

## EN BANC

[ G.R. No. 135975, August 14, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BONIFACIO ABADIES, ACCUSED-APPELLANT.**

### DECISION

**YNARES-SANTIAGO, J.:**

What was supposed to be a merry yuletide season for the Roldan clan turned into a tragic Christmas Day when, in the early dawn of December 25, 1995, amidst the gaiety, family patriarch Cecilio Roldan was fatally shot at close range from behind before the horrified gaze of his wife and twelve year-old son.

Charged with Murder for the fatal shooting of Cecilio Roldan was his uncle, Bonifacio Abadies, a known neighborhood "toughie". The Information against him reads:

That on or about the 25th day of December 1995, at around 2:00 early dawn, in Brgy. Cadaohan, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused BONIFACIO ABADIES, with treachery, evident premeditation and intent to kill, did then and there willfully, unlawfully and feloniously shot (sic) and hit with the use of an unlicensed firearm the person of the victim herein CECILIO ROLDAN, without giving the latter sufficient time to defend himself, thereby inflicting upon him a gunshot wound which caused his death. xxx.<sup>[1]</sup>

The case was docketed as Criminal Case No. 4756-O at the Regional Trial Court of Ormoc City, Branch 35. Upon arraignment, accused-appellant entered a plea of "Not guilty."<sup>[2]</sup> After trial, the court a quo rendered judgment convicting accused-appellant of the crime charged and imposing on him the supreme penalty of death, to wit:

WHEREFORE, for all the foregoing considerations, the Court finds the accused Bonifacio Abadies GUILTY beyond reasonable doubt of the crime of Murder as the killing was with treachery and hereby sentences him, after having found the aggravating circumstance of evident premeditation in the un rebutted testimony of Jose Manuel Roldan and no mitigating circumstances being present to offset the same, pursuant to Art. 63 of the Revised Penal Code, with the penalty of DEATH.

The Court further sentences the accused to pay the offended party the sum of P50,000.00 as indemnity; P25,000.00 as actual expenses; P50,000.00 as moral damages.

SO PROMULGATED.<sup>[3]</sup>

On automatic review before the Court, accused-appellant insists that the penalty of death should not have been imposed on him because—

THE TRIAL COURT ERRED IN IMPOSING THE MAXIMUM PENALTY ON ACCUSED-APPELLANT DESPITE THE FACT THAT THE AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION WAS NOT PROVED BEYOND REASONABLE DOUBT.

On December 24, 1995, Cecilio Roldan, his wife Cynthia, their son Ronald and neighbor Salve Aligway were celebrating Christmas Eve at the balcony of their house at Barangay Cadaohan, Ormoc City. At 2:00 a.m. of Christmas day, Cynthia saw appellant Bonifacio Abadies, her husband's uncle, approached Cecilio from behind. Without warning, accused-appellant shot Cecilio with a short firearm about 8 inches in length.<sup>[4]</sup>

Cecilio was hit on the upper back and slumped to the floor. Salve Aligway rushed to his side. Cynthia saw accused-appellant rushing towards the back of their house since the balcony was lighted.<sup>[5]</sup>

Jose Manuel Roldan, Cecilio's brother who lived next door, heard the gunshot. He immediately went out of his house and saw accused-appellant, his uncle, carrying a firearm and hurriedly entering his own house, about ten meters away. Jose Manuel rushed toward his brother's house fearing that he had been hurt. He recalled that in the morning of the previous day, accused-appellant had threatened to kill Cecilio Roldan because of a recent misunderstanding between them. Jose Manuel arrived at Cecilio's house and found the latter wounded. <sup>[6]</sup>

Cecilio was rushed to the Ormoc District Hospital, where he eventually died.<sup>[7]</sup>

According to the victim's widow, accused-appellant harbored a grudge against her husband because he was unable to give him the additional amount of P10,000.00 for the lease of a rice land owned by a certain Langkoy Fran in the month of December 1995, a few weeks before the shooting incident transpired.<sup>[8]</sup>

