



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **June 23, 2021**, which reads as follows:

“**G.R. No. 231378 (People of the Philippines v. Nick Candelario y Sabado)**. - Challenged in this appeal¹ is the September 30, 2016 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07288, which affirmed with modifications the November 4, 2014 Decision³ of the Regional Trial Court (RTC), Branch 95, Quezon City in Criminal Case No. Q-11-168152 which found accused-appellant Nick Candelario y Sabado (Candelario) guilty beyond reasonable doubt of Murder. He was sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of the deceased Elmer Tion (Tion) the amounts of PhP 75,000.00 as civil indemnity; PhP 75,000.00 as moral damages; PhP 30,000.00 as exemplary damages; and PhP 70,041.00 as actual damages with interest at 6% *per annum* from the finality of judgment until fully paid.

The Antecedents:

Candelario was charged with Murder in an Information⁴ that reads:

That on or about the 26th day of December 2010, in Quezon City, Philippines, the said accused with intent to kill, qualified by treachery, and evident premeditation did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one Elmer Tion y Pelacz, by then and there stabbing him on the different parts of his body, thereby inflicting upon him serious and grave wounds which were the direct and immediate cause of his ultimately death, to the damage and prejudice of the heirs of the said Elmer Tion (Tion).

¹ *Rollo*, pp. 199-200.

² *CA rollo*, pp. 177-194; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Elio A. Ybañez and Nina G. Antonio-Valenzuela.

³ *Records*, pp. 178-188; penned by Judge Jose G. Paneda.

⁴ *Id.* at 1-2.

Accused planned the commission of the crime prior to its execution until its commission and consciously adopting sudden and unexpected attack upon the victim to ensure that victim will not be able to defend himself thus, accused committed that attending circumstances of evident premeditation and treachery.

Contrary to law.⁵

Candelario pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued. Police Officer 2 Vicben Padua (PO2 Padua), PO3 Fernando Santiago (PO3 Santiago), Joel Careno (Careno) and Dr. Angelic Oropilla (Dr. Oropilla) testified for the prosecution while the defense presented the accused-appellant himself as its lone witness.

Version of the Prosecution:

On December 26, 2010 at around 9:00 P.M., Tion and his cousin, Careno, were in front of Pan Di Pedro Bakery near the Five Star Bus Terminal in Cubao, Quezon City waiting for a jeepney going to Gilmore, Quezon City. While waiting, Tion bought a cigarette from accused-appellant. However, when Tion turned his back towards Candelario, the latter suddenly punched Tion causing him to fall on the ground. Thereafter, Candelario pinned Tion down and stabbed him five times with a knife.

When PO2 Padua and PO3 Santiago arrived at the scene of the crime, Candelario was nowhere to be found. The police officers immediately brought Tion to the East Avenue Medical Center. When they returned to the place of incident, Careno informed them that Candelario, who was wearing a bloodstained orange t-shirt with a "Mercado" marking, boarded a Five Star Bus bound to Dau, Pampanga.

Thus, the police officers coordinated with the North Luzon Express Way (NLEX) toll personnel which, in turn, coordinated with the Five Star Bus Station in Dau, Pampanga regarding the accused-appellant's whereabouts.

Thereafter, PO2 Padua received a call from the Dau Police Station informing him of the arrest of Candelario. PO2 Padua and PO3 Santiago proceeded to the Dau Police Station where they saw accused-appellant. The police officers then brought him to Police Station 7, Quezon City. Later, they turned over accused-appellant and the bag which contained the bloodstained shirt to the Criminal Investigation and Detection Unit (CIDU) at Camp Karingal.

The following day, or on December 27, 2010, the police officers informed Careno of accused-appellant's arrest. Careno went to the police station and identified Candelario as the person who stabbed his cousin Tion.

⁵ Id.

