

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERT BETAY AND MANSUETO BETAY, ACCUSED-APPELLANTS.

Ponente: BALTAZAR-PADILLA, J.

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BALTAZAR-PADILLA, J.:

On appeal is the April 24, 2012 Decision[1] of the Regional Trial Court, Branch 22 of Cabagan, Isabela (hereinafter, "RTC") finding appellants Albert Betay and Mansueto Betay guilty beyond reasonable doubt of the crimes of Multiple Murder and Frustrated Murder in Criminal Case No. 22-2129.

Appellants, together with two (2) unidentified persons designated as John Doe and Peter Doe, were charged with the crime of Multiple Murder and Frustrated Murder before the RTC under an Amended Information[2] which reads -

"The undersigned Fourt Assistant Provincial Prosecutor accuses, ALBERT BETAY, MANSUETO BETAY, JOHN DOE and PETER DOE, of the crime of MULTIPLE MURDER AND FRUSTRATED MURDER, defined and penalized under Article 248 of the Revised Penal Code, committed as follows:

That on or about the 5[th] day of July, 2007, in the municipality of Cabagan, province of Isabela, Philippines and within the jurisdiction of this Honorable Court, the said accused, Albert Betay, Mansueto Betay together with John Doe and Peter Doe, whose identities are still to be determined, conspiring, confederating together and helping one another, with intent to kill and with evident premeditation, treachery, did then and there, willfully, unlawfully and feloniously, stage an ambush, explode a land mine and assault, attack and shoot with a gauge 12 shotgun for several times the persons of Barangay Captain Adriano Taccang [sic], Carmen Taccang [sic] and Juanito Layugan @ Ryan inflicting upon the said Barangay Captain Adriano Taccang [sic], multiple gunshot wounds on the chest and neck (R) and upon the person of the said minor Juanito Layugan @ Ryan multiple gunshot wound[s] (L), lateral side of the skull ® [sic] and (L) arm, which directly cause[d] their deaths and upon the said Carmen Taccang [sic], a gunshot wound on the left arm, which injury would ordinarily caused [sic] her death, thus performing the acts of execution which should have [produced] the crime of Murder, as a consequence, but nevertheless did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to the said Carmen Taccang [sic] which prevented her death.

That during the commission of the crime, the said accused, not being allowed nor authorized by law to keep, possess and carry firearm and ammunitions, did then and there, willfully, unlawfully and feloniously, have in their possession and under their control amd custody, the gauge 12 gunshot with live ammunitions for the same, which they used into shooting to deaths [sic] the said Barangay Captain Adriano Taccang [sic] and Juanito Layugan @ Ryan, without first having obtained the necessary permit and/or license therefore [sic].

CONTRARY TO LAW."

Appellants were arraigned and pleaded not guilty to the charges against them.

During pre-trial, the prosecution and the defense stipulated on the following facts: (1) the place and time of the commission of the crimes; and (2) at the time of the commission of the crime, the victim Adriano Tacang was the

incumbent Barangay Captain of Pilig Alto, Cabagan, Isabela.[3]

Trial ensued where the prosecution presented Carmen Tacang, Joel Marayag, Eduardo Castillo, Dr. Marivic Dela Peña, Dr. Anthony Abogado and Joel Sangco as witnesses while the defense presented Orlanda Dela Fuente, Miguel Sagadrace and herein appellants.[4]

The parties' respective versions of the facts of the case were summarized by the trial court in this wise -

"PROSECUTION'S VERSION

Carmen Tacang and her husband Adriano Tacang who was then the barangay captain of Pilig Alto, Cabagan, Isabela on July 5, 2007, started their day, manning their store which was situated 200 meters from their residence. The store was in operation for the past ten (10) days consisted mainly of serving snacks such as noodles. The spouses Tacang opened their store at 5:00 o'clock in the morning and closed at 7:00 to 8:00 o'clock in the evening.

On July 5, 2007, after a day of toiling at the store, the spouses Tacang called it a day and prepared going home. They were accompanied by their ten year old grandson Juanito Layugan @ Ryan. They left the store to the care of barangay tanods, Michael Sagadraca, Redentor Bagunu and Ronaldo Jose. They left at 7:30 o'clock in a motorcycle driven by Adriano Tacang, their grandson Ryan sat between Adriano and Carmen Tacang. While traversing the road or about thirty (30) meters from their store, someone fired at them, hitting the left arm of Carmen who informed her husband that she was hit. Adriano then turned the motorcycle to his left and it was then that the headlight of the motorcycle focused on the person of Albert Betay who was with Mansueto Betay who were armed with long firearms. Carmen was able to recognize them as both of them are her barangay mates. As Adriano Tacang was turning his motorcycle, a second shot emanated from Mansueto Betay hitting her husband Adriano at his chest killing him instantaneously. Their grandson was likewise killed at the first gunshot. Carmen Tacang left the place and proceeded to the hospital in Tuguegarao City, Cagayan. She was accompanied by Mila Laguinday, Aning Campano, Darwin Laguinday and his wife Linda Laguinday. Carmen was treated of her gunshot wound in Cagayan Valley Medical Center and was confined thereat for four (4) days. While undergoing treatment at the CVMC, she went home to attend the wake and burial of her husband who was laid in state in the house of her younger sibling in Magassi, Cabagan, Isabela. She went back to CVMC and continued her treatment. She spent One Hundred Ninety-Five [sic] (P195,000.00) Pesos for the funeral and medical expenses which included surgical procedure.

