PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SARIO TAHAO, JOHN DOE, ACCUSED, AND EDGAR TAHAO, ACCUSED-APPELLANT.

Ponente: BALTAZAR-PADILLA, J.

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BALTAZAR-PADILLA, J.:

This is an appeal assailing the Decision[1] dated July 27, 2009 of the Regional Trial Court of the City of Trece Martires, Branch 23, finding Edgar Tahao (appellant) guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. CR-164-00, the dispositive part of which states:

> "WHEREFORE, premises considered and finding the accused EDGAR TAHAO GUILTY beyond reasonable doubt, he is hereby sentenced to suffer the maximum penalty of death. Accused EDGAR TAHAO is further ordered to pay to the heirs of Eduardo Joya the following: (1) P50,000.00 civil indemnity ex delicto for the death of the victim; (2) P100,000.00 actual damages; (3) P50,000.00 moral damages; (4) P50,000.00 exemplary damages; (5)P25,000.00 temperate damages; and (6) P20,000.00 attorney's fees.
>
> SO ORDERED."

THE FACTS

As culled from the decision of the trial court, the facts of the case are as follows:

> "AS PRESENTED BY THE PROSECUTION:
>
> On February 23, 2000, at about 9:30 in the evening, JENNELYN MENDOZA was with PO3 Eduardo Joya in front of Venice Aira's Videoke Bar talking when accused, a certain Sario Tahao came out the videoke bar. Joya approached Sario when he noticed a gun tucked in his waist and disarmed him. Joya also asked for the gun of accused Edgar Tahao who also came out but he refused so that an altercation between the two ensued. Joya then went to his car to get his long firearm but Edgar went after him. Edgar pointed his gun at Joya's head and got the gun tucked at his waist. When he let his guard down, Joya pushed Edgar away and run (sic) towards the direction of McDonald['s] but Edgar fired upon him and he fell down. While Joya was on the ground Edgar and Sario together with another person shot Joya.
>
> ROMY PADERNILLA was at the vicinity of McDonald['s] at around 9:30 in the evening of February 23, 2000 riding his bicycle when he heard a shot. As he stopped he saw two (2) persons shooting someone who was lying on the pavement. Padernilla saw accused Edgar Tahao get the firearm of the person lying on the ground and together with his companion they fired upon him.
>
> FRANCISCO BOLANTE was at the outpost on February 23, 2000 when he saw PO3 Eduardo Joya running while being chased and shot at by accused Edgar Tahao. Joya fell down and Edgar shot him on the head together with two other persons who also shot Joya.
>
> DR. REGALADO SOSA, City Health Officer of Cavite City, conducted an autopsy on the cadaver of Eduardo Arayata Joya indicating two (2) gunshot wounds on the head and eight (8) others in different parts of his body and issued his Death Certificate indicating that he died of Hypovolemic Shock due to multiple gunshot wounds

(Exhibits "G" to "G-2" and "Exhibit "H). He enumerated and detailed the gunshot wounds as follows: (1) gunshot wound, 0.5 cms. In diameter with contusion collar and inverted irregular borders (point of entry) located at the right posterior auricular region. It is directed inwards penetrating and perforating into the intracranial cavity to the opposite, i.e., left side of the head; (2) gunshot wound, 0.5 cm. in diameter with contusion collar and inverted irregular borders (point of entry) located at the lower right occipital borders, 6 cms. away from the above mentioned injury. It is directed inwards penetrating and perforating into the intracranial cavity to the opposite, i.e., left side of the head; (3) gunshot wound, one (1) cm. in diameter with contusion collar and inverted irregular borders (point of entry) located at the posterior body, 22 cms. from the right shoulder and 7 cms. from the posterior midline to the right. It is directed inwards penetrating and perforating into the internal body cavity; (4) gunshot wound, 1 cm. in diameter with contusion collar and inverted irregular borders (point of entry) located at the posterior back, i.e., 21 cms. from the right shoulder and 16 cms. from the posterior midline to the right. It is directed inwards penetrating and perforating into the internal body cavity; (5) gunshot wound, 1 cm. in diameter with contusion collar and inverted irregular borders (point of entry) located at the posterior body, i.e., 31 cms. from the left shoulder and 16 cms. from the posterior midline to the left. It is directed inwards penetrating and perforating into the internal body cavity; (6) gunshot wound, 1 cm. in diameter with contusion collar and inverted irregular borders (point of entry) i.e., 36 cms. from the right shoulder and 4 cms. from the posterior midline to the right. It is directed inwards penetrating and perforating into the internal body cavity; (7) gunshot wound, 1 cm. in diameter with contusion collar and inverted irregular borders (point of entry) located at the left lower buttock. It is directed inwards, and upwards anteriorwards into the body cavity making a 1 cm. x 1.5 cms. exit wound with everted irregular borders located just below the navel at the anterior midline; (8) gunshot wound, 1 cm. in diameter with contusion collar and inverted irregular borders (point of entry) located at the middle right buttock. It is directed inwards, upwards, lateralwards and anteriorwards making a 2.5 cm. x 2 cm. exit wound with irregular everted borders at the lateral right illiac spine region; (9) gunshot wound, 1 cm. x 1.5 cm. in size with contusion collar and inverted irregular borders (point of entry) located at the anterior upper 3[rd] of the right leg. It is directed inwards to the opposite fracturing the tibia and fibula underneath and making an exi[s[t wound of 1.5 cm. x 2 cm. in size with irregular inverted borders at the upper posterior 3[rd] of the same leg; (10) gunshot wound, 0.5 cms. x 1.5 cm. located at the right anterior shoulder over the lateral end of the right clavicle.