Dr. Oropilla, the Medico-Legal Officer I of the National Bureau of Investigation (NBI), conducted an autopsy on the cadaver of Tion. She executed the Certification of Post-Mortem Examination⁶ and Autopsy Report No. N-10-1129.⁷ She also explained that Tion's stab wounds were fatal, particularly the three stab wounds, a 6.5 cm wound near the middle of the chest, a 5.5 cm wound and a 4.5 cm wound with a 4.5 cm tailing. As to the last wound, she expounded that Candelario twisted the knife same before pulling it out which damaged Tion's liver. She added that the proximate cause of Tion's death was "multiple stab wounds anterior chest and abdomen."

Version of the Defense:

On December 26, 2010 at around 8:00 P.M., Candelario was at his sister Eden Candelario's (Eden) house in Guadalupe. Then, he went to Tarlac on board a Five Star Bus. However, he was not able to reach Tarlac because he was accosted by police officers in Pampanga. He was then brought to a police station in Arayat, Pampanga and subsequently transferred to Camp Karingal. He denied any knowledge about the death of Tion.

On cross examination, he testified that he was arrested while he was having his *merienda* and not while on board the bus. He added that he was at the Five Star Bus Station in Cubao, Quezon City at around 12 midnight when he bumped into a man covered in blood. He knew that there was a stabbing incident in the area as he witnessed the same from a distance of about 15 meters away but he could not identify the assailant or where the victim was stabbed. He claimed to have been wearing a striped t-shirt and denied knowing Tion or Careno.

Ruling of the Regional Trial Court:

On November 4, 2014, the trial court rendered its Decision⁸ convicting Candelario of Murder.

The trial court found that accused-appellant, without any warning, punched and stabbed Tion five times. The suddenness of the assault provided no opportunity for Tion to defend himself. He immediately fell to the ground yet accused-appellant continued to stab him. Hence, the RTC held that Tion's killing was Murder qualified with treachery. The trial court did not appreciate the qualifying circumstance of evident premeditation. It also disregarded accused-appellant's denial and alibi in view of Careno's positive identification of him as the assailant.

⁶ Id. at 116.

⁷ Id. at 117-118.

⁸ *Supra* note 3.

The *fallo* of the RTC judgment reads:

WHEREFORE, the court finds accused NICK CANDELARIO Y SABADO "GUILTY" beyond reasonable doubt of the crime of Murder defined and punished under Article 248 of the Revised Penal Code, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA; and to pay the heirs of the deceased ELMER TION in the sum of Php50,000.00 as civil indemnity; and the further sums of Php50,000.00 as moral damages and Php70,041.00 as actual damages.

IT IS SO ORDERED.⁹

Ruling of the Court of Appeals:

In its assailed Decision,¹⁰ the CA denied accused-appellant's appeal. According to the appellate court, the totality of evidence established with moral certainty all the elements of the crime of Murder qualified by treachery. Careno personally witnessed the stabbing incident and identified the accused-appellant as the person who stabbed Tion. There was treachery because the attack was sudden and without the slightest provocation on the part of Tion, depriving him of any real chance to defend himself and thereby ensuring the commission of the crime without risk to the aggressor. Tion had no reason to expect that he would be assaulted by accused-appellant and stabbed with a knife.

The appellate court ultimately affirmed the November 4, 2014 Decision of the trial court but with modification as to the amounts of civil indemnity, moral damages and exemplary damages, to wit:¹¹

WHEREFORE, the appeal is DISMISSED. The assailed Decision is hereby AFFIRMED with MODIFICATIONS, to wit:

WHEREFORE, the court finds accused NICK CANDELARIO Y SABADO "GUILTY" beyond reasonable doubt of the crime of Murder defined and punished under Article 248 of the Revised Penal Code, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA; and to pay the heirs of the deceased ELMER TION in the sum of Php75,000.00 as civil indemnity; and the further sums of Php75,000.00 and Php30,000.00 as moral damages and exemplary damages, respectively; and Php70,041.00 as actual damages, with interest at six (6%) percent per annum from the finality of judgment until fully paid.

IT IS SO ORDERED.¹²

Hence, this appeal.

⁹ Records, p. 11.

¹⁰ *Supra* note 2.

¹¹ *CA rolla*, 193.

¹² *Id.*

Both the accused-appellant and plaintiff-appellee adopted their respective briefs filed before the appellate court.

