PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. SPO1 LEONARDO TORRES Y BLANCA AND P/INSP. DAMASO QUIACOS Y JOYA, ACCUSED-APPELLANTS.

Ponente: ZALAMEDA, R.V., J.

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ZALAMEDA, R.V., J.:

Before Us is an Appeal from the Judgment[1] dated 10 September 2010 of Branch 13, Regional Trial Court of Lipa City, Batangas, finding accused SPO1 Leonardo Torres[2] y Blanca, guilty beyond reasonable doubt of the crimes of homicide and frustrated homicide, and accused P/Insp. Damaso Quiacos[3] y Joya likewise for the crime of frustrated homicide, the dispositive portion of which states:

> "WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> In Criminal Case No. 0204-2000, the Court finds the accused SPO1 Leonardo Torres y Blanca GUILTY beyond reasonable doubt, as principal, for the crime of Frustrated Homicide defined and penalized under Article 249 in relation to Article 50 of the Revised Penal Code with an aggravating circumstance of taking advantage of his public position, and applying the Indeterminate Sentence Law, hereby sentences him to suffer imprisonment of four (4) years, two (2) months and one (1) day of prision correccional as minimum to ten (10) years and one (1) day of prision mayor as maximum.
>
> Accused is likewise ordered to pay the private complainant Emerson Dagpa the following amounts:
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> - Eight Hundred Thirty Thousand One Hundred Seventy Six Pesos and Sixty Centavos (Php 830,176.60) as actual damages;
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> - Twenty Five Thousand Pesos (Php 25,000.00) as moral damages; and
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> - Twenty Five Thousand Pesos (Php 25,000.00) as exemplary damages.
>
> In Criminal Case No. 0205-2000, the Court finds the accused SPO1 Leonardo Torres y Blanca GUILTY beyond reasonable doubt, as principal, for the crime of Homicide defined and penalized under Article 249 of the Revised Penal Code with an aggravating circumstance of abuse of public position and, applying the Indeterminate Sentence Law, hereby sentences him to suffer an imprisonment of ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum.
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> The Court finds his co-accused P/Insp. Damaso Quiacos y Joya likewise GUILTY beyond reasonable doubt, as ACCOMPLICE, for the said crime and, applying the Indeterminate Sentence Law, hereby imposes upon him the penalty of imprisonment of two (2) years, four (4) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum.
>
> Both accused are ordered to indemnify the heirs of Sgt. Mario Ticman the following sums:
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> 1.
>
> One Hundred Thousand and Twenty Five Pesos (Php 100,025.00) as a actual damages in the following

proportion:

SPO1 Leonardo Torres

Php 66,683.35

P/Insp. Damaso Quiacos

Php 33,341.65

2.

Fifty Thousand Pesos (Php 50,000.00) as civil indemnity in the following proportion:

SPO1 Leonardo Torres

Php 33,333.35

P/Insp. Damaso Quiacos

Php 16,666.65

3.

Fifty Thousand Pesos (Php 50,000.00) as moral damages in the following proportion:

SPO1 Leonardo Torres

Php 33,333.35

P/Insp. Damaso Quiacos

Php 16,666.65

with subsidiary liability in accordance with Article 110, of the Revised Penal Code, i.e., in case of insolvency of P/Insp. Quiacos (accomplice), SPO1 Torres (principal) shall be subsidiarily liable for his share of the indemnity; and in case of insolvency of SPO1 Torres, P/Insp. Quiacos shall be subsidiarily liable for the indemnity due from said principal.

In addition to the above sums, accused SPO1 Leonardo Torres is further ordered to pay Twenty Five Thousand Pesos (Php 25,000.00) as exemplary damages to the heirs of Sgt. Ticman.

