



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 245921
Plaintiff-Appellee,

Present:

LEONEN,
 Chairperson
GESMUNDO,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

- versus -

ABDILLAH PANGCATAN *y*
DIMAO

Accused-Appellant.

Promulgated:

October 5, 2020

Misproced

X-----X

DECISION

CARANDANG, *J.*:

This is an appeal¹ from the Decision² dated June 21, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01562-MIN finding accused-appellant Abdillah Pangcatan *y* Dimao (Pangcatan) guilty beyond reasonable doubt of the following criminal offenses: (1) violation of Section 1, Republic Act No. (R.A.) 9516;³ (2) violation of Section 28(e)(1) in relation to Section

¹ *Rollo*, pp.24-25

² Penned by Associate Justice Perpetua T. Atal-Pano, with the concurrence of Associate Justices Edgardo A. Camello and Walter S. Ong; *id.* at 5-22.

³ An Act Further Amending the Provisions of Presidential Decree No. 1866, As Amended, entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes.

J

28(a) of R.A. 10591;⁴ and (3) murder under Article 248 of the Revised Penal Code (RPC).

Antecedents

The three (3) separate Information against accused-appellant Pangcatan respectively state:

Criminal Case No. 20344

Illegal Possession of Explosives in Violation of Section 1,
R.A. No. 9516

That on or about January 11, 2015, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without lawful permit, license or authority, did then and there willfully, unlawfully and knowingly possess one (1) pc. of hand grenade.

CONTRARY TO LAW.⁵

Criminal Case No. 20345

Illegal Possession of Firearm and Ammunitions in
Violation of Section 28 (e) 1 in relation to Section 28 (a) of
Article V of R.A. No. 10591

That on or about January 11, 2015, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without lawful permit, license, or authority, did then and there willfully, unlawfully and knowingly possess one (1) unit cal. 45 Norinco pistol with serial no. BA02493 with magazine loaded with 7 rounds of ammunition contained inside a leather magazine pouch belt and another olive green sling bag containing four (4) pcs of magazine each loaded with five (5) pcs of ammunitions.

CONTRARY TO LAW.⁶

Criminal Case No. 20346

Murder under Article 248 of the Revised Penal Code (RPC)

That on or about January 9, 2015, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with evident premeditation abuse of superior strength and with intent to kill, armed with a gun, using a black Rouser motorcycle to facilitate his escape in the commission of the crime, did then and there willfully, unlawfully and feloniously attack, assault, and shoot Richelle Anne Marabe, thereby inflicting upon her mortal

⁴ Otherwise known as the "Comprehensive Firearms and Ammunition Regulation Act."

⁵ Records (Criminal Case No. 20344), p. 2.

⁶ Records (Criminal Case No. 20345), p. 1.

wounds which caused her death, and further causing actual, moral and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.⁷

On February 27, 2015, Pangcatan filed a Motion to Quash and to Suppress Evidence⁸ before the Regional Trial Court (RTC) alleging that: (1) his warrantless arrest on January 11, 2015 was illegal;⁹ (2) the body search conducted on him was likewise illegal, making all items recovered from him inadmissible in evidence;¹⁰ and (3) the court did not acquire jurisdiction over him as his arrest was illegal.¹¹

In a Resolution¹² dated April 24, 2015, the RTC denied Pangcatan's Motion to Quash. The RTC ruled that the Tagum City Police had probable cause to arrest Pangcatan without a warrant because: (1) he was identified by an alleged eyewitness from photographs shown to the latter; (2) an invitation for Pangcatan to appear at the station was sent to him on the very same day of the subject incident; (3) although Pangcatan arrived at the police station two days later, he was positively identified by the eyewitness from a police lineup; and (4) Pangcatan was arrested not only as a suspect in the murder of the victim but also because he was found in possession of a firearm, ammunition, and a hand grenade without authority therefor. The RTC also held that, though it is unclear whether the frisk done on the person of Pangcatan was done before or after he was identified from the police lineup, it devolves upon Pangcatan to rebut its regularity in a full-blown trial.¹³

Pangcatan's Motion for Reconsideration¹⁴ was likewise denied in an Order¹⁵ dated June 1, 2015.

During his arraignment on June 8, 2015, Pangcatan entered a plea of not guilty to the three charges.¹⁶

During trial, the prosecution presented the following witnesses, namely: (1) Police Officer 3 Crisanto Quibrar¹⁷ (PO3 Quibrar); (2) PO3 Melven Parcon¹⁸ (PO3 Parcon); (3) Renante Cruz¹⁹ (Renante); (4) Lieutenant Colonel Allan Odal²⁰ (Lt. Col. Odal); (5) PO1 Kimberly Carillo²¹ (PO1 Carillo); (6) PO3 Lino Warren Almonia²² (PO3 Almonia); (7) SPO2 Romeo

⁷ Records (Criminal Case No. 20346), p. 1.

⁸ Records (Criminal Case No. 20344), pp. 23-39.

⁹ Id. at 25-32.

