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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff- Appellee,

G.R. No. 241632

Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, and
ROSARIO, JJ.

ANGELITO DAYRIT y HIMOR,
Accused-Appellant.

Promulgated:

OCT 14 2020

X-----X *[Signature]*

DECISION

PERALTA, C.J.:

This is an appeal from the March 21, 2018 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06982, which affirmed with modifications the July 28, 2014 Decision² of the Regional Trial Court (RTC), Branch 269, Valenzuela City.

The Facts

Accused-appellant Angelito Dayrit y Himor (*Dayrit*) was indicted for two (2) counts of Murder as defined and penalized under Article 248 of the Revised Penal Code (RPC). The accusatory portion of the Informations dated September 4, 2013 alleged:

¹ Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion, concurring; *rollo*, pp. 2-16.

² Penned by Presiding Judge Emma C. Matammu; *CA rollo*, pp. 124-136.

[Signature]

Criminal Case No. 1218-V-13

That on or about August 31, 2013 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with another person, whose name, identity and present whereabouts are still unknown, with deliberate intent to kill, treachery and evident premeditation, and while on board a motorcycle, did then and there willfully, unlawfully, and feloniously shot with a handgun one ARIEL SERENILLA y DE CHAVEZ, the latter not being armed and not in a position to retaliate and defend himself due to the suddenness of the attack, hitting him on the neck, chin and chest, which caused his death.

CONTRARY TO LAW.³

Criminal Case No. 1219-V-13

That on or about August 31, 2013 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with another person, whose name, identity and present whereabouts are still unknown, with deliberate intent to kill, treachery and evident premeditation, and while on board a motorcycle, did then and there willfully, unlawfully, and feloniously shot with a handgun one LOURDES SERENILLA y ESPELETA, the latter not being armed and not in a position to retaliate and defend himself due to the suddenness of the attack, hitting her on the neck, which caused her death.

CONTRARY TO LAW.⁴

In his arraignment, Dayrit pleaded not guilty⁵ to the offense charged in the Informations. Thereafter, trial on merits ensued.

The prosecution presented seven (7) witnesses, namely, PSI Jocelyn Cruz, PO3 Alexander Buan, SPO1 Alexander Manalo, victims' son Aliven Serenilla, Lloyd Ontiveros, John Moises Vista and Joseph Emmanuel Soliman. The defense for its part presented four (4) witnesses, including the accused Dayrit, Billy Bragais, Michael John Aquino and Joseph Cabero.

Version of the Prosecution

On August 31, 2013, at around 10 o'clock in the evening, minors Lloyd Ontiveros, John Moises Vista and Joseph Emmanuel Soliman were playing along Anak Dalita Street, Barrio Bitik, Marulas, Valenzuela City. At that time, a man wearing a black jacket and a helmet arrived on board a green and

³ Records, Crim. Case No. 1218-V-13, p. 1.

⁴ Records, Crim. Case No. 1219-V-13, p. 1.

⁵ Records, Crim. Case No. 1218-V-13, pp. 53-55.

black motorcycle. This man alighted from his motorcycle and removed his helmet to wipe off his perspiration, he is observing a group of persons and among them was Ariel Serenilla (*Ariel*). Thereafter, Ontiveros approached the man since he recognized him as Angelito Dayrit, who was a school security guard at Serrano Elementary School. Ontiveros then asked Dayrit "*Kuya, bakit po kayo palakadlakad.*" Dayrit replied that he was just waiting for someone. After that, Dayrit boarded the motorcycle and left. Ontiveros then went back to his friends to continue playing. A few second later, Dayrit came back in the same motorcycle with a companion, who also was wearing a black jacket and a helmet. Dayrit, together with his companion, drove back and forth on the same street.