SOLEDAD JOYA incurred Two Hundred Fourteen Thousand Five Hundred Fifty Two Pesos (P214,552.00) (Exhibit "I") in connection with the death of her son Eddie Joya, One Hundred Thousand Pesos (P100,000.00) of which Cenizal Funeral Homes issued a receipt (Exhibit " J").

AS PRESENTED BY THE ACCUSED:

It is the testimony of the accused Edgar Tahao that on that fateful night, he had met his Uncle Sario Tahao and a certain John Doe at the Venice Aira Karaoke Bar in Tanza, Cavite to celebrate [the] Sario's birthday. They had not stayed long in the said place when victim Eddie Joya, a police officer in civilian clothes at that time, arrived and stayed outside the door of the karaoke bar but within the establishment's fence. It was during this time that the elder Tahao decided to urinate outside the karaoke bar and as he passed by Joya, he was accosted by the police officer for carrying a firearm. Sario Tahao gave the gun to the police officer but asked for it to be returned to him after he had urinated outside. The police officer, who was visibly drunk as well, refused and pushed back the elder Tahao. It was at this time that the accused Edgar Tahao approached the two to pacify them. Daniel meanwhile went out of the establishment. Instead of calming down, the police officer vented his ire on Edgar Tahao and even accused him of also carrying a firearm which the accused vehemently denied. He asked the police officer to instead call a uniformed police officer since he was in civilian clothes and should not be making any seizures or arrests. Instead of complying, the victim angrily shouted back, " I am a police officer! Why should I call a uniformed officer?" The police officer then stood up, went behind Edgar Tahao who was seated and pushed his face on the table and pistol whipped him on the head. He then pointed his gun at the accused but he was able to parry the police officer's arm and the gun went off, hitting the top of the fabric canopy. The policeman then went outside and threatened to get a bigger firearm while Edgar Tahao lay

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> dazed on the table. It was at this time that Edgar's uncle Sario and Daniel followed Eddie Joya outside to where the policeman's car was parked. Accused Edgar Tahao then heard gunshots and when he went outside, he saw Sario Tahao and Daniel, armed with the policeman's long firearm, after having wrest[l]ed it from him, shooting at Eddie Joya who had fled to the middle of the street. Joya then fell and Sario Tahao kept on firing at the fallen police officer until Edgar Tahao shouted for him to stop. Fearing for his life, as the person shot by his companions was a police officer, Edgar Tahao left the place himself. Hours later, Edgar Tahao learned that his Uncle Sario and his friend Daniel had been brutally shot to death with Sario even getting his gun stuffed in his mouth. Accused Edgar Tahao, wanting to preserve his life, decided to surrender to some higher police authorities, the PNP's Regional Office in Canlubang."

On June 2, 2000, an Information[2] for Murder was filed against Edgar Tahao (appellant), Sario Tahao and "John Doe" at the Regional Trial Court of the City of Trece Martires, Branch 23. It reads:

> "The undersigned Assistant Provincial Prosecutor accuses EDGAR TAHAO, SARIO TAHAO and JOHN DOE of the crime of "MURDER" committed as follows:
>
> That on or about the 23[rd] day of February 2000, at around 9:30 in the evening, at Barangay Daang Amaya I, Municipality of Tanza, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, with intent to kill, being then armed with an unlicensed short firearms, with treachery and evident premeditation, did then and there wil[l]fully, unlawfully and feloniously, fire upon and shoot PO3 Eduardo A. Joya inflicting upon him multiple gunshot wounds on the different parts of his body, thereby causing his subsequent death, to the damage and prejudice of the legal heirs of said PO3 Eduardo A. Joya.
>
> Contrary to law."

Upon arraignment, appellant pleaded not guilty. Thereafter, trial ensued.

On July 27, 2009, the court a quo issued the assailed Decision.

Aggrieved, appellant filed a motion for reconsideration. On February 8, 2010, the court a quo issued an Order[3] upholding appellant's conviction but reducing his sentence to reclusion perpetua. The modified fallo states:

> "WHEREFORE, premises considered and finding the accused EDGAR TAHAO GUILTY beyond reasonable doubt, he is hereby sentenced to suffer penalty of reclusion perpetua. Accused EDGAR TAHAO is further ordered to pay to the heirs of Eduardo Joya the following: (1) P50,000.00 civil indemnity ex delicto for the death of the victim; (2) P100,000.00 actual damages; (3) P50,000.00 moral damages; (4) P50,000.00 exemplary damages; (5)P25,000.00 temperate damages; and (6) P20,000.00 attorney's fees.
>
> SO ORDERED."

Hence, this appeal.

ISSUE

Appellant imputed a sole error to the trial court, to wit:

> THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

RULING

In support of his argument, appellant avers that there are several inconsistencies in the testimonies of the prosecution's witnesses which would warrant his acquittal. He further argues that the prosecution failed to prove the circumstance of treachery that would qualify the case to murder.