SO ORDERED."[4]

The facts, as culled from the records, are as follows:

On 08 May 2000, accused-appellants were charged in two (2) Informations for frustrated homicide under Article 249 in relation to Article 50 of the Revised Penal Code[5] and Homicide under Article 249 of the RPC, to wit:

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i. accused Torres was charged with frustrated homicide for the injuries sustained by Emerson Dagpa y Silva[6] -

> CRIMINAL CASE NO. 0204-2000
>
> "That on or about the 14[th] day of August 1999, at about 9:15 o'clock in the evening at G.A. Solis and Esteban Mayo Streets, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused then armed with a short firearm, with intent to kill and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the use of said firearm one Emerson Dagpa y Silva, thereby inflicting upon the latter multiple gunshot wounds, the said accused thus performing all the acts of execution which should have produced the felony of homicide as a consequence but which nevertheless did not produce the same by reason of some causes independent of the will of the perpetrator, that is because of timely and able medical assistance rendered to the said offended party which prevented his death.
>
> Contrary to law."

ii. accused Torres and Quiacos were charged for homicide for the death of Mario Ticman y Nerio[7] -

> **CRIMINAL CASE NO. 0205-2000**
>
> "That on or about the 14[th] day of August 1999, at about 9:15 o'clock in the evening at G.A. Solis and Esteban Mayo Streets, Lipa City, Philippines and within the jurisdiction of this Honorable Court, principal accused Leonardo Torres who was armed with a short firearm, together with and aided by accused Damaso Quiacos who acted as his accomplice with intent to kill and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the use of said firearm one Mario Ticman y Nerio while the latter was being held in his arm by accused Damaso Quiacos, thereby inflicting upon the latter multiple gunshot wounds, on his abdomen which directly caused his death.
>
> Contrary to law."

On arraignment, accused-appellants duly assisted by their respective counsels, pleaded NOT GUILTY to the charges. Thereafter, pre-trial conference was terminated and joint trial on the merits ensued.

The prosecution presented the following witnesses:

(1) Emerson Dagpa; (2) Harold Ticman; (3) Eufrania Manalo Ticman; (4) Dr. Antonio S. Vertido; and (5) Dr. Nemesio K. Villa.

The evidence of the prosecution reveals the following:

On or about 14 August 1999 at around 9:15 p.m., Emerson Dagpa y Silva,[8] Sgt. Mario Ticman y Nerio, a Staff Sergeant of the Philippine Air Force, and Harold Ticman,[9] son of Mario, were on their way home on board a car when they accidentally bumped the rear portion of a maroon pick-up with plate number DFM 425 travelling along C.M. Recto Avenue, Lipa City. Emerson, who was driving, stopped the car and together with Mario alighted therefrom, leaving Harold inside the car. At the same time, three (3) unknown men got out of the pick-up. Mario approached them and proposed to settle the matter at the police station but for some reason, the men refused, leading to an altercation. Eventually, two of the men attacked Mario, with one holding him, who was later identified to be accused Quiacos. Meanwhile, another companion exchanged fist blows with Emerson. During the commotion, another man alighted from the pick-up, who was later identified to be accused Torres. When accused Torres pointed a gun at Mario, accused Quiacos released his hold on the latter. Thereafter, accused Torres shot Mario three (3) times[10] hitting him on his abdomen. After seeing accused Torres shot Mario, Emerson approached accused Torres in an attempt to wrest the gun but had to run towards the direction of their car when

said accused started shooting and pursued him even after he fell to the ground.[11] Accused Torres only stopped when someone called out, "Pare tama na, patay na ang mga iyan!"[12]

Harold, who stayed inside the car, witnessed the incident which eventually led to the death of his father Mario and the fatal wounding of Emerson. He even had the opportunity of getting a good look at accused Torres when said accused went after Emerson and the latter was able to reach the car and opened the right rear door.[13]

When the group left, Harold went out of the car and shouted for help. Mario and Emerson were brought to N.L. Villa Memorial Medical Center where the former expired that same night.[14] Meanwhile, Emerson sustained several wounds on various parts of his body and had to be confined for one and a half (1-1/2) months[15] in the hospital. When he was discharged from the hospital after six (6) months,[16] he was able to walk but still had to undergo continuous medication and physical therapy, for a limp he acquired as a consequence of the incident.

It was only after his discharge from the hospital when he was able to give a statement to the National Bureau of Investigation.[17] Thereafter, he assisted in the preparation of the cartographic sketches of the assailants, which included accused Quiacos. Meanwhile, it was Harold who provided the description of the fourth man, accused Torres.[18] The investigations that followed revealed the culprits to be police officers assigned in Cavite City.

