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FIRST DIVISION

[G.R. No. 126281. June 10, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SERGIO A. CARATAO,** *appellant.*

SYNOPSIS

Appellant was charged with the crime of murder for the death of Edgardo Bulawin. He interposed the defense of self-defense to exculpate himself, but the trial court did not appreciate the same. Consequently, the trial court found appellant guilty as charged and sentenced him to suffer the penalty of *reclusion perpetua.* Hence, this appeal.

The Supreme Court ruled that at the heart of the claim of self-defense is the presence of an unlawful aggression committed against appellant. Without unlawful aggression, self-defense will not have a leg to stand on and this justifying circumstance cannot and will not be appreciated, even if the other elements are present. Unlawful aggression refers to an attack amounting to actual or imminent threat to the life and limb of the person claiming self-defense. In the case at bar, the unlawful aggression was convincingly established to have emanated from appellant, and not from the victim. Appellant having failed to discharge the burden of establishing his defense, his conviction necessarily follows on the basis of his admission of the killing.

The Court further ruled that the killing in the case at bar was not attended by treachery for failure of the prosecution's evidence to prove the presence of the second element, namely, that appellant deliberately adopted the mode of attack. However, the Court appreciated the mitigating circumstance of voluntary surrender.

In the absence of the qualifying circumstance of treachery, the Court held that the crime committed is homicide, not murder.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF EVIDENCE; SHIFTS ON THE ACCUSED CLAIMING SELF-DEFENSE.— [W]here an accused admits killing the victim but invokes self-defense

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to escape criminal liability, he assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim. This is known as a shift in the burden of the evidence, and as a result thereof the person claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution's. Furthermore, on appeal, appellant must show that the court below committed reversible error in appreciating the evidence.

2. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.**— To prove self-defense, the accused must show with clear and convincing evidence: (1) that the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person claiming self-defense; (2) that there was reasonable necessity in the means employed to prevent or repel the unlawful aggression; and (3) that there was lack of sufficient provocation on the part of the person claiming self-defense or, at least, that any provocation executed by the person claiming self-defense was not the proximate and immediate cause of the victim's aggression.

3. **ID.; ID.; ID.; ID.; PRESENCE OF UNLAWFUL AGGRESSION DETERMINES THE APPRECIATION OF SELF-DEFENSE.**— At the heart of the claim for self-defense is the presence of an unlawful aggression committed against appellant. Without unlawful aggression, self-defense will not have a leg to stand on and this justifying circumstance cannot and will not be appreciated, even if the other elements are present. Unlawful aggression refers to an attack amounting to actual or imminent threat to the life and limb of the person claiming self-defense.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF WITNESSES ARE ENTITLED TO FULL FAITH AND CREDIT IN THE ABSENCE OF ILL MOTIVE TO FALSELY TESTIFY AGAINST ACCUSED.**— [W]here there is no evidence that the principal witnesses of the prosecution were actuated by ill motives, their testimonies are entitled to full faith and credit.

5. **ID.; ID.; ID.; NOT ADVERSELY AFFECTED BY INCONSISTENCIES IN THE NARRATION OF WITNESSES ON MINOR DETAILS OF THE CASE.**— There may have been inconsistencies in the narration of the prosecution witnesses on minor details, but these

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do not affect the weight of their testimonies, as these cannot be expected to be uniform to the last details. In fact, a perfectly dovetailing narration by different witnesses could mean that their testimonies were prefabricated and rehearsed. What is primordial is that the mass of testimony jibes on material points.

6. **ID.; ID.; ID.; FINDINGS THEREON BY TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL.**— As to who between the prosecution and the defense witnesses are to be believed, the trial court's assessment enjoys a great amount of respect for the reason that the trial court has the advantage of observing the demeanor of the witnesses as they testify, unless found to be clearly arbitrary or unfounded. In the present case, appellant failed to point out any arbitrariness on the part of the trial court.

7. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS.**— Treachery is present when two conditions concur, namely: (1) that the means, methods and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and (2) that such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person. In the case at bar, the first element was established by the fact that appellant suddenly attacked from behind the unsuspecting and unarmed victim who was then astride his motorcycle. However, we find the prosecution's evidence insufficient to sustain the finding of the presence of the second element, namely, that appellant deliberately adopted the mode of attack.

8. **ID.; ID.; ID.; CANNOT BE APPRECIATED WHEN KILLING IS DONE AT THE SPUR OF THE MOMENT; CASE AT BAR.**— [C]hance encounters, impulse killing or crimes committed at the spur of the moment, or those that were preceded by heated altercations are generally not attended by treachery, for lack of opportunity of the accused deliberately to employ a treacherous mode of attack. In the present case, it appears from the evidence that appellant's grudge against the victim was brought about only moments before the attack, when the latter ignored his repeated pleas for rice. As observed by the trial court, the sight of the victim leaving the compound without heeding appellant's request must have worsened his anger. In

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his testimony, appellant admitted that at that moment, he "forgot himself." Further, he explained that it was then customary for him to bring a knife for his own safety, in defense against lawless elements in their area at the time. It was thus only by chance and not by plan that he attacked the victim the way he did. The stabbing was evidently a result of a rash and impetuous impulse of the moment arising from what appellant perceived to be an unjust act of the victim, rather than from a deliberated action. Hence, as the killing was done at the spur of the moment, treachery cannot be appreciated.