¹⁰ Id. at 32-36.

¹¹ Id. at 37-38.

¹² Penned by Presiding Judge Ma. Susana T. Baua; id. at 47-51.

¹³ Id. at 50-51.

¹⁴ Id. at 52-65.

¹⁵ Penned by Presiding Judge Ma. Susana T. Baua; id. at 74.

¹⁶ Id. at 80-81.

¹⁷ TSN dated October 19, 2015, pp. 2-24.

¹⁸ TSN dated October 22, 2015, pp. 3-11.

¹⁹ Id. at 15-42.

²⁰ TSN dated February 1, 2016, pp. 12-18.

²¹ TSN dated November 4, 2015, pp. 2-12.

²² TSN dated November 5, 2015, pp. 2-19; TSN dated November 18, 2015, pp. 2-9.

M. Obrero²³ (SPO2 Obrero); and (8) Nercita Marabe Evangelista (Nercita).²⁴

According to the prosecution, on January 9, 2015, Renante was weeding grass near the Sto. Niño Chapel which was across Boarders Inn, approximately 30 meters away and separated by a highway.²⁵ He saw two persons onboard a motorcycle, a male and a female, about to enter Boarder's Inn. As the motorcycle stopped at the gate of Boarder's Inn, he observed that the two were fighting. He heard the female passenger, who was later identified as the victim Richelle Ann Marabe Austero (Richelle), shouting "No, I will not!" Richelle went out of Boarder's Inn and crossed the highway toward the chapel.²⁶ The driver of the motorcycle, who was later identified as Pangcatan, was wearing a black jacket, shorts and had a bandage on his left knee. Renante was able to describe the man's hair cut as a "flat top" as he was not wearing any helmet.²⁷ When Richelle hailed a tricycle, Pangcatan blocked it and pointed his gun at the tricycle driver. Renante allegedly saw Pangcatan order Richelle to step out of the tricycle.²⁸ When Richelle refused, Pangcatan allegedly pointed his gun at her stomach and shot her twice, hitting her stomach and her jaw.²⁹ After the assailant fled the scene, Renante ran towards Richelle and checked her pulse. Ten minutes after, the police arrived.³⁰ Renante was taken to the police station where he narrated what he saw and identified Pangcatan from two photograph albums of various persons shown to him. He then learned that Pangcatan is an official of the Philippine Army and that his photo was included in the album after he was reported several times in the Women's Desk for complaints for violation of R.A. No. 9262.³¹

On January 11, 2015, Renante was invited back to the police station where he was shown three individuals standing side by side and was asked to identify the assailant. Renante identified the person standing in the middle, Pangcatan, as the person who shot Richelle.³²

After being identified, PO3 Quibrar arrested him and read his constitutional rights. PO3 Parcon then conducted a body search on Pangcatan and confiscated the following: one (1) leather magazine pouch with belt; one (1) black plastic pistol holster; one (1) caliber. 45 Norinco pistol with Serial No. BA02493 loaded with magazine containing 7 rounds; one (1) olive green sling bag containing four (4) other spare magazines each containing five (5) rounds; one (1) grenade wrapped in black pouch; one (1) Mardee's tactical magazine holster; one (1) small brown envelope containing white cottons and white bandage; one (1) small vial containing liquid wrapped with paper tape; one (1) red disposable lighter, and one (1) leather wallet.³³

²³ TSN dated December 2, 2015, pp. 3-16.

²⁴ TSN dated February 1, 2016, pp. 3-12.

²⁵ TSN dated October 22, 2015, pp. 17-19.

²⁶ Id. at 20-21.

²⁷ Id. at 22-23.

²⁸ Id. at 25-26.

²⁹ Id. at 26-27.

³⁰ Id. at 27-28.

³¹ Id. at 32-33.

³² Id. at 34-35.

³³ Records (Criminal Case No. 20344), p. 4.

When asked for permit or license to carry the firearm, magazine, and grenade seized from him, Pangcatan failed to present any.³⁴

Lt. Col. Odal confirmed that two days before the date of the incident, Pangcatan asked him to be excused from duty because of his knee injury.³⁵

Upon the request of the prosecution, the Firearms and Explosives Office of the Philippine National Police (PNP) issued a certification³⁶ stating that:

THIS IS TO CERTIFY that **ABDILLAH D. PANGCATAN** of Blk. 12, Lot 20, Villa Cacacho, Mankilam, Tagum City, is not a licensed/ registered firearm holder of any kind and caliber particularly one (1) **Pistol, Caliber .45, Norinco with Serial Number BA02493** per verification from records of this office as of this date.