DEFENSE' VERSION

On July 5, 2007 at about 6 o'clock in the evening, Mansueto Betay was at the house of his brother Leon Betay watching television in Pilig Alto, Cabagan, Isabela. Aside from Leon Betay's family, Orlanda Dela Fuente, Ato Betay and Kikoy Dapena were there. While they were watching a program at the television, Marivic Betay, wife of Leon Betay, heard a gun report. She went out of the kitchen and met a neighbor, Belen Managuelod, who told her that their Barangay Captain Adriano Tacang was shot. Marivic Betay then informed his [sic] brother-in-law Mansueto Betay who was barangay tanod at that time that Adriano Tacang was shot. Mansueto Betay immediately went to the scene of the incident followed by Leon and Marivic Betay as well as Orlanda Dela Fuente and Kikoy Dapena. When they arrived at the scene of the crime, there were already persons milling around the dead bodies of Adriano Tacang and Ryan Layugan on the barangay road. Mansueto Betay overtook his fellow barangay tanods Eduardo Dela Fuente, Romualdo Jose and Edilberto Balingao carrying the dead body of Ryan Layugan. Mansueto Betay and his co-tanods guarded the dead bodies and waited for the arrival of police officers. When the policemen arrived, they conducted investigation. Mansueto Betay did not see Carmen Tacang, his first cousin at the scene of the incident, he learned that she was already brought somewhere at the curved [sic] of the road. Two members of SOCO likewise arrived and investigated. Mansueto Betay helped in carrying the dead bodies of Ryan Layugan and Adriano Tacang to be brought to Funeraria Rumbaua.

Albert Betay claimed that he shot Adriano Tacang in defense of himself. In the evening of July 5, 2007, Albert Betay was walking towards Barangay Fermeldy to visit his aunt. He met Adriano Tacang who was driving his motorcycle. He saw Adriano Tacang poked his firearm at him. Before Adriano Tacang could fire his shot, Albert Betay shot Adriano Tacang twice. He went home to Masipi East, Cabagan, Isabela and went to Barangay Kagawad Nida Sarmiento and sought her advice. Nida Sarmiento told him that she will bring him to SB Masigan who brought him to the police station of Cabagan, Isabela on July 17, 2007."[5]

On April 24, 2012, the trial court convicted both appellants, thus-

"WHEREFORE, premises considered, the court hereby finds the accused Albert Betay and Mansueto Betay, both GUILTY beyond reasonable doubt for the crime [sic] charged of Multiple Murder and Frustrated Murder, and accordingly sentences each of the said accused to a Prison Term of Reclusion Perpetua, pursuant to Article 48 and Article 248 of the Revised Penal Code.

In addition, the accused are hereby ordered to pay, jointly and severally the following:

1) To the heirs of Adriano Tacang:

a) Fifty Thousand (P 50,000.00) Pesos as Moral Damages.

b) Fifty Thousand (P 50,000.00) Pesos as Actual Damages.

2) To the heirs of Ryan Layugan:

a) Fifty Thousand (P 50,000.00) Pesos as Moral Damages.

b) Fifty Thousand (P 50,000.00) Pesos as Actual Damages.

SO DECIDED."[6]

Hence, this recourse by appellants anchored on the following assigned errors:

"I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS (SIC) GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING EXISTENCE OF THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE ON THE PART OF ACCUSED ALBERT BETAY."[7]

Appellants contend that the trial court erred in giving credence to the testimony of Carmen Tacang. Her narration that she recognized appellants as the persons responsible for the shooting because they were illuminated by the motorcycle's headlight when her husband tried to evade the gunshot should not be believed for being unrealistic. The act of Carmen Tacang of staying where she was during the firing incident was contrary to human experience because the natural reaction of a person when fired at would be to immediately seek cover. Appellants argue that it is a well-settled rule that evidence to be believed must not only proceed from the mouth of a credible witness but must be credible in itself – such as the common experience and observation of mankind can approve as probable under the circumstances. Since the statement of Carmen Tacang as to how she was able to know the

identities of their assailants go against the natural human experience, the same should not be given full faith and credit by the court.

Appellant Albert Betay for his part, asserts that the trial court erred in not appreciating self-defense to free him of any liability. He insists that he killed Adriano Tacang in self-defense when the latter drew and poked a gun at him, otherwise, he could have been dead.