9. **ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ELEMENTS; PRESENT IN CASE AT BAR.**— [W]e find the mitigating circumstance of voluntary surrender present in the case at bar. To benefit an accused, the following requisites of this circumstance must be proven, namely: (1) the offender has not actually been arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary. In the present case, based on SPO4 Capablanca's testimony, appellant's surrender at the station immediately after the incident was spontaneous, showing his intent to submit himself unconditionally to the authorities. He expressly acknowledged having killed the victim, surrendered his knife, and allowed himself to be detained in prison.

10. **CIVIL LAW; DAMAGES; ACTUAL DAMAGES, CIVIL INDEMNITY AND MORAL DAMAGES, AWARDED IN CASE AT BAR.**— [W]e affirm the award of actual damages in the amount of ₱22,050, as these are duly substantiated by receipts and appear to have been genuinely incurred in connection with the death, wake and burial of the victim. The award of civil indemnity in the amount of ₱50,000 is likewise sustained, pursuant to controlling case law. However, we increase the award of moral damages to a more reasonable amount of ₱30,000, in line with prevailing jurisprudence.

11. **ID.; ID.; INDEMNIFICATION FOR LOSS OF EARNING CAPACITY, HOW COMPUTED.**— [T]he heirs of the victim are also entitled to indemnification for the loss of the latter's earning capacity. In a recent case, we explained how to arrive at the amount of this indemnity, thus: "The following factors should be considered in determining the compensable amount of lost earnings: (1) the number of years for which the victim

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would have otherwise lived; and (2) the rate of loss sustained by the heirs of the deceased. Life expectancy is computed using the formula adopted in the American Combined Experience Table of Mortality: 2/3 x (80 – age at death). The rate of loss is arrived at by multiplying life expectancy by the net earnings of the deceased, *i.e.*, the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The net earning is ordinarily pegged at fifty percent of the gross earnings."

12. ID.; ID.; ID.; CASE AT BAR.— Evidence on record reveals that the victim died at the age of 41, and that he was earning an annual gross income of ₱37,432 from his employment with NALCO. The widow's testimony regarding the victim's income from his sideline cannot be considered for lack of the necessary unbiased proof. Thus, applying the above-cited formula, appellant should pay the victim's heirs ₱486,616 as shown by the following computation: 2/3 [80 – 41(age at the time of death)] = 26 (life expectancy) 26 x [₱37,432 x 50% (annual net income)]= ₱486, 616.

APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Libra Law Firm for accused-appellant.

D E C I S I O N

AZCUNA, *J.*:

Sergio A. Caratao appeals from the decision of the Regional Trial Court of Libertad, Butuan City, Branch 3, in Criminal Case No. 5143, dated December 22, 1995, finding him guilty of murder, as follows:

WHEREFORE, in the light of the foregoing findings of facts and law, with the attendan[ce] of the qualifying circumstance of treachery, the court finds the accused Sergio A. Caratao guilty beyond reasonable doubt of the crime of murder under Art. 248, Revised Penal Code. Republic Act No. 7659 defining heinous crimes was not yet passed and effective at the time of the commission of the crime. Accused Sergio A. Caratao is hereby sentenced to suffer the penalty of

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reclusion perpetua, with all the accessory penalties provided for in Art. 41, Revised Penal Code. Further, the knife used in the commission of the crime is hereby declared confiscated and forfeited in favor of the government. Furthermore, he is ordered to indemnify the heirs of the deceased Edgardo "Tado" Bulawin, the following:

(1)₱50,000.00 – for the death of Edgardo "Tado" Bulawin;
(2)₱22,050.00 – as actual damages; and –
(3)₱20,000.00 – as moral damages.

And also to pay the costs.[1]

On July 21, 1992, appellant was charged under an amended information, thus:

That on or about the 27th day of April, 1992, at, more or less, 4:20 o'clock in the evening, at Nalco Commissary Compound, Hill Top Village, Nasipit, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-name[d] accused, armed with a bladed weapon, with intent to kill and with evident premeditation and treachery and with cruelty, did then and there willfully, unlawfully, and feloniously attack, assault and stab Edgardo Bulawin, thus inflicting upon him stab wounds on the different parts of his body, which directly caused his death.

CONTRARY TO LAW: (Article 248, of the Revised Penal Code).[2]

Upon his arraignment on August 11, 1992, appellant, assisted by his counsel, entered a plea of not guilty.[3] Trial thereafter ensued and the court *a quo* rendered the assailed decision.

The prosecution relies on the eyewitness accounts of Martin Sugala, Eugenio Agudera and Roberto Mangmang. The widow of the deceased, Moreta Bulawin, testified to prove civil damages. Their testimonies are summarized below.

Martin Sugala, a rice dispatching checker employed with Nasipit Agusan Lumber Company (NALCO) at Nasipit, Agusan

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[1] RTC Decision, p. 24; RTC Records, p. 191.