However, upon verification based on Firearms Information Management System, we have on record, **Pistol, Caliber .45, Norinco with Serial Number BA02493** is licensed/ registered to **FLORANTE GORDOLAN y OLIPAS** of Blk 4, Lot 14, Anjelica Homes, Tagum City, Davao del Norte, issued/ approved on October 12, 2006 with expiry date December 16, 2008.³⁷ (Emphasis in the original)

The Certificate of Death³⁸ of Richelle confirmed that the immediate cause of her death were multiple gunshot wounds to the head and trunk.³⁹

Pangcatan was the sole witness for the defense. He denied the allegations against him. He claimed that on January 9, 2015, he was in the hinterlands of Compostela Valley Province to conduct intelligence work.⁴⁰ He maintained that on January 11, 2015, he was invited by PSI Anjanette Tirador (PSI Tirador) to the police station.⁴¹ Upon arrival, Pangcatan claimed that PSI Tirador asked him to remove the caliber .45 Norinco pistol from his waist to which he complied. He removed the caliber .45 with magazine and placed it inside his sling bag which he put down just beside his feet.⁴² Pangcatan narrated that he was then asked to join a line-up together with two other persons. Thereafter, the two persons were asked to go out and PO3 Quibrar arrested him after having been identified by a witness as the suspect in killing Richelle.⁴³ He denied receiving any invitation from the police prior to January 11, 2015.⁴⁴

³⁴ Id.
³⁵ TSN dated February 1, 2016, pp. 15-16.
³⁶ Records (Criminal Case No. 20344), p. 262.
³⁷ Id.
³⁸ Records (Criminal Case No. 20346), p. 130.
³⁹ Id.
⁴⁰ Records (Criminal Case No. 20345), pp. 123-124.
⁴¹ Id. at 121.
⁴² Id. at 121-122.
⁴³ Id. at 122.
⁴⁴ Id. at 123.

Ruling of the Regional Trial Court

On August 13, 2016, the RTC rendered its Joint Decision,⁴⁵ the dispositive portion of which reads:

WHEREFORE, premises considered, there being proof of his guilt beyond reasonable doubt, the accused **ABDILLAH PANGCATAN Y DIMAO** is hereby found **GUILTY** of all the three (3) criminal offenses subject of these cases and is hereby sentenced:

1) In **Crim. Case No. 20344** for the illegal possession of a hand grenade, to suffer the penalty of *reclusion perpetua*, as provided for by Section 3 of Rep. Act No. 9516;

2) In **Crim. Case No. 20345** and applying the Indeterminate Sentence Law, to suffer imprisonment for a period of *ten (10) years of prision mayor* in accordance with Section 28 (e), par. 1 of Rep. Act No. 10591.

The hand grenade, .45 caliber Norinco pistol and the ammunition confiscated from Pangcatan are forfeited in favor of the State.

3) In **Crim. Case No. 20346**, to suffer the penalty of *reclusion perpetua* and to pay the heirs of the late Richelle Anne Marabe Austero the sum of P75,000.00 as civil indemnity; the sum of P50,000.00 as exemplary damages and the sum of P50,000.00 as moral damages.

SO ORDERED.⁴⁶ (Emphasis and italics in the original)

In Criminal Case Nos. 20344 and 20345, the RTC ruled that the prosecution overwhelmingly discharged its burden of establishing the guilt of Pangcatan for illegal possession of the caliber .45 Norinco pistol, multiple pieces of ammunition, and the hand grenade. The Certification from the Firearms and Explosives Division (FED) stated that Pangcatan is not a licensed holder of a caliber .45 Norinco pistol and that the said firearm is registered to one Florante Gordolan y Olipas.⁴⁷ The acknowledgment receipt that Pangcatan showed, the original or certified true copy of which was never presented in court, does not contain the signature of his immediate superior, Lt. Col. Odal. Moreover, it indicated that the firearm and grenade were the “property accountability” of another person, 1Lt. Allan M. Bonhoc. The RTC also found that Pangcatan was unable to present competent proof that, as an intelligence officer of the Philippine Army, he was authorized to carry and possess the weapons. The RTC ruled that self-defense is no excuse to carry the weapons.⁴⁸

⁴⁵ Penned by Presiding Judge Ma. Susana T. Baua; CA rollo, pp. 49-60.

⁴⁶ Id. at 60.

⁴⁷ Id. at 54-55.

⁴⁸ Id. at 57.

In Criminal Case No. 20346, the RTC held that Pangcatan failed to substantiate his alibi that he was in the hinterlands of Compostela Valley at the time of the incident. The RTC was convinced with Renante's identification of Pangcatan as the person who shot Richelle.⁴⁹ The RTC did not consider the qualifying circumstance of evident premeditation because the audio tapes presented by the prosecution was not a clear proof that Pangcatan was the man talking and that he had an intent to kill Richelle.⁵⁰ On the other hand, the qualifying circumstance of abuse of superior strength was considered because Pangcatan was described as "a man of height greater than Richelle" and "with a build [*sic*] superior to hers." The RTC concluded that he took physical advantage over Richelle who was slim and he was armed with a gun. Richelle could not have put up any effective resistance when she was dragged by the hair from the tricycle.⁵¹

Ruling of the Court of Appeals

On June 21, 2018, the CA issued its Decision,⁵² the dispositive portion of which reads:

WHEREFORE, the appeal is **DENIED**. The Joint Decision dated August 13, 2016 of the Regional Trial Court, Branch 2, Tagum City, in Criminal Case Nos. 20344, 20345 and 20346 is hereby **AFFIRMED** with **MODIFICATION**, as follows:

1. In Criminal Case No. 20345, appellant shall suffer the penalty of imprisonment for a period of ten (10) years and one (1) day of *prision mayor* as minimum to eleven (11) years and four (4) months of *prision mayor* as maximum; and,
2. In Criminal Case No. 20346, appellant is ordered to pay the heirs of the late Richelle Anne Marabe Austero (a) P75,000.00 as civil indemnity; (b) P75,000.00 as exemplary damages; (c) P75,000.00 as moral damages; and (d) interest of six percent (6%) *per annum* on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.⁵³

The CA held that the order of the RTC denying Pangcatan's Motion to Quash and to Suppress Evidence is not the proper subject of an appeal because it is an interlocutory order. The CA noted that Pangcatan had already filed a petition for *certiorari* in the CA (docketed as CA-G.R. SP No. 06846) to assail the interlocutory order and the issue concerning the validity of his arrest and the admissibility of the evidence against him had already been put to rest.⁵⁴

⁴⁹ Id. at 58.
⁵⁰ Id. at 58-59.
⁵¹ Id.
⁵² Supra note 2.
⁵³ *Rollo*, p. 22.
⁵⁴ Id. at 15-16.

In affirming the conviction of Pangcatan for murder, the CA ruled that the elements of the crime were proven beyond reasonable doubt. The CA gave credence to the clear and categorical testimony of Renante, who positively identified him.⁵⁵ The CA agreed with the finding of the RTC that abuse of superior strength attended the killing of Richelle because Pangcatan was armed with a gun and was described as “a man of height greater than Richelle Anne’s and with a build [*sic*] superior to hers.”⁵⁶ The CA was also convinced with the out-of-court identification made by Renante at the Tagum Police Station. The CA ruled that there is no need to identify Pangcatan in open court since his identity was already stipulated and admitted during the pre-trial.⁵⁷

The CA rectified the penalty imposed in Criminal Case No. 20345 as the RTC failed to provide minimum and maximum terms for Pangcatan’s penalty of imprisonment as required by the Indeterminate Sentence Law.⁵⁸

In a Resolution⁵⁹ dated October 24, 2018, the CA denied the Motion for Reconsideration Pangcatan filed.⁶⁰

In Pangcatan’s Supplemental Appellant’s Brief,⁶¹ he raised the following arguments: (1) the CA committed error in ruling that the denial of a Motion to Quash is not appealable;⁶² (2) the weapons recovered from him were preceded by an invalid and unlawful warrantless arrest;⁶³ (3) the photographs in the album the police showed Renante prior to the line-up was not presented in court;⁶⁴ (4) the alleged initial photographic identification and subsequent line-up identification made by Renante were highly suggestive and influenced by the police officers, making Renante’s out-of-court identification unreliable;⁶⁵ and (5) pre-trial identification is not sufficient and the failure of the prosecution witness to positively identify the assailant in court is fatal to its cause.⁶⁶

The Court notified the Office of the Solicitor General (OSG) to file its supplemental brief. However, the OSG manifested that it will no longer file a supplemental brief since Pangcatan did not raise any new matter and to expedite the resolution of the case.⁶⁷

⁵⁵ Id. at 16-17.

⁵⁶ Id. at 17-18.

⁵⁷ Id. at 18-19.

⁵⁸ Id. at 20-22.

⁵⁹ Penned by Associate Justice Perpetua T. Atal-Pano, with the concurrence of Associate Justices Edgardo A. Camillo and Walter S. Ong; CA *rollo*, pp. 175-176.

⁶⁰ Id.

⁶¹ *Rollo*, pp. 39-70

⁶² Id. at 45-51.

⁶³ Id. at 53-55.

⁶⁴ Id. at 56-57.

⁶⁵ Id. at 57-66

⁶⁶ Id. at 68-69

⁶⁷ Id. at 31-32.



Issues

The issues to be resolved are:

1. Whether the issue of Pangcatan's alleged illegal arrest on January 11, 2015 and the admissibility of the evidence recovered from him is a proper subject matter in an automatic review;
2. Whether Pangcatan is guilty of illegal possession of explosives;
3. Whether Pangcatan is guilty of illegal possession of firearm and ammunitions; and
4. Whether Pangcatan is guilty of murder.

Ruling of the Court

The appeal is partially meritorious.

The alleged illegal arrest of Pangcatan on January 11, 2015 is a proper subject matter in an automatic review.

It is settled that any objection to the arrest or acquisition of jurisdiction over the person of the accused must be made before he enters his plea, otherwise the objection is deemed waived.⁶⁸ An accused submits to the jurisdiction of the trial court upon entering a plea and participating actively in the trial and this precludes him from invoking any irregularity that may have attended his arrest.⁶⁹ He is deemed to have waived his objections when he entered a plea and participated actively in the trial.

