



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-appellee,

GR. No. 211159

Present:

CARPIO, *J.*, Chairperson,  
VELASCO, JR.,\*  
DEL CASTILLO,  
MENDOZA, and  
LEONEN, *JJ.*

-versus-

MARCELINO OLOVERIO,  
Accused-appellant.

Promulgated:  
MAR 18 2015

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DECISION

LEONEN, *J.*:

Passion and obfuscation as a mitigating circumstance need not be felt only in the seconds before the commission of the crime. It may build up and strengthen over time until it can no longer be repressed and will ultimately motivate the commission of the crime.

This is a review of the Decision<sup>1</sup> dated January 29, 2013 of the Court of Appeals which affirmed the conviction of accused-appellant Marcelino

\* Designated as acting member per S.O. No. 1951 dated March 18, 2015.

<sup>1</sup> *Rollo*, pp. 3-14. The Decision, docketed as CA-G.R. No. CEB-CR HC No. 01175, was penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Carmelita Salandanan-Manahan and Maria Elisa Sempio-Diy of the Twentieth Division, Court of Appeals Cebu.

Oloverio (Oloverio) of murder and sentenced him to *reclusion perpetua* and the payment of civil indemnity and damages.

An Information was filed charging Oloverio with the crime of murder.<sup>2</sup> The Information reads:

That at around 2:00 o'clock in the afternoon of October 2, 2003, at Brgy. Belen, Palompon, Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused met the victim, DOLFO GULANE, while the latter was walking on his lonesome, and with treachery, did then and there willfully, unlawfully and feloniously, stab the said victim using a sharp-pointed bolo, which the accused has provided for the purpose, thereby hitting and inflicting mortal wounds on the different parts of the body of the aforesaid victim causing his instantaneous death.

CONTRARY TO LAW.<sup>3</sup>

Oloverio was arraigned on January 25, 2005, where he pleaded not guilty. Trial on the merits ensued.<sup>4</sup>

According to the prosecution, on October 2, 2003, at around 3:00 p.m., Rudipico Pogay (Pogay) and Dominador Panday (Panday) saw Rodulfo Gulane walking about five (5) meters away from them with Oloverio trailing behind him. Oloverio allegedly tapped Gulane's right shoulder and hacked him on the chest and extremities with a *bolo* until Gulane collapsed on the ground. Oloverio then allegedly took Gulane's money from his pocket.<sup>5</sup>

Pogay heard Oloverio shouting the words, "*Patay na ang datu sa Brgy. San Pablo!*" ("The rich man in San Pablo is already dead!") Gulane managed to tell Oloverio, "*Man luba ka man, Ling?*" ("Ling, why did you stab me?") After, Gulane died. Panday proceeded to inform Gulane's family of the incident.<sup>6</sup>

In his defense, Oloverio alleged that at the time and day of the incident, Gulane had been accusing him of having an incestuous relationship with his mother. He allegedly kept his cool and told Gulane to go home, but the latter continued to mock him by asking in a loud voice, "How many times did you have sexual intercourse with your mother?" He allegedly asked Gulane to go home again but the latter angrily replied, "Who are you to tell me to go home?"<sup>7</sup>

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<sup>2</sup> Id. at 4.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id. at 4-5.

<sup>7</sup> Id. at 5.

Gulane allegedly attempted to draw his *bolo* but Oloverio stopped him by drawing his own *bolo*. They grappled with it, and eventually, Oloverio ended up stabbing Gulane, which resulted in the latter's death. Accompanied by a *barangay tanod*, Oloverio went to the municipal hall to surrender to the authorities. He admitted that he stabbed Gulane because he could no longer bear the insulting remarks against him.<sup>8</sup>

Romulo Lamoste (Lamoste), then Barangay Captain of Barangay Belen, Palompon, Leyte, alleged that Gulane and Oloverio had an altercation before the incident. He alleged that Oloverio's daughter had once confided to Oloverio that Gulane wanted to touch her private parts. About a month later, he allegedly heard Gulane ask Oloverio "in a joking manner about his incestuous relationship with his mother."<sup>9</sup> Oloverio allegedly got mad and they ended up fighting, but Lamoste was able to subdue them. He, however, admitted that he was not present during the incident.<sup>10</sup>

On January 29, 2010, Branch 17 of the Regional Trial Court of Palompon, Leyte rendered its Decision<sup>11</sup> finding Oloverio guilty beyond reasonable doubt of murder.

The trial court ruled that the mitigating circumstance of passion and obfuscation was not present in this case since it could not co-exist with the presence of treachery. The only mitigating circumstance it found present was of voluntary surrender. As murder was punishable by *reclusion perpetua* to death, it imposed the lesser penalty of *reclusion perpetua*.<sup>12</sup> The dispositive portion reads:

Wherefore, as to the proffer of mitigating circumstances of Passion and Obfuscation as defined by Art. 13 of the Revised Penal Code cannot be appreciated, what can be appreciated only is the voluntary surrender which is covered by Art. 13 par. 7 of the Revised Penal Code.