Accused-appellant raised the following errors:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED IN CONVICTING ACCUSED-APPELLANT OF MURDER DESPITE [THE] PROSECUTION'S FAILURE TO PROVE [HIS] GUILT BEYOND REASONABLE DOUBT.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

III

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT FINDING ACCUSED-APPELLANT GUILTY ONLY OF HOMICIDE

IV

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DISREGARDING ACCUSED-APPELLANT'S DEFENSE.¹³

Arguments of the Defense:

Candelario argues that the prosecution failed to prove his identity as the person who committed the crime charged. There was a reasonable possibility of mistake regarding his apprehension which thereby violated his right to be presumed innocent until the contrary is proved.

Positive identification by an eyewitness is not always reliable. Identification testimony has at least three components such as: a) witnessing a crime whether by a by-stander or a victim involves perception of an event actually occurring; b) the witness must memorize the details of the event; and c) the witness must be able to recall and communicate accurately. In addition, the prosecution must establish the credibility of the eyewitness regarding his identification of the accused.

Accused-appellant claims that the prosecution failed to prove Careno's credibility as an eyewitness. First, Careno did not give any particular identification of the accused-appellant to the police officers. He merely described the accused-appellant as a cigarette vendor, smaller than Tion and wearing an orange t-shirt. Hence, it was impossible for him to have outrightly and unmistakably recognize accused-appellant at the police station when the latter was no longer wearing the blood-stained orange t-shirt.

¹³ Id. at 34-50.

Second, the accused-appellant was presented as a single suspect for purposes of identification which was a grossly suggestive identification procedure that does not preclude the possibility of misidentification. What transpired is worse than a "show-up" identification where the suspect alone is brought face to face with the witness for identification.

Third, the Dau police officers, in effecting his arrest, relied only on the description that he was wearing a blood-stained orange t-shirt. However, at the time of his arrest, he claimed that he was no longer wearing an orange t-shirt. In addition, the prosecution failed to present the Dau police officer who allegedly inspected the bag which contained the bloodstained orange t-shirt. Neither was the bloodstained orange t-shirt presented by the prosecution as evidence which served as accused-appellant's primary identification.

Fourth, it is highly unbelievable for accused-appellant to openly commit a detestable act in front of a bakery and near a bus terminal where pedestrian traffic is heavy. Also, it is illogical for accused-appellant to still have the luxury of time to gather his belongings before attempting to escape by boarding a bus bound for Dau, Pampanga. The fact that he was carrying a bag during his arrest is more consistent with his version that he was indeed on his way to Tarlac.

Fifth, the prosecution witnesses' accounts of what transpired were inconsistent on vital points. Careno testified that the police officers were informed by a by-stander from the bakery that accused-appellant fled the place of incident and boarded a bus bound to Dau, Pampanga. However, PO3 Santiago testified that it was Careno who informed them of the whereabouts of accused-appellant. PO3 Santiago also testified that they rushed the victim to the East Avenue Medical Center and came back to the place of incident where they were informed by a male person, who happened to be Careno, that the accused-appellant was wearing a bloodstained orange t-shirt with markings "Mercado" and boarded a bus bound for Dau, Pampanga.

Moreover, the police officers' testimonies as to who brought Tion to the hospital were also inconsistent. PO2 Padua testified that the other police officers brought Tion to the East Avenue Medical Center while PO3 Santiago testified that he, PO2 Padua and PO1 Castillo brought Tion to the hospital. However, PO3 Santiago could not have brought Tion to the hospital as he was instructed by PO2 Padua to follow the bus going to Dau, Pampanga. Also, in their Joint-Affidavit, the police officers attested that after bringing Tion to the hospital, they proceeded to NLEX. However, PO3 Santiago testified that they went back to the place of incident.

As regards the qualifying circumstance of treachery, accused-appellant argues that it was not established beyond reasonable doubt since no evidence was presented to support it. The alleged attack was not treacherous; it was not consciously or deliberately adopted for his advantage; it was not preconceived or deliberately adopted but was merely triggered by sudden provocation on

Tion's part. As testified to by Careno, he saw Tion and accused-appellant intensely staring at each other. After lighting his cigarette and turning his back towards the accused-appellant, the latter immediately boxed Tion on his face. When Tion fell on the ground, accused-appellant went on top of him and stabbed him. According to Candelario, the attack could not be considered as treacherous because it was not sudden or unexpected. There was also provocation on the victim's part. Hence, accused-appellant should have been convicted only of homicide and not murder.

