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error committed in the computation of interest and that there were expenses which were disallowed (*Ibid.*, pp. 296-311).

"4. On April 2, 1990, respondent ICC sent the CIR additional documents in support of its protest/reconsideration. The letter was received by the BIR on April 18, 1990. Respondent ICC further executed a Waiver of Statute of Limitation (dated April 17, 1990) whereby it consented to the BIR to assess and collect any taxes that may be discovered in the process of reinvestigation, until April 3, 1991 (*Ibid.*, pp. 296-311). A copy of the waiver is hereto attached as Annex 'C'."

Having admitted as a *fact* private respondent's request for reconsideration, petitioner must have passed upon it prior to the issuance of the Final Notice Before Seizure.

WHEREFORE, the Petition is hereby *DENIED* and the assailed Decision *AFFIRMED.*

SO ORDERED.

Melo (Chairman), Vitug, and *Sandoval-Gutierrez, JJ.*, concur.

Gonzaga-Reyes, J., on leave.

EN BANC

[G.R. No. 137050. July 11, 2001]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GEORGE CORTES *y* ORTEGA,** *accused-appellant.*

SYNOPSIS

Appellant was charged with murder for the fatal stabbing of Edlyn Gamboa, a 16-year old girl. Assisted by counsel, he pleaded guilty. Nonetheless, the prosecution presented evidence to prove the presence of aggravating circumstances of evident premeditation, cruelty, nighttime, abuse of superior strength, disrespect to sex and

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intoxication, while the defense presented evidence to prove voluntary surrender, plea of guilty, mistaken identity and intoxication. The prosecution was able to establish that appellant who was drunk on that fateful night successively stabbed Edlyn inside the house of one Junilla Macaldo causing her death. The trial court rendered judgment finding appellant guilty of the crime of murder qualified by treachery, with the aggravating circumstances of evident premeditation, cruelty, nighttime, abuse of superior strength, disrespect to sex and intoxication, and imposed the death penalty.

The evidence presented by the prosecution failed to establish evident premeditation, cruelty, nighttime, disregard of sex and intoxication. However, abuse of superior strength is absorbed in treachery. Thus, the proper penalty imposable against appellant should be *reclusion perpetua.*

SYLLABUS

1. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS.**— "The prosecution failed to establish the following elements of this aggravating circumstance: (a) the time when the accused determined to commit the crime, (b) an act manifestly indicating that the accused clung to that determination, and (c) a lapse of time between the determination and the execution sufficient to allow the accused to reflect upon the consequences of the act."

2. **ID.; AGGRAVATING CIRCUMSTANCES; CRUELTY; THERE MUST BE A SHOWING THAT ACCUSED INTENDED TO PROLONG SUFFERING OF VICTIM; NOT APPRECIATED BY MERE INFLICTION OF SEVERAL WOUNDS.**— As to the aggravating circumstance of cruelty, although the accused stabbed the victim several times, the same could not be considered as cruelty because there was no showing that it was intended to prolong the suffering of the victim. "For cruelty to be appreciated against the accused, it must be shown that the accused, for his pleasure and satisfaction, caused the victim to suffer slowly and painfully as he inflicted on him unnecessary physical and moral pain. The crime is aggravated because by deliberately increasing the suffering of the victim the offender denotes sadism and consequently a marked degree of malice and perversity. The mere fact of inflicting various successive wounds upon a person in order

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to cause his death, no appreciable time intervening between the infliction of one (1) wound and that of another to show that he had wanted to prolong the suffering of his victim, is not sufficient for taking this aggravating circumstance into consideration."

3. **ID.; ID.; NIGHTTIME MUST BE SPECIFICALLY SOUGHT; CASE AT BAR.**— As to the aggravating circumstance of nighttime, the same could not be considered for the simple reason that it was not specifically sought in the commission of the crime. "Nighttime becomes an aggravating circumstance only when (1) it is specially sought by the offender; (2) the offender takes advantage of it; or (3) it facilitates the commission of the crime by insuring the offender's immunity from identification or capture." In the case at bar, no evidence suggests that accused purposely sought the cover of darkness to perpetrate the crime, or to conceal his identity.