[2] RTC Records, p. 76.

[3] Certificate of Arraignment, RTC Records, p. 82; Order, RTC Records, p. 84.

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del Norte, testified that at around 4:00 p.m., appellant and his wife entered the commissary canteen of NALCO. Appellant's wife approached Sugala and told him that her husband was angry. Sugala asked appellant about this. Appellant replied, saying that he was not given additional rice *vale* by the victim Edgardo "Tado" Bulawin, NALCO's rice *vale* issuer. After checking that there was extra rice available, Sugala assured appellant that he would give him an additional 25 kilos.

Shortly thereafter, Sugala saw the victim walk out of the canteen. Sensing that appellant was about to rush to the victim, the witness restrained him and said, "Do not do anything harsh because we are all brothers here, anyway I am giving you [an] additional 25 kilos of rice." He placed his arm around appellant and accompanied him to the issuing area for the additional rice. Upon reaching the issuing area, he first checked the rice being issued to two employees. After this, he noticed that appellant was no longer near him. Through the canteen's screened windows, he next saw appellant standing one meter behind the victim, who was then already astride his motorbike. About 5 meters from Sugala's position, the victim's motorbike was facing towards the exit gate, with its engine already running.[4] At that moment, he saw appellant attack the victim from behind:

Q. What did you observe next?

A. When I saw that Sergio Caratao was already about 1 meter away from the back of Edgardo Bulawin, I shouted to him saying "*Bay,* your rice is ready." At that moment, I saw that the left hand of Caratao was on the shoulder of Bulawin and his right hand was on the side of Bulawin. I thought he only boxed the latter.

Q. Aside from thrusting his hand at the side of Bulawin, what else if any did you see Caratao do with his hand?

A. When the right hand was on the side of Bulawin, it was retracted very fast and I saw that that hand was holding a knife, and [that he] immediately made another thrust towards here. (witness pointing to his nose)

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[4] TSN, October 7, 1992, pp. 8-12.

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ATTY. GONZALES: With the permission of the Court, may we request the witness to re-enact what [he] actually saw, and we request the jail guard to act as the victim.

COURT: Okay.

INTERPRETER: (Jail guard Meode being requested to act as Edgardo Bulawin and the witness as accused Sergio Caratao.)

(Edgardo Bulawin made an initial stance as if riding on a motorcycle with both hands on the handle bars of the motorcycle.)

ATTY. GONZALES:

Q. Where was Caratao when you first saw him, how far was he?

A. This distance, [S]ir. (witness demonstrating a distance of about 1 meter from the back of Bulawin)

Q. Then re-enact what you saw.

A. After I shouted "*Bay*, your rice is ready," I saw Sergio Caratao, in a simultaneous action, place his left hand on the left shoulder of Bulawin and the right hand of Caratao on the right side of Bulawin. When Sergio Caratao withdrew his right hand from the right side of Bulawin, I saw that the right hand has a knife in it, and a second thrusting motion was made towards the face of Bulawin. After that, Bulawin got off from his motorcycle and ran towards the cemented road. Sergio Caratao remained standing on the place of the incident still holding that knife, and after that, Caratao and his wife went home.[5]

Sugala also recalled seeing many people at the scene of the incident, such as some NALCO employees, security guards, and outsiders who buy rice from the canteen called the blackmarketers.[6]

Roberto Mangmang, canteen dispatcher of NALCO, corroborated Sugala's testimony. He testified that in the afternoon of April 27, 1992, while walking from the canteen towards the gate, he saw the victim in a squatting position, tinkering with his motorbike.[7] Shortly thereafter, on his way back to the canteen, at around 4:20 p.m., he saw appellant behind the victim who

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[5] *Id.* at 13-15.

[6] *Id.* at 37.

[7] TSN, November 18, 1992, p. 22.

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was already astride his motorbike facing the gate, with his hands on its handle bars. From a distance of one and a half meter, he witnessed appellant put his left hand on the victim's left shoulder and thrust his right hand on the victim's right side. Immediately thereafter, appellant made another thrust at the victim's face. At that point, Mangmang saw that appellant was holding a dagger, and he later heard somebody shout, "*Do,* run!" The victim then ran out through the gate towards the hospital, while appellant ran home. Mangmang followed the victim and saw his intestines bulging and coming out. He then brought the victim to the nearby hospital aboard a tricycle.[8] He testified having seen many employees in the area at the time of the incident, whom he could not identify.[9]

Eugenio Agudera, the security guard of NALCO, testified that on April 27, 1992, he likewise saw the stabbing incident four meters away from the guardhouse by the gate of the canteen. At around 4:15 p.m., he witnessed appellant sneak from behind the victim who was astride his motorcycle, and stab the victim's right side with a knife. Immediately thereafter, appellant delivered a second blow, with a slashing motion across the victim's mouth. Upon seeing this, he shouted, "Run, *Do*!," directed at the victim. The victim then ran out towards the highway through the gate, while clutching his stomach as it bled profusely.[10] Agudera also confirmed the presence of those who witnessed the incident such as Clemente Felias, Roberto Mangmang, Dino Macabugto, Martin Sugala and the blackmarketers.[11]

Moreta Bulawin, wife of the victim, testified that she saw her husband in St. Christopher Hospital around 4:30 p.m. with stab wounds on his right stomach and upper lip, and a cut across his right cheek.[12] Shortly thereafter, the victim was transferred to Butuan Doctors' Hospital, where he expired. She presented her husband's death certificate to prove his age at the time of death,[13]

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[8] *Id.* at 12-16, & 25.