Nonetheless, in criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."⁷⁰ Accordingly, at this stage of the proceedings, the Court is not divested of its authority to resolve issues on purported irregularities in the arrest and subsequent search on Pangcatan.

Here, Pangcatan raised the validity of his arrest and the seizure of weapons in his possession in his Motion to Quash and to Suppress Evidence timely filed prior to his arraignment. He repeatedly raised these arguments when he filed a petition for *certiorari* in the CA docketed as CA-G.R. SP No. 06846-MIN assailing the resolution of the RTC denying his motion.

⁶⁸ RULES OF COURT, Rule 117, Section 9.

⁶⁹ *People v. Lara*, 692 Phil. 469, 483 (2012).

⁷⁰ *People v. Alejandro*, 807 Phil. 221, 229 (2017), citing *People v. Comboy*, 782 Phil. 187, 196 (2016).

Considering that this is an automatic review, the Court may still review the validity of Pangcatan's arrest and the admissibility of the evidence seized against him at this stage of the proceedings.

Pangcatan was not validly arrested. However, he is now estopped from assailing the court's jurisdiction over his person.

As a rule, no peace officer has the power or authority to arrest a person without a warrant except in instances authorized by Section 5, Rule 113 of the Rules of Court (Rules) which include:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Pangcatan was arrested two days after the incident while he was at the police station following an invitation from PSI Tirador. Upon arrival at the police station, he was made to participate in a police lineup with two other persons and was positively identified by Renante.⁷¹ After he was identified during the police lineup, he was arrested for killing Richelle and the body search yielded the following confiscated items: one (1) piece of hand grenade; one (1) unit caliber .45 Norinco pistol with serial no. BA02493, its magazine loaded with 7 rounds of ammunition contained inside a leather magazine pouch belt; and an olive green sling bag containing four (4) pieces of magazine each loaded with five (5) pieces of ammunitions.

Noticeably, at the time Pangcatan was invited to the police station two days after the incident, he was not committing any crime nor was it shown that he was about to do so or that he had just done so in the presence of the police officers. Thus, the warrantless arrest of Pangcatan cannot be justified under the *in flagrante delicto* exception in paragraph (a), Section 5, Rule 113 of the Rules.

The fact that the search incident to Pangcatan's unlawful arrest resulted in the seizure of firearm, ammunition, and a hand grenade he was allegedly not authorized to carry cannot rectify the defect of the illegal arrest preceding

⁷¹ Records (Criminal Case No. 20346), p. 18.



the search. The apprehending officers would not have seen these items had Pangcatan not been subjected to a body search following his illegal arrest. Due to the absence of an overt physical act of Pangcatan showing that he had committed a crime, was committing a crime or was going to commit a crime, there could not have been an *in flagrante delicto* arrest preceding the search.

Pangcatan's arrest also cannot be validated under the hot pursuit arrest exception in paragraph (b), Section 5, Rule 113 of the Rules.

The elements of a hot pursuit arrest are: (1) an offense has just been committed; and (2) the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.⁷² Moreover, there must be no appreciable lapse of time between the arrest and the commission of the crime. Otherwise, a warrant of arrest must be secured.⁷³ In *Pestilos v. Generoso*,⁷⁴ the Court explained the reason for the element of immediacy as follows:

x x x [A]s the time gap from the commission of the crime to the arrest widens, the pieces of information gathered are prone to become contaminated and subjected to external factors, interpretations and hearsay. On the other hand, with the element of immediacy imposed under Section 5 (b), Rule 113 of the Revised Rules of Criminal Procedure, the police officer's determination of probable cause would necessarily be limited to **raw** or **uncontaminated** facts or circumstances, gathered as they were within a very limited period of time. The same provision adds another safeguard with the requirement of probable cause as the standard for evaluating these facts of circumstances before the police officer could effect a valid warrantless arrest.⁷⁵ (Emphasis in the original)

The test of immediacy is not a mere mathematical computation of the lapse of time between the commission of the crime and the arrest. It is evaluated based on the circumstances surrounding each case.

It is worthy to point out that in *People v. Del Rosario*,⁷⁶ the Court found that the arrest of the accused failed to comply with the immediacy requirement because he was arrested a day after the commission of the crime and not immediately thereafter. The Court also noted that the arresting officers were not present and were not actual eyewitnesses to the crime. Thus, they had no personal knowledge of facts indicating that the person to be arrested had committed the offense.⁷⁷ In *People v. Cendana*,⁷⁸ the Court declared unlawful an arrest made one day after the killing of the victim and only on the basis of information obtained from unnamed sources. The unlawful arrest was held

⁷² *Pestilos v. Generoso*, 746 Phil. 301, 315 (2014).

⁷³ *Id.*, citing *People v. Del Rosario*, 365 Phil. 292, 312 (1999).

⁷⁴ *Supra* note 72, p. 331.