4. **ID.; ID.; ABUSE OF SUPERIOR STRENGTH; ABSORBED IN TREACHERY.**— Abuse of superior strength is absorbed in treachery, so that it can not be appreciated separately as another aggravating circumstance." Here, treachery qualified the offense to murder.

5. **ID.; ID.; DISREGARD OF SEX; THERE MUST BE DELIBERATE INTENT TO OFFEND OR INSULT SEX OF VICTIM.**— As to the aggravating circumstance of disregard of sex, the same could not be considered as it was not shown that accused deliberately intended to offend or insult the sex of the victim, or showed manifest disrespect for her womanhood. In fact, the accused mistook the victim for a man.

6. **ID.; ALTERNATIVE CIRCUMSTANCES; INTOXICATION; WHEN CONSIDERED.**— "Ordinarily, intoxication may be considered either aggravating or mitigating, depending upon the circumstances attending the commission of the crime. Intoxication has the effect of decreasing the penalty, if it is not habitual or subsequent to the plan to commit the contemplated crime; on the other hand, when it is habitual or intentional, it is considered an aggravating circumstance. A person pleading intoxication to mitigate penalty must present proof of having taken a quantity of alcoholic beverage prior to the commission of the crime, sufficient to produce the effect of obfuscating reason. At the same time, that person must show proof of not being a habitual drinker and not taking the alcoholic drink with the intention to reinforce his resolve to commit the crime."

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7. **ID.; MURDER; PENALTY IN ABSENCE OF AGGRAVATING CIRCUMSTANCE.**— The Solicitor General agrees with the accused that "the only aggravating circumstance present was treachery which qualified the killing to murder and that there were two mitigating circumstances of plea of guilty and intoxication, not habitual. The penalty shall be *reclusion perpetua*, not death, in accordance with Article 63 in relation to Article 248 of the Revised Penal Code, as amended by Republic Act No. 6759.

8. **CIVIL LAW; DAMAGES; ₱50,000.00 MORAL DAMAGES AWARDED HEIRS OF VICTIM.**— We also award ₱50,000.00 as moral damages in keeping with current jurisprudence. Moral damages is proper considering the mental anguish suffered by the heirs of the victim on account of her untimely and gruesome death.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PARDO, *J.*:

The case is before the Court on automatic review of the decision[1] of the Regional Trial Court, Surigao del Sur, Branch 29, Bislig, finding accused George Cortes *y* Ortega guilty beyond reasonable doubt of murder and sentencing him to the supreme penalty of death.

On August 12, 1998, provincial prosecutor Alfredo J. Pondoc of Surigao del Sur filed with the Regional Trial Court, Surigao del Sur, Branch 29, Bislig, an Information for murder against accused George Cortes *y* Ortega, which reads as follows:

"That on or about 11:00 o'clock in the evening, more or less, of June 24, 1998, at P. Lindo Street, Saint Paul District, Nangagoy, Bislig, Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with treachery and evident premeditation, armed with a knife and with intent to kill did then and there willfully, unlawfully and feloniously attacked, assault and stabbed one Edlyn S. Gamboa, a

[1] Original Record, Decision, pp. 35-37.

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16 year old girl, thereby inflicting the latter multiple stab wounds on her body which caused her instantaneous death as certified by the doctor, to the damage and prejudice of the victim's heirs.

Contrary to law: In violation of Article 248 of the Revised Penal Code."[2]

On June 24, 1998, at about eleven o'clock in the evening, Junilla Macaldo was sitting on a bench outside her house located at P. Lindo St., Saint Paul District, Mangagoy, Bislig, Surigao del Sur. While thus seated, Edlyn Gamboa came to her asking for the whereabouts of Yen-yen Ibuña. Junilla noticed that Edlyn was followed by accused George Cortes. Junilla then instructed Edlyn to go upstairs of the house. When Edlyn complied, accused followed her and successively stabbed her several times. Junilla tried to help Edlyn, but accused overpowered her. In a moment, Edlyn was able to run away despite being wounded; however, she collapsed five (5) meters away from where she was stabbed. Junilla shouted for help. At this juncture, accused scampered away. Edlyn was able to stand up but again collapsed after walking about five (5) steps. She was brought to the Babano Medical Clinic, where she expired.