Appellants argue that inasmuch as their culpability was not sufficiently established, it follows that treachery is not attendant in this case. According to appellants, the rules require that the said qualifying circumstance be specifically alleged in the Information in order to properly inform the accused of the nature and cause of the accusation against him. The purpose is to allow the accused to prepare fully for his defense and prevent surprises during trial. It is also a rule that an aggravating circumstance must be proven as clearly as the crime itself.

Appellant Mansueto Betay stresses that in convicting them for the crimes, the trial court merely made a sweeping statement that the defense of denial and alibi cannot prevail over the positive identification made by the prosecution eyewitness. He argues that although it is a settled rule that denial and alibi are weak defenses, the Supreme Court had the occasion to rule in *People vs. Ladrillo*,^[8] that such defenses should not instantly be looked upon with disfavor since there are situations where an accused may really have no other defenses but denial and alibi which, if established to be the truth, may still tilt the scales of justice in his favor, especially when the prosecution's evidence itself is weak. Considering that the prosecution in this case failed to prove their guilt beyond reasonable doubt, their acquittal is in order.

The appeal must fail.

At the outset, WE must stress that the primary issue raised by appellants in their brief relates to the question of credibility of prosecution's eyewitness Carmen Tacang who is also a private complainant herself. The doctrinal rule is that findings of facts made by the trial court, which had the opportunity to directly observe the witnesses, and to determine the probative value of other testimonies, are entitled to great weight and respect because the trial court is in a better position to assess the same, an opportunity not equally open to an appellate court.^[9] The assessment of the credibility of witnesses and their testimonies is best undertaken by the trial court due to its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination.^[10] These significant factors are needed in unearthing the truth, especially in conflicting testimonies. The findings of the trial court on such matters are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.^[11]

After revisiting the record of this case, WE are convinced that Carmen Tacang had competently established the identities of appellants as the assailants. There are circumstances and cogent reasons to support this finding. Not only that she saw appellants as the ones responsible for the shooting incident, she was also one of their victims at that time. Appellants and Carmen also have known each other for a long time because aside from being residents of Barangay Pilig Alto, Cabagan, Isabela, they are relatives. Appellant Mansueto Betay is Carmen's cousin while appellant Albert Betay is her nephew. No ill-motive was ascribed to Carmen to impute so grave a crime against appellants who are even related to her.

Jurisprudence is replete with rulings that on the point of credibility of witnesses, appellate courts will not disturb the trial court's assessment of the credibility of witnesses, in the absence of proof that some facts or circumstances of substance have been overlooked or misinterpreted which, if properly appreciated would affect the disposition of the case.^[12] Having heard the witnesses and observed their deportment on the stand, the trial judge is in a better position to resolve such question.^[13] We have carefully perused the records and find no reason to depart

from this long-standing rule.

Appellants' claim that Carmen's actuation of not seeking cover during the shooting was contrary to human experience fails to persuade. It is well-settled that different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response where one is confronted with a strange or startling or frightful experience.[14] Witnessing a crime is an unusual experience which elicits different reactions from the witnesses and for which no clear-cut standard form of behavior can be drawn.[15]

Appellant Mansueto's alibi that he was watching a television program with his family at the house of his brother Leon Betay when the crime happened cannot stand due to the positive identification made by eyewitness and private complainant Carmen Tacang. It is a well-settled doctrine that alibi cannot prevail over the positive identification of the assailant by an eyewitness.[16] Further, for alibi to prevail, it must be established by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of the commission, and not merely that he was somewhere else.[17] The house of appellant Mansueto's brother Leon Betay where appellant Mansueto was allegedly watching television was within 200 meters only from the crime scene. Such distance is near enough to reach by walking in a matter of 5 minutes according to defense witness Marivic Betay who is the wife of appellant Mansueto's brother Leon Betay.[18] Indubitably, it was not physically impossible for appellant Mansueto to be at the crime scene at the time the crime was committed.

The corroborative testimonies of Marivic Betay and Orlanda Dela Fuente that appellant Mansueto was with them watching television at the time that the crime was committed cannot be given much weight. The High Court had consistently assigned less probative weight to a defense of alibi when it is corroborated by friends and relatives since it had been established in jurisprudence that, in order for corroboration to be credible, the same must be offered preferably by disinterested witnesses.[19] On account of appellant Mansueto's relation to said witnesses, Marivic being his sister-in-law and Orlanda his cousin, they cannot be considered as disinterested witnesses.

Moreover, appellant Mansueto's reliance on Ladrillo case is misplaced. The ruling therein is not applicable to the present case due to differences in the factual scenarios. In that case, the Information alleged that the crime was committed "on or about the year 1992," in appellant's residence at Abanico, Puerto Princesa City. However, the defense in that case was able to prove that appellant therein had never been there and had not known the complainant and her family until he resided thereat in 1993. In this case, the prosecution was able to prove that appellant Mansueto is one of the assailants. His defense of alibi cannot stand since there was no convincing proof that it was physically impossible for him to be at the scene of the crime when it was committed inasmuch as the place where the crime happened was only 200 meters from the house of his brother where he claimed he was on July 5, 2007. He had been positively identified by his cousin Carmen who is a victim herself and eyewitness for the prosecution, as one of the assailants. Carmen was certain of appellants' identities as they were illuminated by the headlight of the motorcycle and they were well known to her not only for being residents of the same barangay but also for being her relatives. In the light of the positive identification of appellant as the perpetrator of the crime, his defense of denial and alibi cannot be sustained. Well-settled is the rule that the positive identification of the accused, when categorical and consistent and without any ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial. Unless substantiated by clear and convincing proof, such defenses are negative, self-serving, and undeserving of any weight in law.[20]

As to appellant Albert Betay's claim of self-defense, the following essential elements had to be proved: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[21] A person who invokes self-defense has the burden of proof. He must prove all the elements of self-defense.