Emerson went to the Police Provincial Headquarters in Cavite City[19] on 17 February 2000. He was able to recognize accused Quiacos from the pictures in the police files. However, he did not identify him right away but requested for a police line-up just to be positive in his identification. A week after, Emerson returned and during the police line-up, Emerson pointed to accused Quiacos as one of the perpetrators of the crime.[20]

On 03 March 2000, Harold went back to the Cavite PNP Headquarters and behind a one-way mirror,[21] identified accused Torres as the one who shot his father Mario and seriously wounded Emerson.[22]

The prosecution then rested its case and the defense presented its witnesses as follows: (1) accused Torres; (2) accused Quiacos; (3) PO3 Ronald Limbo; (4) Ex-Mayor Felomino Crizaldo Maligaya; (5) Federito V. Panganiban.

In his defense, accused Torres alleged that he was not in Lipa City, Batangas on 14 August 1999, the date of the incident. Said accused Torres admitted knowing accused Quiacos[23] but denied owning a pick-up with plate number DFM 425.[24] He remembered being summoned by Police Superintendent Rustico Francisco[25] to the Cavite PNP Headquarters sometime in the year 2000 and respondent thereto. The following day, he was called to the Office of the Intelligence Operation and turned out that through a one-way mirror, he was identified by Harold as one of their assailants.[26]

On the other hand, accused Quiacos interposed the defense of denial and alibi. He averred that at the time of the incident, he was the Chief of Police of the Municipality of General Emilio Aguinaldo, Cavite.[27] In the morning of 14 August 1999, he assisted in the interment of the father of the municipal mayor of the place. Thereafter, he returned to the police station until 7:30 p.m, went back to the house of the mayor until 10:30 p.m., then returned to the station and after an hour, left for home.[28]

Accused Quiacos further alleged that sometime in the year 2000, he was called for investigation by a certain Major Gaerlan and was ordered to line-up with five (5) others who were all in civilian clothes. Thereafter, he was informed being identified as one of those involved in the subject incident.[29] However, accused Quiacos insisted that it was a mistake, as he could not have been in Lipa City, Batangas on the date referred to. Moreover, he claimed that the cartographic sketch described the assailant to be five feet six inches to five feet seven inches (5'6"- 5'7") in height and was thirty-five to forty (35-40) years old. Accused Quiacos, on the other hand, insisted that he is five feet eight and one-half inches (5'8-1/2") tall and fortynine (49) years old at the time of the

incident.[30] He posited that there may have been a mistake, as another PNP member by the name of Edgardo Quiacos fitted more the said sketch and description.[31]

After trial, the RTC rendered the assailed Decision, hence, this Appeal.

Accused Torres claimed that the trial court erred as follows:

> I. THE LOWER COURT ERRED IN DISREGARDING THE EVIDENCE THAT HEREIN ACCUSED' (SIC) APPELLANT'S RIGHT TO DUE PROCESS WAS REPEATEDLY DENIED FROM THE START OF THE POLICE INVESTIGATION UNTIL HE WAS CHARGED IN COURT.
>
> II. THE LOWER COURT ERRED IN RULING THAT WITNESSES HAROLD TICMAN AND EMERSON DAGPA POSITIVELY IDENTIFIED ACCUSED[-]APPELLANT AS THEIR ASSAILANT.
>
> III. THE LOWER COURT ERRED IN DISREGARDING ACCUSED' (SIC) APPELLANT'S TESTIMONY AS TO HIS WHEREABOUTS DURING THE DATE AND TIME OF THE INCIDENT.[32]

On the other hand, accused Quiacos raised the following errors allegedly committed by the trial court:

- THE LOWER COURT ERRED IN NOT CONSIDERING THAT THE ACCUSED-APPELLANT'S RIGHT TO DUE PROCESS WAS DENIED WHEN HE WAS MADE TO PRESENT HIMSELF IN THE POLICE LINE UP

