomplete self-defense under Article 69 of the Revised Penal Code.<sup>36</sup>

The Office of the Solicitor General, on behalf of the People of the Philippines, countered that Patriarca failed to prove the elements of self-defense. It argued that Patriarca's assertion of imminent threat from Akmad had no legal and factual basis,<sup>37</sup> there being no bolo recovered from the crime scene.<sup>38</sup> Even assuming that the victim reached for his bolo, it does not constitute unlawful aggression. There was no overt act which would lead a reasonable mind to conclude that he had clearly manifested his intention of attacking Patriarca.<sup>39</sup>

Moreover, the Office of the Solicitor General argued that by the time Patriarca shot the victim in the head, there was no longer any unlawful aggression because the victim was already debilitated and was in no way a threat to Patriarca.<sup>40</sup>

The Office of the Solicitor General also maintained the existence of treachery and evident premeditation. It insisted that treachery existed in Patriarca suddenly shooting Akmad in the chest, leaving him no chance to retaliate or defend himself, and shooting him again in the head after falling on the ground.<sup>41</sup> The Office of the Solicitor General also raised evident premeditation in Patriarca's determination to kill the victim, as shown from the following: (1) their land dispute; (2) Patriarca learning of Akmad's threat; (3) him confronting Akmad and later returning with a gun; and (4) Patriarca shooting Akmad when he refused to leave the property. It noted that there was a significant lapse of time between Patriarca's resolve to kill the victim and his execution of that plan.<sup>42</sup>

In its December 7, 2018 Decision,<sup>43</sup> the Court of Appeals affirmed the ruling of the Regional Trial Court, thus:

WHEREFORE, the appeal is DISMISSED. The November 17, 2017 Judgment rendered by the RTC, Branch 24, Midsayap, Cotabato, in

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<sup>35</sup> Id. at 41.

<sup>36</sup> Id. at 42.

<sup>37</sup> Id. at 76.

<sup>38</sup> Id. at 77.

<sup>39</sup> Id. at 77 citing *People v. Se*, 469 Phil. 763 (2004) [Per J. Ynares-Santiago, First Division].

<sup>40</sup> Id. at 79.

<sup>41</sup> Id. at 81.

<sup>42</sup> Id. at 82.

<sup>43</sup> *Rollo*, pp. 5-18.

Criminal Case No. 07-065 is AFFIRMED with modification that accused-appellant REYNALDO PATRIARCA is found GUILTY beyond reasonable doubt of the crime of murder and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

He is ordered to pay the heirs of Akmad Utto ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. Prevailing jurisprudence now fixes the amount of ₱50,000.00 as temperate damages in murder cases; as such, the RTC's award of temperate damages is increased to ₱50,000.00.

Appellant shall pay an interest of six percent (6%) per annum on the aggregate amount of the monetary awards computed from the time of finality of this Decision until full payment.

SO ORDERED.<sup>44</sup> (Citation omitted)

The Court of Appeals found that there was no unlawful aggression on the part of the victim to justify Patriarca's acts. It noted that while two (2) empty shells were recovered from the crime scene, no bolo was found. This belied Patriarca's claim that Akmad threatened to assault him with a bolo, the Court of Appeals noted, and added that since there was no need to defend himself, Patriarca did not have to shoot the victim twice.<sup>45</sup>

The Court of Appeals further ruled that even if Akmad were about to attack Patriarca, the act of trying to draw a bolo is merely an intimidating attitude that did not constitute unlawful aggression.<sup>46</sup> It held that the claim of self-defense is likewise negated by the location of the gunshot wounds.<sup>47</sup>

The Court of Appeals also found treachery in this case. It observed that Patriarca purposely intended to attack the victim, in a sudden and unexpected way, making it impossible for the victim to defend himself. To the Court of Appeals, Patriarca's claim that he was merely checking if Akmad and his family had left his property was belied by the testimony that he went there to get his dog. Moreover, the victim could not have thought that Patriarca would shoot him as he was with his son.<sup>48</sup> The Court of Appeals also noted that if the victim were indeed going to attack Patriarca, one (1) shot would have been enough to repel the aggression, instead of shooting him again in the head to ensure his death.<sup>49</sup>

The Court of Appeals, however, found no evident premeditation, ruling that there was no proof that Patriarca had previously planned the

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<sup>44</sup> Id. at 17.

