

Investigation into the shooting of fishing boat Guang Da Xing No. 28 by
a Philippine government vessel

Ministry of Justice
Taipei, Republic of China
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1. Basic facts

- A. Arnold Dela Cruz y Enriquez was commanding officer of the Republic of the Philippines (hereinafter the Philippines) patrol vessel MC-3001. Said vessel, constructed of fiberglass, is 30 meters in length, 6 meters in beam and weighs 115.45 tons. It was armed with 15 weapons: one .30-caliber machine gun (firing 7.62 millimeter ammunition), eight M16 rifles (firing 5.56 mm ammunition), and six M14 rifles (firing 7.62 mm ammunition). There were 20 personnel onboard; in addition to Arnold Dela Cruz y Enriquez, there were 16 members of the Philippine Coast Guard and three agents of the Philippine Bureau of Fisheries and Aquatic Resources.
- B. At roughly 9:45 a.m. May 9, 2013, the Philippine vessel spotted Taiwan fishing boat Guang Da Xing No. 28 (registered in Liuqiu Township, Pingtung County; registration CT2-6519, 14.7 meters in length, 3.68 meters in beam, weighing 15.15 tons, constructed of fiberglass reinforced plastic) sailing at 19 degrees 59 minutes 17.02 seconds north latitude, 122 degrees 53 minutes 48.21 seconds east longitude. The fishing boat was unarmed, and crewed by Capt. Hung Yu Chih, Hung Shih Cheng, Hung Chieh Son, and Indonesian national Iman Buchaeri.

Commanding officer Arnold Dela Cruz y Enriquez, suspecting that the Guang Da Xing No. 28 was fishing in the waters in this area (which fall within the overlapping Exclusive Economic Zones (EEZs) of the Republic of China (ROC) and the Philippines), ordered his crew to general quarters and recorded a sighted target in the sea log.

With the entire crew at general quarters, the Philippine vessel

pursued the Guang Da Xing No. 28, with some of the coast guards on deck with their weapons awaiting orders. At 9:58:21, with the GPS onboard the Philippine vessel recording its position as 19 degrees 59 minutes 13.2 seconds north latitude, 122 degrees 54 minutes 50.6 seconds east longitude, commanding officer Arnold Dela Cruz y Enriquez gave the order to use loudspeakers and the blowing of the ship's whistle to command the Guang Da Xing No. 28 to allow Philippine personnel to board it for inspection. To force the fishing boat to stop, he then violated Article VII, Item h of the Philippine Coast Guard Rules of Engagement in the Conduct of Maritime Law Enforcement Operations by ordering the firing of warning shots.

At around 10 a.m., the Guang Da Xing No. 28 was forced by the illegal actions of the Philippine vessel to slow down. When the Philippine vessel drew near, commanding officer Arnold Dela Cruz y Enriquez observed what appeared to be fishing gear in the waters to the starboard side to the fishing boat. Then Hung Chieh Son came out of the cockpit of the fishing boat and gestured to indicate that the fishing gear did not belong to the Guang Da Xing No. 28. To avoid the fishing gear, commanding officer Arnold Dela Cruz y Enriquez ordered his vessel to sail behind the stern of the fishing boat to its port side, so that the two vessels were now abreast and moving in the same direction.

At roughly 10:12 a.m., as Philippine coast guards were putting out fenders and ropes in preparation for boarding and inspecting the Guang Da Xing No. 28, Capt. Hung Yu Chih, not wanting to be controlled by the Philippine personnel, suddenly reversed his boat toward the stern of the Philippine vessel, turned the bow in a counterclockwise direction, sailed behind Philippine vessel's stern, put the boat on automatic pilot and sailed away at full speed—over 11 knots—to the port side of the Philippine vessel. All crew members of the Guang Da Xing No. 28 went down to take cover in the engine compartment on the lowest level of the fishing boat. When the Guang Da Xing No. 28 reversed and changed course to flee, there was no physical contact between the two vessels.