[9] *Id.* at 32, 36-37.

[10] TSN, October 2, 1992, pp. 6-11.

[11] *Id.* at 12 & 15.

[12] TSN, November 20, 1992, pp. 12-13.

[13] TSN, November 20, 1992, p. 6; RTC Records, Exhibit "C", p. 102.

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and his latest income tax return to prove his annual gross income of ₱37,432.[14] She testified that she spent more than ₱30,000 for hospital and funeral expenses, some of which were supported with receipts.[15]

The defense presented four witnesses, namely, appellant, Nancy Sotis, Delia Peramide, and SPO4 Bienvenido Capablanca.

Taking the witness stand, appellant ***Sergio Caratao*** admitted stabbing the victim, but interposed self-defense to exculpate himself. He testified that on April 27, 1992, at around 4:00 p.m., he was with his wife at the NALCO Commissary Canteen, where the victim was then on duty as rice *vale* issuer. He requested the victim for his rice vale. The victim told him to wait. Appellant hence waited nearby for around ten minutes, while the victim issued rice to others. Appellant thereafter kept begging the victim for his turn, telling him "*Do*, give me my rice because I have nothing to eat for supper," but the victim made no reply. Despite repeated pleas, he was not given any rice. Upon seeing the victim leave the issuing area, he kept silent and walked away. He went to his wife and told her that he was unable to get rice. His wife then left.

Shortly thereafter, appellant also left to go home. On his way out, he saw the victim getting his motorbike. He approached the victim, who at that point was already mounted on his motorcycle, holding the handle bars, with the engine already running. As appellant stood one meter away from the victim, along the right side of the motorcycle, he asked, "*Do*, how about my rice?" The victim answered, "That is no longer my problem. Why are you forcing me?" Appellant persisted with his pleas, and the victim angrily answered back, "Are you forcing me?" Immediately thereafter, the victim punched appellant's face with his right fist and said, "You are always like that, you are forcing me." Appellant was thrown backward, and the victim

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[14] TSN, November 20, 1992, pp. 21-23; RTC Records, Exhibit "K", p. 110.

[15] TSN, November 20, 1992, pp. 26-30; RTC Records, Exhibits "L, M, N, O & P", pp. 112-115.

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moved his motorbike forward, hitting appellant's left thigh near the groin. Appellant then held the victim's right hand, and when the victim tried to break free, he twisted it. Thereafter, with a knife on his right hand, he stabbed the right portion of the victim's belly. In retaliation, the victim punched appellant with his left fist, hitting appellant's mouth. The victim thereafter ran, while appellant remained standing for about ten minutes. He later followed the victim to the gate, and saw the victim from afar boarding a tricycle alone. Appellant went home to get his tricycle and immediately drove to the municipal hall, where he voluntarily surrendered.[16]

In his testimony, appellant denied seeing any guard at the guardhouse at the time of the incident. He saw Mangmang only, inside the canteen,[17] and denied hearing anyone shout "Run, *Do*!"[18] On his way out of the gate after the stabbing, he noticed only one person in the compound, a woman sitting under the jackfruit tree at the corner by the gate, whom he does not know. He recalled seeing other people outside the gate of the canteen, whom he could not identify.[19] On cross-examination, however, he confirmed the presence of Agudera outside the said gate.[20]

Nancy Sotis, a blackmarketer who frequented the NALCO canteen, testified that she was seated under a jackfruit tree by the gate of the canteen the whole day of April 27, 1992.[21] At about 4:00 P.M., from a distance of four meters, she saw the victim astride his motorcycle, with its engine already running. Appellant then approached the victim and stood in front of the latter, a little obliquely to the right. She saw appellant utter something to the victim, which she did not hear because of the sound of the engine. She looked away, and when she glanced back at their direction, she saw the victim punch appellant in

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[16] TSN, January 12, 1993, pp. 3-17.

[17] *Id.* at 28.

[18] *Id.* at 31.

[19] *Id.* at 15-16.

[20] *Id.* at 27.

[21] TSN, December 2, 1992, p. 28.