Afterwards, a certain Niño asked Ontiveros to buy some cigarettes. On his way to the store, Ontiveros met Ariel and his wife Lourdes Serenilla (*Lourdes*). Ontiveros walked together with them and was teased by Ariel. Ariel also had a bicycle in tow. While walking, Ontiveros noticed that the two (2) persons on board the motorcycle he saw earlier were following Ariel and Lourdes. When they reached the store, Ontiveros stayed behind, while the spouses continued walking towards the tricycle. As the spouses were boarding the tricycle, two persons on board a motorcycle blocked their way and the back-rider thereof fired a gun four times fatally shooting the spouses. The motorcycle then sped away and went to the direction of Serrano Street.

Meanwhile, Aliven Serenilla, the son of Ariel and Lourdes, was in the house of his cousin at Tampoy, Marulas, Valenzuela City when he learned that his parents were shot. He rushed to the scene where it happened and learned that his parents were brought to Fatima Medical Center. Upon his arrival at the said hospital, he was told that the latter were already dead.

At around 11 o'clock in the evening, the Station Investigation Division of the Valenzuela City Police Station received a telephone call from a security guard of the Fatima Medical Center informing them that the victims from a shooting incident were brought to the said hospital. SPO1 Alexander Manalo, PO3 Edwin Mapula and PO2 Joel Madregalejo arrived at the said hospital and were informed that the victims were being treated inside the emergency room. The police officers were also informed that the shooting incident transpired at Little Tagaytay, Serrano Street corner Anak-Dalita Street to which they proceeded to conduct an investigation. The scene of the crime was already cordoned off by their fellow police officers from Police Community Precinct 3. After the case was turned over to them, they also sought the assistance of the NPD-SOCO Satellite Office in Valenzuela City. They discovered that the spouses victims were about to board a tricycle when two (2) persons on board a motorcycle suddenly shot Ariel and Lourdes, successively. The gunmen fled to the direction going to Serrano Street towards MacArthur Highway. The witnesses who saw the shooting incident were not willing to give their sworn statements.



Further investigation was then conducted by PO3 Alexander Buan, SPO3 Conrado Sy and PO3 Vladimir Magsino. PO3 Buan found out from Genero Dudlao, Lourdes' sibling, that Ariel had a misunderstanding with a certain Angelito Dayrit, and that three (3) children witnessed the shooting incident. Subsequently, the children were fetched and were shown a picture of Dayrit to which they identified as the one who shot the spouses.

On September 2, 2013, PSI Jocelyn Cruz, a medico-legal officer, conducted a post-mortem examination of the cadavers of Ariel and Lourdes. In her medico-legal report, Ariel sustained three (3) gunshots, one on his face, the other on his neck and another one on his pelvic region. These wounds caused blood loss which resulted radic shock and eventually, his death. In the case of Lourdes, the gunshot's point of entry is located at her lateral neck region. From the injuries sustained by Lourdes, PCI Cruz inferred that these caused her instantaneous death.

On September 3, 2013, the police officers proceeded to the Karuhatan National High School, arrested Dayrit and informed him of his constitutional rights. Dayrit was brought to the police station and, thereafter, to the Valenzuela Medical Center for medical examination.

Version of the Defense

On August 31, 2013, at around 8 o'clock in the evening, accused-appellant Dayrit was at home with his family in Magsaysay Street, Marulas, Valenzuela City, watching television. His cousins, Michael John Aquino, Billy Joe Bragais and other relatives were also there and were discussing about their children's performance in school. At around 11:30 in the evening, Dayrit went to sleep.

Joseph Cabero was in Anak-Dalita Street on the same date, between 9:30 to 10 o'clock in the evening. He saw Ariel and Lourdes walk towards a tricycle. After Lourdes boarded the side car of the vehicle and Ariel was about to board, a motorcycle arrived and stopped beside the tricycle. The motorcycle driver, whom Cabero did not recognize, shot Ariel twice and Lourdes once. Joseph did not see the face of the shooter, but said that the latter had a smaller built compared to Dayrit. Shocked by what he saw, Cabero fled and hid at the side of an apartment across the street. Ten (10) minutes later, he left but he saw the tricycle driver, Raymond, being investigated by the police authorities. He, likewise, gave his statement to the investigator.