However, the most important of all the elements is unlawful aggression on the part of the victim. Unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete.[22]

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It "presupposes actual, sudden, unexpected or imminent danger - not merely threatening and intimidating action." It is present "only when the one attacked faces real and immediate threat to one's life." [23]

In this case, the element of unlawful aggression is absent. According to appellant Albert, he had no option but to fire his shotgun at Adriano Tacang because the latter drew a .45 caliber pistol and aimed it at him. This claim of appellant Albert is belied by the record of this case. As succinctly stated by the RTC:

"This court is more inclined to believe the account of the witness Carmen Tacang on the circumstances of the shooting, than the self-serving and uncorroborated claim of the accused Albert Betay that before the actual shooting of the victims by said accused, the victim Adriano Tacang after drawing his [.45 caliber pistol leveled it at him. This court cannot see any reason for the witness Carmen Tacang to testify falsely and no ill motive for her testimony was ever shown by the evidence. On the contrary, the witness Tacang in court's view, was motivated by no other impulse but to seek justice for the death of her husband and grandson and to hold liable the very persons whom she saw as responsible for the killing. Accordingly the Supreme Court said:

'As there is no evidence to show any improper motive for filing these cases, complainant's testimony must be accepted and given full faith and credit.' [24]

And additionally, the pronouncement was made, thus:

'The earnest desire to seek justice for a dead kin is not served should witness abandon his conscience and prudence and blame one who is innocent of the crime.' [25]

The court thus finds the testimony of the witness Carmen Tacang to be credible and worthy of probative weight more than the self-serving statements of the accused Albert Betay. In the view of the court, there was no unlawful aggression which transpired on that faithful (sic) night on July 5, 2007 which could justify a lawful self-defense by the accused.

Even an assessment of the theory of self-defense, this court sees badges of insincerity in the testimony of the accused Albert Betay. It is shown by the prosecution evidence that just after the shooting, the police authorities conducted an investigation at the scene of the crime. However, nowhere is it shown that in the scene of the crime there was a caliber [.45] pistol recovered which could bolstered (sic) the claim of aggression unlawfully made by the victim. As viewed now, the statement of the accused that the victim levelled at him a [.45 caliber pistol is a mere self-serving statement, bereft and devoid of any corroborative evidence, much less the physical evidence of the existence of the said firearm of the victim.

And even more telling is the flight of the accused Albert Betay, who, after the commission of the crime of shooting their victims, left the scene of the crime. While it is shown that Albert Betay gave himself up on July 17, 2007, or after the lapse of twelve days from the commission of the crime, his act of hiding from the authorities and failure to divulge to them the circumstances of the shooting incident negate the existence of self-defense. In the mind of the court, an innocent person who merely defended himself would not have hidden after the fact of the commission but instead should have disclosed the circumstances of the shooting in order to prove the true facts of its commission. On the contrary, the hiding by the accused is evident in his own testimony thus:

Q. And what did you do when you shot him twice successively?

A. No more sir, I just went home.

Q. After that, what action or other action did you take in relation to this shooting incident?

A. I hid myself because many persons were looking for us [sic].

Q. How many day or days were you hiding for the protection of yourself?

A. I cannot recall because I was arrested July 17, (TSN, Testimony of Albert Betay, October 24, 2011, page 7).

It is thus plain that the accused Albert Betay was in flight after commission of the offense and the effect thereof on his defense is stated in jurisprudence, thus:

'Flight negates an accused's plea of self-defense and indicates guilt - persons who act in legitimate defense of their persons or rights invariably surrender themselves to the authorities and describe fully and in all candor all that has happened with a view to justify their acts.'

All told on the matter of the accused's self-defense, the court does not find any unlawful aggression to justify it and the same defense is negated by the flight of the accused Albert Betay." [26]

Evidently, appellant Albert failed to discharge his burden to prove his claim that he acted in self-defense. There being no unlawful aggression on the part of Adriano Tacang, the act of appellant Albert of firing his shotgun twice upon Adriano was not made in lawful self-defense.

Under Article 248 of the Revised Penal Code, the crime of Murder is committed as follows:

"Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua, to death if committed with any of the following attendant circumstances:

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

xxx xxx xxx

5. With evident premeditation.

xxx xxx xxx"

The elements of the crime of murder are: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by any of the qualifying circumstances mentioned in Art. 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide. [27] In this case, all the elements of murder were duly proved.