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the face with his right hand. Appellant then thrust something near the victim's abdomen. Upon seeing appellant pull out a knife from the victim's abdomen, she shouted to the people outside the fence of the canteen. When she looked back, he saw the victim raise his right fist towards appellant's face. Appellant then stabbed the victim's face with his knife. The victim thereafter alighted from his motorcycle and walked towards the gate, holding his bleeding abdomen. The people outside the fence were about to meet and assist him, but they later turned back when they saw appellant following the victim.[22]

Sotis testified that there was nobody near the victim and appellant at the time of the incident.[23] She denied seeing Mangmang,[24] but confirmed that Sugala was then inside the canteen.[25] She admitted having seen in the morning a security guard at the guardhouse, by the name of Felias, but was uncertain as to his presence from noontime onwards.[26] She denied seeing any guard at the gatepost at the time of the incident,[27] but admitted seeing Agudera approach the victim when the latter was about to go out of the gate.[28]

Delia Peramide, a blackmarketer like Sotis, testified to rebut the statement of prosecution eyewitness Mangmang, who declared that he brought the victim to the hospital aboard a tricycle. She narrated that in the afternoon of April 27, 1992, while she was in line for consultation inside St. Christopher Hospital, she heard someone shout, "Doctor, there is an emergency." She ran to look outside, and saw a tricycle parked outside the hospital, about 20 to 25 meters away from where she stood. She saw the driver, and a bloodied person curled up on the passenger's seat, whom she later recognized as Tado Bulawin.[29] She declared that when she saw the victim in the tricycle, Mangmang was not with him.

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[22] *Id.* at 4-18.

[23] *Id.* at 15.

[24] *Id.* at 16.

[25] *Id.* at 16, 36-37.

[26] *Id.* at 29-30.

[27] *Id.* at 18, 2-30.

[28] *Id.* at 36.

[29] TSN, December 3, 1992, pp. 3-6.

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She saw Mangmang in the hospital only after 15 minutes, when he was on his way to the emergency room to visit the victim.[30]

SPO4 Bienvenido Capablanca, chief of the operations division of Nasipit PNP Station, testified that at about 4:30 p.m. of April 27, 1992, appellant, looking cool and composed, arrived at the station and told him, "Sir, I voluntarily surrender myself because I have killed somebody." Appellant identified the victim as a certain "Tado," and also surrendered his knife.[31]

For its rebuttal evidence, the prosecution recalled Roberto Mangmang and presented a new witness, Clemente Felias.

Roberto Mangmang, the prosecution eyewitness who testified earlier, added that the victim never boxed appellant, nor did he try to run over the latter with his motorcycle prior to the stabbing, contrary to appellant's claim.[32]

Clemente Felias, the NALCO security guard whose shift was previous to that of prosecution eyewitness Agudera, testified that throughout his tour of duty from 8:00 a.m. to 4:00 p.m., he never saw defense eyewitness Sotis within the compound. He also testified that he, too, witnessed the incident, and declared that it was not true that the victim punched appellant before the stabbing.[33]

The trial court gave credence to the prosecution's version of the incident. It found that the victim's indifference to appellant's repeated pleas for rice must have angered appellant to the point of attacking the victim upon seeing the latter about to leave without heeding his request. It rejected the plea of self-defense for appellant's failure to prove unlawful aggression on the part of the victim. It upheld the presence of treachery, but ruled out the aggravating circumstances of evident premeditation and cruelty, for lack of evidence.

Hence, this appeal.

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[30] *Id.* at 9-10.

[31] TSN, January 21, 1993, pp. 3-5, 8.

[32] TSN, March 8, 1993, p. 11.

[33] *Id.* at 4-5.

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In his brief, appellant submits the following errors:

I. THE HONORABLE COURT GRAVELY ERRED IN NOT FINDING THAT THE KILLING OF THE DECEASED WAS ATTENDED BY [THE] JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE.

II. THE LOWER COURT LIKEWISE GRAVELY ERRED IN HOLDING THAT ACCUSED COMMITTED MURDER BY TREACHERY.

III. THE LOWER COURT ALSO GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT.[34]

In his first and third assignment of errors, appellant assails the trial court for giving credence to the prosecution's evidence and disregarding his claim of self-defense.

The settled rule is that where an accused admits killing the victim but invokes self-defense to escape criminal liability, he assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim.[35] This is known as a shift in the burden of the evidence, and as a result thereof the person claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution's.[36] Furthermore, on appeal, appellant must show that the court below committed reversible error in appreciating the evidence.[37]

To prove self-defense, the accused must show with clear and convincing evidence: (1) that the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person claiming self-defense; (2) that there was reasonable necessity in the means employed to prevent or repel the unlawful aggression; and (3) that there was lack of sufficient provocation on the part of the person claiming self-defense or, at least, that any provocation executed by the person claiming

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[34] *Rollo*, pp. 86-87.

[35] *People v. Real*, 308 SCRA 244 (1999).

[36] *People v. Belaje*, 345 SCRA 604 (2000).

[37] *People v. Saure*, G.R. No. 135848, March 12, 2002.