On September 3, 2013, while Dayrit was on duty at the Karuhatan National High School, two (2) barangay officials and three (3) police officers in civilian clothes arrived and approached him. The police officers confiscated Dayrit's gun and arrested him. According to Dayrit, he was neither informed of the reason of his arrest nor a warrant of arrest was shown to him. Dayrit was brought to a detention cell at the city hall. The police authorities asked Dayrit about the gun and motorcycle which he allegedly used in killing Ariel and Lourdes but he had no idea who the latter were. Dayrit stated that he does not even own a license to drive a motorcycle. Later on, he was told to stand in line with six (6) other persons.

On July 28, 2014, the RTC convicted Dayrit of the crime charged. The dispositive portion of the Decision states:

WHEREFORE, accused ANGELITO DAYRIT y HIMOR is hereby found GUILTY beyond reasonable doubt of two counts of Murder under Article 248 of the Revised Penal Code for the death of Ariel Serenilla and Lourdes Serenilla; and is hereby imposed the penalty of *reclusion perpetua* for each count. The accused is further ordered to pay the heirs of the victims P100,000.00 as civil indemnity, P50,000.00 as temperate damages, and P100,000 as moral damages.

The accused may be credited with the corresponding period that he has served under preventive imprisonment, in accordance with Article 29 of the Revised Penal Code and applicable rules.

Cost against the accused.

SO ORDERED.⁶

In concluding the guilt of Dayrit, the RTC ratiocinated:

x x x x

The identification by Ontiveros of the accused was strongly corroborated by the two other child-witnesses with whom he was playing at the time the accused first arrived near their play area on his orange and black motorcycle. On that first stop, the accused took off his helmet and wiped his perspiration, thus, the children saw his face. Their playmate, Ontiveros, also talked with him; hence they gave notice to him. Thus, when they saw the accused again in a lineup of six persons at the detention cell of Valenzuela City Police Station a few days later, they recognized him as the person in black jacket and on board a motorcycle colored orange and black who stopped near their play area and went to look at the group of Ariel Serenilla in the evening of August 31, 2013, just prior to the shooting incident.

x x x x

⁶ CA rollo, p. 136.

The shooting of both victims was sudden and unexpected. The couple apparently had no warning whatsoever of the impending assault. They were simply walking down the road. x x x. They were simply boarding a tricycle when all of a sudden, without any warning at all, they were gunned down. Ariel was shot from behind while boarding the tricycle. Lourdes, although shot frontally after Ariel, was seated inside the small sidecar with only one entrance on the side where Ariel was shot. Under the circumstances, both victims had absolutely no chance to evade the assault. They were clearly treacherously assaulted.

The prior acts of the accused plainly evince evident premeditation on his part. He initially checked the presence of his prey. He and his cohort dressed themselves similarly with black jackets and helmets, evidently to conceal their identities. In going back and forth to Anak-Dalita Street, they ensured that their target was still in the area and were obviously waiting for the right time to carry out their ill design. They were armed with a gun, an object not readily available to anyone. In other words, the accused clearly planned and prepared for murder of his victims.⁷

On appeal, the CA agreed with the findings of the trial court in giving credence to the testimonies of the prosecution witnesses, particularly of the children, who were the eyewitness of the crime. The appellate court was convinced that the qualifying circumstances of treachery and evident premeditation were duly appreciated. Likewise, the CA finds it proper to consider the generic aggravating circumstances of use of a motor vehicle that attended the commission of the crime which the trial court failed to appreciate. The records show that Dayrit was riding a motorcycle when he trailed and fatally shot the victims. It was also used to facilitate his escape after the commission of the crime. Lastly, the award of damages was modified by adding exemplary damage in the amount of One Hundred Thousand Pesos (₱100,000.00). The *fallo* of the March 21, 2018 Decision reads:

WHEREFORE, the instant *Appeal* is DENIED. The July 28, 2014 Decision of the Regional Trial Court, Branch 269, Valenzuela City in Criminal Case Nos. 1218-V-13 and 1219-V-13 is AFFIRMED with the following MODIFICATIONS:

- a) Accused-appellant ANGELITO DAYRIT y HIMOR is GUILTY beyond reasonable doubt of two (2) counts of Murder defined under Article 248 of the Revised Penal Code, attended by the aggravating circumstances of evident premeditation and use of motorcycle, and is hereby sentenced to suffer *reclusion perpetua* for each count without eligibility of parole;
- b) He is also ORDERED to PAY the heirs of Ariel and Lourdes Serenilla the following amounts for each victim: (a) P100,000.00 as civil indemnity (b) P100,000.00 as moral damages (c) P100,000.00 as exemplary damages; and (d) P50,000.00 as temperate damages; and

⁷ *Id.* at 132-135.

- c) Lastly, he is further ORDERED to pay interest on all monetary awards for damages at the rate of six percent (6%) *per annum* from the date of finality of this *Decision* until full satisfaction thereof.

SO ORDERED.⁸

Now before Us, the People and Dayrit, manifested that that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA.

The Court resolves to dismiss the appeal for failure to sufficiently show reversible error in the judgment of conviction to warrant the exercise of our appellate jurisdiction.

Murder is defined and penalized under Article 248 of the RPC, as amended by R.A. No. 7659. To successfully prosecute the crime, the following elements must be established: (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 RPC; and (4) that the killing is not parricide or infanticide.⁹ In the instant case, the prosecution was able to establish that (1) Ariel and Lourdes were shot and killed; (2) Dayrit killed them; (3) the killing of Ariel and Lourdes was attended by the qualifying circumstance of treachery and evident premeditation; and (4) the killing of Ariel and Lourdes was neither parricide nor infanticide. We agree with the trial court's finding that the prosecution has proven Dayrit's guilt beyond reasonable doubt, as the first element of the offense was proven by presenting the Certificate of Death of Ariel and Lourdes.¹⁰ The RTC correctly held in its Decision, that PSI Cruz, the Medico-Legal Officer of the Northern Police District Crime Laboratory, sufficiently testified that both victims died due to the gunshot wounds they each sustained which lacerated their major organs. Meanwhile, the other elements thereof were substantiated by child witness, Ontiveros.

It is worthy to note in this case that both driver and back-rider share the same criminal liability as they were in conspiracy with each other. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to, and are indicative of, a joint purpose, concert of action and community of interest. For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the

⁸ *Rollo*, p. 15.

⁹ *Johnny Garcia Yap v. People*, G.R. No. 234217, November 14, 2018 and *People v. Racal*, 817 Phil. 665, 677 (2017).

¹⁰ Records, Crim. Case No. 1218-V-13, pp. 66 and 76.

occurrence; it is sufficient that at the time of the commission of the offense, the malefactors had the same purpose and were united in its execution.¹¹ In the present case, both driver and back-rider were animated by the same criminal intent which is to kill Ariel and Lourdes. As one person was driving the motorcycle, the other held the gun and fired it upon the victims. Hence, it will not matter whether Dayrit was the one driving the motorcycle or the one that fired the shots.

It is settled that the determination of the competence and credibility of a child as a witness rests primarily with the trial judge as he had the opportunity to see the demeanor of the witness, his apparent intelligence or lack of it, and his understanding of the nature of the oath. As many of these qualities cannot be conveyed by the records of the case, the trial judge's evaluation will not be disturbed on review, unless it is clear from the record that his judgment is erroneous.¹²

In the present case, we find no cogent reason to disturb the findings of the trial court in giving credence to the testimonies of the prosecution witnesses, particularly the children who were the eyewitnesses to the crime. Ontiveros, together with other child-witnesses, positively identified Dayrit as the author of the killing of Ariel and Lourdes. Before the fatal shooting of the victims, Ontiveros, together with other child-witnesses, saw Dayrit as the person on board a motorcycle. In fact, at the time when the Dayrit took off his helmet and wiped his perspiration, Ontiveros approached him as the latter recognized him together with the other child-witnesses. Further, contained in the *Sinumpaang Salaysay*¹³ of Ontiveros are the following:

8. T- Papaano ba binaril sina kuya Ariel at ate Seksek mo, [ikuwento] mo nga sa akin lahat ng pangyayari?

S- Naglalaro po kami noon ng mga kaibigan ko sa may tapat [ng] bahay nila Angelo sa may taas ng Anak-Dalita tapos po ay may dumating na naka-motorsiklo na kulay green sa unahan at itim sa likod at itong may dala ng motor ay naka-kulay itim na jacket at itim na helmet tapos ay finlash-lightan kame nito tapos ay hinubad niya iyong helmet at jacket niya at nagpunas ng pawis tapos po ay nilapitan ko siya at tinanong ko siya "KUYA BAKIT PO KAYO PALAKAD LAKAD?" dahil bumaba siya ng motorsiklo at naglalakad habang patingin-tingin sa nag-iinuman na sina kuya Ariel and sagot niya sa akin ay may inaantay lang siya tapos pinapauwi na kaming lahat pero hindi kami umuwi tapos ay naglaro na lang ako ulit tapos sumakay ulit siya sa motor niya at bumaba ng Anak-Dalita pero maya-maya ay bumalik siya ulit pero may kasama na siyang isang lalaki na naka-itim din na jacket at helmet at iyong kasama [niya] ng kinausap ko kanina ang nagmamaneho ng motor tapos ganun lang po ang ginagawa nila pabalik-balik lang sila sa taas ng Anak-dalita.

9. T- Pagtapos ano pa ang sumunod na nangyari?

¹¹ *People v. Richard Dillatan, Sr. y Pat, et al.*, G.R. No. 212191, September 5, 2018.

¹² *People v. Lawa*, 444 Phil. 191, 203 (2003).

¹³ Records, Crim. Case No. 1218-V-13, pp. 11-12.

S- Habang naglalaro pa rin ako ay inutusan ako ni Niño na bumili ng sigarilyo kaya nagpunta ako sa may baba at nakasabay ko sina kuya Ariel na may dalang bike pati ang asawa na si Ate Seksek at habang naglalakad po kami ay binibiro pa ako ni Kuya Ariel tapos nakita ko na iyong kaninang dalawang lalaking nakamotorskilo ay nakasunod sa amin tapos ay huminto na ako sa tindahan samantalang sina kuya Ariel a[y] naglakad at sumakay ng tricycle at ng umabante iyong tricycle ay hinarang na sila noong naka-motor at pinagbabaril na sila ng lalaking naka-angkas sa motor na siya rin iyong lalaking kinausap ko.

Jurisprudence tells us that where there is no evidence that the witnesses of the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit. In the instant case, no imputation of improper motive on the part of the prosecution witnesses was ever made by the accused-appellant.

The child witness in this case positively identified the accused-appellant several times during the trial as the person who killed Ariel and Lourdes. Such resoluteness cannot be doubted of a child, especially of one of tender age. The testimony of a single witness, when positive and credible, is sufficient to support a conviction even of murder.¹⁴ Anent appellant's defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the witness. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.¹⁵

Now, it has been established that Dayrit was the one who killed Ariel and Lourdes. The other question to be resolved is whether or not the killing was attended by the qualifying circumstance of treachery and premeditation.

Paragraph 16, Article 14 of the RPC defines treachery as the employment of means, methods, or forms in the execution of the crime against a person which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor arising from the defense which the offended party might make.¹⁶

¹⁴ *People v. Avila*, 787 Phil. 346, 358 (2016).

¹⁵ *People v. Bensurto, Jr.*, 802 Phil. 766, 778 (2016).

¹⁶ *People v. Joseph A. Ampo*, G.R. No. 229938, February 27, 2019.