The appeal is partly meritorious.

In order to successfully prosecute murder, the following elements of the crime must be successfully proved, to wit: (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 Article 248[4] of the Revised Penal Code; and (4) that the killing is not parricide or infanticide.[5]

In this case, there is no argument that the first and fourth requisites are present. The issue here is whether or not the second and third elements of the crime of murder were sufficiently established by the prosecution.

WE find that the second element was likewise satisfactorily proved.

The prosecution's witnesses testified as follows:

> "Francisco Bolante
>
> Q. And when you were waiting for your wife Trining, Trinidad on February 23, year 2000 at around 9:00 in the evening, what happened if any Mr. Witness?
>
> A. I witnessed the shooting incident at Venice Aire, sir.
>
> Q. How far were you from the cite (sic) of the shooting incident at that time Mr. Witness?
>
> A. More or less twenty (20) feet, sir.
>
> Q. And tell this Honorable Court who were involved in that shooting incident which you witnessed according to you Mr. Witness?
>
> A. Yes, sir.
>
> Q. Tell this Honorable Court Mr. Witness?
>
> A. Edgar Tahao, Sario Tahao and another unknown person, sir.
>
> Q. And what happened to this shooting incident that you have witnessed Mr. Witness?
>
> A. I saw Eddie Joya fell down, sir.
>
> Q. And who is this Eddie Joya whom you said you saw fell down?
>
> A. Eddie Joya is a policeman, sir.
>
> xxx
>
> Q. Why did Eddie Joya fell down Mr. Witness?
>
> A. Because he was shot, sir.
>
> Q. And who shot Eddie Joya Mr. Witness?
>
> A. Edgar Tahao, sir.
>
> Q. And how did Edgar Tahao shoot Eddie Joya Mr. Witness?
>
> A. When they were chasing each other, he shot him (Eddie Joya), sir.
>
> Q. How far did Eddie Joya reach when he was fired upon by Edgar Tahao Mr. Witness?
>
> A. For almost two (2) meters, sir.

Q. And where in particular did this Eddie Joya fall down when he was fired upon by Edgar Tahao Mr. Witness?

A. In the island of the road, sir.

Q. And when Eddie Joya fell down, what happened next Mr. Witness?

A. He was hit by the gun on his head, sir.

Q. And who shot Eddie Joya with the gun?

A. It was Edgar Tahao, sir.

Q. You said Mr. Witness that there were three (3) persons chasing Eddie Joya, what did the other two (2) persons do with Eddie Joya Mr. Witness, if any?

A. They were also shooting him, sir.

Q. You mean to say Mr. Witness, all the three (3) persons chasing Eddie Joya fired upon Eddie Joya?

A. Yes, sir.

Q. Who first fired to (sic) Eddie Joya Mr. Witness?

A. Edgar Tahao, sir.

Q. And then who fires (sic) next Mr. Witness?

A. Sario Tahao, sir.

Q. And after Sario Tahao fired upon Eddie Joya, what did the other person do if any?

A. I do not know because I was shocked then, sir.

Q. By the way Mr. Witness, it is (sic) 9:30 o'clock in the evening and it is (sic) rather late in the evening, why did you say that it was Edgar Tahao and Sario Tahao and other person whom you do not know the name were the one (sic) who shot Eddie Joya?

A. Because I know them very well, sir.

Q. Among the three (3), who among the three (3) were known to you Mr. Witness?

A. Two (2) of them, sir.

Q. Name them Mr. Witness?

A. Edgar Tahao and Sario Tahao, sir.

Q. And how long have you known this (sic) Edgar Tahao and Sario Tahao Mr. Witness?

A. Since their childhood, sir.

Q. Please inform this Honorable Court why you know these Edgar Tahao and Sario Tahao since childhood Mr. Witness?

A. Because they are my neighbors, sir.

Q. You mean to say Mr. witness that this Edgar Tahao and Sario Tahao are also residing in Brgy. Amaya I, Tanza, Cavite where you are residing Mr. Witness?

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A. Yes, sir.

Q. After these accused Edgar Tahao and Sario Tahao and other person who have caused this Eduardo Joya fell down on the ground, what transpired next Mr. Witness?

A. They run (sic) away towards the tricycle terminal, sir.

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Q. Again Mr. Witness, the time is (sic) 9:00 o'clock in the evening and being evening, it is considered dark, why did you still saw (sic) these accused Edgar Tahao and Sario Tahao and the other man whom you do not know the name and this Eddie Joya at that time Mr. Witness?

A. Because the light was bright then, sir.

Q. And if you really saw these accused shooting Eddie Joya, will you please inform this Honorable Court what kind of firearms did they use in shooting with (sic) Eddie Joya Mr. Witness?

A. It was a short firearms with caliber 45, sir.[6]
Romy Padernilla

Q. Where were you Mr Witness on February 23, 2000 at around 9:30 in the evening?

A. I was at Daang Amaya, Tanza, Cavite.

Q. Where in particular in Daang Amaya, Tanza, Cavite?

A. At the corner of Daang Amaya.

Q. Can you give the specific marking where you were at Daang Amaya at that time?

A. In front of the McDonald['s].

Q. And what were you doing at that time February 23, 2000 at around 9:30 near the vicinity of McDonald['s]?

A. I was riding my bicycle going the direction of Seven Eleven.

Q. And where did you come from [when you] on your way to Seven Eleven?

A. Pandan.

Q. And while you were riding on your bicycle at that time going to Seven Eleven near the vicinity of McDonald['s] what happen (sic) if any Mr. Witness?