So from the evidence extant from the records, the court finds the accused Marcelino Oloverio, GUILTY of the crime of Murder as the evidence proved the guilt of the accused beyond reasonable doubt that he committed the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code and therefore sentences him to suffer the penalty of Reclusion Perpetua. The voluntary surrender is none availing as *reclusion perpetua* is not a divisible penalty as defined by the Revised Penal Code.

The accused Marcelino Oloverio is also ordered to pay Fifty Thousand (□50,000.00) Pesos damages to the heirs of Rodulfo Gulane.

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<sup>8</sup> Id. at 5.

<sup>9</sup> Id. at 6.

<sup>10</sup> Id.

<sup>11</sup> CA *rollo*, pp. 45–48.

<sup>12</sup> Id. at 47–48.

SO ORDERED.<sup>13</sup>

The case records were forwarded to the Court of Appeals on May 6, 2010.<sup>14</sup>

On January 29, 2013, the Court of Appeals rendered its Decision<sup>15</sup> affirming the conviction. It found that Oloverio failed to establish with clear and convincing evidence that Gulane “committed an unlawful act which sufficiently caused him to act with passion and obfuscation.”<sup>16</sup>

The Court of Appeals found that Gulane’s act of insulting Oloverio before the stabbing was unsupported by evidence.<sup>17</sup> Instead, it found that treachery was present since Gulane was unsuspecting when Oloverio suddenly attacked him. The court also noted that Gulane was already 83 years old and might not have had a chance to defend himself.<sup>18</sup>

The Court of Appeals also affirmed the trial court’s imposition of the lesser penalty of *reclusion perpetua* in view of Oloverio’s voluntary surrender.<sup>19</sup> It, however, modified the award of damages to include moral, temperate, and exemplary damages.<sup>20</sup> The dispositive portion reads:

**WHEREFORE**, in view of the foregoing, the appeal is **DENIED**. The Decision dated January 29, 2010 of the RTC, Branch 17, of Palompon, Leyte in Criminal Case No. P-1163 finding appellant guilty beyond reasonable doubt of the crime of murder is **AFFIRMED** with the **MODIFICATION** that with respect to the trial court’s award of Php50,000.00 damages, this should be understood to represent the civil indemnity. Appellant is further ordered to pay the heirs of Rodulfo Gulane Php50,000.00 as moral damages, Php25,000.00 as temperate damages, and Php30,000.00 as exemplary damages. All damages shall be subject to interest at the legal rate of 6% per annum from the finality of this Decision until fully paid.

**SO ORDERED.**<sup>21</sup> (Emphasis in the original)

On March 18, 2013, Oloverio filed his Notice of Appeal,<sup>22</sup> which was favorably acted upon by the Court of Appeals.<sup>23</sup>

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<sup>13</sup> Id. at 48.

<sup>14</sup> Id. at 8.

<sup>15</sup> *Rollo*, pp. 3–14.

<sup>16</sup> Id. at 11.

<sup>17</sup> Id. at 11–12.

<sup>18</sup> Id. at 11.

<sup>19</sup> Id. at 12.

<sup>20</sup> Id. at 12–13.

<sup>21</sup> Id. at 13.

<sup>22</sup> *CA rollo*, p. 92.

<sup>23</sup> Id. at 119.

In compliance with this court's Resolution<sup>24</sup> dated April 2, 2014, Oloverio and the Office of the Solicitor General separately manifested that they were no longer filing their supplemental briefs before this court since they have already stated their arguments in their briefs before the Court of Appeals.<sup>25</sup>

Upon review of the case records, this court resolves to modify the Decision of the Court of Appeals.

Accused-appellant Marcelino Oloverio is guilty only of homicide under Article 249 of the Revised Penal Code. He is entitled to the mitigating circumstances of passion and obfuscation and of voluntary surrender.

## I

Murder is the act of killing a person under the circumstances mentioned in Article 248 of the Revised Penal Code. The provision states:

ARTICLE 248. Murder. — Any person who, not falling within the provisions of article 246<sup>26</sup> shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period 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 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.

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<sup>24</sup> *Rollo*, p. 20.

<sup>25</sup> *Id.* at 21–23 and 26–27.

<sup>26</sup> REVISED PENAL CODE. ARTICLE 246. Parricide. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

To be able to sustain a conviction for murder, the prosecution must prove the following elements:

1. That a person was killed.
2. That the accused killed him.
3. That the killing was attended by any of the qualifying circumstances mentioned in Art. 248.
4. The killing is not parricide or infanticide.<sup>27</sup>

For murder or homicide, the prosecution must also be able to prove the accused had the intent to kill.<sup>28</sup>

The witnesses, Panday and Pogay, positively identified accused-appellant as the one who stabbed Gulane with a *bolo*.