First. Adriano and Ryan both died due to gunshot wounds as testified to by Dr. Marivic Dela Peña who conducted the post mortem examination on them. Death certificates of both deceased indicating their death and the cause of their deaths were presented and identified during trial.

Second. Carmen Tacang was able to positively identify appellant Mansueto as the person responsible for the death of her husband Adriano and appellant Albert for the death of her grandson Ryan. During trial, Carmen was able to narrate the gruesome incident and explained how she came to know who were the persons involved in the incident, as follows:

"Q

Were you able to reach your house, Madam Witness?

A

No, sir.

Q

Why?

A

We were shot, sir.

Q

Now, who shot you?

A

Albert Betay, Sir.

Q

What part of your body was shot?

A

My left, sir.

xxx

Q

Now, how were you able to identify Albert Betay which you claim to have shot you?

A

He was situated at the left of the motorcycle, sir.

Q

Now, after you were shot by Albert Betay, what happened to your husband, if any?

A

He turned the motorcycle, sir, that is why he was lighted by the light of the motorcycle and he was with Monching [herein appellant Mansueto Betay] who shot at us, sir, in the light of the motorcycle.

Q

Why do you say they were lighted by the motorcycle, he and Monching?

A

When he turned the motorcycle, sir, he was lighted by the motorcycle beside each other and he shot.

xxx

Q

Okay, when your husband turned his motorcycle and he lighted Monching, did he turn to the left or to the right?

A

On the left side, sir.

Q

Now, after your husband turned towards his left, what happened next?

A

He was shot, sir.

Q

Now, who shot your husband?

A

Monching, sir.

Xxx

Q

Now, you said that this Monching is your neighbor. Who is this?

A

Monching Betay, sir.

Q

Okay, Madam Witness, how were you able to identify Monching Betay that shot your husband when your husband tried to turn the motorcycle towards the left?

A

He was lighted by the light of the motorcycle, sir.

Q

You said that your husband was shot when he tried to turn his motorcycle to the left and he was illuminated by the light and he was shot by Monching. What kind of weapon did he use, Madam Witness?

A

Shotgun, sir.

Q

Now, in relation to when you were seated while your husband was trying to turn his motorcycle, how far were you to Albert Betay when he shot you?

A

Near only, sir, about two (2) meters.

xxx

Q

Now, when Albert Betay shot at you, what happened to your grandson?

A

He was dead, sir.

Q

What do you mean by he was dead?

A

He died, sir.

Q

Mr. [sic] Witness, why did he die?

A

He was shot, sir.

Q

Who shot your grandson?

A

Albert, sir.

Q

So all in all, how many shots were directed to your position as well as your husband and your grandson, Madam Witness?

A

Once to my grandson, sir.

Q

What part of the body of your grandson was shot?

A

Here, sir.

COURT INTERPRETER:

Witness pointing to the left side.

PROSECUTOR AGGABAO:

xxx

Q

Now, when you said that it was Mansueto who shot your husband, what part of the body of you husband was shot at, Madam Witness?

A

Here, sir, at his chest.

Xxx

Q

Now, Madam Witness, how many times if you recall was your husband shot at?

A

Only once, sir.

Q

So do I get you correctly that there was only two (2) shots that was fired at your direction?

A

Yes, sir.

Q

Madam Witness, after your husband was shot at, what happened to you?

A

I asked for help, sir."[28]

Third. The killing was attended by treachery. The sudden and unexpected attack of appellants, without provocation on the part of their victims, clearly showed that treachery attended the shooting. The sudden and unexpected attack of appellants rendered the victims unable and unprepared to defend themselves. Although Adriano Tacang was facing appellant Mansueto when the latter shot the former, Adriano was completely denied of the opportunity to make a defense or ward off the attack because of the immediate and unexpected firing of the gun at him. In *People vs. Cuadra*,[29] the Supreme Court had the occasion to rule that a sudden and unexpected attack, although frontal is treacherous.

While treachery and evident premeditation were alleged in the Information as qualifying circumstances, WE agree with the finding of the trial court that the killing in this case was qualified to murder by treachery alone and that evident premeditation was not attendant because the prosecution failed to prove the elements thereof, namely: (1) the time when the offender determined to commit the crime; (b) sufficient lapse of time between the determination and execution to allow himself to reflect upon the consequence of his act.[30] In this case, although the prosecution was able to establish that there had been actual shooting, the time when appellants resolved to commit the crime and that they adhered to such determination despite lapse of time, were both not shown.

Fourth. The killing in this case is not parricide or infanticide.

Treachery qualifies the mortal wounding of Carmen Tacang to Frustrated Murder. Even assuming that private complainant was forewarned of the danger to her person, treachery may still be appreciated because what is decisive is that at that moment when the harm was inflicted, the victim was helpless and unable to defend himself.[31] A felony is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.[32] In the instant case, appellants performed all the acts of execution which could have killed private complainant Carmen Tacang but due to immediate medical intervention, a cause independent of appellants' will, private complainant survived.