A. There was.

Q. Will you please [tell] to this Honorable Court what was this unusual incident that happened when you were in the vicinity of McDonald['s] riding on the bicycle?

A. I heard [a] shot, sir.

Q. And when you heard [a] shot, what did you do if any, Mr. Witness?

A. I stopped from biking, sir.

Q. And where in particular in Tanza, Cavite, did you stop?

A. At the outer lane of McDonald['s], sir.

Q. And why did you stop your bicycle when you heard a shot?

A. Because I saw two (2) persons shooting a guy who was lying in (sic) the pavement, sir.

Q. And where in particular [was] this person[,] who was lying in (sic) the pavement[,] was being shot by these two (2) persons?

A. In front of Benny Era.

Q. This Benny Era when you saw this man lying on the ground being shot by two (2) persons, how far is this place from McDonald['s] Mr. Witness?

A. Around twenty (20) meters, sir.

Q. And during that time that you saw a man being shot by two (2) persons, how far were you from them, Mr, Witness?

A. Around fifteen (15) meters.

Q. And with that incident was nighttime, how come Mr. witness with that distance you were able to see these two (2) persons firing a man who was lying on a ground?

A. Because it was lighted.

Q. Were you able to recognize the person being fired [at] by the two (2) persons?

A. I do not know him by his name I only know him by his face.

Q. What do you know of this person who was being shot at that time?

A. I did not come to know to see his face because he was lying on the pavement, sir.

Q. How about the two (2) persons whom you saw firing at this man who was lying on the ground were you able to recognize them?

A. Yes, sir. I know them.

Q. Why do you know them?

A. Because it was lighted.

Q. Before that incident, do you know already these two (2) man (sic) who were firing at the man lying on the ground at that time, Mr., Witness?

A. No, sir.

Q. And if these two (2) persons whom you saw firing a man who was lying on the ground will be seen by you today will you be able to recognize them?

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A. Yes, sir.

Q. Will you please look around inside the courtroom Mr. Witness and tell this Honorable Court if that person whom you saw firing at a man lying on the ground on February 23, 2000 are (sic) present inside the courtroom?

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A. Only one person is present, your Honor.

Q. Will you please point who is present?

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COURT: You go there and tapikin mo ang balikat.

Mr. Morabe: Witness is tapping the shoulder of a person wearing prison uniform who stand (sic) up and identified himself as Edgar Tahao.

Q. How about the other person if you will see him again will you be able to recognize him, Mr. Witness?

A. Yes, sir.

Q. When you saw these two persons firing at the man lying on the ground after they have fired this person. What did they do next, Mr. Witness?

A. I saw him get the firearm of the man lying on the ground.

Q. Who between the two (2) persons took the gun of the person when you saw lying on the ground?

A. Siya po.

Mr. Morabe: Witness is pointing to Edgar Tahao.

Q. When you saw these two (2) persons firing at the man lying on the ground, what firearm were they using at that time?

A. I did not recognize the gun but all I saw it is a too short firearm, sir.

Q. And after the man whom you pointed to as Edgar Tahao as the one who took the firearm lying on the ground what did these two (2) persons do next?

A. They fired at the man lying on the ground.

Q. After they have fired again on the man lying on the ground what transpired next, Mr. Witness?

A. They left the place and cross (sic) the road, sir.[7]

Jennylyn Mendoza

Q. On February 23, 2000 at around 9:30 in the evening Madam Witness, please tell this Honorable Court where were you?

A. Yes, sir.

Q. And where were you Madam Witness?

A. I was inside at Venice Aira, sir.

Q. What is this Venice Aira Madam Witness?

A. It is a videoke house, sir.

Q. And why were you at that place on February 23, 2000 at 9:30 in the evening Madam Witness?

A. Because I am the caretaker of that Videoke House, sir.

Q. And this Eddie Joya whom you say you knew already, when was the last time you met him?

A. On the day he was shot, sir.

Q. You said he was shot, where was this Eddie Joya shot Madam Witness?

A. Outside the Venice Aira Videoke House, sir.

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Q. You said you were inside Venice Aira Videoke, why do you say that Eddie Joya was shot outside that establishment on that day and time Madam Witness?

A. Because he was talking to me at that time, sir.

Q. Where were you talking with that Eddie Joya before he was shot Madam Witness?

A. Inside the Venice Aira Videoke House, sir.

Q. And you said he was shot outside Venice Aira, where were you when he was shot outside that Venice Aira Madam Witness?

A. I went outside, sir.

Q. Before he was shot outside, where were you at that time?

A. I was outside the Venice Aira, sir.

Q. And when you were outside the Venice Aira Videoke before Eddie Joya was shot, what were you doing Madam Witness?

A. I was there, sir, trying to pacify them.

Q. When you said you were trying to pacify them, to whom are you referring?

A. Sario Tahao, Edgar Tahao and Eddie Joya, sir.

Q. Before you tried to pacify these persons, where was (sic) these Sario Tahao and Edgar Tahao Madam Witness?

A. They were inside the Venice Aira Videoke, sir.

Q. And how come according to you, you were pacifying them outside?

A. Because they went outside when they have heated argument, sir.

Q. Who between Sario Tahao and Edgar Tahao came out first from Venice Aira Videoke between Sario Tahao and Edgar Tahao?

A. We were talking within the compound, sir.

Q. When you said within the compound, do you mean to tell this Honorable Court that you are (sic) outside the Videoke House?