Panday stated:

Q: When you saw Rodulfo Gulane walking alone towards Brgy. San Pablo, Palompon, Leyte, do you recall of any untoward incident that took place?

A: Yes, sir, I saw the incident.

Q: *What was that incident?*

A: *Rodulfo Gulane was killed by [a] certain Marcelino Oloverio.*

Q: Now, you said that Rodulfo Gulane was killed by Marcelino Oloverio, what was used by Marcelino Oloverio in killing the deceased?

A: A bolo.

....

Q: *Now, you said that Rodulfo Gulane was killed by Marcelino Oloverio with the use of this bolo, would you describe to this*

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<sup>27</sup> *People v. De la Cruz*, 626 Phil. 631, 639 (2010) [Per J. Velasco, Third Division], citing L.B. REYES, THE REVISED PENAL CODE CRIMINAL LAW 469 (16th ed., 2006).

<sup>28</sup> *Cirera v. People*, G.R. No. 181843, July 14, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/july2014/181843.pdf>> [Per J. Leonen, Third Division], citing *Palaganas v. People*, 533 Phil. 169, 193 (2006) [Per J. Chico-Nazario, First Division] and *People v. Pagador*, 409 Phil. 338, 351–352 (2001) [Per J. Bellosillo, En Banc].

*Honorable Court, how and in what way did Marcelino Oloverio killed [sic] Rodulfo Gulane?*

*A: Yes, while Rodulfo Gulane was walking, Marcelino Oloverio held the right shoulder of Rodulfo Gulane then stabbed him many times and there was striking [sic] the victim Rodulfo Gulane.<sup>29</sup> (Emphasis supplied)*

Pogay also testified:

Q: When you reached Brgy. Belen, what have you observed?

A: I observed Lino stabbed Dolpo [sic] Gulane and when Dolfo Gulane fell down, he said “Patay na ang datu sa Brgy. San Pablo.”

....

Q: If you can recall, how many times did Marcelino Oloverio stab Rodulfo Gulane?

A: Many times and there was also a hacking blow.<sup>30</sup>

Their testimonies were consistent with the medico-legal findings that Gulane died due to multiple stab wounds. Both the trial court and the Court of Appeals also found that the witnesses had no ill motive to testify against accused-appellant.<sup>31</sup>

The intent to kill is established not only by the number of stab wounds found on Gulane, but also by accused-appellant’s own admission that he stabbed Gulane.<sup>32</sup>

## II

The presence of treachery, however, has not been sufficiently established. Treachery is defined by the Revised Penal Code as:

ARTICLE 14. Aggravating Circumstances. — The following are aggravating circumstances:

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16. That the act be committed with treachery (*alevosia*).

There is treachery when the offender commits any of the crimes

<sup>29</sup> *Rollo*, p. 9.

<sup>30</sup> *Id.* at 9–10.

<sup>31</sup> *Id.* at 10.

<sup>32</sup> *CA rollo*, p. 36.

against the person, 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.

For treachery to be appreciated, the following elements must be proven:

(a) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and (b) the means of execution was deliberately or consciously adopted.<sup>33</sup>

In *People v. Lobino*:<sup>34</sup>

In *People vs. Estrellanes*, we declared in no uncertain terms that ‘*the mere fact that the victim had no weapon with which he could have defended himself is not sufficient to prove the existence of the first element of treachery, for settled is the rule that treachery cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself.*’ [sic] Furthermore, there must be some evidence, none of which, however, obtains in the instant case, showing that this mode of assault is deliberately or consciously adopted to insure the execution of the crime without risk to the offender. Accordingly, if the attack was not preconceived and deliberately adopted but was just triggered by the sudden infuriation on the part of the accused because of the provocation on the part of the victim, then no treachery attended the commission of the crime. *The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person being attacked[.]*<sup>35</sup> (Emphasis supplied)

Pogay testified that Gulane was walking down the road when accused-appellant came up behind him, tapped him on the shoulder, and then stabbed him repeatedly, thus:

Q: You said Rodulfo Gulane[,] before the stabbing, was heading towards Brgy. San Pablo, while he was walking where was the accused positioned himself? [sic]

A: *He was following the victim and then he tapped the right shoulder and stabbed him.*

....

Pros. Macapugas: Mr. Witness, during the stabbing incident, did you

<sup>33</sup> *People v. Lobino*, 375 Phil. 1065, 1076 (1999) [Per J. Purisima, En Banc], citing *People vs. Valles*, 334 Phil. 763 (1997) [Per J. Torres, Second Division].

<sup>34</sup> 375 Phil. 1065 (1999) [Per J. Purisima, En Banc].

<sup>35</sup> *Id.*, citing *People vs. Valles*, 334 Phil. 763 (1997) [Per J. Torres, Second Division], in turn citing *People v. Estrellanes*, G.R. No. 111003, December 15, 1994, 267 SCRA 103, 114–115 [Per J. Davide, Jr., First Division].



know whether or not the victim in this case was able to retaliate?