⁷⁵ *Id.*

⁷⁶ 746 Phil. 301 (2014)

⁷⁷ *Id.*

⁷⁸ 268 Phil. 571 (1990).

invalid.⁷⁹

Although the factual setting in the present case is different from *Del Rosario*⁸⁰ and *Cendana*,⁸¹ the rulings of the Court remain relevant in emphasizing the significance of the immediacy requirement in hot pursuit arrests. Here, it took two days for the police officers to arrest him, a lapse of time which is inconsistent with the immediacy requirement in hot pursuit arrests. Since Renante positively identified Pangcatan from the photos shown to him on January 9, 2015, the police officers had sufficient time to secure a warrant. Instead of applying for a warrant, the police officers lured Pangcatan into placing him into their custody under the guise of an invitation. Consequently, Pangcatan's arrest was unlawful.

Nevertheless, the subsequent filing of charges against Pangcatan, his plea of not guilty, and his active participation during trial now preclude him from assailing the court's jurisdiction over him.

The search made on Pangcatan cannot be considered a lawful warrantless search. The pieces of evidence obtained from him during his unlawful arrest are inadmissible.

The search incident to Pangcatan's arrest is also unlawful. Section 13, Rule 126 of the Rules states:

Section 13. *Search Incident to Lawful Arrest.* – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

To constitute a valid warrantless search under this provision, the arrest must be lawfully made on the basis of probable cause under Section 5, Rule 113 of the Rules. It requires that there be first a lawful arrest before a search can be made and this process cannot be reversed.⁸² Absent the requisite lawful arrest that must precede the search, it cannot be considered legal. Since the search on the person of Pangcatan cannot be considered a search incident to a lawful arrest as contemplated in Section 13, Rule 126 of the Rules, the pieces of evidence obtained from this search are inadmissible.

In Criminal Case Nos. 20344 and 20345, the crimes of Illegal Possession of Explosives and Illegal Possession of Firearms and Ammunition were not proven beyond

⁷⁹ Id.

⁸⁰ Supra note 76.

⁸¹ Supra note 78.

⁸² *Peralta v. People*, 817 Phil. 554, 564-565 (2017).

reasonable doubt.

To secure a conviction for Illegal Possession of Explosives and Illegal Possession of Firearms and Ammunition, the elements for the offenses are as follows: (a) the existence of the firearm, ammunition or explosive; (b) ownership or possession of the firearm, ammunition or explosive; and (c) lack of license to own or possess.⁸³

Despite Pangcatan's own admission that he brought the confiscated firearm and ammunition for self-defense purposes,⁸⁴ he cannot be held liable for violation of Section 1, R.A. No. 9516 and violation of Section 28 (e) 1 in relation to Section 28 (a) of Article V of R.A. No. 10591. Due to the inadmissibility of the hand grenade, firearm, and ammunition confiscated during the warrantless search made on Pangcatan, the *corpus delicti* of both crimes were not established.

The elements of Murder were proven beyond reasonable doubt.

Murder is defined and penalized under Article 248 of the RPC which states:

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, 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 inhumanely augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.⁸⁵

Accordingly, the elements of murder are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any

⁸³ *Saluday v. People*, 829 Phil. 65, 78 (2018).

⁸⁴ TSN dated March 17, 2016, p. 12.

⁸⁵ REVISED PENAL CODE, Article 248.

of the qualifying circumstances mentioned in Art. 248; and 4) that the killing is not parricide or infanticide.

In the present case, the prosecution was able to establish all the elements of the crime: 1) Richelle was killed on January 9, 2015; 2) Renante positively identified Pangcatan as the assailant; 3) the killing was attended by abuse of superior strength and evident premeditation; and 4) the killing is not parricide or infanticide.

The out-of-court identification made by Renante deserves credence.

Pangcatan maintains that the alleged initial photographic identification, which was not presented during trial, and the subsequent police lineup identification Renante made were highly suggestive and influenced by the police officers, making it unreliable.⁸⁶ We do not agree.

The identification of Pangcatan during trial was dispensed with by the RTC considering that his identity and correct name were already admitted in the Pre-Trial Order the RTC issued.⁸⁷ Moreover, We find that there was sufficient compliance with the totality of circumstances to give weight to Renante's out-of-court identification of Pangcatan as Richelle's assailant.

In *People v. Teehankee, Jr.*,⁸⁸ the Court explained the concept of out-of-court identification and the factors to consider in determining its admissibility and reliability, thus:

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,

⁸⁶ Rollo, pp. 57-66.

⁸⁷ Records (Criminal Case No. 203406), p. 98; TSN dated October 22, 2015, p. 36.

⁸⁸ 319 Phil. 128 (1995).