In order for treachery to be properly appreciated, two (2) elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself or to retaliate or escape; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.¹⁷

In the instant case, the records show that in the evening of August 31, 2013, Ariel and Lourdes were merely boarding a tricycle, unaware of the danger. All of a sudden, Dayrit, while on board a motorcycle, launched an attack, shooting at his victims successively. It was clear that the manner of attack employed by Dayrit was deliberate and unexpected. Likewise, there was no opportunity for the victims to defend themselves. With the given circumstances, it is impossible for the victims to retaliate. Clearly, the prosecution has established that the qualifying circumstance of treachery is present.

Meanwhile, the requisites for the appreciation of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.¹⁸

In the present case, Dayrit initially monitored the presence of Ariel and subsequently drove back and forth on Anak-Dalita Street, ensuring that Ariel was still in the area. Dayrit was also seen wearing a black jacket and helmet for him not to be recognized and he secretly followed Ariel and Lourdes while they were on their way to a tricycle. Further, it was clearly shown that Dayrit and his companion planned the means on how to carry out and facilitate the killing of the victims. The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment.¹⁹ In this case, the time that had elapsed while monitoring the victims and while waiting for the perfect opportunity to execute the shooting is indicative of a cool thought and reflection on the part of Dayrit to carry out his criminal intent.

Moreover, the CA correctly considered the generic aggravating circumstance of use of a motor vehicle that attended the commission of the crime. In *People v. Herbias*,²⁰ the Court held:

¹⁷ *Id.*

¹⁸ *People v. Macaspac*, 806 Phil. 285, 293 (2017).

¹⁹ *People v. Loreto Dagsil y Caritero*, G.R. No. 218945, December 13, 2017.

²⁰ 333 Phil. 422, 433 (1996).



The use of motor vehicle may likewise be considered as an aggravating circumstance that attended the commission of the crime. The records show that assailants used a motorcycle in trailing and overtaking the jeepney driven by Saladio after which appellant's back rider mercilessly riddled with his bullets the body of Jeremias. There is no doubt that the motorcycle was used as a means to commit the crime and to facilitate their escape after they accomplished their mission.

The use of a motor vehicle is aggravating when it is used either to commit the crime or to facilitate escape.²¹ Here, it was established that Dayrit was riding a motorcycle when he followed and fatally shot Ariel and Lourdes. Afterwards, he fled the crime scene on board the motorcycle. Clearly, a motor vehicle was used as a means to commit the crime and to facilitate his escape after the consummation of his plan to kill Ariel and Lourdes.

Furthermore, Dayrit is assailing the validity of his warrantless arrest. He is claiming that the police officers that arrested him did not have personal knowledge based on the facts and circumstances that he, had in fact, committed the crime. A contravention to Section 5, Rule 113 of the Revised Rules of Court.

We are not persuaded.

According the records of the case, Dayrit never raised the supposed illegality of his arrest prior to his arraignment. Instead, he raised the said issue for the first time in his appeal. As to the legality of his warrantless arrest, appellant is already estopped from questioning such because it was never raised prior to his having entered a plea of not guilty. Moreover, the rule is that an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is deemed waived. Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection.²²

In view of the attendant circumstance of treachery which qualified the killing to murder, as well as the presence of evident premeditation, and the generic aggravating circumstance of use of motor vehicle, the imposible penalty would have been death if not for the proscription for its imposition under Republic Act No. 9346. As regards to the award of damages, We agree with the CA in imposing civil indemnity *ex delicto*, moral and exemplary

²¹ *People v. Salahuddin*, 778 Phil. 529, 552 (2016).

²² *People v. Bringcula*, G.R. No. 226400, January 24, 2018, 853 SCRA 142, 154.

damages in the amount of One Hundred Thousand (₱100,000.00) for each count of Murder, and temperate damages in the amount of Fifty Thousand Pesos (₱50,000.00), in line with our ruling in *People v. Juguetta*.²³ Likewise, the CA is correct in ruling that the monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of the Decision until fully paid.²⁴

WHEREFORE, the appeal is **DENIED**. The March 21, 2018 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 06982, convicting Angelito Dayrit y Himor of two (2) counts of Murder, is hereby **AFFIRMED**.

SO ORDERED.