A. No, sir.

Q. And when Sario Tahao came out of the Videoke Bar, what happened?

A. Eddie Joya noticed that Sario Tahao is (sic) carrying a gun, sir.

Q. And what did Eddie Joya do when he noticed that Sario Tahao was carrying a firearm?

A. He asked Sario Tahao why he (sic) is carrying a gun, sir.

Q. And what was the reply of Sario Tahao?

A. He just uttered a (sic) words "Pinsan" and then gave his firearm to Eddie Joya, sir.

Q. And after Sario Tahao gave his gun to Eddie[d] Joya, what did Sario Tahao do?

A. Nothing, sir.

Q. And after Sario Tahao was disarmed by Eddie Joya, where is (sic) Edgar Tahao now?

A. He was walking outside towards our direction, sir.

Q. And what did Eddie Joya do when he saw Edgar Tahao coming out of the Videoke Bar?

A. Eddie Joya noticed that Edgar Tahao was also carrying a gun and uttered the words "Pare may baril ka rin,", sir.

Q. And what did (sic) the reply of Edgar Tahao, if any?

A. Eddie Tahao replied that "It's none of your business", sir.

Q. And when Edgar Tahao uttered to Eddie Joya that: "Wala kang pakialam kung may baril ako", what happened next?

A. It is my business because I'm a policeman, sir.

Q. At that time that they were arguing with each other (referring to Edgar Tahao), where were you Madam Witness?

A. I was still there, sir.

Q. What did you do when they were arguing Madam Witness?

A. I [was] just listening to them and then after that, Eddie Joya instructed me to call on the police station, sir.

Q. And when you were instructed to call the police by Eddie Joya, what did you do Madam Witness, if any?

A. I called the police but I was a little bit nervous, sir.

Q. Were you able to call for the police as instructed by Eddie Joya Madam Witness?

A. No, sir. Because I forgot the telephone number.

Q. Where were you, about to call a (sic) police?

A. In the bakery, sir.

Q. How far was this bakery from the place where you were at that time?

A. It is quite far, sir. "Malayo po".

ATTY. SALATANDRE: So may we quote on the record "Malayo po", Your Honor.

PROS. MARANAN:
Q. From where you are, how far?

A. About 25 to 30 minutes, sir. The parties agreed on the distance.

Q. Were you able to reach the bakery Madam Witness?

A. Yes, sir.

Q. And according to you, you were not able to call the police because you forgot the number, when you were not able to call the police, what did you do Madam Witness?

A. I returned to them, sir.

Q. And when you returned to the place where these Edgar Tahao and Eddie Joya were at that time, what happened Madam Witness?

A. When I returned, they were already outside the compound of the Videoke House, sir.

Q. And what were they doing when you saw them?'

A. I returned to the place where they were, I saw Eddie Joya walking the direction towards of his car and then Edgar Tahao followed him and took his firearm, sir.

Q. Who took the firearm of Eddie Joya, for clarification?

A. Edgar Tahao, sir.

Q. How far were you when you saw Edgar Tahao took the gun of Eddie Joya Madam Witness?

A. About three (3) meters, sir.

Q. From where did this Edgar Tahao get the gun of Eddie Joya?

A. After Eddie Joya turned his back, Edgar Tahao ordered Eddie Joya to raise his arm and poked a gun and then he get (sic) the firearm of Eddie Joya from his wallet, sir.

Q. And what happened after that, after poking his gun, after poking Edgar's gun to Eddie Joya?

A. Eddie Joya tried to fight it out with Edgar Tahao and then he ran away but Edgar Tahao shoot (sic) him, sir.

Q. And what happened to Eddie Joya when he was shot by Edgar Tahao?

A. He fell down, sir.

Q. And where did he fall down Madam Witness?

A. Near the outpost, sir.

Q. And when Eddie Joya was already on the ground, what happened next if any Madam Witness?

A. Sario Tahao came out and Eddie Tahao gave a firearm to Sario Tahao and they helped each other in shooting Eddie Joya, sir.

Q. How many persons shot Eddie Joya?

A. All in all three (3) persons, sir. But I could not recognize the other one, sir.

Q. When these persons including Edgar Tahao and Sario Tahao were firing at Eddie Joya, who was on the ground, how far were you from them?

A. About ten (10) meters, sir.

Q. That was nighttime Madam Witness, how come you were able to have clear view of the incident?

A. Because I was there when it happened, sir.

Q. But it was nighttime and if it is not nighttime, it should be dark Madam Witness, why is it that despite it was nighttime, you saw the incident?

A. Because my attention was focused on them sir.

xxx

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Q. How would you describe the place where the incident happened?

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A. A jeep are (sic) passing thru there and it is near the outpost and beside the outpost is Venice Aira, sir.