C. After the Guang Da Xing No. 28 failed to cooperate for inspection, commanding officer Arnold Dela Cruz y Enriquez ordered his vessel to engage in hot pursuit of the fishing boat, recording this order in the sea log. The Philippine vessel immediately set off in hot pursuit, and while so doing, for safety's sake from beginning to end maintained considerable distance between the two vessels, so that it was always either behind the Guang Da Xing No. 28 or sailing parallel to it; the two vessels never collided, came into contact or caused imminent threat of death or serious injury to the Philippine personnel.

Commanding officer Arnold Dela Cruz y Enriquez, however, in knowing violation of Article VII, Item d of the Philippine Coast Guard Rules of Engagement in the Conduct of Maritime Law Enforcement Operations, which prohibits the use of deadly force in the absence of imminent threat of death or serious injury, ordered several coast guards to fire on the Guang Da Xing No. 28 with the .30-caliber machine gun and M14 and M16 rifles to disable its engine. At the time, the fishing boat was fleeing in a northerly direction at 12-13 knots in strong winds and heavy seas.

This use of high-powered weapons, which should only be employed when faced by armed and hostile opponents, against the unarmed, unhostile fishing boat, constitutes taking advantage of superior strength. Aiming would have been difficult in the heavy seas, and throughout the chase no one was seen on the deck of the Guang Da Xing No. 28. Under these conditions, as shooting to disable the fishing boat's engine clearly could result in the death of its crew members, the attack was an intentional killing.

In the 75 minutes from 10:15 a.m. to 11:30 a.m., Philippine personnel fired 108 shots, 45 of which hit the Guang Da Xing No. 28, with entry points spread across the port side, stern, starboard bow and cockpit. Among the bullets fired was a 7.62 mm round from an M14 (Barrel No. 5006, Grip No. 21) that pierced the portside hull of the fishing boat and entered the engine compartment and hit Hung Shih Cheng in the lower left side of

the neck, penetrating the left carotid artery, trachea and esophagus, causing transverse shattering of the second to sixth thoracic vertebrae, ruptures in the aorta, upper left lung, upper and lower right lung, heavy bleeding and hemopneumothorax. The bullet then fragmented as it exited Hung Shih Cheng's right shoulder blade. Hung Shih Cheng died quickly due to heavy blood loss and hemopneumothorax.

At around 11:30 a.m., after a 75-minute chase, the Philippine vessel abandoned the pursuit after spotting a fishing boat that was clearly not a Philippine boat, worried that it was a boat friendly to the Guang Da Xing No. 28 coming to its aid.

At roughly 11:33 a.m., after losing engine power and beginning to drift at 20 degrees 07 minutes 06.36 seconds north latitude, 122 degrees 59 minutes 42.91 seconds east longitude, the Guang Da Xing No. 28 radioed the ROC Coast Guard Administration (CGA) for help.

On May 11 at approximately 3:30 a.m., the CGA escorted the Guang Da Xing No. 28 under tow into Dafu Fishing Harbor, Liuqiu Township, Pingtung County, whereupon prosecutors and forensic medical examiners boarded the fishing boat to investigate the scene and then conduct an autopsy on Hung Shih Cheng.

2. Clarifications of evidence and findings

A. Location of the incident

According to the voyage data from the Guang Da Xing No. 28's voyage data recorder (VDR), attached to Document No. Yu Er Zi 1021321978, dated May 12, 2013, from the Fisheries Agency under the ROC Council of Agriculture, as well as the ROC Coast Guard Administration document dated May 16, 2013, from 9:21 p.m. May 8 to 3:24 p.m. May 9, 2013, the Guang Da Xing No. 28 was within the 200-nautical-mile Exclusive Economic Zone (EEZ) of the ROC.

GPS data from the Philippine vessel at 9:58:21 a.m. May 9, 2013, put said vessel at 19 degrees 59 minutes 13.2 seconds north latitude, 122 degrees 54 minutes 50.6 seconds east longitude.