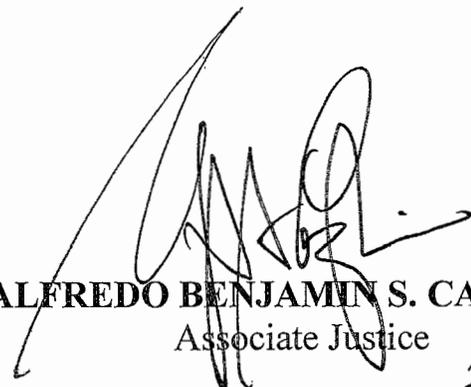


DIOSDADO M. PERALTA
Chief Justice

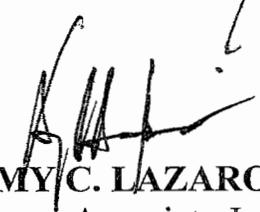
²³ 783 Phil. 806 (2016).

²⁴ See Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013, effective July 1, 2013, in *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

WE CONCUR:

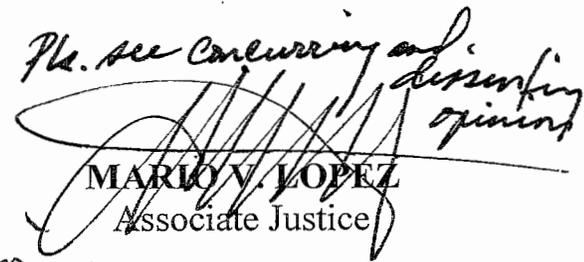


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

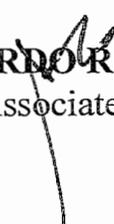
Concurring with dissenting opinion



MARIO V. LOPEZ
Associate Justice

Pls. see Concurring and dissenting opinions

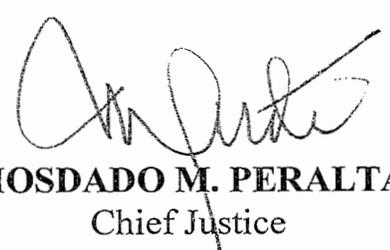
I agree with the dissenting opinion of Justice Lopez



RICARDO R. ROSARIO
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

FIRST DIVISION

G.R. No. 241632 - PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *versus*,
ANGELITO DAYRIT Y HIMOR, *accused-appellant*.

Promulgated:

OCT 14 2020



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CONCURRING AND DISSENTING OPINION

LOPEZ, J.:

I register my concurrence with the *ponencia* which affirmed the conviction of the accused for two counts of murder with the aggravating circumstances of treachery and use of motor vehicle. However, I disagree that evident premeditation attended the commission of the crime.

For proper reference, there is a need to revisit the facts of the case.

On August 31, 2013 at around 10:00 p.m., Lloyd Ontiveros and his friends saw a man wearing a black jacket and a helmet on board a green and black motorcycle. The man was seen "*palakadlakad*" on the street and observing a group of persons which included Ariel Serenilla. Lloyd recognized the man as Angelito Dayrit and asked him why he was there. Angelito responded that he was waiting for someone and soon left on his motorcycle. After a few seconds, Angelito returned in the same motorcycle with a companion, who was also wearing a black jacket and a helmet. They were driving back and forth along the same street. Later, Lloyd met Ariel and his wife Lourdes Serenilla on his way to buy cigarettes. As they were walking together, Lloyd noticed that Angelito and his companion are following Ariel and Lourdes. Upon reaching the store, Lloyd stayed behind while Ariel and Lourdes boarded a tricycle. Thereafter, Angelito and his companion blocked the tricycle and fired a gun four times that fatally injured Ariel and Lourdes. The assailants then drove the motorcycle and sped away to escape.

In appreciating evident premeditation, the majority ruled that the accused and his cohort monitored the victims and subsequently drove back and forth on the street to ensure that they remained in the area. The accused and his companion were also wearing helmets and black jackets while stalking their victims showing that they planned the means on how to carry out the crimes. The *ponencia* then concluded that the time between monitoring the victims and waiting for the perfect opportunity to kill them indicated cool thought and reflection on the part the accused.