Q. When you said Madam Witness that three (3) persons were firing on Eddie Joya, how many firearms were they using?

A. Tig-iisa po sila , sir.

Q. And what kind of firearms they were using on firing upon Eddie Joya?

A. Short firearm, sir.

Q. Then after they have jointly fired upon Eddie Joya, what did these three (3) persons do after firing?

A. They ran away, sir, on the different direction[s], sir.

Q. What did you notice where they went when they were fleeing from the incident?

A. They rode the tricycle separately, sir."[8]

The testimonies of Bolante, Padernilla and Mendoza are clear, concise and straightforward. Each witness corroborated each other's testimony painting a clear picture of what had really transpired that night.

The inconsistencies raised by appellant are insufficient to adversely affect the credibility of these witnesses.

Appellant raised two inconsistencies. First, as to witness Bolante, appellant cites that in his affidavit,[9] Bolante stated that it was appellant, Sario and "John Doe" who shot Joya when he was on the ground, however, during his testimony, Bolante testified that it was only appellant and Sario who shot Joya and that he was not aware what the third person did.

Second, as to witness Padernilla, appellant argues that in his affidavit,[10] Padernilla stated that he was 50 meters away from the scene of the crime, however, during his testimony, Padernilla testified that he was a mere 15 meters away from the scene when it happened.

The said inconsistencies are too minor to destroy the veracity of the witnesses' testimonies. What is important is the consistency in Bolante's testimony that it was appellant who first shot Joya when the latter tried to run away and thereafter, continued to shoot Joya when Joya was already wounded and lying prostrate on the ground.

On the other hand, Padernilla's exact distance from the shooting scene does not relate to an essential element of the crime. WE also note that the numbers 15 and 50 are similar-sounding which could have led to the erroneous entry in the affidavit. Finally, the fact that it was Padernilla himself who noticed the discrepancy in the distance only strengthens his claim that he witnessed the incident.

Taken together, the testimonies of Bolante and Padernilla sufficiently proved that it was appellant who shot Joya. To disregard their testimonies on the basis of minor inconsistencies would result in injustice. Hae nugae seria ducent in mala. Consideration of these trifles will lead to serious mischief. Again, minor inconsistencies do not impair the essential integrity of the prosecution's evidence as a whole.[11] Furthermore, it is well established that discrepancies and/or inconsistencies between a witness’ affidavit and testimony do not necessarily impair his credibility as affidavits are taken ex parte and are often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer.[12] Minor inconsistencies in the narration of a witness do not detract from its essential credibility as long as it is in its entirety coherent and intrinsically believable. Inaccuracies may in fact

suggest that the witness is telling the truth and has not been rehearsed as it is not to be expected that he will be able to remember every single detail of an incident with perfect or total recall.[13]

Appellant also cannot rely on Bolante's alleged failing eyesight to overturn his conviction. Appellant posits that it would have been impossible for Bolante to identify him as one of the shooters of Joya as he is suffering from poor eyesight, so much so, that he could not even read a signage in the court which was was 20 meters away.

The argument does not sway.

Bolante testified that he knew appellant and Sario since childhood because they are neighbors. In view thereof, he could easily identify them. What is important is that during his testimony, Bolante categorically and positively identified appellant and his testimony was found by the trial court to be credible and straightforward. Bolante had no ill-motive to point to appellant and Sario as the assailants. Ergo, it can be safely said that he identified them because they were the ones whom he saw shot the victim.

In addition, the testimony of Mendoza, as previously quoted, strengthened the testimonies of Bolante and Padernilla. It is clear from her testimony that she had witnessed the shooting, and thus, could positively identified the perpetrators of the same. The argument of appellant that Mendoza's testimony should not be given credence as she had not witnessed the shooting because she was then at the bakery cannot hold water. As borne-out by the evidence, appellant and Joya were arguing when Mendoza left to call the police; when she returned to the place of the incident, Joya was already on the way to his car with appellant following him and not long thereafter, the shooting incident took place. She, therefore, witnessed the perpetration of the crime.

All told, the alleged loopholes in the prosecution's case raised by appellant are very inadequate to overturn the trial court's guilty verdict. The minor inconsistencies in the prosecution's witnesses' testimonies are to inconsequential to adversely affect their overall integrity.

Time and again, this Court has maintained that the question of credibility of witnesses is primarily for the trial court to determine. For this reason, its observations and conclusions are accorded great respect on appeal. They are conclusive and binding unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered.[14] The rationale behind this rule is that the credibility of a witness can best be determined by the trial court since it has the opportunity to observe the candor and demeanor of the witnesses. Appellant failed to convince this Court to deviate from the said doctrine.

Nevertheless, WE find that appellant can only be convicted of the crime of homicide.

The defense argues that the prosecution failed to prove the presence of treachery as there was no evidence presented to prove that appellant sought the victim to be at a disadvantaged position to ensure consummation of the crime.

WE agree.

Treachery qualifies the killing to murder. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make.[15]

The essence of treachery is the sudden and unexpected attack by the assailant on an unsuspecting victim, depriving the latter of any real chance to defend one's self. It is employed to ensure the commission of the crime without the concomitant risk to the aggressor. The rule is well-settled in this jurisdiction that treachery may still be appreciated even though the victim was forewarned of danger to his person. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.[16]

However, it must be remembered that it is not only the sudden attack that qualifies a killing into murder. There must be a conscious and deliberate adoption of the mode of attack for a specific purpose.[17]

In this case, proceeding from the aforequoted testimonies of prosecution witnesses, the meeting between the accused and the victim was casual and the attack was impulsively done.