B. Personnel onboard Philippine government vessel MCS-3001 at the time of the incident

There were 20 personnel onboard, comprising 17 coast guards and three agents of the Philippine Bureau of Fisheries and Aquatic Resources. Commanding officer Arnold Dela Cruz y Enriquez ordered coast guards to apply the vessel's superior strength against the unarmed, fleeing fishing boat by firing on it with the M14 and M16 rifles, as well as the .30-caliber machine gun.

C. Number of bullets fired and number that hit the Guang Da Xing No. 28

During the pursuit of the Guang Da Xing No. 28, which according to the Philippine government vessel's sea log lasted for 75 minutes, from 10:15 a.m. to 11:30 a.m., 108 rounds were fired, with 45 hitting the fishing boat, with entry points spread across the port side, stern, starboard bow and cockpit.

D. No evidence of a collision

The video footage recorded by Philippine personnel onboard MCS-3001 beginning from the time it approached the Guang Da Xing No. 28 shows no evidence of a collision between the two vessels. Although the hulls of both vessels have scratches of unknown origin indicating collisions, examination showed that the height of the scratches on the two vessels does not match, and a comparison of paint samples from each one by the ROC National Police Agency's Criminal Investigation Bureau failed to find a match. Clearly the two vessels did not collide into or scrape against each other.

E. Evidence indicating the Philippine crew members committed a killing/homicide

The personnel on board MCS-3001 who fired weapons were all clearly aware that in the strong winds and heavy seas at the time aiming would be very difficult, and as there was no one in the Guang Da Xing No. 28's cockpit, its crew could only be taking cover below decks. The Philippine personnel were thus cognizant of the fact that firing on the fishing boat could result in its crew members being hit and killed.

But to disable the Guang Da Xing No. 28, in violation of the Philippine Coast Guard Rules of Engagement in the Conduct of Maritime Law Enforcement Operations, with no imminent threat of death or serious injury to anyone onboard the MCS-3001, upon the order of commanding officer Arnold Dela Cruz y Enriquez seven coast guards fired the .30-caliber machine gun and M14 and M16 rifles at the unarmed, fleeing Guang Da Xing No. 28, taking advantage of absolute superiority of firepower. As all the personnel were aware of the potentially deadly effect of their use of weapons, these actions show a presumed intent to kill.

During the 75-minute pursuit, 108 rounds were fired, 45 of which hit the Guang Da Xing No. 28, with entry points spread across the port side, stern, starboard bow and cockpit. One of the rounds, fired from the M14 operated by Edrando Aquila y Quiapo, pierced the portside hull of the fishing boat (traveling to starboard) at an angle of 84 degrees, entered the engine compartment and hit Hung Shih Cheng in the lower left side of the neck, penetrating the left carotid artery, trachea and esophagus, causing transverse shattering of the second to sixth thoracic vertebrae, ruptures in the aorta, upper left lung, upper and lower right lung, heavy bleeding and hemopneumothorax. The bullet then fragmented as it exited Hung Shih Cheng's right shoulder blade. Hung Shih Cheng died quickly due to heavy blood loss and hemopneumothorax. The intent to kill is clear.

- F. Personnel aboard Philippine patrol vessel MCS-3001 used a machine gun and automatic rifles to stop the ROC fishing boat. When the fishing boat refused to allow boarding, the Philippine

vessel gave pursuit and attacked, strafing the fishing boat with machine gun and automatic rifle fire. Relation of these actions to Philippine regulations concerning the use of weapons is as follows:

- (1) According to Article VII, Item h of the Philippine Coast Guard Rules of Engagement in the Conduct of Maritime Law Enforcement Operations, “Warning shots to prevent the target vessel from escaping or to force the target vessel to comply with instructions to stop and be boarded are prohibited. Instead, personnel in charge of unit afloat shall employ other means necessary to force the target vessel to comply with instructions given.”

The incident occurred in the overlapping Exclusive Economic Zones (EEZs) of the Republic of China (Taiwan) and the Republic of the Philippines. Where a Philippine official vessel believes it must stop an ROC fishing vessel in these waters, the aforementioned Rules of Engagement ought to be followed. Prior to the incident, when the Philippine vessel attempted to cause the ROC fishing vessel to stop by firing warning shots, and later when it fired its guns while in hot pursuit, it was in violation of the Rules of Engagement and not acting in accordance with the law.