- THE LOWER COURT ERRED IN NOT CONSIDERING THAT ACCUSED[-]APPELLANT SUCCESSFULLY RAISED HIS DEFENSE OF ALIBI THEREBY DISPUTING THE ALLEGATION THAT HE WAS AT THE SCENE OF THE CRIME AT THE TIME OF THE INVESTIGATION

- THE LOWER COURT SERIOUSLY ERRED IN FINDING THAT THE EYE WITNESSES HAROLD TICMAN AND EMERSON DAGPA POSITIVELY IDENTIFIED THE ACCUSED[-]APPELLANT

- THE LOWER COURT SERIOUSLY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES

- THE COURT SERIOUSLY ERRED IN CONVICTING THE ACCUSED[-]APPELLANT BASED ON MERE INCONSISTENT TESTIMONIES OF THE WITNESSES AND WHICH CANNOT FIND BASIS ON THE PIECES OF OBJECT EVIDENCE PRESENTED

- THE LOWER COURT ERRED IN CONVICTING ACCUSED[-]APPELLANT AS AN ACCOMPLICE WHEN THE PROSECUTION FAILED TO ESTABLISH CONSPIRACY[33]

After a thorough review of the facts and evidence on record, this Court agrees with the trial court that the evidence, indubitably lead to the conclusion that both accused appellants Torres and Quiacos are guilty beyond reasonable doubt of the crimes charged.

In the instant Appeal, the issues raised by accused-appellants concern (1) the alleged violations of their constitutional rights and the consequent admissibility of the evidence against them and (2) the credibility of the witnesses for the prosecution.

Both accused-appellants lamented that their constitutional rights were violated when they were identified out-of-court by the witnesses for the prosecution without the assistance of their respective counsel.

Accused Torres raised the issue on the illegality of his identification by claiming that he was identified by Harold through a one-way mirror without his knowledge and consent.

In the case of accused Quiacos, he maintained that since he was already identified through pictures by Emerson

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prior to the police line-up, custodial investigation had already commenced, giving rise to his right to counsel. Thus, according to him, his identification during the police line-up without the presence of his counsel should have been excluded by the trial court, citing the case of People vs. Escordial[34] in support thereof.

These arguments fail to convince Us.

The case cited by accused Quiacos finds no application herein. In said case of People vs. Escordial, at the time accused was identified by the victim, there was already a warrant for his arrest and said accused was identified by other witnesses on various dates after his arrest. Otherwise stated, the process had already shifted from the investigatory to the accusatory, necessitating the assistance of accused's counsel of choice.

Accused Quiacos was identified through a police line-up. That he stood in a police line-up without the assistance of a counsel did not render Emerson's identification of him inadmissible. The right to counsel becomes a matter of right at the precise moment custodial investigation begins. Being made to stand in a police line-up is neither the starting point nor a part of custodial investigation.[35]

A close reading of the transcript of stenographic notes shows that Emerson requested for a police line-up just to be sure that the person he saw in the picture on file provided him was one of those responsible for the death of Mario.[36] Thus, at the time of accused Quiacos' identification during the police line-up, the process of custodial investigation had not yet commenced.

In the case of accused Torres, he was described by Harold to the NBI artist who then made a sketch out of it. His being identified by the son of the deceased using a one-way mirror without him knowing it did not necessitate the assistance of a counsel of his choice as it was just a confirmation that, indeed, he was the same person described in the sketch made by the NBI artist.

Be it noted that in the active service of the PNP and not both accused-appellants were under arrest when the identifications were made. They were never arrested after the out of court identification but afforded their rights during the preliminary investigation proceedings before the City Prosecutor's Office.