A: No ma'am, he was not able to retaliate.<sup>36</sup> (Emphasis supplied)

The mere suddenness of an attack should not be the sole basis in finding treachery. There must be evidence to show that the accused deliberately or consciously adopted the means of execution to ensure its success.<sup>37</sup>

At the time of the incident, Gulane was already 83 years old. Accused-appellant was standing behind him. He already had the advantage of surprise with Gulane's back turned. Gulane's advanced age and position would have ensured his death as it would have prevented him from being able to retaliate.

Instead, accused-appellant tapped Gulane on the shoulder as if to call his attention. He waited until Gulane was facing him before he started stabbing. The medico-legal report indicates stab wounds on the chest and extremities,<sup>38</sup> proving that Gulane was stabbed from the front.

In *People v. Real*:<sup>39</sup>

As a rule, a sudden attack by the assailant, whether frontally or from behind, is treachery if such mode of attack was coolly and deliberately adopted by him with the purpose of depriving the victim of a chance to either fight or retreat. *The rule does not apply, however, where the attack was not preconceived and deliberately adopted but was just triggered by the sudden infuriation on the part of the accused because of the provocative act of the victim.*<sup>40</sup> (Emphasis supplied)

The attack, while sudden, cannot be said to have been unexpected or unprovoked. Accused-appellant alleged that before the attack, Gulane had been insulting him and mocking him in a loud voice, "How many times did you have sexual intercourse with your mother?"<sup>41</sup> This utterance, along with testimonies of Gulane's previous insults, would have been sufficient provocation for accused-appellant to stab him.

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<sup>36</sup> *Rollo*, p. 10.

<sup>37</sup> See *Cirera v. People*, G.R. No. 181843, July 14, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/july2014/181843.pdf>> [Per J. Leonen, Third Division], citing *People v. Sabanal*, 254 Phil. 433, 436 (1989) [Per J. Cruz, First Division], *People v. Ayupan*, 427 Phil. 200, 219 (2002) [Per J. Panganiban, Third Division], and *People v. Templo*, 400 Phil. 471, 493 (2000) [Per J. De Leon, Jr., Second Division].

<sup>38</sup> *Rollo*, p. 10.

<sup>39</sup> 312 Phil. 775 (1995) [Per J. Quiason, First Division].

<sup>40</sup> Id. at 780-781, citing *People v. Aguiluz*, G.R. No. 91662. March 11, 1992, 207 SCRA 187 [Per J. Regalado, Second Division].

<sup>41</sup> *Rollo*, p. 5.

Since treachery has not been proven, the crime is merely homicide. Under the Revised Penal Code:

ARTICLE 249. Homicide. — Any person who, not falling within the provisions of article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

The penalties of the accused-appellant must be modified accordingly.

### III

The mitigating circumstance of passion and obfuscation<sup>42</sup> is present in this case.

To be able to successfully plead the mitigating circumstance of passion and obfuscation, the accused must be able to prove the following elements:

1. that there be an act, both unlawful and sufficient to produce such condition of mind; and
2. that said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.<sup>43</sup>

In *People v. Lobino*:<sup>44</sup>

It has been held that “[T]here is *passional obfuscation when the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts, or due to a legitimate stimulus so powerful as to overcome reason.*”

“The obfuscation must originate from lawful feelings. The turmoil and unreason which naturally result from a quarrel or fight should not be confused with the sentiment or excitement in the mind of a person injured or offended to such a degree as to deprive him of his sanity and self-control, because the cause of this condition of mind must necessarily have

<sup>42</sup> REV. PEN. CODE, art. 13. Mitigating Circumstances. — The following are mitigating circumstances:

• • • •

6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

<sup>43</sup> *People v. Lobino*, 375 Phil. 1065, 1074 (1999) [Per J. Purisima, En Banc], *citing* I L. B. REYES, REVISED PENAL CODE 272 (14<sup>th</sup> ed., 1998).

<sup>44</sup> 375 Phil. 1065 (1999) [Per J. Purisima, En Banc].

preceded the commission of the offense.”

Moreover, “the act *producing the obfuscation must not be far removed from the commission of the crime by a considerable length of time*, during which the accused might have recovered his normal equanimity.”<sup>45</sup> (Emphasis supplied)

There is no uniform rule on what constitutes “a considerable length of time.” The provocation and the commission of the crime should not be so far apart that a reasonable length of time has passed during which the accused would have calmed down and be able to reflect on the consequences of his or her actions. What is important is that the accused has not yet “recovered his normal equanimity” when he committed the crime.

To appreciate passion and obfuscation as a mitigating circumstance, the facts must be examined on a case-to-case basis.