- (2) According to Article VII, Item d of the Philippine Coast Guard Rules of Engagement in the Conduct of Maritime Law Enforcement Operations, “The use of deadly force (firearms) should be the last resort and should only be resorted in self-defense or in defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives is present. Towards this end, the principle of proportionality shall always be observed. This principle provides that the force must be reasonable in intensity, duration and magnitude, and based on all facts known at the time. The level of force in terms of the types of weapons and rates of usage must be

limited to that which is reasonably necessary to counter the threat. Moreover, the employment of deadly force/weapons should be controlled, precise and with sufficient fire warnings in order to avoid the accidental inflicting of casualties on innocent civilians. Shooting shall not be resorted to if it will endanger innocent people within the target area.”

According to commanding officer Arnold Dela Cruz y Enriquez of patrol vessel MCS-3001, while engaged in the pursuit, his ship was endangered by the Guang Da Xing No. 28, but the video footage provided by the Philippine Coast Guard, recorded from the time hot pursuit began at 10:15 a.m. through the incident’s end at 11:30 a.m., never once shows the Guang Da Xing No. 28 using any means to ram the Philippine vessel and thus create imminent threat of death or serious injury to the lives of its crew. Nor does the video show the fishing boat crew using any kind of weapon to attack the Philippine vessel. The plot of the fishing boat’s voyage and the video recording show the Guang Da Xing No. 28 fleeing at the high speed of 12-13 knots. In short, the handling of the Guang Da Xing No. 28 never indicates that it engaged in an unlawful assault. Never did it put the Philippine vessel’s crew into imminent threat of death or serious injury or threaten their liberty or property. It can thus be determined that Philippine patrol vessel MCS-3001 was not under unlawful assault, while the 75-minute pursuit and shooting of over 100 rounds at the unarmed fishing boat was clearly in violation of the Philippine Coast Guard Rules of Engagement in the Conduct of Maritime Law Enforcement Operations.

G. Articles in The Revised Penal Code of the Philippines concerning the endangerment of life

Related regulations:

Article 248, concerning murder;

Article 249, concerning homicide;

Article 365, concerning imprudence and negligence

H. Distinction between Article 248, concerning murder, and Article

249, concerning homicide, in The Revised Penal Code of the Philippines

- (1) On June 24, 2006, in Republic Act No. 9346, the Philippine Congress abolished the death penalty, changing all instances of the death penalty in the penal code to reclusion perpetua. Article 248 of The Revised Penal Code of the Philippines addresses murder, stating: “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 temporal in its maximum period to death, if committed with any of the attendant circumstances. ...” For this crime, the sentence shall be imprisonment from 20 years plus 1 day to 40 years.
- (2) Article 249, addressing homicide, states, “Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.” Reclusion temporal is imprisonment from 12 years and 1 day to 20 years.
- (3) The crimes addressed by Articles 248 and 249 are commensurate to the basic categories of crime listed in Article 271 of the Criminal Code of the Republic of China, but the minimum penalty of imprisonment for 12 years and 1 day exceeds that of the ROC, which lists a minimum penalty of 10 years imprisonment.

I. Possible charges against crew members of the MCS-3001 under The Revised Penal Code of the Philippines, according to the results of the investigation

In the Revised Penal Code, which took effect January 1, 1932, Article 248, concerning murder, lists as a criterion “taking advantage of superior strength.” This indicates an intentional excessive use of violence on the part of the aggressor clearly out of proportion to the ability of the party being attacked to defend itself. This does not mean that a party being attacked may not defend him or herself, but rather is determined from the relative strength of the aggressor to the attacked.

In the decision handed down January 26, 2011, in case G. R. No. 186528, “People of the Philippines v. Hemiano De Jesus and Rodelo Morales,” the Supreme Court of the Philippines stated that an attack wherein the aggressors enjoyed superiority in numbers, were armed and the victim had no means with which to defend himself constituted “taking advantage of superior strength.”