<sup>45</sup> Id. at 12.

<sup>46</sup> Id. at 13.

<sup>47</sup> Id. at 15.

<sup>48</sup> Id. at 14.

<sup>49</sup> Id. at 15.

killing. Nevertheless, Patriarca's conviction for murder was affirmed because of the circumstance of treachery.<sup>50</sup>

On January 9, 2018, Patriarca filed his Notice of Appeal.<sup>51</sup> Having given due course to the appeal,<sup>52</sup> the Court of Appeals elevated the records of the case to this Court.<sup>53</sup>

When notified by this Court to submit their supplemental briefs,<sup>54</sup> both parties manifested that they would no longer do so.<sup>55</sup>

The principal issue for this Court's resolution is whether or not accused-appellant Reynaldo Patriarca is guilty of murder. Subsumed under this issue are the following:

First, whether or not all the elements of self-defense are present;

Second, if not all the elements are present, whether or not incomplete self-defense may be appreciated in favor of accused-appellant; and

Third, whether or not the qualifying circumstances of treachery and evident premeditation are proven.

## I

This Court has held that when a person accused of killing "interposes self-defense to justify the act, the fact of killing is necessarily admitted."<sup>56</sup> The burden of proof, then, shifts from the prosecution to the accused, who must be able to show that the elements of self-defense are present.<sup>57</sup> In *People v. Daniel*:<sup>58</sup>

It is fundamental, that for self-defense to prosper, appellant must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if that were weak it could not be disbelieved after the accused himself had admitted the killing. Appellant's plea must be established by a clear and convincing evidence and not of

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<sup>50</sup> Id. at 17.

<sup>51</sup> Id. at 19-20.

<sup>52</sup> Id. at 21.

<sup>53</sup> Id. at 1.

<sup>54</sup> Id. at 24-25.

<sup>55</sup> Id. at 26-30 and 34-36.

<sup>56</sup> *People v. Daniel*, 220 Phil. 486, 496 (1985) [Per J. Gutierrez, Jr., First Division] citing *People v. Libardo*, 212 Phil. 499 (1984) [Per J. Abad Santos, En Banc].

<sup>57</sup> Id.

<sup>58</sup> 220 Phil. 486 (1985) [Per J. Gutierrez, Jr., First Division].



doubtful veracity, otherwise the conviction of the accused becomes imperative.<sup>59</sup>

The justifying circumstance of self-defense must be clearly established through convincing evidence. It cannot be appreciated if uncorroborated by competent evidence or is patently doubtful.<sup>60</sup>

Here, accused-appellant has admitted that he shot and killed the victim. However, because he interposes the justifying circumstance of self-defense, he now has the burden of proving that the elements of self-defense are present in this case.

For self-defense to prosper, the defense must establish the following elements: “(1) there was unlawful aggression by the victim; (2) that the means employed to prevent or repel such aggression was reasonable; and (3) that there was lack of sufficient provocation on the part of the person defending himself.”<sup>61</sup>

Of these elements, “the most indispensable is unlawful aggression on the part of the victim”;<sup>62</sup> if there is no unlawful aggression, the assailant has nothing to prevent or repel.<sup>63</sup> Unlawful aggression is a condition *sine qua non* to appreciate the justifying circumstance of self-defense.<sup>64</sup>

To establish unlawful aggression, “there must be a strong and positive act of real aggression, not merely a threat or an intimidating stance.”<sup>65</sup> There must be an “actual, sudden and unexpected attack, or imminent danger”<sup>66</sup> from the victim.

Unlawful aggression was aptly described in *People v. Nugas*:<sup>67</sup>

Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there

<sup>59</sup> Id. at 497 citing *People v. Mationg*, 198 Phil. 552 (1982) [Per J. Concepcion, Jr., Second Division].