Lastly, his defense of denial or alibi should have not been disregarded by the appellate court.

Arguments of the Prosecution:

On the other hand, the prosecution argues that it sufficiently established beyond reasonable doubt accused-appellant's guilt for the crime of murder. Careno, who was three meters away, could not have mistakenly identified accused-appellant as the perpetrator as he personally witnessed the whole incident from the time Tion bought a cigarette from accused-appellant until the stabbing incident.

Also, Careno immediately described to the police officer accused-appellant's height and physique when he was interviewed at the East Avenue Medical Center.

Nevertheless, any irregularity as to the out-of-court identification of accused-appellant as the perpetrator of the crime was already cured by Careno's positive identification of him in court as the cigarette vendor who punched and stabbed his cousin Tion. An out-of-court identification does not necessarily foreclose admissibility of an independent in-court identification. In addition, accused-appellant testified that he neither knew Careno nor was he aware of any reason why he would implicate him in the killing of his cousin. Accused-appellant failed to give any explanation as to why Careno would single him out as the one who stabbed and killed his cousin Tion. Notably, accused-appellant admitted his presence at the place of incident.

With regard to the alleged discrepancies in Careno's testimony and his affidavit, the rule is that inconsistencies between the testimony in open court and the affidavit do not impair credibility since affidavits are often taken *ex parte* and tend to be incomplete or inaccurate for lack of searching inquiries by the investigating officer. As to the alleged inconsistency in the testimony of Careno of having seen the accused-appellant board the bus going to Dau, Pampanga, the same is not an essential element of the crime of murder and does not negate the fact that Careno indeed saw accused-appellant stab Tion. Inconsistencies as to minor or collateral matters do not diminish the value of the testimony in terms of truthfulness or weight.

As to the alleged contradictory statements of the police officers as to who actually brought Tion to the hospital, a careful reading of the testimony

of PO3 Santiago would show that he was among those who brought the victim to the hospital. He then returned to the place of incident and proceeded to Dau, Pampanga after they were informed by the Dau Police Station that accused-appellant had already been arrested.

Lastly, the prosecution asserts that treachery was duly established. Accused-appellant first punched Tion on the face which caused the latter to fall on the ground. Tion attempted to fight back but accused-appellant pinned him on the ground and continuously stabbed him on different parts of his body. As per Careno's testimony, it only took less than five minutes for accused-appellant to execute the crime. Clearly, accused-appellant employed means to ensure the death of the victim by punching Tion to instantly weaken his defense, immobilizing him by pinning him on the ground and while in that position, delivered stabbing thrusts at different parts of his body.

Our Ruling

Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, 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 perpetua*, to death if committed with any of the following attendant circumstances;

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or 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 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.

Murder has the following elements:

(1) that a person was killed;

(2) that the accused killed him or her;

(3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and

(4) that the killing is not parricide or infanticide.¹⁴

It is undisputed that the victim Tion died due to “multiple stab wounds anterior chest and abdomen” on December 26, 2010 as evidenced by the Certification of Post-Mortem Examination and Autopsy Report No. N-10-1129. However, accused-appellant now assails his positive identification as the perpetrator of the crime.

*People v. Teehankee, Jr.*¹⁵ adopted the totality of circumstances test in resolving the admissibility of and relying on out-of-court identification of suspects, viz.:

Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz.: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.¹⁶

Carcno was just about three meters away when the stabbing incident happened in front of Pan Di Pedro Bakery with a number of by-standers. Carcno was able to describe: (a) the interaction between Candelario and Tion prior to the punching and stabbing incident; (b) the fact that the Tion bought a cigarette from Candelario; (c) how Candelario punched Tion at his face when the latter turned his back; (d) how Candelario went on top of and continuously stabbed Tion; and (e) that Candelario boarded a bus bound for Dau, Pampanga after the stabbing incident. Carcno even informed the police officers of accused-appellant Candelario's built and height as well as the orange colored t-shirt he was wearing, viz.:

Q Do you remember what this Nick Candelario was wearing at that time?
A He was wearing an orange colored t-shirt, sir.¹⁷

x x x x

Q Did the police officers talk to you
A Yes, sir at the hospital they asked my name and address

¹⁴ *People v. Dimapilit*, 816 Phil. 523, 540 (2017) citing *People v. Las Piñas*, 739 Phil. 502, 524 (2014).