Accused admitted that he stabbed Edlyn. He mistook Edlyn for her male companion against whom he had an altercation earlier. He committed the mistake because at the time of the incident, accused was very drunk and the place was very dark. He only learned that he had stabbed the wrong person the following morning through the radio vigilantes program.

On August 28, 1998 the trial court arraigned the accused.[3] He entered a plea of guilty.[4] In virtue of his plea of guilty, the trial court proceeded to satisfy itself of the voluntariness of the plea by propounding questions to the accused to find out if he understood his plea and the legal consequence thereof. Accused, assisted by counsel, reiterated his plea of guilty and the extra judicial confession he executed before the police.

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[2] Information, *Rollo*, pp. 6-7.

[3] Original Record, Certificate of Arraignment, p. 31.

[4] *Ibid.*

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Nonetheless, the prosecution proceeded to present evidence to prove the presence of aggravating circumstances. The accused on the other hand presented evidence proving the mitigating circumstances that attended the commission of the crime.

The prosecution alleged that the aggravating circumstances of evident premeditation, cruelty, nighttime, abuse of superior strength, disrespect to sex, and intoxication were present in the commission of the crime. The accused, on the other hand, raised the attendance of the mitigating circumstances of voluntary surrender, plea of guilty, mistaken identity and the alternative mitigating circumstance of intoxication.

On September 2, 1998, the trial court after considering the aggravating and mitigating circumstances attendant found the existence of the aggravating circumstances and appreciated only the mitigating circumstance of plea of guilty that was offset by one of the aggravating circumstances. The trial court then proceeded to rule on the appropriate penalty to be imposed on the accused. The trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the court finds the accused guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended by the Republic Act 7659, otherwise known as the Death Penalty Law and is hereby sentenced to suffer the penalty of Death, to indemnify the family of the victim in the amount of ₱60,000.00, and to pay damages in the amount of ₱200,000.00 and cost ."[5]

Hence, this review.[6]

Accused raises the following errors imputed to the trial court:

1. In finding that the aggravating circumstances of evident premeditation, cruelty, nighttime, abuse of superior strength, sex and intoxication attended the commission of the crime charged; and

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[5] Original Record, Decision, pp. 35-37, at p. 37.

[6] On July 20, 1999, we accepted the case. *Rollo*, p. 15.

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2. In imposing the death penalty upon accused instead of *reclusion perpetua.*

According to the accused, the prosecution failed to prove the aggravating circumstances of evident premeditation and other circumstances attending the commission of the crime.

We agree with the accused that the prosecution did not prove the aggravating circumstance of evident premeditation. "The prosecution failed to establish the following elements of this aggravating circumstance: (a) the time when the accused determined to commit the crime, (b) an act manifestly indicating that the accused clung to that determination, and (c) a lapse of time between the determination and the execution sufficient to allow the accused to reflect upon the consequences of the act."[7]

As to the aggravating circumstance of cruelty, although the accused stabbed the victim several times, the same could not be considered as cruelty because there was no showing that it was intended to prolong the suffering of the victim. "For cruelty to be appreciated against the accused, it must be shown that the accused, for his pleasure and satisfaction, caused the victim to suffer slowly and painfully as he inflicted on him unnecessary physical and moral pain. The crime is aggravated because by deliberately increasing the suffering of the victim the offender denotes sadism and consequently a marked degree of malice and perversity. The mere fact of inflicting various successive wounds upon a person in order to cause his death, no appreciable time intervening between the infliction of one (1) wound and that of another to show that he had wanted to prolong the suffering of his victim, is not sufficient for taking this aggravating circumstance into consideration."[8]

As to the aggravating circumstance of nighttime, the same could not be considered for the simple reason that it was not specifically sought in the commission of the crime. "Night-time becomes an

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[7] *People v. Torres*, G.R. No. 138046, December 8, 2000.