In *People v. Mojica*,<sup>46</sup> Aurelio Mojica was accused of murder for stabbing Diosdado Tormon to death. He attempted to mitigate his liability by alleging that the victim humiliated him a month before the incident. The trial court convicted him of murder without appreciating the mitigating circumstance of passion and obfuscation. This court agreed, stating:

The last point to consider is whether the mitigating circumstance of passion or obfuscation ought to have been appreciated in favor of appellant. *What was done to him on that fateful day of November 16, 1968 when he was subjected to treatment offensive to his dignity, having been slapped and asked to kneel down in the attitude of a supplicant, certainly could give rise to the feeling of passion or obfuscation.* There is a host of cases from *United States v. Ferrer*, a 1901 decision, to *People v. Pareja*, decided in 1969, that so attests. Conduct of that character, in the language of *United States v. Salandanan*, would ordinarily be expected to have produced “such powerful excitement as to overcome reason and self-control.” *Unfortunately for appellant, however, this mitigating circumstance cannot be invoked because the killing took place one month and five days later.* The language of Justice Malcolm in *United States v. Sarikala* is relevant: “As to the mitigating circumstance of passion and obfuscation we likewise cannot agree that it can be taken into consideration because more than twenty-four hours elapsed after the insults of Cotton to the accused and the criminal act.” In the relatively recent case of *People v. Constantino*, such a plea was likewise rejected. There the killing took place after four days. As pointed out by Justice Romualdez in *People v. Alanguilang*: “In order that the circumstance of obfuscation can be considered, it is necessary to establish the

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<sup>45</sup> Id. at 1074–1075, citing *People v. Valles*, G.R. No. 110564, January 28, 1997, 267 SCRA 103, 116 [Per J. Torres, Second Division], *People v. Bautista*, 325 Phil. 83 (1996) [Per J. Bellosillo, First Division], and I.L.B. REYES, REVISED PENAL CODE 274 (14<sup>th</sup> ed., 1998).

<sup>46</sup> 162 Phil. 657 (1976) [Per Acting C.J. Fernando, Second Division].

existence of an act both unlawful and sufficient to produce such a condition of mind; and that said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.” Reference may also be made to *People v. Dagatan*, where this Court could not consider the presence of this mitigating circumstance as the act that caused the resentment “took place long before the commission of the crime.” *People v. Gervacio* had another way of putting it, “a time not far removed from the commission of the crime.” The lower court, therefore, did not commit any error in refusing to credit appellant with the mitigating circumstance of passion and obfuscation.<sup>47</sup> (Emphasis supplied, citations omitted)

However, a fight between the accused and the victim prior to the crime is not always enough to be able to successfully prove that passion and obfuscation attended it.

This court did not appreciate passion and obfuscation in *People v. Rabanillo*,<sup>48</sup> where the accused killed the victim 30 minutes after they came to blows:

Suarez and Magalong testified that before the hacking incident, MORALES reprimanded RABANILLO in front of their drinking mates for dousing him with water, which entered into his ear. RABANILLO resented it and felt humiliated. Hence, a fistfight ensued, but was eventually broken up. The event must have continued to dominate RABANILLO’s thought that he decided to strike back at the victim by hacking him to death. Clearly, the assault was made in a fit of anger.

*For passion and obfuscation to be mitigating, the same must originate from lawful feelings. The turmoil and unreason that naturally result from a quarrel or fight should not be confused with the sentiment or excitement in the mind of a person injured or offended to such a degree as to deprive him of his sanity and self-control. The excitement which is inherent in all persons who quarrel and come to blows does not constitute obfuscation.*

*Moreover, the act producing obfuscation must not be far removed from the commission of the crime by a considerable length of time, during which the accused might have regained his normal equanimity. Thus, it has been held that where at least half an hour elapsed between the previous fight and the killing, the accused cannot be given the benefit of the attenuating circumstance of obfuscation.*

In this case, 30 minutes intervened between the fistfight and the

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<sup>47</sup> Id. at 666–668, citing *U.S. v. Ferrer*, 1 Phil. 56 (1901) [Per J. Mapa, En Banc], *People v. Pareja*, 141 Phil. 379 (1969) [Per Curiam, En Banc], *U.S. v. Salandanan*, 1 Phil. 464 (1902) [Per J. Mapa, En Banc], *U.S. v. Sarikala*, 37 Phil. 486 (1918) [Per J. Malcolm, En Banc], *People v. Constantino*, 127 Phil. 381 (1967) [Per J. Bengzon, J.P., En Banc], *People v. Alanguilang*, 52 Phil. 663 (1929) [Per J. Romualdez, En Banc], *People v. Dagatan*, 106 Phil. 88 (1959) [Per J. Endencia, En Banc], and *People v. Gervacio*, 133 Phil. 805 (1968) [Per Curiam, En Banc].