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(6) the suggestiveness of the identification procedure.⁸⁹ (Citation omitted and emphasis in the original)

In *People v. Llamera*,⁹⁰ the Court laid down the guidelines to sustain the validity of an out-of-court identification through photographs:

x x x [F]irst, a series of photographs must be shown and not merely that of the suspect; and **second**, when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect. In addition, photographic identification should be free from any impermissible suggestions that would single out a person to the attention of the witness making the identification.⁹¹ (Emphasis in the original)

In the present case, the police observed the guidelines stated above and belie the claim of Pangcatan that the out-of-court identification was suggestive. Renante first identified Pangcatan as the assailant when he was asked to scour through two albums containing approximately 20 uniformly sized photos per album of criminals or suspected criminals of the police⁹² on the same day the incident occurred. According to PO1 Carillo, of the approximately 40 photos shown to Renante, he identified Pangcatan in the middle of the second album.⁹³ Pangcatan's photo was allegedly supplied by his ex-wife, Yoshira Pangcatan. PO1 Carillo of the Intelligence Section explained that Pangcatan's photo appears on the gallery they kept because he was previously reported on four instances for violation of R.A. 9262 between September 25, 2014 and October 22, 2014.⁹⁴ To Our mind, Renante's identification of Pangacatan is not suggestive because there is nothing in the records that would suggest that he was influenced or pressured by the police officers.

Renante's recollection of the assailant through the photo album shown to him is worthy of belief as it was done immediately after the incident, while the details of Pangcatan was still fresh in his memory. The natural reaction of witness of violence is to strive to see the appearance of their assailants and observe the manner the crime was committed. In *People v. Esoy*,⁹⁵ the Court held:

It is known that the most natural reaction of a witness to a crime is to strive to look at the appearance of the perpetrator and to observe the manner in which the offense is perpetrated. Most often the face of the assailant and body movements thereof, create a lasting impression which cannot be easily erased from a witness's memory. Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, eyewitnesses can

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Id.

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830 Phil. 607, 614-615 (2018).

⁹¹

Id. at 180.

⁹²

TSN dated November 4, 2015, pp. 8-9.

⁹³

Id. at 10.

⁹⁴

TSN dated November 4, 2015, pp. 6-7; RTC records (Criminal Case No. 20346), pp. 193-196.

⁹⁵

631 Phil. 547 (2010).

remember with a high degree of reliability the identity of criminals at any given time.⁹⁶ (Citations omitted)

While the actual shooting happened in less than one minute, Pangcatan and Richelle already caught Renante's attention before she was shot. He was already observing the assailant and Richelle as they appeared to be fighting moments before the shooting. He had an unobstructed view of them as he was approximately 30 meters away from where they stood.

In this case, though Renante failed to describe any facial feature of the assailant in his Affidavit dated January 9, 2015, the same day Richelle was shot, he described the assailant as follows:

x x x [H]er companion, the one driving the said motorcycle (a **heavy-built man who was wearing a black jacket and black shorts with a white bandage wrapped on his knee**), chased the female across the highway and positioned himself three meters away from where the female was waiting for a tricycle[.]⁹⁷ (Emphasis in the original)

Noticeably, in his Supplemental Affidavit⁹⁸ dated January 12, 2015, Renante only declared that he identified Pangcatan as Richelle's assailant during a lineup conducted the previous day. Nonetheless, the same information about the assailant proved critical in identifying the assailant. Apart from describing the size of the assailant relative to the victim, his clothes, and his motorcycle, Renante reiterated during his testimony that the assailant had a bandage on his left knee⁹⁹ which is consistent with the claim of Lt. Col. Odal that Pangcatan had a wound on his knee at the time of the incident. Lt. Col. Odal testified that two days prior to the incident, Pangcatan told him that he cannot work as command duty officer as he needed to get his knee wound treated.¹⁰⁰ This wound is a distinguishing mark that bolsters the credibility of Renante's identification of the assailant. Renante could not have known this information prior to the alleged suggestive police lineup if he really did not witness the shooting incident. Therefore, Renante's identification of Pangcatan passed the totality of circumstances test.

In *Kummer v. People*,¹⁰¹ it was held that:

x x x [A]ffidavits are usually abbreviated and inaccurate. Oftentimes, **an affidavit is incomplete, resulting in its seeming contradiction with the declarant's testimony in court.** Generally, **the affiant is asked standard questions, coupled with ready suggestions intended to elicit answers, that later turn out not to be wholly descriptive of the series of events as the affiant knows them.** Worse, the process of affidavit-taking may sometimes amount to



⁹⁶ Id. at 555-556.

⁹⁷ Records (Criminal Case No. 20346), p. 10.

⁹⁸ Id. at 11.

⁹⁹ TSN dated October 22, 2015, p. 22.

¹⁰⁰ TSN dated February 1, 2016, pp. 15-16.

¹⁰¹ 717 Phil. 670 (2013).

putting words into the affiant's mouth, thus allowing the whole statement to be taken out of context.

The court is not unmindful of these on-the-ground realities. In fact, we have ruled that the discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since *ex parte* affidavits are generally incomplete. As between the joint affidavit and the testimony given in open court, the latter prevails because affidavits taken *ex-parte* are generally considered to be inferior to the testimony given in court.¹⁰²

We cannot simply disregard his initial statements for being incomplete and discredit his credibility. The veracity and weight of Renante's testimony in court is not affected because his earlier statements complement and furnish supporting details to elaborate on his initial statements. The perceived incompleteness of Renante's affidavits cannot entirely be attributed to him since the police officers also had a hand in the preparation of the documents. The information Renante later supplied during his testimony in court did not contradict his earlier statements.