Notably, evident premeditation has the following elements, to wit: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) *a sufficient lapse*



of time between the determination and execution to allow him to reflect upon the consequences of his act.¹ Specifically, the prosecution must establish that a sufficient amount of time had lapsed between the malefactor's determination and execution.² Indeed, case law had specified the periods for purposes of reflection or cool thinking on the part of the accused.

In *People v. Mojica*,³ a period of **one month** from the time of the humiliation inflicted against the accused is enough. In *People v. Lasafin*,⁴ **three days'** time is considered sufficient for the accused to meditate upon the crime which he intended to commit. In *People v. Renegado y Señora*,⁵ the accused had more or less **sixty-four hours** to ponder over his plan and listen to the advice of his co-employees and of his own conscience. In *People v. Dosal*,⁶ a period **one whole day** is enough to appreciate evident premeditation. In *People v. Magayac*,⁷ an intervening period of **11 hours** was sufficient for the accused to have a cool reflection on the consequences of his criminal plan. In *People v. Benito y Restubog*,⁸ a **six-hour** interval between the alleged grave offense committed by the victim against the accused and the assassination was more than sufficient to enable the accused to recover his serenity. In *People v. Dumdum, Jr.*,⁹ a **one-hour interval** from conceiving the crime and its commission is considered sufficient.

Corollarily, the Court will not appreciate evident premeditation absent showing that there was enough time that had lapsed between the conception and execution of the crime to allow the accused to reflect upon the consequences of his acts.¹⁰ Here, there is no evidence as to the period of time when the accused resolved to commit the crime and had cool thought and reflection to arrive at a calm judgment. The prosecution witnesses only attested that they saw the accused and his companion scouting the area and stalking the victims. Moreover, the assailants were in disguise and in possession of a gun. Yet, these circumstances are insufficient to prove cool thought and reflection of the crime to be executed. In *People v. Chua*,¹¹ the Court emphasized that the premeditation to kill must be plain and notorious. It must be sufficiently proven by evidence of outward acts showing the intent to kill. *In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient.* More importantly, the fact that a riding in tandem committed the crime should not automatically result in a finding of evident premeditation especially if there are no external acts of deliberate planning. In *People v. Punsalan*,¹² two men on board a motorcycle passed by the victim and his wife who were in front of their store. The riding in tandem then stopped in front

¹ *People v. Guillermo*, 361 Phil. 933 (1999).

² *People v. Abierra*, G.R. No. 227504, June 13, 2018.

³ 162 Phil. 657 (1976).

⁴ 92 Phil. 668 (1953).

⁵ 156 Phil. 260 (1974).

⁶ 92 Phil. 877 (1953).

⁷ 387 Phil. 1 (2000).

⁸ 165 Phil. 871 (1976).

⁹ 180 Phil. 628 (1979).

¹⁰ *People v. De Guia*, 257 Phil. 957 (1989); *People v. Baldimo y Quillo*, 338 Phil. 350 (1997); *People v. Garcia y Romano*, 467 Phil. 1102 (2004); *People v. Abierra*, *supra*; *People v. Illescas*, 396 Phil. 200 (2000); and *People v. Agramon*, G.R. No. 212156, June 20, 2018, 867 SCRA 194.

¹¹ 357 Phil. 907 (1998).

¹² 421 Phil. 1058 (2001).

of the couple and asked the victim his name. Thereafter, the accused shot the victim four times. The Court did not consider evident premeditation because there is no evidence *as to how and when the plan to kill was decided and what time had elapsed before it was carried out.*

To reiterate, the prosecution has the burden to prove all the elements of evident premeditation beyond reasonable doubt.¹³ The Court cannot rely on mere suspicion. Accordingly, I vote to affirm the conviction of the accused for two counts of murder with the aggravating circumstances of treachery and use of motor vehicle sans evident premeditation.



MARIO V. LOPEZ
Associate Justice

¹³ *People v. Peña*, 353 Phi. 782 (1998).