<sup>48</sup> 367 Phil. 114 (1999) [Per C.J. Davide, En Banc].

killing of MORALES by RABANILLO. The attack cannot, therefore, be said to be the result of a sudden impulse of natural and uncontrollable fury. Having been actuated more by the spirit of revenge or by anger and resentment for having been publicly berated by MORALES, RABANILLO cannot be credited with the extenuating circumstance of passion and obfuscation.<sup>49</sup> (Emphasis supplied)

This court clarifies in *People v. Bautista*:<sup>50</sup>

The turmoil and unreason which naturally result from a quarrel or fight should not be confused with the sentiment or excitement in the mind of a person injured or offended to such a degree as to deprive him of his sanity and self-control, because the cause of this condition of mind must necessarily have preceded the commission of the offense.<sup>51</sup>

This court has also ruled that acts done in the spirit of revenge cannot be considered acts done with passion and obfuscation.

In *People v. Caber*,<sup>52</sup> Francisco Caber was seen chasing Teodoro Ramirez with a bladed weapon, locally known as a *pisao*, and stabbing Ramirez twice, which resulted in his death.

Caber tried to argue that he stabbed Ramirez in a fit of passion and obfuscation and alleged that Ramirez raped his wife three (3) days before the incident. This court rejected the claim:

*Even assuming, however, that he really killed Ramirez because of passion or obfuscation in order to avenge the wrong done to his wife by the victim, still he cannot be credited with this circumstance as he would then have acted "in the spirit of revenge." Furthermore, although accused-appellant's wife was allegedly raped by Ramirez on November 17, 1994, the stabbing incident in question took place three days later or on November 20, 1994. Thus, the act which was supposed to have caused passion or obfuscation on the part of the accused-appellant was so far removed from the date of the stabbing. In *United States v. Sarikala*, the Court ruled that the lapse of more than 24 hours, reckoned from the commission of the act which produced the passion or obfuscation up to the time of the commission of the felony, constituted a considerable period of time after which such*

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<sup>49</sup> Id. at 126–127, citing *People v. Bautista*, 325 Phil. 83 (1996) [Per J. Bellosillo, First Division], *People v. Cruz*, 53 Phil. 635 (1929) [Per J. Romualdez, En Banc], *People v. Giner*, 6 Phil. 406 (1906) [Per J. Torres, En Banc], *U.S. v. Herrera*, 13 Phil. 583, 585 (1909) [Per C.J. Arellano, En Banc], *People v. Layson*, 140 Phil. 491 (1969) [Per Curiam, En Banc], and *People v. Matbagon*, 60 Phil. 887, 890 (1934) [Per J. Vickers, En Banc].

<sup>50</sup> 325 Phil. 83 (1996) [J. Bellosillo, First Division].

<sup>51</sup> Id. at 93, citing *People v. Giner*, 6 Phil. 406 (1906) [Per J. Torres, En Banc].

<sup>52</sup> 399 Phil. 743 (2000) [Per J. Mendoza, Second Division].

circumstance would no longer be deemed present.<sup>53</sup> (Emphasis supplied)

The facts of this case, however, are similar to that in *People v. Real*.<sup>54</sup> In *Real*, Melchor Real and Edgardo Corpuz, his fellow market vendor, engaged in a heated argument over the right to use the market table to display their fish. The municipal mayor, then present at the scene, tried to pacify them and told them that they were arguing over trivial matters. Both parties calmed down after a while.

Corpuz, however, said something to Real, to which Real softly uttered, “You are being too oppressive.” When Corpuz kept walking near the table, Real started to sharpen his *bolo*. As Corpuz turned his back, Real hacked him with his *bolo* which caused his death.

Real was held liable for homicide, but this court took into account the mitigating circumstance of passion and obfuscation, stating that:

[t]he act of the victim in berating and humiliating appellant was enough to produce passion and obfuscation, considering that the incident happened in a market place within full view and within hearing distance of many people.<sup>55</sup>

This court also noted:

In the case at bench, the assault came in the course of an altercation and after appellant had sharpened his *bolo* in full view of the victim. Appellant's act of sharpening his *bolo* can be interpreted as an attempt to frighten the victim so the latter would leave him alone. It was simply foolhardy for the victim to continue walking to and fro near appellant in a taunting manner while the latter was sharpening his *bolo*.<sup>56</sup>

Accused-appellant admitted that he stabbed Gulane but alleged that they had been fighting. He alleged that Gulane had been hurling insults at him which provoked him to react; in effect, he alleged that the mitigating circumstance of passion and obfuscation was present in this case.<sup>57</sup>

The Court of Appeals rejected his contention and stated that no evidence was presented to prove that immediately before or at the time of the incident, there was an altercation between accused-appellant and Gulane that would provoke his reaction.

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<sup>53</sup> Id., citing *U.S. v. Sarikala*, 37 Phil. 486 (1918) [Per J. Malcolm, En Banc].

<sup>54</sup> 312 Phil. 775 (1995) [Per J. Quiason, First Division].

<sup>55</sup> Id. at 781.

<sup>56</sup> Id.

<sup>57</sup> *Rollo*, p. 5 and *CA rollo*, p. 42.