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self-defense was not the proximate and immediate cause of the victim's aggression.[38]

At the heart of the claim for self-defense is the presence of an unlawful aggression committed against appellant. Without unlawful aggression, self-defense will not have a leg to stand on and this justifying circumstance cannot and will not be appreciated, even if the other elements are present.[39] Unlawful aggression refers to an attack amounting to actual or imminent threat to the life and limb of the person claiming self-defense.[40] The admission of appellant in his testimony that he stabbed the victim makes it incumbent upon him convincingly to prove that there was unlawful aggression on the part of the victim which necessitated the use of deadly force.[41] In the case at bar, appellant tried to prove that the unlawful aggression emanated from the victim, who punched him in the face and hit him in the thigh with his motorbike, without provocation on his part. This the trial court found unconvincing, thus:

> Under the situation where Tado Bulawin was in a riding position on his motorcycle, holding its handle bars, ready to start the engine, the court finds it incredible for him to be the unlawful aggressor. Instead, Sergio Caratao's being made to wait and make repeated requests or pleas for his *vale* of rice must have moved him to be the unlawful aggressor thereby inflicting stab wounds on the victim Tado Bulawin. For the circumstance of self-defense to be appreciated, it must be shown that the compulsion is of such character that the accused is left with no opportunity to escape or self-defense [*sic*] in equal combat (*People v. Fronda*, 222 SCRA 71). And this is not the set-up in the case at bar. The prosecution version merits belief and credence beyond reasonable doubt.[42]

We agree with the foregoing finding of the trial court. Appellant's account of the circumstances of the attack does not inspire belief.

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[38] *People v. Enfectana, et al.*, G.R. No. 132028, April 19, 2002.

[39] *Supra*, note 37.

[40] *Supra*, note 38.

[41] *Ibid.*

[42] RTC Decision, p. 20; RTC Records, p. 187. Citations omitted.

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First, according to appellant's testimony, after an exchange of words, the victim punched him in the face, and thereafter hit his left thigh with his motorcycle. Appellant held the victim's hand, twisted it and stabbed the latter in the abdomen. The victim then punched appellant in the mouth with his left fist. After this, the victim ran away. Noticeably, in this narration, nowhere did appellant mention that he stabbed the victim for the second time in the face. This is in conflict with the testimonies of the prosecution witnesses, and even of the defense witness Sotis, who all narrated that appellant stabbed the victim in the mouth. Appellant's account, moreover, does not jibe with the physical evidence showing the victim's injuries below the nose and across the cheek.[43]

Second, on cross-examination, appellant missed the part where the victim allegedly hit his left thigh with the motorcycle, testifying that after the first punch, he immediately stabbed the victim.[44] Interestingly, defense witness Sotis also made no mention of this important portion,[45] rendering it highly dubious.

Third, we agree with the trial court's observation that the circumstances of the victim's alleged assault on appellant is not credible, thus:

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Further, his contention that Tado Bulawin while still in that riding position boxed him and that Tado Bulawin let run his motorcycle pushing forward hitting accused on his thigh also do not inspire belief because accused Sergio Caratao was positioned at the right side of the motorcycle, not in front, and if at all Tado Bulawin boxed him in that riding position, the motorcycle could have probably fallen down. But [there was] no proof that it did fall.[46]

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[43] RTC Records, p. 108, Exhibit "G"; TSN, November 20, 1992, pp. 13, 20-21.

[44] TSN, January 12, 1993, p. 30.

[45] TSN, December 2, 1992, p. 12.

[46] RTC Decision, p. 19, RTC Records, p. 186.

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We further observe that in their relative positions, appellant had more freedom of action than the victim who was riding his motorcycle. Moreover, it is hardly believable that the victim in that position would have the strength to punch appellant in the face with his left fist, after being stabbed in his right abdomen. All the eyewitness accounts showed that, after being stabbed, the victim left his motorcycle and walked away while clutching his bleeding abdomen with both hands.[47]

Fourth, we note that as between appellant and the victim, appellant had more hatred to harbor arising from the fact that the victim refused to give him his rice *vale*. He thus had more motive to do harm than the victim. On the witness stand, he reasoned that he stabbed the victim, not to repel the victim's attack, nor out of fear for his life, but specifically because he "lost his temper."[48]

Fifth, we note that appellant's plea of self-defense is rendered doubtful by the fact that he invoked it for the first time only upon taking the witness stand for his defense. When he surrendered at the police station, he only reported that he had killed a certain "Tado," but never raised self-defense to exculpate himself. Records also show that appellant waived his right to a preliminary investigation and submission of counter-affidavits.[49] We have ruled that an appellant's failure to inform the police upon his surrender that he acted in self-defense is fatal to his defense.[50] A righteous individual will not cower in fear but rather unabashedly admit the killing at the earliest opportunity if he were morally justified in so doing. A belated plea suggests that it is false and only an afterthought made as a last-ditch effort to avoid the consequences of the crime.[51]

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[47] TSN, October 2, 1992, p. 11; TSN, October 7, 1993, p. 36; TSN, November 18, 1992, p. 15; December 2, 1992, p. 17.

[48] TSN, January 12, 1993, p. 18.

[49] RTC Records, p. 62.

[50] *People v. Saure, supra*, note 37.

[51] *People v. Salazar*, 221 SCRA 170 (1993).