Assuming ex-gratia argumenti that the out-of-court identifications of the accused-appellants by the witnesses for the prosecution should have been made with the assistance of their respective counsels, it is noted that the defense did not immediately object when Emerson and Harold were presented by the prosecution or when specific questions regarding accused-appellant's out-of-court identifications were asked of them.[37] Hence, accused-appellants were deemed to have waived their right to object to the admissibility of the testimonies of Emerson and Harold. Nonetheless, the out-of-court identifications made by Emerson and Harold were not the sole basis of the trial court's conviction of accused-appellants, as they were likewise identified in open court. In the same case of People vs. Escordial, the Supreme Court had this to say:

> "Furthermore, the inadmissibility of these out-ofcourt identifications does not render the in-court identification of accused-appellant inadmissible for being the 'fruits of the poisonous tree.' This in-court identification was what formed the basis of the trial court's conviction of accused-appellant. As it was not derived or drawn from the illegal arrest of accused-appellant or as a consequence thereof, it is admissible as evidence against him. However, whether or not such prosecution evidence satisfies the requirement of proof beyond reasonable doubt is another matter altogether." [Emphasis supplied]

Also, the issue of identification of accused-appellants as perpetrators of the crimes boils down to one of credibility.

Assessment of the credibility of witnesses is a matter best undertaken by the trial court because of its opportunity, not available to the appellate court, to observe the witnesses first-hand, and note their demeanor under

questioning. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted which would otherwise materially affect the disposition of the case.[38] We do not see any reason to depart from this established rule.

The denial interposed by accused-appellants is an inherently weak defense, not to mention, easily fabricated and thus, cannot prevail as against positive identification of them as the perpetrators by the witnesses for the prosecution. Accused Quiacos averred that he was in General Aguinaldo, Cavite in the house of municipal mayor and could not possibly be in Lipa City, Batangas at the date and time of the incident. He argued being mistakenly identified for another policeman by the surname of Quiacos.

We are not persuaded.

Harold positively identified accused Quiacos as one of the men who attacked his father. He testified that it was accused Quiacos who held his father while the latter was being boxed by another man who remains unidentified. He could clearly see from where he was seated all that was happening outside as the headlights of the car he was in were on and there was also a post that provided sufficient illumination.[39] On the other hand, Emerson was able to identify accused Quiacos for he came face to face with the latter when he alighted from the car to negotiate a settlement with him on the accident. Emerson even presented before the court the relative positions of the accused-appellants during the incident.

Anent the claim that accused Quiacos was mistakenly identified as there was another policeman with the same surname as his, the same deserves scant consideration.

We note that aside from the criminal charges filed against accused Quiacos in court, he was also investigated by the Regional Internal Affairs Services, Region IV,[40] for the same incident and as a result, was suspended from service for three (3) months.[41] While he was very insistent that the cartographic sketch resembled Edgardo Quiacos, also a PNP member, who according to him may probably be the one involved in the subject incident, surprisingly, he never divulged this in the "Ganting Salaysay" which he submitted before the RIAS relative to the investigation conducted.[42] This claim is apparently a mere afterthought.

As to accused Quiacos' claim that he was at the house of the municipal mayor in Cavite on the night of 14 August 1999, he presented as his lone witness, a certain Federito V. Panganiban,[43] who claimed that he saw said accused thereat. It did not escape this Court’s attention that accused Quiacos was allegedly with a certain PO3 Aniceto Mojica and SPO1 Lamberto del Mundo.[44] We find it baffling that the companions of said accused were not presented as witnesses in his favor and instead, accused-appellant chose to present Panganiban alone.

As to accused Torres, he placed much emphasis that Emerson could not easily identify him in court, thus, according to him, created doubt as to his identity as a perpetrator of the crime.

Indeed, Emerson testified that accused Torres was "nakatagilid" when he saw him.[45] When accused Torres started firing his gun, he ran away from the former, affording him no opportunity to closely look at his face.[46] Moreover, in that moment, Emerson claimed that his vision was already blurred[47] after having sustained several gunshot wounds. On the other hand, Harold was able to see the face of accused Torres when he pursued Emerson who was running towards the car where the former was in. Emerson was able to reach and open the right rear door of the car, giving Harold, who was in the back seat, the opportunity to take a good look at accused Torres.[48] In the case of People vs. Visperas, Jr.,[49] the Supreme Court had the occasion to discuss, thus:

> "Once again, we rule that the credible and positive testimony of a single eyewitness is sufficient to sustain a conviction. Where the guilt of the accused is firmly established by the lone eyewitness’ unwavering and unequivocal testimony that positively identifies him as the assailant, the defense of denial and alibi must

inevitably collapse."