Panday testified:

Q: Do you remember if there was any altercation that took place between the accused and the victim in this case before the incident?

A: I have not heard any argument from both of them and he stabbed Rodulfo Gulane and Rodulfo Gulane uttered the words in a vernacular, “Man luba kaman Ling.”<sup>58</sup>

Pogay further testified:

Q: Before the stabbing incident, have you noticed if there was an altercation between Rodulfo Gulane and Marcelino Oloverio?

A: No, sir.<sup>59</sup>

Panday, however, clarifies:

Q: Now, before the actual stabbing of the victim in this case, you said there was no altercation between the accused and Rodulfo Gulane, now, if you can recall[,] if there was any incident that took place immediately before the stabbing incident?

A: *I cannot say any but what I only say is that I only saw the incident.*<sup>60</sup> (Emphasis supplied)

The prosecution could not prove that an altercation might have occurred between accused-appellant and Gulane before the incident since their eyewitnesses could only testify to the actual stabbing.

The Court of Appeals also failed to take into account the testimony of Lamoste, the defense witness.

Lamoste testified that he and accused-appellant worked together, as he was then the *barangay* captain and accused-appellant was a *barangay tanod*. He alleged that accused-appellant’s daughter once confided to accused-appellant that Gulane told her that he wanted to touch her private parts.<sup>61</sup>

Lamoste testified that about a month before the incident, he witnessed Gulane telling accused-appellant, “*Kumusta na man mo imo mama nagtap-il*

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<sup>58</sup> *Rollo* at 9.

<sup>59</sup> *Id.* at 10.

<sup>60</sup> *Id.* at 9.

<sup>61</sup> *Id.* at 5–6.

*mo imo mama naba mo produkto?*” (“How is your relationship with your mother have you produced fruits with your mother?”) He alleged that accused-appellant got angry and tried to attack Gulane, but he was able to intervene and part the two.<sup>62</sup>

The prosecution did not deny any portion of Lamoste’s testimony and only insisted that no altercation occurred immediately before the stabbing.

Both the trial court and the Court of Appeals narrowed its understanding of passion and obfuscation to refer only to the emotions accused-appellant felt in the seconds before a crime is committed. It failed to understand that passion may linger and build up over time as repressed anger enough to obfuscate reason and self-control.

The circumstances of both victim and accused-appellant were also not taken into account by the trial court and the Court of Appeals.

Accused-appellant referred to Gulane as the “*datu*” or rich man of Barangay San Pablo. Gulane enjoyed an economic ascendancy over accused-appellant, a mere *barangay tanod*.

Gulane not only threatened to molest accused-appellant’s daughter but also accused him in public of having incestuous relations with his mother. Gulane was said to have insulted accused-appellant in full view of his immediate superior, the barangay captain.

Both victim and accused-appellant lived in the small locality of Palompon, Leyte. As with any small town, it was a place where a person’s degrading remarks against another could be made the measure of the latter’s character. Gulane’s insults would have been taken into serious consideration by the town’s residents because of his wealth and stature in the community.

There was neither a reason given why Gulane acted that way towards accused-appellant nor any evidence to show that accused-appellant had previously wronged him.

The prosecution did not deny that Gulane insulted accused-appellant on various occasions. The witnesses could not state with reasonable certainty that Gulane did not provoke accused-appellant a few minutes before the incident; they could only testify to the incident itself and the seconds which preceded it.

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<sup>62</sup> CA *rollo*, p. 46.



In view of these considerations, we find that the mitigating circumstance of passion and obfuscation is present in this case.

#### IV

According to Article 249 of the Revised Penal Code, homicide is punishable by *reclusion temporal*. The trial court and the Court of Appeals considered accused-appellant's voluntary surrender to the authorities as a mitigating circumstance.<sup>63</sup> We find no reason to disturb this conclusion.

Considering that there are two (2) mitigating circumstances in accused-appellant's favor, the imposable penalty must be that which is next lower to that prescribed by law. Article 64 (5) of the Revised Penal Code provides:

ARTICLE 64. Rules for the Application of Penalties Which Contain Three Periods. — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

....

5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

Accordingly, the imposable penalty is *prision mayor*. Applying the Indeterminate Sentence Law, accused-appellant should be sentenced to suffer the penalty of imprisonment, the minimum of which should be within the range of *prision correccional*<sup>64</sup> and the maximum of which should be within the range of *prision mayor*.<sup>65</sup>

Based on the records, accused-appellant was put under preventive imprisonment pending his conviction by the trial court.

In accordance with Article 29 of the Revised Penal Code, the time undergone by accused-appellant under preventive imprisonment shall be credited to his service of sentence, provided that he has given his written

<sup>63</sup> *Rollo*, p. 12 and *CA rollo*, p. 48.

<sup>64</sup> The duration of *prision correccional* is six (6) months and one (1) day to six (6) years.