<sup>60</sup> *People v. Lopez, Jr.*, G.R. No. 232247, April 23, 2018, 862 SCRA 507 [Per J. Peralta, Second Division].

<sup>61</sup> *People v. Geneblazo*, 414 Phil. 103, 109 (2001) [Per J. Buena, Second Division] citing *People v. Ringor, Jr.*, 378 Phil. 78 (1999) [Per J. Purisima, En Banc].

<sup>62</sup> *People v. Areo*, 452 Phil. 36, 44 (2003) [Per J. Corona, Third Division].

<sup>63</sup> Id.

<sup>64</sup> *People v. Bayocot*, 256 Phil. 27 (1989) [Per J. Sarmiento, Second Division].

<sup>65</sup> *People v. Areo*, 452 Phil. 36, 44 (2003) [Per J. Corona, Third Division].

<sup>66</sup> *People v. Geneblazo*, 414 Phil. 103, 109 (2001) [Per J. Buena, Second Division].

<sup>67</sup> 677 Phil. 168 (2011) [Per J. Bersamin, First Division].

must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.<sup>68</sup> (Citations omitted)

In this case, accused-appellant failed to prove that there was unlawful aggression on the part of the victim. As the lower courts have observed, the records do not bear out accused-appellant's claim that the victim ran toward him, poised to attack him with a bolo. Nothing in the police blotter puts any bolo in the crime scene.

Moreover, even if the victim were about to draw his bolo, it is settled in jurisprudence that this kind of act does not equate to unlawful aggression. In *People v. Escarlos*,<sup>69</sup> this Court explained that in such act, the danger sought to be avoided is merely speculative:

In the present case, appellant claims that there was unlawful aggression on the part of the victim when the latter unceremoniously boxed him on the forehead in the heat of their argument. Appellant adds that he had initially thought of hitting back when he noticed that the victim was pulling out a kitchen knife. Hence, to save his life, the former grabbed the weapon and used it to stab the latter. Appellant insists that under the circumstances, he was legally justified in using the knife to ward off the unlawful aggression. For him to wait for the knife to be raised and to fall on him before acting to defend himself would be asking too much, he argues.

The contentions of appellant are untenable. While the victim may be said to have initiated the confrontation, we do not subscribe to the view that the former was subjected to an unlawful aggression within the legal meaning of the phrase.

The alleged assault did not come as a surprise, as it was preceded by a heated exchange of words between the two parties who had a history of animosity. Moreover, the alleged drawing of a knife by the victim

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<sup>68</sup> Id. at 177-178.

<sup>69</sup> 457 Phil. 580 (2003) [Per J. Panganiban, En Banc].

could not have placed the life of appellant in imminent danger. The former might have done it only to threaten or intimidate the latter.

*Unlawful aggression presupposes actual, sudden, unexpected or imminent danger — not merely threatening and intimidating action.* Uncertain, premature and speculative was the assertion of appellant that the victim was about to stab him, when the latter had merely drawn out his knife. *There is aggression, only when the one attacked faces real and immediate threat to one's life. The peril sought to be avoided must be imminent and actual, not just speculative.*<sup>70</sup> (Emphasis supplied, citations omitted)

Furthermore, even if there was indeed unlawful aggression on the part of the victim, it ceased to exist the moment he fell on the ground from the first gunshot. Thus, by the time accused-appellant shot the victim again in the head, there was no longer any danger to avert to justify the killing. As this Court held in *People v. Tica*:<sup>71</sup>

When an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even wound the former aggressor. To be sure, when the present victim no longer persisted in his purpose or action to the extent that the object of his attack was no longer in peril, there was no more unlawful aggression that would warrant legal self-defense on the part of the offender.<sup>72</sup>

Absent the element of unlawful aggression, the privileged mitigating circumstance of incomplete self-defense cannot be appreciated in favor of accused-appellant.