Further, while it is true that Harold only came out of the car after the assailants have left, this did not prevent him from seeing what was happening outside. For as testified to by him, there was enough illumination coming from a post and the headlights of the car he was in.

Anent the alleged oft-altered statements as to the number of assailants, which at first glance may raise doubt as to the truthfulness of the statements, the seeming inconsistency was satisfactorily explained by Emerson and Harold. The Supreme Court has repeatedly said that although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency in relating to the principal occurrence and positive identification of the assailant.[50] Minor inconsistencies even tend to strengthen the credibility of a witness because they discount the possibility that the testimony was rehearsed.[51] Jurisprudence even warns against a perfect dovetailing of narration by different witnesses as it could mean that their testimonies were pre-fabricated and rehearsed.[52]

Like his co-accused, accused Torres proffered the defense of denial and alibi and presented as witness the former Municipal Mayor of Magallanes, Cavite Felomino Maligaya.[53] Maligaya testified that accused Torres was in his house on the date and time of the incident as he specifically requested for the latter to be part of the team of the PNP to be sent to Magallanes, Cavite to conduct anti-insurgency operation, which group reported to him on 14 August 1999. However, according to the witness, there was no record of such request for the same was done verbally to a certain Col. Francisco. We, however, note that Maligaya's testimony contradicted that of accused Torres who testified that he was already in Magallanes on 10 August 1999,[54] not on 14 August 1999 and was assigned in the command post stationed at the house of then Mayor Maligaya from 12 August 1999 to 18 August 1999.[55] Further, if indeed there was an order for accused Torres to be in Magallanes, Cavite on the dates he alleged, the same should have been taken into account during the administrative investigation conducted against him relative to the subject incident, but he did not.

It is well-nigh to stress over and over again, that a positive identification, when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of the accused whose testimony is not substantiated by clear and convincing evidence. Such denial and alibi are negative and self-serving evidence undeserving of any weight in law.[56]

Accused-appellants Torres and Quiacos were charged with homicide for the death of Mario Ticman y Nerio.

Jurisprudence laid out the elements of homicide as (1) a person was killed; (2) the accused killed him without any justifying circumstance; (3) the accused had the intention to kill, which is presumed; and (4) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[57]

We hold that the aforesaid elements are present.

It is beyond dispute that Mario Ticman y Nerio was killed. Dr. Antonio S. Vertido testified that he was the one who conducted an autopsy on the cadaver of Mario and that the victim died from a single gunshot wound in the abdomen. Witnesses Emerson and Harold positively identified accused Torres as the one who shot to death Mario, thus, the presumption that he had every intention of killing him. Moreover, the killing of Mario did not involve any of the qualifying circumstances of murder, or by that of parricide or infanticide.

On the other hand, while accused Quiacos had no hand in the actual shooting of Mario, he committed a previous act that left the latter defenseless – by holding him while he was being punched by an unidentified suspect. He may not have planned on killing Mario and may have been initially unaware of his co-accused's intent of killing the latter, but his act of stepping away when he saw accused Torres aim the gun at Mario can be considered a

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concurrence with the criminal design of his co-accused, more so, that it was not shown that he tried to stop accused Torres either by word or deed.

We likewise agree with the trial court in holding accused Quiacos merely liable as an accomplice for the death of Mario. Under Article 18 of the Revised Penal Code, an accomplice is one who, not being considered as principal in the commission of a crime, cooperates in the execution of the offense by means of previous or simultaneous act.

Anent the fatal wounding of Emerson Dagpa y Silva, the trial court correctly held accused Torres guilty of the crime of frustrated homicide.