In a case decided by the Supreme Court, it was held that where the meeting between the accused and the victim was casual and the attack was done impulsively, there is no treachery even if the attack was sudden and unexpected and while the victim was running away with his back towards the accused. The reason for this is that the accused could not have made preparations for the attack, the meeting between him and the deceased being casual; and the means, method and form of attack could not theretofore have been thought of by the accused, because the attack was impulsively done.[18]

The record further shows that the shooting was preceded by a heated argument between the victim and appellant after the latter refused to be disarmed by the former. The High Court ruled that there is no treachery when the victim is placed on guard, as where the attack was preceded by a quarrel and by a heated exchange of words between the accused and the victim.[19] In said cases, it cannot be said that the victim was caught completely by surprise when the attack ensued.[20]

There was no indication that there was a sufficient interval of time between the argument and the shooting whereby appellant, Sario and "John Doe" could have plotted the killing of Joya and do it in such manner that would ensure that Joya would not survive. The period starting from the time Joya confronted Sario about his gun until the appellant shot Joya to death on the pavement was a continuous one that gives rise to no other conclusion than that the decision to shoot Joya was sudden, a spur of the moment.

Jurisprudence is consistent in stating that there can be no treachery where accused made no preparation or employed no means, method and form of execution tending directly and specially to insure the commission of a crime and to eliminate or diminish risk from defense which the victim may take. The mere suddenness of attack does not, of itself suffice for a finding of alevosia if the mode adopted by the accused does not positively tend to prove that they thereby knowingly intended to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that might be offered.[21]

Deliberate or conscious adoption of the mode of attack has to be proved beyond reasonable doubt. For it is likewise an established principle that the quantum of evidence to prove a person's being guilty of a crime is also required to prove treachery. The same degree of proof to dispel any reasonable doubt is required before any conclusion may also be reached respecting the attendance of treachery, whether as qualifying or aggravating, in a criminal case.[22] There is no such proof in this case.

Finally, when the victim had a chance to prepare or where the attack was preceded by a warning, there could be no treachery.[23] The hostile attitude continuously demonstrated by appellant from the time the victim noticed him to be possessing a firearm was already a warning to the latter giving the latter a chance to prepare for the impending attack. As a matter of fact, in the course of the heated argument that ensued between appellant and the victim, the latter even instructed Mendoza to call the police. Not only that, the victim also attempted to get his long firearm inside his car. These are obviously preparations the victim had made against the expected aggression of appellant. Therefore, it cannot be said that appellant's assault was sudden and unexpected as to qualify the same to be treacherous.

Consequently, with treachery not being proved beyond reasonable doubt, the crime appellant is guilty of is the lesser crime of homicide.

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As regards the failure of the police to present a ballistic report, the same does not weaken the case of the prosecution. A ballistic report serves only as a guide for the courts in considering the ultimate facts of the case. It would be indispensable if there are no credible eyewitnesses to the crime inasmuch as it is corroborative in nature. The presentation of weapons or the slugs and bullets used and ballistic examination are not prerequisites for conviction. The corpus delicti and the positive identification of accused-appellant as the perpetrator of the crime are more than enough to sustain his conviction. Even without a ballistic report, the positive identification by prosecution witnesses is more than sufficient to prove accused's guilt beyond reasonable doubt.[24]

In the extant case, the testimonial evidence of the prosecution sufficiently proved the identity of appellant as the assailant, thus, a ballistic report may be dispensed with.

As to the claim of voluntary surrender by appellant, WE find the same to be without merit.

In order for an accused to benefit from the mitigating circumstance of voluntary surrender, the following requisites 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. A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt, or he wishes to save them the trouble and expense necessarily incurred in his search and capture. Voluntary surrender presupposes repentance.[25] It has been held that going to the police station to clear one's name does not show any intent to surrender unconditionally to the authorities.[26]

In the case at bar, appellant surrendered to the authorities on February 25, 2000,[27] after being informed of the death of Sario and John Doe, in order to disclaim responsibility for the killing of the victim and pin the same to those who are already dead. This neither shows repentance nor acknowledgment of the crime; not even of intention to save the government the trouble and expense necessarily incurred in his search and capture.[28] Hence, he should not be credited with the mitigating circumstance of voluntary surrender.

As to the penalty, having been found guilty only of the crime of homicide, the penalty for appellant should be reduced to reclusion temporal under Article 249 of the Revised Penal Code. Applying the Indeterminate Sentence Law, there being neither mitigating nor aggravating circumstance proven, the maximum of the penalty should be taken from its medium period which ranges from 14 years, 8 months and 1 day to 17 years and 4 months. The minimum of the penalty, on the other hand, shall be taken within the range of the penalty one degree lower than reclusion temporal which is prision mayor (six years and one day to 12 years).

Pursuant thereto, WE hereby sentence appellant to the indeterminate sentence of ten (10) years of prision mayor, as minimum to fifteen (15) years of reclusion temporal, as maximum.