Under Article 69 of the Revised Penal Code, incomplete self-defense reduces the penalty by one (1) or two (2) degrees lower than that prescribed by law.<sup>73</sup> However, to invoke this privilege, the accused must have proven the existence of the majority of the elements of self-defense, with the requirement that the element of unlawful aggression is always present. Only either of the two (2) other requisites may be absent, namely, reasonable necessity of the means employed to prevent or repel it, or the lack of sufficient provocation on the part of the person defending himself.<sup>74</sup>

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<sup>70</sup> Id. at 596.

<sup>71</sup> 817 Phil. 588 (2017) [Per J. Peralta, Second Division].

<sup>72</sup> Id. at 596 citing *Dela Cruz v. People*, 747 Phil. 376 (2014) [Per J. Peralta, Third Division].

<sup>73</sup> REV. PEN. CODE, art. 69 provides:

ARTICLE 69. *Penalty to be imposed when the crime committed is not wholly excusable.* — A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in Article 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.

<sup>74</sup> See *People v. Dulin*, 762 Phil. 24 (2015) [Per J. Bersamin, First Division].

Since accused-appellant failed to prove unlawful aggression, the lower courts did not err in not appreciating the circumstance of incomplete self-defense.<sup>75</sup>

## II

Under the Revised Penal Code, the killing is qualified to murder if any of the following circumstances is present:

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 street car or locomotive, 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.<sup>76</sup>

Qualifying circumstances must be proved beyond reasonable doubt.<sup>77</sup> Thus, in this case, to convict accused-appellant of the crime of murder, the prosecution must prove that the killing was attended by either treachery or evident premeditation, or both—beyond reasonable doubt.

There is treachery when there is a sudden, unexpected attack by an assailant without the slightest provocation from the victim. This leaves the victim without an opportunity to defend himself or herself, ensuring that the killing is committed without risk to the assailant.<sup>78</sup> *People v. Ilo*<sup>79</sup> is instructive:

<sup>75</sup> See *People v. Nagum*, 379 Phil. 507 (2000) [Per J. Melo, En Banc].

<sup>76</sup> REV. PEN. CODE, art. 248.

<sup>77</sup> *People v. Agramon*, G.R. No. 212156, June 20, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64517>> [Per J. Caguioa, Second Division] citing *People v. Bisio*, 448 Phil. 591 (2003) [Per J. Callejo, Sr., Second Division].

<sup>78</sup> *People v. Tejero*, 431 Phil. 91 (2002) [Per J. Quisumbing, Second Division].

<sup>79</sup> 440 Phil. 852 (2002) [Per J. Callejo, Sr., Second Division].

The prosecution must prove that the killing was premeditated or that the assailant chose a method or mode of attack directly and especially (*sic*) to facilitate and insure the killing without danger to himself. The essence of treachery is that the attack is deliberate and without warning done in a swift and unexpected manner of execution affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. There is no treachery where the attack is neither sudden nor preconceived and deliberately adopted but just triggered by the sudden infuriation on the part of the offender. To establish treachery, the evidence must show that the offender made some preparation to kill the victim in such a manner as to insure the execution of the crime or to make it impossible or difficult for the person attacked to defend himself. The mode of attack must be planned by the offender and must not spring from the unexpected turn of events. There is no treachery when the killing results from a verbal altercation between the victim and the assailant such that the victim was forewarned of the impending danger.<sup>80</sup> (Citations omitted)

To establish treachery, the following must be proven: “(1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution.”<sup>81</sup>

On the other hand, evident premeditation presupposes that the “execution of the criminal act [was] preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.”<sup>82</sup> For it to be appreciated, the following elements must concur: “(1) [t]he time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.”<sup>83</sup>

To prove evident premeditation, the prosecution must establish: (1) how and when the plan to kill was made; and (2) the sufficient lapse of time before the killing was carried out.<sup>84</sup> How the perpetrator deliberately planned the crime “should not be based merely on inferences and presumptions but on clear evidence.”<sup>85</sup>

Here, accused-appellant was armed when he went to the victim’s place at around 5:30 a.m., while the victim and his family were still asleep.

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<sup>80</sup> Id. at 860–861.