The link that binds appellants in this case is the finding of conspiracy. Conspiracy exists when the acts of the accused demonstrate a common design towards the accomplishment of the same unlawful purpose.[33] In the instant case, the acts of appellants clearly indicate a unity of action: (1) appellants were together during the commission of the crime; and (2) appellant Albert was the first to fire his shotgun towards their victims who were then riding a motorcycle and appellant Mansueto fired his gun at Adriano when the latter tried to turn the motorcycle he was driving to his left. Evidently, appellants performed specific acts with such closeness and coordination as to demonstrate a common purpose or design to perpetrate crime. Hence, they are liable for double murder and frustrated murder on account of conspiracy between them, manifested by their obvious concerted efforts to commit the felonies. Each of them is responsible not only for the crime committed personally by him but also for the crime committed by the other as well. To establish conspiracy, it is not essential that there be proof as to the previous agreement and decision to commit the crime, it being sufficient that the malefactors shall have acted in concert pursuant to the same objective.[34]

In view of the foregoing disquisitions, WE are convinced that appellants are guilty of murder for killing Adriano Tacang.

In addition, this Court finds both herein appellants guilty of the complex crime of murder and frustrated murder, defined and penalized in Article 248, in relation to Article 48, of the Revised Penal Code for the death of Ryan Layugan and for the serious wounding of Carmen Tacang.

Article 48 of the Revised Penal Code (RPC) reads:

"Art. 48. Penalty for complex crimes. – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

Article 48 provides for two classes of crimes where a single penalty is to be imposed: first, where a single act constitutes two or more grave or less grave felonies (*delito compuesto*); and, second, when an offense is a necessary means for committing the other (*delito complejo*).[35]

Best exemplified by the first of the two cases is where one shot from a gun results in the death of two or more persons[36]. Jurisprudence teaches that, in this factual setting, the complex crime defined in the first part of Article 48 finds application.[37] In this case, the single treacherous act of shooting by appellant Albert caused the death of Ryan Layugan and the almost fatal wounding of Carmen Tacang.

Notably, only one information (for multiple murder and frustrated murder) was filed with the trial court. However, nothing in the record shows that appellants objected to the duplicity of the offenses charged in the information via a motion to quash before entering a plea. Hence, they are deemed to have waived such defect.[38] Under Section 3, Rule 120 of the Rules of Court, when two or more offenses are charged in a single complaint or information and the accused fails to object to it before trial, the court may convict the accused of as many offenses as are charged and proved, and impose on him the penalty for each of them.

Article 248 of the Revised Penal Code (RPC) states that murder is punishable by reclusion perpetua to death. Article 63 of the same Code provides that if the penalty is composed of two indivisible penalties and both mitigating and aggravating circumstances are present in the commission of the crime, the courts shall allow them to offset one another.[39] With the effectivity of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the capital punishment of death has been prohibited, thus, the penalty to be meted to appellant shall be reclusion perpetua without, however, eligibility for parole.

On the other hand, the penalty for frustrated murder is reclusion temporal, which must be imposed in its medium period, considering the absence of aggravating and mitigating circumstances. Therefore, the penalty imposable in this case is imprisonment of Fourteen (14) Years, Eight (8) Months and One (1) Day to Seventeen (17) years and Four (4) months.[40]

Article 48 provides that when a single act constitutes two or more grave or less grave felonies, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. In this case, reclusion perpetua should be imposed since it is the penalty for the crime of murder, the more serious crime in the complex crime of murder and frustrated murder.

WE now go to the civil aspect of the case. Although this was not raised as an issue by appellants, the filing of an appeal in criminal case throws open the entire case for review and it becomes the duty of the appellate court to correct any error, as may be found in the appealed judgment, whether assigned as an error or not.[41]

WE hold that to conform with the prevailing jurisprudence, a civil indemnity of P75,000.00 and moral damages of P75,000.00 should be awarded to the respective heirs of Adriano Tacang and Ryan Layugan. These awards, are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder.[42]

Further, in view of the presence of the qualifying circumstance of treachery, the amount of P30,000.00 exemplary damages to the respective heirs of the deceased victims should also be awarded.[43]

The amount of actual damages awarded by the trial court to the respective heirs of the deceased victims should be modified. In its decision, the court a quo awarded each of the deceased's heirs the amount of P50,000.00 as actual damages on the ground that it found the said sum as reasonable amount for actual damages. Jurisprudence instructs that the award of actual damages must be duly substantiated by receipts.[44] The record discloses that only the total amount of P30,000.00 was receipted covering total payment for the victims' coffins, embalming and funeral services. Hence, P15,000.00 may be given to the heirs of each of the deceased victims as actual damages.

WE sustain the ruling of the trial court that Carmen Tacang cannot recover indemnification for loss of earning capacity of her husband in such amount claimed by her for lack of documentary evidence to prove the actual earning of the deceased. Compensation for lost income is in the nature of damages and as such requires due proof of the damages suffered; there must be unbiased proof of the deceased's average income.[45]

Damages for loss of earning capacity are awarded pursuant to Article 2206 of the Civil Code, which states that:

"Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death[.]"