<sup>65</sup> The duration of *prision mayor* is six (6) years and one (1) day to twelve (12) years.

conformity to abide by the disciplinary rules imposed upon convicted prisoners. The provision states:

“ART. 29. *Period of preventive imprisonment deducted from term of imprisonment.* – Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing after being informed of the effects thereof and with the assistance of counsel to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:

“1. When they are recidivists, or have been convicted previously twice or more times of any crime; and

“2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.

“If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall do so in writing with the assistance of a counsel and shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment[.]”<sup>66</sup>

The letter of PGI Gilbert P. Cayubit, Officer-in-Charge of the Leyte Sub-Provincial Jail, stated that accused-appellant had been transferred to Leyte Regional Prison on May 4, 2010.<sup>67</sup> The transfer to Leyte Regional Prison was also confirmed by SO2 Jorge A. Colanta, Officer-in-Charge of the Leyte Regional Prison, who stated that accused-appellant was received by the prison on May 27, 2010.<sup>68</sup>

As the exact length of time cannot be determined with certainty, the trial court shall determine the exact period of preventive imprisonment that may be credited in accused-appellant’s favor.

The monetary awards must also be modified. In a prosecution for murder or homicide, civil indemnity and moral damages may be awarded without need of further proof other than the victim’s death.<sup>69</sup> The monetary awards of ₱50,000.00 in civil indemnity and ₱50,000.00 in moral damages are in line with prevailing jurisprudence.<sup>70</sup> Temperate damages may also be

<sup>66</sup> REV. PEN. CODE, art. 29, as amended by Rep. Act No. 10592 (2012).

<sup>67</sup> CA *rollo*, p. 97.

<sup>68</sup> *Rollo*, p. 35.

<sup>69</sup> See *Heirs of Castro v. Bustos*, 136 Phil. 553 (1969) [Per J. Barredo, En Banc].

<sup>70</sup> See *Guevara v. People*, G.R. No. 170462, February 5, 2014, 715 SCRA 384 [Per J. Brion, Second Division], *Almojuela v. People*, G.R. No. 183202, June 2, 2014, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/june2014/183202.pdf>> [Per J. Brion, Second Division], and *Dela Cruz v. People*, G.R. No. 189405, November 19, 2014

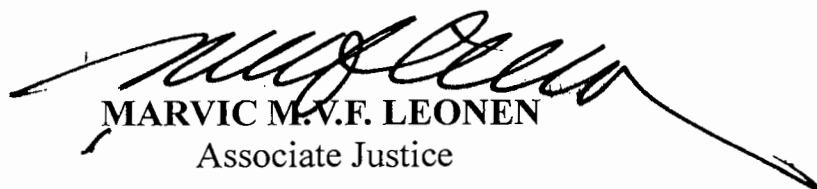
awarded in lieu of actual damages, as in this case where the prosecution failed to prove proof of actual damages.<sup>71</sup> The award of exemplary damages, however, must be deleted in view of Article 2230 of the Civil Code.<sup>72</sup>

**WHEREFORE**, the Decision of the Court of Appeals is **SET ASIDE**. Accused-appellant Marcelino Oloverio is found **GUILTY** beyond reasonable doubt of the crime of homicide under Article 249 of the Revised Penal Code.

As the crime was attended with the mitigating circumstances of passion and obfuscation and voluntary surrender with no aggravating circumstance, accused-appellant Marcelino Oloverio is **SENTENCED** to suffer the indeterminate penalty of imprisonment for two (2) years, four (4) months, and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum.<sup>73</sup> The period of his preventive imprisonment shall be credited in his favor if he has given his written conformity to abide by the disciplinary rules imposed upon convicted prisoners in accordance with Article 29 of the Revised Penal Code, as amended.

Accused-appellant Marcelino Oloverio is further ordered to pay the heirs of Rodulfo Gulane the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages. All damages awarded shall be subject to the rate of 6% legal interest per annum from the finality of this Decision until its full satisfaction.

**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:

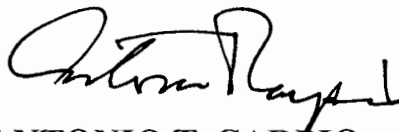
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<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/189405.pdf>>  
[Per J. Peralta, Third Division].

<sup>71</sup> See *Guevara v. People*, G.R. No. 170462, February 5, 2014, 715 SCRA 384 [Per J. Brion, Second Division].

<sup>72</sup> CIVIL CODE. art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

<sup>73</sup> See *Heirs of Castro v. Bustos*, 136 Phil. 553 (1969) [Per J. Barredo, En Banc].



**ANTONIO T. CARPIO**

Associate Justice  
Chairperson



**PRESBITERO J. VELASCO, JR.**

Associate Justice



**MARIANO C. DEL CASTILLO**

Associate Justice



**JOSE CATRAL MENDOZA**

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.



**ANTONIO T. CARPIO**

Acting Chief Justice