<sup>81</sup> *Pentecostes, Jr. v. People*, 631 Phil. 500, 513 (2010) [Per J. Peralta, Third Division] citing *People v. Catbagan*, 467 Phil. 1044 (2004) [Per J. Panganiban, First Division].

<sup>82</sup> *People v. Dimapilit*, 816 Phil. 523, 550 (2017) [Per J. Leonen, Second Division] citing *People v. Duavis*, 678 Phil. 166, 176–177 (2011) [Per J. Peralta, Third Division].

<sup>83</sup> Id. citing *People v. Duavis*, 678 Phil. 166, 177 (2011) [Per J. Peralta, Third Division].

<sup>84</sup> See *People v. Ordon*, 818 Phil. 672 (2017) [Per J. Leonen, Third Division]; *People v. Corpuz*, 107 Phil. 44 (1960) [Per J. J.B.L. Reyes, En Banc]; and *People v. Acaya*, 246 Phil. 773 (1988) [Per J. Melencio-Herrera, Second Division].

<sup>85</sup> *People v. Ordon*, 818 Phil. 672, 672 (2017) [Per J. Leonen, Third Division].

Accused-appellant's claim that he was merely checking if the victim had already left the place is belied by him bringing a weapon. The victim, who had just awoken, went out with his son believing that accused-appellant was merely getting his dog. He could not have expected that accused-appellant would shoot him. Add to that the short distance between them, and it is clear that the victim could not have defended himself. Hence, the prosecution proved treachery attended Akmad's killing.

However, evident premeditation is absent in this case. As the Court of Appeals correctly pointed out, there was no clear proof that Patriarca had previously planned the killing. The prosecution did not adduce evidence proving when he plotted the crime, nor was there proof of act manifesting that he clung to his determination. Similar to the element of a crime, the qualifying circumstance of evidence premeditation must be proven beyond reasonable doubt.<sup>86</sup> Here, absent clear evidence, it cannot be used against accused-appellant.

Nonetheless, because treachery was proven, this Court affirms that accused-appellant is guilty beyond reasonable doubt of murder.

Under Article 248 of the Revised Penal Code, the penalty for murder is *reclusion perpetua* to death.<sup>87</sup> Since treachery has already qualified the killing to murder, it is no longer considered an aggravating circumstance to increase the penalty. Under Article 63(2) of the Revised Penal Code, when the penalty consists of two (2) indivisible penalties and there are neither mitigating nor aggravating circumstances, the lesser penalty shall be imposed.<sup>88</sup> Thus, the Court of Appeals correctly imposed the penalty of *reclusion perpetua* without eligibility for parole pursuant to Republic Act No. 9346.<sup>89</sup>

In accordance with *People v. Jugueta*,<sup>90</sup> this Court increases the civil indemnity and moral damages to ₱100,000.00 each. We also impose the penalty of exemplary damages in the amount of ₱100,000.00.

**WHEREFORE**, the December 7, 2018 Decision of the Court of Appeals in CA-G.R. CR HC No. 01816 is **AFFIRMED with MODIFICATION**. Accused-appellant Reynaldo Patriarca is found **GUILTY** beyond reasonable doubt of the crime of murder and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole

<sup>86</sup> *People v. Abadies*, 436 Phil. 98 (2002) [Per J. Ynares-Santiago, En Banc].

<sup>87</sup> REV. PEN. CODE, art. 248 provides:

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 temporal in its maximum period to death.

<sup>88</sup> REV. PEN. CODE, art. 63(2).

<sup>89</sup> An Act Prohibiting the Imposition of Death Penalty in the Philippines.

<sup>90</sup> 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

under Republic Act No. 9346. He is further **ORDERED** to indemnify the heirs of the victim, Akmad Vicente Utto, moral damages, civil indemnity, and exemplary damages worth ₱100,000.00 each.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Resolution until fully paid.<sup>91</sup>

**SO ORDERED.”**

Very truly yours,

*Mis-DC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
*6/11/2020*

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The Presiding Judge  
REGIONAL TRIAL COURT  
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(Crim. Case No. 07-065)

**245950**

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<sup>91</sup> See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