¹⁵ 319 Phil. 128 (1995).

¹⁶ *Id.* at 180.

¹⁷ Records, TSN February 28, 2012, p. 6.

- Q Other than that did you give the information regarding the suspect?
A Yes, sir. I told to the police officers the actual incident about the suspect, I gave to the police the height, the built, sir.

COURT: (to the witness)

- Q How about the clothes that the suspect was wearing at the time of the incident?
A Yes, Your Honor.¹⁸

Contrary to the contention of the accused-appellant, Careno was able to see the face of his cousin's assailant and describe in detail the events that transpired on that day. He positively identified Candelario the following day upon the latter's arrest. Accused-appellant's physical appearance and the events that transpired were still fresh in Careno's memory when he positively identified Candelario as the assailant of his cousin Tion.

In addition, Careno also informed the police officers of his built and height and the fact that he boarded a Five Star bus going to Dau, Pampanga as identifying factors for his arrest, in addition to the color of the shirt he was wearing on that day. The fact that accused-appellant was no longer wearing the same orange colored t-shirt when Careno identified him as the assailant in a police station in Quezon City did not diminish his credibility as an eyewitness. It is settled that an out-of-court identification does not necessarily foreclose the admissibility of an in-court identification and that, even assuming that an out-of-court identification was tainted with irregularity, the subsequent identification in court cured any flaw that may have attended it.¹⁹ Careno's in-court identification of accused-appellant was certain and categorical when he was asked to identify him from among the people inside the courtroom.

Careno categorically, candidly, and positively identified Candelario as the perpetrator of the crime. His identification of accused-appellant is worthy of credence and weight. In *People v. Cenahonon*,²⁰ this Court said:

An affirmative testimony merits greater weight than a negative one, especially when the former comes from a credible witness. Categorical and positive identification of an accused, without any showing of ill motive on the part of the witness testifying on the matter, prevails over alibi and denial, which are negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence.²¹ (Citation omitted.)

Moreover, there was no ill motive on the part of Careno in testifying against accused-appellant and in identifying him as the person who killed Tion. In fact, both Careno and accused-appellant admitted that they had no such grudge or misunderstanding as would impel Careno to wrongly impute to him the commission of the crime. Careno, as the victim's cousin, had more

¹⁸ Id. at 16.

¹⁹ *People v. Lugnasin*, 781 Phil. 701, 715 (2016) citing *People v. Sabangan*, 723 Phil. 591 (2013).

²⁰ 554 Phil. 415 (2007).

²¹ Id. at 430.

reason to ensure that the real perpetrator of the crime be punished to avenge the senseless death of Tion. It would be unnatural for a victim's relative to falsely accuse somebody other than the real culprit in order to vindicate the crime. Hence, absent any compelling reason to believe that Careno acted with improper motive, his testimony is entitled to full faith and credit.

As to the alleged discrepancies in the testimonies and affidavits of the police officers concerning what transpired after the stabbing incident, particularly as to who brought Tion to the hospital, who informed them of the whereabouts of the suspect and whether they proceeded to the NLEX to apprehend the accused-appellant, these inconsistencies, if any, referred to minor details and did not diminish the credibility of the police officers as witnesses. These matters were inconsequential and did not substantially affect the outcome of the case. Besides, the prosecution has duly established that Tion was killed and Careno witnessed the stabbing incident. Thereafter, Careno informed the police officers about the incident and the accused-appellant's attempt to escape by boarding a bus going to Dau, Pampanga which eventually resulted in the latter's arrest.