As a rule, documentary evidence should be presented to substantiate the claim for loss of earning capacity.[46] By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when: (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[47]

In this case, Carmen, Adriano's widow, testified that her husband was a Barangay Captain at the time that he was killed and that he was engaged in selling feeds. According to her, her husband received a monthly compensation of P2,300.00 as Barangay Captain[48] and that as a vendor, he earned P5,000.00 to P7,000.00 a month.[49] She presented no documentary proof of her claims.

In an array of cases, it has been ruled that the bare testimony of a deceased's mother or spouse as to the income or earning capacity of the deceased must be supported by competent evidence like income tax return or receipts.[50] In *People vs. Castellano*,[51] the High Court ruled that "compensation for lost income is in the nature of damages and as such requires due proof of the damage suffered; there must be unbiased proof of the deceased's average income."

Nonetheless, temperate damages in lieu of actual damages for loss of earning capacity may be awarded since the earning capacity of Adriano Tacang was established but no evidence was presented to support the allegation of his actual income.[52]

In *Pleno vs. Court of Appeals*,[53] the award of temperate damages in the amount of P200,000.00 instead of actual damages for loss of earning capacity was sustained by the High Court because the plaintiff's salary in the said case was not adequately proven.

Similarly, in *People vs. Singh*,[54] and *People vs. Almedilla*,[55] the Supreme Court granted temperate damages in lieu of actual damages because the prosecution in those cases failed to present sufficient evidence of the deceased's earnings.

Also, in *Victory Liner, Inc. vs. Gammad*,[56] the award of damages for loss of earning capacity was deleted for lack of evidentiary basis of the actual extent of the loss. However, since the income-earning capacity lost was clearly established, the heirs were awarded P500,000.00 as temperate damages.

In this case, considering that the income-earning capacity of the deceased Adriano Tacang was never disputed, this Court opt to award temperate damages in the amount of P50,000.00 in lieu of the award of actual damages for loss of earning capacity.

Finally, WE find and so hold that the surviving victim Carmen Tacang who sustained serious injury that almost killed her is also entitled to actual, moral and exemplary damages.

Actual damages in the amount of P42,070.04[57] covering the duly receipted hospitalization and medication expenses incurred by Carmen should be awarded to her.

It is likewise proper to award Carmen moral damages on account of the physical suffering, fright, serious anxiety and moral shock she suffered because of the wound inflicted upon her by her own relatives. In conformity with the prevailing jurisprudence,[58] she should be awarded the amount of P40,000.00 as moral damages.

In addition, by reason of the presence of an aggravating circumstance, WE are also for the granting of exemplary damages[59] in favor of Carmen in the amount of P30,000.00 as dictated by recent jurisprudence.[60]

WHEREFORE, the appeal is DISMISSED. The Decision of the Regional Trial Court, Branch 22 of Cabagan, Isabela in Criminal Case No. 22-2129 is AFFIRMED with MODIFICATIONS. Appellants are hereby found GUILTY of the crime of Murder and the complex crime of Murder with Frustrated Murder and is sentenced to reclusion perpetua without eligibility for parole for the crime of Murder and another reclusion perpetua for the complex crime of Murder with Frustrated Murder.

Appellants are ordered to pay, jointly and severally the following:

(1) To the heirs of Adriano Tacang:

(a) P75,000.00 as civil indemnity;

(b) P75,000.00 as moral damages; and

(c) P50,000.00 as temperate damages.

(2) To the heirs of Ryan Layugan:

(a) P75,000.00 as civil indemnity;

(b) P75,000.00 as moral damages; and

(c) P15,000.00 as actual damages.

(3) To surviving victim Carmen Tacang:

(a) P42,070.04 as actual damages;

(b) P40,000.00 as moral damages; and

(c) P30,000.00 as exemplary damages.

SO ORDERED.

Tijam, (Chairperson), and Reyes-Carpio, JJ., concur.

[1] Rollo, pp. 98-106.

[2] Record, p. 103-104.

[3] Rollo, p. 99.

[4] Record, p. 455.

[5] Record, pp. 455-456.

[6] Record, p. 106.

[7] Rollo, pp. 88-89.

[8] G.R. No. 124342, December 8, 1999.

[9] People vs. Escandor, 265 SCRA 444.

[10] People vs. Lopez, G.R. No. 172369, March 7, 2007.

[11] People vs. Alarcon, G.R. No. 174199, March 7, 2007.

[12] See People vs. Manegdeg, 316 SCRA 689 (1999).

[13] People vs. Quitlong, 292 SCRA 360 (1998).

[14] People vs. Sta. Ana, 291 SCRA 188 (1998).

[15] People vs. Laceste, 293 SCRA 397 (1998).

[16] People vs. Grefaldia, 273 SCRA 591 (1997).