As to the award of damages, the trial court correctly awarded to the heirs of the victim the amount of P50,000.00 as moral damages,[29] P20,000.00 as attorney's fees and P50,000.00 as civil indemnity.[30] However, WE reduce the award of exemplary damages from P50,000.00 to P30,000.00[31] to be consistent with prevailing jurisprudence. Exemplary damages are given to deter similar conduct and serve as an example for the public good.[32]

As to the award of temperate damages, WE find that the award of the same to be justified. Temperate damages in lieu of actual damages for loss of earning capacity can be awarded when the income of the victim was not sufficiently proven.[33] In this case, there was no question that at the time of his death Joya was employed as a police officer. However, there was no evidence presented as to the amount of his actual income.

The award of P100,000.00 as actual damages is also in order as the same is duly substantiated by receipts.[34]

In addition, WE note that the trial court failed to impose interest on the awards of civil indemnity and damages. Considering that the appeal of a criminal case opens the whole case for review, even on questions that the parties did not raise,[35] WE find that the imposition of interest is in order in line with the ruling of the Supreme Court in People of the Philippines vs. Combate,[36] wherein a six percent (6%) interest per annum on the awards of civil indemnity and all damages was held to be proper.

WHEREFORE, premises considered, the instant appeal is hereby PARTLY GRANTED. The impugned Decision of the Regional Trial Court of the City of Trece Martires, Branch 23, finding accused-appellant Edgar Tahao guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. Criminal Case No. CR-164-00 is hereby MODIFIED. Appellant Edgar Tahao is found GUILTY beyond reasonable doubt only of the crime of HOMICIDE and is correspondingly sentenced to suffer the indeterminate penalty of ten (10) years of prision mayor, as minimum to fifteen (15) years of reclusion temporal, as maximum.

Appellant is likewise ordered to pay to the heirs of Eduardo Joya the following sums:

(1)

P50,000.00 as civil indemnity;

(2)

P100,000.00 as actual damages;

(3)

P50,000.00 as moral damages;

(4)

P30,000.00 as exemplary damages;

(5)

P25,000.00 as temperate damages; and

(6)

P20,000.00 as attorney's fees;

(7)

Interest rate of six percent (6%) per annum on the award of civil indemnity and damages from the finality of this judgment until fully paid.

SO ORDERED.

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

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[1] Rollo p. 64

[2] Records p. 280 [3] Records p. 280

[4] 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.

[5] People of the Philippines vs. Sameniano, G.R. No. 183703, January 20, 2009

[6] TSN, Francisco Bolante, June 7, 2001, pp. 7-19

[7] TSN, Romy Padernilla, November 6, 2002, pp. 6- 18

[8] TSN, Jennylyn Mendoza, April 23, 2000, pp. 8-25

[9] Testimony of Francisco Bolante during Preliminary Investigation dated March 3, 2000, Question No. 9, Records p. 13

[10] Testimony of Romy Padernilla during Preliminary Investigation dated February 29, 2000, Question No. 8, Records p. 10

[11] See People of the Philippines vs. Villablanca, G.R. No. 89662, October 1, 1999

[12] See People of the Philippines vs. Galicia, G.R. No. 191063, October 09, 2013

[13] See People of the Philippines vs. Teñoso, G.R. No. 188975, July 05, 2010

[14] See People of the Philippines vs. Gambao, G.R. No. 172707, October 01, 2013

[15] See People of the Philippines vs. Bracia, G.R. No. 174477, October 2, 2009

[16] See People of the Philippines vs. Glino, G.R. No. 173793 December 4, 2007

[17] See People of the Philippines vs. Antonio, G.R. No. 128900, July 14, 2000

[18] See People of the Philippines v. Magallanes, G.R. No. 114265, July 8, 1997, citing People of the Philippines vs. Escoto, G.R. No. 91756, May 11, 1995

[19] See People of the Philippines vs. San Gabriel, G.R. No. 107735, February 1, 1996; People of the Philippines vs. Zeta, G.R. No. 140901-02, May 9, 2002; People of the Philippines vs. Escarlos, G.R. No. 148912, September 10, 2003

[20] See People of the Philippines vs. Rillorta, G.R. No. 57415, December 15, 1989

[21] Supra., G.R. No. 128900, July 14, 2000

[22] Supra., G.R. No. 128900, July 14, 2000

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[23] See People of the Philippines vs. Visagar 93 Phil 319; People of the Philippines vs. Luna 76 Phil. 101

[24] See Velasco vs. People of the Philippines, G.R. NO. 166479, February 28, 2006

[25] See People of the Philippines vs. Nanas, G.R. No. 137299, August 21, 2001

[26] See People of the Philippines vs. Abolidor, G.R. No. 147231, February 18, 2004

[27] Records p. 26

[28] See People of the Philippines vs. Tabarnero, G.R. No. 168169, February 24, 2010

[29] See People of the Philippines vs. Rebucan, G.R. No. 182551, July 27, 2011

[30] See People of the Philippines vs. Likiran, G.R. No. 201858, June 04, 2014

[31] See People of the Philippines vs. Combate, G.R. No. 189301, December 15, 2010

[32] See People of the Philippines vs. Barde, G.R. No. 183094, September 22, 2010

[33] See Tan vs. OMC Carriers, Inc., G.R. No. 190521, January 12, 2011

[34] Records p. 162

[35] Caneda vs. People, G.R. No. 182941, July 03, 2009

[36] G.R. No. 189301, December 15, 2010

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