Moreover, the Joint Affidavit executed by PO3 Santiago and PO2 Padua is generally subordinate in importance to their testimonies in court. Besides, a perusal of both the joint affidavit and their testimonies show that upon arrival at the place of incident, Careno informed them of the suspect's description and whereabouts. Thereafter, they brought Tion to the hospital. Afterwards, they proceeded to and coordinated with the NLEX to apprehend accused-appellant who was on board a Five Star bus bound for Dau, Pampanga. After accused-appellant's arrest by the Dau police officers, they turned him over to the Quezon City police officers. Minor disparities in the narration of witnesses do not impair their credibility as long as their testimonies are coherent and intrinsically believable on the whole; in particular, their consistency in the narration of the principal occurrence and in the positive identification of the accused.²² Besides, minor variances in witnesses' testimonies serve to strengthen their credibility as they negate the suspicion of a rehearsed testimony.²³

As opposed to the clear and positive testimonies of the prosecution witnesses, accused-appellant's defense of denial does not convince the Court. He admitted that he was at the place of incident but imputed the commission of the crime to another person. He even admitted on cross-examination that he was wearing an orange t-shirt at that time but a certain person covered in blood bumped into him and stained his shirt with blood. Thus, he had to change into another shirt. Indeed, to claim that another person killed the victim is easy to fabricate as it is negative and self-serving and unsubstantiated by clear and convincing evidence. Hence, it merits no weight in law and could

²² *People vs. De Leon*, 428 Phil. 556, 573 (2002) citing *People vs. Khor*, 366 Phil. 762 (1999), *People vs. Ebruda*, 357 Phil. 345 (1998) and *Sumalpong vs. Court of Appeals*, 225 Phil. 1218 (1997).

²³ *People v. Bensig*, 437 Phil. 748, 758 (2002) citing *People vs. Dinglasan*, 334 Phil. 691 (1997) and *People vs. Khor*, supra note 21.

not be given evidentiary value as against the testimony of credible witnesses who testified on affirmative matters.²⁴

We sustain the findings of the trial court and the appellate court that treachery attended the commission of the crime. Treachery is present when the following elements are present: (a) the employment of means, methods or manner of execution to ensure the safety of the offender from defensive or retaliatory acts of the victim and (b) the deliberate adoption by the offender of such means, methods or manner of execution. The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim who gave no provocation,²⁵ without affording the latter any real chance to defend himself and thereby ensuring the commission of the crime without risk to the aggressor.²⁶

Evidence on record shows that Tion was totally unaware of the sudden and impending attack as he already turned his back after buying cigarette from the accused-appellant. Unexpectedly, accused-appellant punched Tion at his face. When the victim fell to the ground, accused-appellant went on top of him and once immobilized, he continuously stabbed the victim on his chest with a knife. At the moment Tion fell to the ground, he was in no position to defend himself as the latter immediately pinned him down by going on top of him. Candelario never afforded his victim any chance to defend himself. By pinning Tion down and stabbing him on his chest, accused-appellant ensured the commission of the crime without any risk to himself. Evidently, no altercation took place between Tion and accused-appellant prior to the stabbing incident and Tion gave no provocation whatsoever. All these circumstances indicated the employment of treachery in the commission of the crime.

Lastly, the killing is obviously not parricide or infanticide. Accordingly, the penalty of *reclusion perpetua* was correctly imposed by the trial court upon the accused-appellant for the crime of Murder. The damages awarded and the imposition of interest were in accordance with the prevailing jurisprudence.

WHEREFORE, the appeal is **DISMISSED**. The September 30, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07288, is hereby **AFFIRMED**.

²⁴ Id. citing *People vs. Serrano*, 634 Phil. 406 (2001).

²⁵ Id. citing *People vs. Nardo*, 337 Phil. 355 (1997) & *People vs. Valles*, 334 Phil. 763 (1997).

²⁶ Id. citing *People vs. Dagami*, 394 Phil. 482 (1999).

SO ORDERED."

By authority of the Court:

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Branch 95, 1100 Quezon City
(Crim. Case No. Q-11-168152)

The Superintendent
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c/o The Superintendent
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