In the case of Serrano vs. People,[58] the Supreme Court held thus:

> "x x x
>
> The crucial point to consider is the nature of the wound inflicted which must be supported by independent proof showing that the wound inflicted was sufficient to cause the victim's death without timely medical intervention.
>
> x x x"

It was sufficiently established by the attending physician, Dr. Nemesio K. Villa, Jr., that the injuries sustained by Emerson were lifethreatening and that he could have died if not for the timely medical intervention, for the injuries were serious with too many complications. He further testified that Emerson might suffer partial permanent disability secondary to lumbar spine and cord injuries.[59] Thus, the elements of frustrated homicide clearly borne by evidence are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.[60]

While We affirm the conviction of accused-appellants, We take exception to the finding of the trial court that the crime was aggravated by accused Torres' abuse of his public position. For this circumstance to be appreciated as aggravating, the public official must use his influence, prestige and ascendancy which his office gives him in realizing his purpose.[61] In the case herein, it cannot be said that accused Torres purposely used or took advantage of his position or rank in killing Mario and in fatally shooting Emerson.

Under Article 249 of the Revised Penal Code, a principal participant in a consummated homicide shall be punished with reclusion temporal which has a duration of twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the minimum imposable penalty for a principal in a consummated homicide shall be within the range of six (6) years and one (1) day to twelve (12) years of prision mayor, while the maximum imposable penalty shall be within the range of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of reclusion temporal in its medium period.

The trial court sentenced accused Torres, as principal participant in the death of Mario, to an indeterminate prison term of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum. The prison term imposed by the trial court to be served by accused Torres in the homicide case should be upheld as the same is within the range provided for under the law.

As an accomplice in homicide, the trial court sentenced accused Quiacos to an indeterminate prison term of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor as maximum.

The statutory penalty for an accomplice in homicide shall be prision mayor which has a duration of six (6) years and one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law, the minimum imposable penalty shall be within the range of six (6) months and one (1) day to six (6) years, while the maximum imposable penalty shall be within the range of six (6) years and one (1) day to twelve (12) years. The sentence imposed by the trial court to be suffered by accused Quiacos, being within the range provided for by law, should be sustained.

We likewise affirm the amount of one hundred thousand twenty-five (P100,025.00) pesos actual damages ordered by the trial court to be paid by accused Torres and accused Quiacos to the heirs of Mario, as it is supported in evidence.

Anent the award of fifty thousand (P50,000.00) pesos as civil indemnity and fifty thousand (P50,000.00) pesos as moral damages, the same should be likewise upheld as they are in line with the pronouncements of the Supreme Court in the case of People vs. Placer.[62]

In consonance with the ruling of the Supreme Court in the case of People vs. Veloso,[63] the award of exemplary damages in the amount of twenty-five thousand (P25,000.00) pesos which the trial court ordered accused Torres to pay the heirs of Mario is sustained despite Our finding that no aggravating circumstance attended the commission of the crime.

Moreover, the apportionment by the trial court of the aforementioned civil liabilities between accused Torres and accused Quiacos need not be changed as the same is sanctioned by Article 109 of the Revised Penal Code.

In Criminal Case No. 0204-2000 for Frustrated Homicide, the trial court sentenced accused Torres to an indeterminate prison term of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to ten (10) years and one (1) day of prision mayor, as maximum.

The statutory penalty for frustrated homicide under Article 249, in relation to Article 250 of the Revised Penal Code shall be prision mayor, which has a duration of six (6) years and one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law, the minimum imposable penalty shall be within the range of six (6) months and one (1) day to six (6) years, while the maximum imposable penalty shall be within the range of six (6) years and one (1) day to twelve (12) years.

As the sentence imposed by the trial court to be served by accused in the frustrated homicide case is within the range provided for under the law, We find no need to modify the same.

Anent the award of actual damages in the amount of eight hundred thirty thousand one hundred seventy-six and 60/100 (P830,176.60) pesos ordered by the trial court to be paid by accused Torres to Emerson, the same is likewise affirmed.

The award of moral and exemplary damages in the amount of twenty-five thousand (P25,000.00) pesos each is also upheld in line with the ruling of the Supreme Court in the case of Abella vs. People.[64]

Upon the authority of Article 2211 of the Civil Code, which states that in crimes and quasi-delicts, interest as a part of the damages may, in a proper case, be adjudicated in the discretion of the court,[65] We deem it proper to impose an interest of six (6%) per annum on all the monetary awards reckoned from the finality of judgment until fully paid.