In the decision handed down October 5, 2011, in case G. R. No. 178321 “People of the Philippines v. Conrado Laog y Ramin,” the Supreme Court of the Philippines focused on the inequality of forces between the victim and the aggressor.

Personnel aboard Philippine patrol vessel MCS-3001 involved in this case had access to one machine gun and 14 automatic rifles, while the ROC fishing boat was a small, unarmed craft. Those who fired knew that the crew of the Guang Da Xing No. 28 were likely to take cover below decks, but in violation of the Philippine Coast Guard Rules of Engagement in the Conduct of Maritime Law Enforcement Operations, wherein the crew of the MCS-3001 were under no imminent danger of death or injury and enjoyed an absolute advantage in firepower, took aim at the unarmed, fleeing fishing boat and kept it under continual fire for 75 minutes, discharging in the process 108 rounds. A total of forty-five rounds hit the Guang Da Xing No. 28, entering at points spread throughout the hull, and resulting in the mortal wounding of Hong Shih Cheng, who perished from a combination of heavy blood loss and hemopneumothorax. Thus this was a killing carried out while, as the Revised Penal Code of the Philippines states, “taking advantage of superior strength.”

It has been verified that the Guang Da Xing No. 28 was not carrying any weapons, nor were its personnel armed. While being attacked by the MCS-3001, the fishing boat crew had no thought but to escape. The Guang Da Xing No. 28 made no counterattack upon the Philippine vessel. Moreover, in its attempts to escape, the fishing boat did not cause imminent threat of death or serious injury to personnel aboard the Philippine vessel. The Philippine

official vessel is more than twice the size of the Guang Da Xing No. 28, and more than six times its tonnage [MCS-3001: 30 meters in length, 6 meters in beam, 115.45 tons; Guang Da Xing No. 28: 14.7 meters in length, 3.68 meters in beam, 15.15 tons]. The MCS-3001 had a crew of 20 armed with one .30-caliber machine gun, 14 M16 and M14 rifles, and more than 800 rounds of ammunition [.30-caliber machine gun statistics: muzzle velocity of 860 meters/second, rate of fire of 400-500 rounds/minute, effective range of 1,000 meters; rifle statistics: muzzle velocity of 990-1,000 meters/second, rate of fire of 700-950 rounds/minute, effective range of 400 meters]. Having the advantage both in number of crew members and firepower, the Philippine vessel pursued the Guang Da Xing No. 28, which was unarmed and presented no imminent threat of death or serious injury to personnel aboard the MCS-3001, for 75 minutes. During this time, it fired 108 rounds, striking the fishing boat 45 times and killing Hong Shih Cheng. This was an action meeting the stipulations of Point 1, Paragraph 1 of Article 248 of The Revised Penal Code of the Philippines in that the aggressors took advantage of their superior strength.

- J. Comparison of Revised Penal Code of the Philippines Article 248, addressing murder, and Article 249, addressing homicide, with Paragraph 1 of Article 271 of the Criminal Code of the Republic of China

The statutory sentence for murder as defined in Article 248 of The Revised Penal Code of the Philippines is imprisonment from 20 years and 1 day to 40 years; that for homicide as defined in Article 249 of said Code is imprisonment from 12 years and 1 day to 20 years. In Article 271 of the Criminal Code of the Republic of China, the penalty for a person who takes the life of another is death, life imprisonment or imprisonment for not less than 10 years.

Statistics show that for the 10 years between 2003 and 2012, of persons convicted under Paragraph 1 of Article 271, 84.4 percent were sentenced to imprisonment for 20 years or less.

- K. Jurisdiction in the case: the Republic of China or the Republic of

the Philippines

As vessels are part of the floating territory of the flag State, the aggressor patrol vessel MCS-3001 is under the jurisdiction of the Philippines. The victim Guang Da Xing No. 28, being the location of the crime and of the criminal result, is under the jurisdiction of the ROC.