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Appellant tried to obtain corroboration from Sotis and Peramide to prop up his defense and to assail the prosecution's testimonies. The account of Sotis, however, was put to question by the rebuttal testimony of Felias, whom Sotis admitted to having seen on the day of the incident. Felias in his testimony denied seeing her under the jackfruit tree near the guardhouse, or anywhere within the compound on that day. Peramide's testimony, on the other hand, failed to cast doubt on the testimony of prosecution witness Mangmang, as it was established that when she saw the tricycle where Mangmang claimed to have ridden going to the hospital, it was already parked. It therefore does not render false Mangmang's claim that he brought the victim to the hospital, as he could already have alighted from the vehicle by the time Peramide saw it.

Moreover, appellant has not shown that the prosecution witnesses had any ill motive against him, which would have moved them falsely to implicate him. On the contrary, he admitted on cross-examination that prosecution witness Sugala is his friend.[52] Prosecution witness Mangmang further testified that appellant was his neighbor in their younger days, and that appellant's brother is his friend.[53] It is worth reiterating that where there is no evidence that the principal witnesses of the prosecution were actuated by ill motives, their testimonies are entitled to full faith and credit.[54]

All told, no matter how appellant tried to cast doubt on the veracity of the testimonies of the prosecution, we find the prosecution witnesses to be more credible than those of the defense. There may have been inconsistencies in the narration of the prosecution witnesses on minor details, but these do not affect the weight of their testimonies, as these cannot be expected to be uniform to the last details.[55] In fact, a perfectly dovetailing narration by different witnesses could mean that their testimonies

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[52] TSN, January 12, 1993, p. 26.

[53] TSN, November 18, 1992, p. 21.

[54] *People v. Milliam*, 324 SCRA 155 (2000).

[55] *Supra*, note 35.

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were prefabricated and rehearsed.[56] What is primordial is that the mass of testimony jibes on material points.[57]

Furthermore, even assuming that appellant succeeded in weakening the prosecution's evidence, such will not suffice to exculpate him. He must rely on the strength of his own evidence, and not on the weakness of that of the prosecution, for even if it were weak, it could not be disbelieved after his open admission of responsibility for the killing.[58]

Finally, the question whether or not appellant acted in self-defense is essentially a question of fact.[59] The trial court found the testimonies of the prosecution worthy of belief. As to who between the prosecution and the defense witnesses are to be believed, the trial court's assessment enjoys a great amount of respect for the reason that the trial court has the advantage of observing the demeanor of the witnesses as they testify, unless found to be clearly arbitrary or unfounded.[60] In the present case, appellant failed to point out any arbitrariness on the part of the trial court.

Thus, we find that the court *a quo* was correct in upholding the testimonies of the prosecution. The unlawful aggression was convincingly established to have emanated from appellant, and not from the victim. Appellant having failed to discharge the burden of establishing his defense, his conviction necessarily follows on the basis of his admission of the killing.[61]

This brings us to appellant's second assignment of error on the finding of treachery.

Treachery is present when two conditions concur, namely: (1) that the means, methods and forms of execution employed

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[56] *People v. Piedad, et al.*, G.R. No. 131923, December 5, 2002.

[57] *People v. Delim, et al.*, G.R. No. 142773, January 28, 2003.

[58] *People v. Cueto*, G.R. No. 147764, January 16, 2003; *People v. Saure, supra.*

[59] *Arcona v. CA*, G.R. No. 134784, December 9, 2002.

[60] *Supra*, note 58.

[61] *Ibid.*

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gave the person attacked no opportunity to defend himself or to retaliate; and (2) that such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person.[62] In the case at bar, the first element was established by the fact that appellant suddenly attacked from behind the unsuspecting and unarmed victim who was then astride his motorcycle. However, we find the prosecution's evidence insufficient to sustain the finding of the presence of the second element, namely, that appellant deliberately adopted the mode of attack.

Repeatedly upheld has been the rule that chance encounters, impulse killing or crimes committed at the spur of the moment, or those that were preceded by heated altercations are generally not attended by treachery, for lack of opportunity of the accused deliberately to employ a treacherous mode of attack.[63] In the present case, it appears from the evidence that appellant's grudge against the victim was brought about only moments before the attack, when the latter ignored his repeated pleas for rice. As observed by the trial court, the sight of the victim leaving the compound without heeding appellant's request must have worsened his anger.[64] In his testimony, appellant admitted that at that moment, he "forgot himself."[65] Further, he explained that it was then customary for him to bring a knife for his own safety, in defense against lawless elements in their area at the time.[66] It was thus only by chance and not by plan that he attacked the victim the way he did. The stabbing was evidently a result of a rash and impetuous impulse of the moment arising from what appellant perceived to be an unjust act of the victim, rather than from a deliberated action.[67] Hence, as the killing was done at the spur of the moment, treachery cannot be appreciated.[68]

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[62] *Luces v. People of the Phils.*, G.R. No. 149492, January 20, 2003.

[63] *People v. Gonzales, Jr.*, 359 SCRA 352 (2001).

[64] RTC Decision, p. 17, RTC Records, p. 184.

[65] TSN, January 12, 1993, p. 18.

[66] *Id.* at 22.

[67] *People v. Tugbo, Jr.*, 196 SCRA 133 (1991).

[68] *People v. Nitcha*, 240 SCRA 283 (1995).