[17] *People vs. De Guia*, 280 SCRA 141 (1997).

[18] TSN, May 18, 2010, p.9.

[19] *People vs. Basallo*, G.R. No. 182457, January 30, 2013.

[20] *People vs. De Leon, et al.*, G.R. No. 144052, March 6, 2002.

[21] *People vs. Dolorido*, G.R. No. 191721, January 12, 2011.

[22] *Id.*

[23] *Id.*

[24] *People vs. Carbonel*, 366 SCRA 354.

[25] *People vs. Aquino*, 366 SCRA 266.

[26] Rollo, pp. 102-103.

[27] *People vs. Sameniano*, G.R. No. 183703, January 20, 2009.

[28] TSN, February 17, 2009, pp. 9-14.

[29] G.R. No. L-27973, October 23, 1978.

[30] *People vs. Castillo*, 289 SCRA 213 (1998).

[31] See *People vs. Rivera, et al.*, G.R. No. 125895, July 4, 2002.

[32] Revised Penal Code, Article 6.

[33] *People vs. Dela Torre*, G.R. No. 176637, October 6, 2008.

[34] *People vs. Sazon*, G.R. No. 89684, September 18, 1990.

[35] *People of the Philippines vs. Hon. Judge Hernando Pineda, et al.*, G.R. No. L-26222, July 21, 1967 citing Tomo I, Cuello Colon, *Derecho Penal*, 1960 ed., p. 635.

[36] *People of the Philippines vs. Hon. Judge Hernando Pineda, et al.*, *supra*.

[37] *People of the Philippines vs. Hon. Judge Hernando Pineda, et al.*, *supra*, citing *People vs. Pama (C.A.)*; *People vs. Buyco*; and *People vs. Deveza (C.A.)* -

In *People vs. Pama (C.A.)*, 44 O.G. No. 9, pp. 3339, 3345-3346, where four bullets were fired causing four mortal wounds to a person, but one of which also struck a child resulting in the latter's death, the Court of Appeals held that, by the one single shot, a single information should have been filed to cover both deaths, and a single penalty should be imposed.

In *People vs. Buyco*, 80 Phil. 58, 67-69, where the accused fired several bullets in succession from a submachine gun with a single pull of the trigger, killing one person with treachery and another only accidentally, this Court, citing *II Viada*, 5th ed., p. 629, categorized the facts as constituting one single act — a complex crime of murder and homicide. Cf. *People vs. Gatbonton*, *infra*.

In *People vs. Deveza (C.A.)*, 44 O.G. No. 5, pp. 1501, 1507-1511, one shot from a pistol caused the death of a person and serious physical injuries to another; the court considered the factual situation as a complex crime of homicide and serious physical injuries.

- [38] Reodica vs. Court of Appeals, 292 SCRA 87, 102 [1998].
- [39] See Reyes, The Revised Penal Code, Criminal Law, Book One, 15th Ed., 2001,p.721
- [40] See People vs. Pinuela, G.R. Nos. 140727-28, January 31, 2003
- [41] People vs. Balacano, G.R. No. 127156, 31 July 2000, citing People vs. Reñola, 308 SCRA 145 (1999) and People v. Medina, 300 SCRA 98 (1998).
- [42] People vs. Camat, G.R. No. 188612, July 30, 2012.
- [43] People vs. Barde, G.R. No. 183094, September 22, 2010.
- [44] Hugo vs. CA, et al., G.R. No. 126752, September 6, 2002.
- [45] People vs. Ibañez, et al., G.R. No. 197813, September 25, 2013 citing People vs. Ereño 383 Phil. 30 (2000).
- [46] Philippine Hawk Corporation vs. Lee, G.R. No. 166869, February 16, 2010.
- [47] Licyayo vs. People, G.R. No. 169425, March 4, 2008, 547 SCRA 598.
- [48] TSN, March 3, 2009,p.3.
- [49] Id.,p.4
- [50] Id.
- [51] G.R. No. 139412, 2 April 2003, citing People vs. Ereño, 326 SCRA 157 (2000).
- [52] See Tan, et al. vs. OMC Carriers, Inc., et al., G.R. No. 190521, January 12, 2011.
- [53] G.R. No. L-56505, May 9, 1988, 161 SCRA 208, 224-225.
- [54] 412 Phil. 842, 859 (2001).
- [55] G.R. No. 150590, August 21, 2003, 409 SCRA 428, 433.
- [56] G.R. No. 159636, November 25, 2004, 444 SCRA 355.
- [57] Exhibits "I-3" to "I-43", Record,pp.161-201; Exhibits "I-46" to "I-53", Record,pp.204-211; and Exhibit "I-60", Record,p.216
- [58] People vs. Mokammad, G.R. No. 180594, August 19, 2009.
- [59] People vs. De la Torre, 373 SCRA 104.
- [60] People vs. Adallom, 667 SCRA 652 (2012), People vs. Nelmidia, 680 SCRA 386 (2012) and People vs. Punzalan, Jr. 687 SCRA 687 (2012).

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