WHEREFORE, in view of the foregoing, the instant appeals are hereby DENIED. The Decision dated 10 September 2010 of Branch 13, Regional Trial Court of the Lipa City, in Criminal Case No. 0204- 2000 for Frustrated Homicide and Criminal Case No. 0205-2000 for Homicide are hereby AFFIRMED WITH MODIFICATION in that the damages awarded shall earn interest at the rate of six (6%) percent per annum from

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the date of the finality of this decision until fully paid.

SO ORDERED.

Bato, Jr. (Chairperson) and Sempio Diy, JJ., concur.

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[1] Records, pages 752 to 783.

[2] "Accused Torres," for brevity.

[3] "Accused Quiacos," for brevity.

[4] Rollo, pages 242 to 246.

[5] "RPC," for brevity.

[6] "Emerson," for brevity.

[7] "Mario," for brevity.

[8] "Emerson," for brevity.

[9] "Harold," for brevity.

[10] TSN dated 21 May 2001, page 35.

[11] Id. page 57.

[12] TSN dated 09 July 2001, page 12.

[13] TSN dated 19 August 2002, page 38.

[14] Id. page 16.

[15] TSN dated 09 July 2001, page 20.

[16] TSN dated 19 September 2001, page 22.

[17] "NBI," for brevity.

[18] TSN dated 26 August 2002, pages 27 to 28.

[19] "Cavite PNP Headquarters," for brevity.

[20] TSN dated 09 July 2001, pages 45 to 46.

[21] TSN dated 05 November 2002, page 45.

[22] Id. at 51.

[23] TSN dated 23 January 2007, page 16.

[24] TSN dated 23 January 2007, page 08.

[25] "Francisco," for brevity.

[26] TSN dated 23 January 2007, page 14.

[27] TSN dated 07 October 2008, page 06.

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[28] Id. at 17 to 18.

[29] Id. at 23.

[30] Id. at 09 to 10.

[31] TSN dated 27 January 2009, page 14.

[32] Rollo, page 180.

[33] Rollo, pages 100 to 101.

[34] G.R. Nos. 138934-35, 16 January 2002; 373 SCRA 585.

[35] People vs. Lara, G.R. No. 199877, 13 August 2012.

[36] TSN dated 09 July 2001, pages 40 to 43.

[37] Section 36, Rule 132, of the Rules of Court.

[38] People vs. Cogonon, G.R. No. 94548, 04 October 1996; 262 SCRA 393.

[39] TSN dated 19 August 2002, pages 20 to 23.

[40] "RIAS," for brevity.

[41] TSN dated 27 January 2009, page 16.

[42] Id. at 18.

[43] "Panganiban," for brevity.

[44] TSN dated 10 February 2009, pages 12 to 13.

[45] TSN dated 09 July 2001, pages 54 to 55.

[46] Id. at 09 to 10.

[47] TSN-CC #0204-00 dated 19 September 2001, page 36.

[48] TSN dated 19 August 2002, pages 37 to 38.

[49] G.R. No. 147315, 13 January 2003; 395 SCRA 128.

[50] People vs. Mamaruncas, G.R. No. 179497, 25 January 2012.

[51] People vs. Camat, G.R. No. 188612, 30 July 2012.

[52] Ibid.

[53] "Maligaya," for brevity.

[54] TSN dated 08 June 2007, page 25.

[55] Id. at 13.

[56] People vs. Castel, G.R. No. 171164, 28 November 2008; 572 SCRA 642.

[57] Villanueva and the Secretary of Justice vs. Caparas, G.R. No. 190969, 30 January 2013.

[58] G.R. No. 175023, 05 July 2010; 623 SCRA 322.

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[59] Vide Decision dated 10 September 2010, Rollo, page 130.

[60] Mahawan v. People, G.R. No. 176609, 18 December 2008; 574 SCRA 737.

[61] People vs. Sgt. Felix Padilla, G.R. No. 75508, 10 June 1994; 233 SCRA 46.

[62] G.R. No. 181753, 09 October 2013.

[63] G.R. No. 188849, 13 February 2013.

[64] G.R. No. 198400, 07 October 2013.

[65] People vs. Arcillas, G.R. No. 181491, 30 July 2012.

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