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Furthermore, we find the mitigating circumstance of voluntary surrender present in the case at bar. To benefit an accused, the following requisites of this circumstance must be proven, namely: (1) the offender has not actually been arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary.[69] In the present case, based on SPO4 Capablanca's testimony, appellant's surrender at the station immediately after the incident was spontaneous, showing his intent to submit himself unconditionally to the authorities. He expressly acknowledged having killed the victim, surrendered his knife, and allowed himself to be detained in prison.

In the absence of the qualifying circumstance of treachery, the crime committed is Homicide, not Murder.[70] The penalty therefor, under Article 249 of the Revised Penal Code, is *reclusion temporal*. Considering the attendant mitigating circumstance of voluntary surrender, the penalty should be imposed in its minimum period, pursuant to Article 64 (2) of the aforesaid Code.[71] Applying the Indeterminate Sentence Law, appellant's sentence will consist of a minimum that is anywhere within the full range of *prision mayor*, and a maximum which is anywhere within *reclusion temporal* in its minimum period. We hereby fix it to be from eight (8) years of *prision mayor* as minimum, to thirteen (13) years of *reclusion temporal*, as maximum.

Coming now to the matter of damages, we affirm the award of actual damages in the amount of ₱22,050, as these are duly substantiated by receipts and appear to have been genuinely incurred in connection with the death, wake and burial of the victim. The award of civil indemnity in the amount of ₱50,000 is likewise sustained, pursuant to controlling case law.[72] However, we increase the award of moral damages to a more reasonable amount of ₱30,000, in line with prevailing jurisprudence.[73]

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[69] *Luces v. People of the Phils.*, G.R. No. 149492, January 20, 2003.

[70] *People v. Fernandez*, G.R. No. 134762, July 23, 2002.

[71] *People v. Zeta*, G.R. Nos. 140901-02, May 9, 2002.

[72] *People v. Rabanal*, G.R. No. 146687, August 22, 2002.

[73] *People v. Mondijar*, G.R. No. 141914, November 21, 2002.

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Finally, we rule that the heirs of the victim are also entitled to indemnification for the loss of the latter's earning capacity. In a recent case, we explained how to arrive at the amount of this indemnity, thus:

> The following factors should be considered in determining the compensable amount of lost earnings: (1) the number of years for which the victim would have otherwise lived; and (2) the rate of loss sustained by the heirs of the deceased. Life expectancy is computed using the formula adopted in the American Combined Experience Table of Mortality: 2/3 x (80 – age at death). The rate of loss is arrived at by multiplying life expectancy by the net earnings of the deceased, *i.e.*, the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The net earning is ordinarily pegged at fifty percent of the gross earnings.[74]

Evidence on record reveals that the victim died at the age of 41,[75] and that he was earning an annual gross income of ₱37,432 from his employment with NALCO.[76] The widow's testimony regarding the victim's income from his sideline cannot be considered for lack of the necessary unbiased proof.[77] Thus, applying the above-cited formula, appellant should pay the victim's heirs ₱486,616 as shown by the following computation:

> 2/3 [80 – 41(age at the time of death)] = 26 (life expectancy)
> 26 x [₱37,432 x 50% (annual net income)]= ₱486, 616[78]

WHEREFORE, the decision of the court *a quo* is *MODIFIED*. Appellant Sergio A. Caratao is found *GUILTY* beyond reasonable doubt of Homicide, and is sentenced to suffer the penalty of an indeterminate sentence of from eight (8) years of *prision mayor* as minimum to thirteen (13) years of *reclusion temporal* as maximum. Appellant is further ordered to pay the heirs of the victim the amounts of ₱50,000 as death indemnity, ₱30,000

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[74] *People v. San Pascual, et al.*, G.R. No. 137746, October 15, 2002.

[75] Certificate of Death, RTC Records, p. 102.

[76] Income Tax Return, RTC Records, p. 110.

[77] *People v. Panabang*, G.R. Nos. 137514-15, January 16, 2002.

[78] *Supra*, note 74.

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as moral damages, ₱22,050 as actual damages and ₱486,616 as indemnity for the victim's loss of earning capacity. The decision under review is *AFFIRMED* in all other respects. Costs *de oficio*.

SO ORDERED.

Davide, Jr., C. J. (Chairman), Vitug, Ynares-Santiago, and *Carpio, JJ.*, concur.

SECOND DIVISION

[G.R. No. 131842. June 10, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DIONISIO JACKSON,** *accused-appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of rape for sexually abusing a twelve-year old girl. He was sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal.

In affirming the conviction of appellant, the Supreme Court ruled that appellant's conviction was based on the positive and direct testimony of the victim. The absence of evidence of any improper motive on her part to testify as principal witness of the prosecution strongly tends to sustain the conclusion that no such improper motive existed at the time she testified and her testimony is worthy of full faith and credit. When the victim's testimony of her violation is corroborated by the physical evidence of penetration, there is sufficient foundation for concluding that there was carnal knowledge.

The Court further ruled that sexual intercourse with a woman who is a mental retardate constitutes statutory rape, which does