Given that those aboard the MCS-3001 were all Philippine government personnel, there could be difficulties in requesting that the suspects be handed over for trial in the ROC. Thus wording to the following effect was included in the May 2013 letter requesting mutual judicial assistance from the Philippines:

We request that the Philippine government transfer the suspects to the Republic of China (Taiwan) for prosecution and trial on the basis of the coordinated investigations by the two sides, or guarantee that the suspects will be promptly prosecuted, tried and sentenced pursuant to the full extent of Philippine law.

To this, the Philippines responded that it would handle the matter in accordance with the findings of the National Bureau of Investigation, with measures to be taken including, but not limited to, prosecution. The ROC hopes that the Philippines will see justice done by bringing the harshest of penalties to bear on the accused.

L. Charge under ROC law

In the indictment by the Pingtung District Prosecutors Office, the eight suspects Arnold Dela Cruz y Enriquez, Edrando Aguila y Quiapo, Mhelvin II Bendo y Aquilar, Andy Gibb Ronario Golfo, Richard Corpuz y Fernandez, Nicky Renold Aurello, Henry Baco Solomon and Sunny Masangcay y Galan are charged with homicide under Article 271 of the Criminal Code of the Republic of China.

M. Reasons for the simultaneous release of the Taiwan and Philippine investigation reports

Given that the incident involves a transnational maritime crime, mutual judicial assistance and cooperative investigations by both sides are required to clarify the facts and pursue separate prosecutions in accordance with each country's laws. The Ministry of Justice (MOJ) requested judicial assistance with this case, first on May 12 and again on May 14. It then made a third request in response to the Philippines' own request for judicial assistance, on May 24. The MOJ also reiterated that the reports should only be made public, and charges brought against the suspects, after the cooperative investigations and follow-up talks had been completed. On May 27, Taiwan's investigation team, having obtained permission from the Philippine side, departed for the Philippines, while the Philippine investigation team arrived in Taiwan the same day. Both teams returned on May 31. On June 6, representatives from Taiwan flew to the Philippines to exchange opinions on the evidence with their counterparts.

While the investigation teams from both sides analyzed and corroborated the evidence in a professional, scientific manner, there are inherent differences in the legal systems of the two countries. Based on the consensus arrived at through mutual judicial assistance, it would therefore be best for the two sides to jointly verify the results of their investigations and be certain of the applicability of their respective laws before releasing the reports. This would not only demonstrate the cooperative spirit and effectiveness of the investigations, but would also prevent

unsubstantiated and counterproductive speculation.

3. Conclusion

The Ministry of Justice has adopted the following position concerning the Philippine decision to try the defendants for homicide rather than for murder:

- (1) The Criminal Code of the Republic of China and The Revised Penal Code of the Philippines are different in form and cannot be directly compared.
 - a) Homicide as defined in Article 249 of The Revised Penal Code of the Philippines carries a sentence of imprisonment from 12 years and 1 day to 20 years. Murder as defined in Article 248 of said Code indicates an intentional killing committed with attendant circumstances. It carries a sentence of imprisonment from 20 years and 1 day to 40 years. (The Philippines does not practice capital punishment.) For the Philippines, then, murder indicates a more serious form of killing. The crime of intentionally killing a person is, for the Philippines, one dealt with by Articles 248 and 249 of its Revised Penal Code, and carries with it a sentence of imprisonment from 12 years and 1 day to 40 years.
 - b) Article 271 of Chapter 22 of the Criminal Code of the Republic of China deals with the crime of killing (referred to in the statute's official English translation as homicide). Its definition in said Article reads, "A person who takes the life of another shall be sentenced to death or life imprisonment or imprisonment for not less than ten years." Unlike murder as defined in the Philippines' Revised Penal Code, the Criminal Code of the Republic of China does not list a separate statute dealing with killing committed with attendant circumstances.
 - c) Comparing the statutory sentences for intentional killing given in the Criminal Code of the Republic of China and the Philippines' Revised Penal Code: The minimum sentence mandated by the Philippines is imprisonment for 12 years and 1 day, longer than the minimum of imprisonment for 10 years mandated by the Republic

of China in Paragraph 1 of Article 271 of the aforementioned Criminal Code. As the Philippines has abolished the death penalty, its maximum sentence for murder is less severe than that of the Republic of China.