Dr. Jesus Castro, who conducted the post-mortem examination on Cecilio, found that he sustained a fatal gunshot wound at the back which hit the heart. The distance of the gun from the victim was more than one foot, judging from the absence of gunpowder in the body.<sup>[9]</sup> His post-mortem report indicated "Cause of Death: CP arrest, 2<sup>o</sup> Massive and Profuse bleeding 2<sup>o</sup> to gunshot wound."<sup>[10]</sup>

Accused-appellant admits having shot Cecilio but claims that the shooting was accidental because the gun went off when he and Cecilio were grappling for its possession. He alleged that at around 11:00 p.m. of Christmas Eve, 1995, Cecilio invited him and his two sons to celebrate Christmas at his home. Accused-appellant and his sons arrived at Cecilio's house and sat at the terrace, where they drank tuba and ate chicken with him. At about past midnight, Cecilio went to his bedroom. When he returned, he was carrying a gun. Eleodoro, accused-appellant's son, shouted, "*Watch out Pa, you might be shot!*"<sup>[11]</sup>

When he heard Eleodoro's warning, accused-appellant got up and grabbed Cecilio's hand. While he and Cecilio grappled for possession of the firearm, they both fell down with Cecilio on top of him. Accused-appellant tried to twist Cecilio's arm toward his back, when the gun suddenly went off. Immediately after the explosion, accused-appellant and his two sons fled leaving the victim alone. There were no other people present when the incident happened. At 7:00 a.m. the next morning, accused-appellant was arrested.<sup>[12]</sup>

We find no reason to reverse the trial court's ruling insofar as the nature of the crime is concerned. Between the two conflicting versions of the killing, we agree with the trial court that the prosecution witnesses were more worthy of credence. Their testimonies were found to be spontaneous, positive, forthright, and were not destroyed or rebutted throughout the trial.<sup>[13]</sup>

Murder is the unlawful killing of any person when qualified by any of the circumstances listed under Article 248 of the Revised Penal Code.<sup>[14]</sup> Treachery or alevosia, aptly alleged in the information, is one such qualifying circumstance.

Given the prevailing facts of the case, we agree with the trial court that the killing of Cecilio Roldan was attended by alevosia. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.<sup>[15]</sup> The qualifying circumstance of treachery attended the killing as the two conditions for the same are present, i.e., (1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.<sup>[16]</sup> The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on his part.<sup>[17]</sup>

In the case at bar, Cecilio Roldan was in the comforts of his home. He was eating, drinking and thoroughly engrossed in the gaiety of the yuletide season, while engaged in light banter with his wife and a neighbor. Suddenly and without warning, he was shot from behind by accused-appellant, his uncle. As in the recent case of *People v. Herrera*,<sup>[18]</sup> accused-appellant suddenly positioned himself at the back of the unsuspecting victim, pointed his gun at him and, without any warning, promptly delivered the fatal shot. The victim was unaware of the attempt on his life and the danger that lurked behind him. There was no way the victim could have defended himself, taken flight or avoided the assault. Thus, the attendance of treachery qualified the killing to Murder.

However, we take exception to the finding of the trial court that the killing of Cecilio Roldan was premeditated. Like treachery, the elements of evident premeditation must be established with equal certainty as the criminal act itself, in order for it to be appreciated as a qualifying circumstance.<sup>[19]</sup> Thus, the following must be proved beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that he clung to his determination to commit the crime; and (3) a sufficient lapse of time between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of his act.<sup>[20]</sup> 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.<sup>[21]</sup>

Evident premeditation must be based on external facts which are evident, not merely suspected, which indicate deliberate planning.<sup>[22]</sup> There must be direct evidence showing a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to kill the victim.<sup>[23]</sup> Criminal intent must be evidenced by notorious outward acts evidencing a determination to commit the