[8] *People v. Magayac*, 330 SCRA 767, 775-776 [2000], citing *People v. Dayug,* 49 Phil. 423 [1926]; *People v. Estorco*, G.R. No. 111941, April 27, 2000.

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aggravating circumstance only when (1) it is specially sought by the offender; (2) the offender takes advantage of it; or (3) it facilitates the commission of the crime by insuring the offender's immunity from identification or capture."[9] In the case at bar, no evidence suggests that accused purposely sought the cover of darkness to perpetrate the crime, or to conceal his identity.

"The trial court erred in further appreciating the aggravating circumstance of abuse of superior strength. Abuse of superior strength is absorbed in treachery, so that it can not be appreciated separately as another aggravating circumstance."[10] Here, treachery qualified the offense to murder.

As to the aggravating circumstance of disregard of sex, the same could not be considered as it was not shown that accused deliberately intended to offend or insult the sex of the victim, or showed manifest disrespect for her womanhood.[11] In fact, the accused mistook the victim for a man.

"Ordinarily, intoxication may be considered either aggravating or mitigating, depending upon the circumstances attending the commission of the crime. Intoxication has the effect of decreasing the penalty, if it is not habitual or subsequent to the plan to commit the contemplated crime; on the other hand, when it is habitual or intentional, it is considered an aggravating circumstance. A person pleading intoxication to mitigate penalty must present proof of having taken a quantity of alcoholic beverage prior to the commission of the crime, sufficient to produce the effect of obfuscating reason. At the same time, that person must show proof of not being a habitual drinker and not taking the alcoholic drink with the intention to reinforce his resolve to commit the crime."[12]

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[9] *People v. Gallego*, G.R. No. 130603, August 15, 2000; *People v. Bohol,* G.R. No. 130587, July 12, 2000.

[10] *People v. Casturia*, G.R. No. 128819, November 20, 2000, citing *People v. Carillo*, G.R. No. 129528, June 8, 2000.

[11] *Mari v. Court of Appeals*, G.R. No. 127694, May 31, 2000.

[12] *People v. Pinca*, 318 SCRA 270 [1999]; *People v. Tambis*, 311 SCRA 430 [1999].

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Accused argues that in the absence of any of the aggravating circumstances alleged in the information and considering that there was one mitigating circumstance attendant, that of plea of guilty, the penalty imposable is not death but *reclusion perpetua*.

The Solicitor General agrees with the accused that "the only aggravating circumstance present was treachery which qualified the killing to murder and that there were two mitigating circumstances of plea of guilty and intoxication, not habitual. The penalty shall be *reclusion perpetua*, not death, in accordance with Article 63 in relation to Article 248 of the Revised Penal Code, as amended by Republic Act No. 6759.

We also award ₱50,000.00 as moral damages in keeping with current jurisprudence. Moral damages is proper considering the mental anguish suffered by the heirs of the victim on account of her untimely and gruesome death.[13]

WHEREFORE, the decision of the Regional Trial Court, Surigao del Sur, Branch 29, Bislig, in Criminal Case No. 2026 convicting accused George Cortes *y* Ortega of murder is *AFFIRMED* with *MODIFICATION* as to the penalty imposed. In lieu of the death penalty, the accused George Cortes *y* Ortega is hereby sentenced to *reclusion perpetua*, with all the accessory penalties of the law, to indemnify the heirs of the victim in the amount of fifty thousand pesos (₱50,000.00) as death indemnity, and fifty thousand pesos (₱50,000.00) as moral damages and to pay the costs of suit.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Buena, Ynares-Santiago, De Leon, Jr., and *Sandoval-Gutierrez, JJ.*, concur.

Panganiban, J., abroad on official leave.

Quisumbing, J., on official leave.

Gonzaga-Reyes, J., on leave.

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[13] *People v. de la Cruz*, G. R. No. 128362, January 16, 2001; *People v. Espanola*, 271 SCRA 689, 717 [1997].