- (2) Republic of China statistics covering the past 10 years (2003 through 2012) for cases involving intentional killings (as defined in Paragraph 1 of Article 271 of the Criminal Code) where the final verdict has been issued show that of 1,929 persons convicted, 15.6 percent were sentenced to death or life in prison, while 84.4 percent were sentenced to imprisonment for 20 years or less. A total of 46.5 percent were sentenced to imprisonment for 12 years or less. Of those convicted of intentional killing, the sentence for 46.5 percent is less than the minimum Philippine statutory sentence for homicide (as defined in Article 249 of the Revised Penal Code), and 84.4 percent had sentences shorter than the maximum Philippine statutory sentence for homicide.
- (3) The Republic of China is a democracy that is a staunch defender of the rule of law and a strong supporter of an independent judiciary. The results of the Philippine investigation into this incident and its decision to indict are largely in accord with the results of the ROC investigation. The ROC respects the Philippine judicial process and calls on the Philippines' judicial bodies to prosecute and sentence the accused in this case to the full extent of the law, based on the facts and evidence presented in this report, thus seeing justice done.

Extracts from The Revised Penal Code of the Philippines

Art. 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 temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

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

Art. 365. Imprudence and negligence. — Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of arresto mayor in its maximum period to prision correccional in its medium period; if it would have constituted a less grave felony, the penalty of arresto mayor in its minimum and medium periods shall be imposed; if it would have constituted a light felony, the penalty of arresto menor in its maximum period shall be imposed.

Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of arresto mayor in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of arresto mayor in its minimum period shall be imposed.

When the execution of the act covered by this article shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than twenty-five pesos.

A fine not exceeding two hundred pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted a light felony.

In the imposition of these penalties, the court shall exercise their sound discretion, without regard to the rules prescribed in Article sixty-four.

The provisions contained in this article shall not be applicable:

1. When the penalty provided for the offense is equal to or lower than those provided in the first two paragraphs of this article, in which case the court shall impose the penalty next lower in degree than that which should be imposed in the period which they may deem proper to apply.
2. When, by imprudence or negligence and with violation of the Automobile Law, to death of a person shall be caused, in which case the defendant shall be punished by prison correccional in its medium and maximum periods.

Reckless imprudence consists in voluntary, but without malice, doing or falling to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing of failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.

Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest.

The penalty next higher in degree to those provided for in this article shall be imposed upon the offender who fails to lend on the spot to the

injured parties such help as may be in this hand to give.

Extracts from the Criminal Code of the Republic of China

Title [Criminal Code of the Republic of China](#)
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Category Ministry of Justice

Part 2 Specific Offenses

Chapter 22 Offenses of Homicide

A person who takes the life of another shall be sentenced to death or life imprisonment or imprisonment for not less than ten years.

Article 271 An attempt to commit an offense specified in the preceding paragraph is punishable.

A person who prepares to commit an offense specified in paragraph 1 shall be sentenced to imprisonment for not more than two years.

A person who takes the life of his lineal blood ascendant shall be sentenced to death or life imprisonment.

A person who negligently causes the death of another shall be sentenced to imprisonment for not more than two years, short-term imprisonment, or a fine of not more than two thousand yuan.

Article 276 A person in the performance of his occupational duties or activities commits an offense specified in the preceding paragraph by neglecting the degree of care required by such occupation shall be sentenced to imprisonment for not more than five years or short-term imprisonment; in addition thereto, a fine of not more than three thousand yuan may be imposed.

Attachments

1. Plotted voyage of the Guang Da Xing No. 28
2. Information from the voyage data recorder
3. Comparison of the two vessels
4. Statistics on persons convicted of killing in the Republic of China