Even if the subsequent police lineup conducted may appear to be suggestive due to the prior information Renante obtained about Pangcatan when he first identified him through the photo album shown to him, this does not make the identification Renante made unreliable. It must be emphasized that there is no law requiring a police investigation or a police lineup as a condition *sine qua non* for the proper identification of an accused.¹⁰³

Furthermore, Pangcatan's uncorroborated alibi that he was in the hinterlands of Compostella Valley at the time of the shooting to conduct intelligence work deserves scant consideration. For Pangcatan's defense of alibi to prosper, he must establish that: (1) he was present at another place at the time of the perpetration of the crime; and (2) that it was physically impossible for him to be at the scene of the crime during its commission.¹⁰⁴

Here, Pangcatan failed to present any proof that he was in Compostella Valley at the time of the shooting. Even Lt. Col. Odal denied giving him any mission order to conduct intelligence work in the area and guaranteed that no other officer of the Philippine Army could have bypassed him in giving orders to Pangcatan. His bare denial and alibi constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.¹⁰⁵

The qualifying circumstance of abuse of superior strength was properly considered in qualifying the shooting

¹⁰² Id. at 679.

¹⁰³ *People v. Dela Cruz*, 452 Phil. 1080, 1094 (2003).

¹⁰⁴ *People v. Ramos*, 715 Phil. 193, 206 (2013).

¹⁰⁵ *People v. Vergara*, 724 Phil. 702, 712 (2014).



to murder. However, evident premeditation was not established.

It is settled that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes abuse of superior strength due to his sex and the weapon used in the act.¹⁰⁶ Here, the lower courts correctly held that there was inequality of forces between Pangcatan and Richelle because his height and built were superior to hers. He was armed with a gun during the incident while Richelle was defenseless. Richelle could not have put up any effective resistance when she was dragged by the hair from the tricycle and suddenly shot.¹⁰⁷ Thus, the qualifying circumstance of abuse of superior strength was properly considered.

With regard to the allegation of evident premeditation, this circumstance was not established.

In proving evident premeditation, the following requisites must concur: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his or her determination; and (3) a sufficient lapse of time between the determination and execution to allow him or her to reflect upon the consequences of his or her act and to allow conscience to overcome the resolution of his or her will.¹⁰⁸

In this case, the prosecution failed to show that Pangcatan plotted to kill Richelle. Though the prosecution presented an audio recording from the cellphone recovered from Richelle tending to imply that they had an argument prior to the date of the incident, the prosecution failed to correlate the audio recording with the shooting incident. The prosecution was not able to identify any external or outward act that reveals Pangcatan's intent to kill her. There could not have been any lapse of time as contemplated by the RPC because the shooting occurred while they were in the heat of an argument. Thus, there was no opportunity for Pangcatan to coolly deliberate on the consequences of his actions.

Penalty

Under Article 248 of the RPC, as amended, the penalty for the crime of murder qualified by abuse of superior strength is *reclusion perpetua* to death. Since there were no aggravating or mitigating circumstances that attended the commission of the crime, the penalty of *reclusion perpetua* imposed on Pangcatan is in accordance with Article 63, paragraph 2 of the same Code. Therefore, We affirm the penalty imposed by the CA in Criminal Case No. 20346.

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¹⁰⁶ Revised Penal Code Book II, Luis B. Reyes, p. 41; *People v. Roxas*, 457 Phil. 577 (2003).

¹⁰⁷ *Rollo*, p. 59.

¹⁰⁸ Revised Penal Code Book II, Luis B. Reyes, p. 392.

Prevailing jurisprudence¹⁰⁹ sets civil indemnity, moral damages, and exemplary damages in the amount of ₱75,000.00 each. Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid. As such, We find the monetary award imposed by the CA consistent with the Court's ruling in *People v. Jugueta*.¹¹⁰

WHEREFORE, premises considered, the assailed Decision dated June 21, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01562-MIN is **SET ASIDE**.

In Criminal Case No. 20346, We find accused-appellant Abdillah Pangcatan y Dimao **GUILTY** beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code. Accused-appellant Abdillah Pangcatan y Dimao is sentenced to suffer the penalty of *reclusion perpetua*. He is **ORDERED** to pay the heirs of the late Richelle Anne Marabe Austero: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as exemplary damages; (c) ₱75,000.00 as moral damages; and (d) interest of six percent (6%) *per annum* on all damages awarded from the date of finality of this judgment until fully paid.

Accused-appellant Abdillah Pangcatan y Dimao is **ACQUITTED** in Criminal Case Nos. 20344 and 20345, for failure to prove his guilt beyond reasonable doubt.

SO ORDERED.



ROSMARIE D. CARANDANG
Associate Justice


¹⁰⁹ *People v. Jugueta*, 783 Phil. 806 (2016).

¹¹⁰ *Id.*

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

ATTESTATION

I attest 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.


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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