

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLY MANALILI Y BOLISAY AND DANILO REYES Y MAMNILA, ACCUSED-APPELLANTS.

G.R. No. 121671. August 14, 1998

Ponente: PANGANIBAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-121671/>

PANGANIBAN, J.:

Under the Constitution, an accused has the right to be informed, before trial, of the nature of the offense with which he or she is charged. Regardless of how conclusive and convincing the evidence of guilt may be, there can be no conviction, unless the offense is charged (or is necessarily included) in the complaint or information. On the other hand, an accused, who fails to object prior to arraignment to a duplicitous information, may be found guilty of any or all of the crimes alleged therein and duly proven during the trial, for the allegation of the elements of such component crimes in the said information has satisfied the constitutional guarantee that an accused be informed of the nature of the offense with which he or she is being charged.

The Case

Before us is an appeal from the Decision[1] of the Regional Trial Court of Santiago City, Isabela, Branch 21,[2] in Criminal Case Nos. 21-1156, 21-1157 and 21-1158, finding Willy Manalili y Bolisay and Danilo Reyes y Mamnila guilty of attempted robbery with homicide, sentencing them to reclusion perpetua and ordering them to pay, jointly and severally, P50,000 to each of the heirs of the deceased -- Alfredo Tango, Sonny Quintua and Nestor Agustin.

On July 27, 1990, three Informations against the two appellants were simultaneously filed in the Regional Trial Court of Ilagan, Isabela, Branch 16. The first case, docketed as Crim. Case No. 1380, now Crim. Case 21-1156, charged the two with attempted robbery, as follows:

“That on or about the 1st day of February 1990, in the [M]unicipality of Cordon, [P]rovince of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, together with Edmund Belleza, Antolin Maragundon and Allan Montenegro, who are now deceased, conspiring and confederating together and helping one another, all armed with assorted firearms, with intent to gain, by means of violence and intimidation against persons, did then and there willfully, unlawfully and feloniously try and attempt to rob the passengers of a Ballesteros Liner, De Luxe Bus bearing Plate No. PNG-908, thereby commencing the commission of the crime of robbery directly by overt acts and that if the herein accused did not accomplish their unlawful purpose, it was not because of their own voluntary desistance but because a military personnel who was one of the passengers resisted and repelled the accused with the use of his gun with the result that one of the hold-up men was killed and the others were wounded.”[3]

The second case, docketed as Crim. Case No. 1381, now Crim. Case No. 21-1157, charged them with killing three persons, viz.:

“That on or about the 1st day of February 1990, in the [M]unicipality of Cordon, [P]rovince of Isabela,

Philippines, and within the jurisdiction of this Honorable Court, the herein accused together with Edmundo Belleza, Antolin Maragundon and Allan Montenegro who are now deceased, not being allowed or authorized by law to keep, possess and carry firearms, did then and there willfully, unlawfully and feloniously have in their possession and under their control and custody assorted firearms without having obtained the necessary permit and/or license therefor and on the occasion of such possession, herein accused, conspiring and confederating together and helping one another, with evident premeditation and treachery, with intent to kill suddenly and unexpectedly and without giving them [a] chance to defend themselves did then and there willfully, unlawfully, and feloniously assault, attack and shoot with said illegally possessed firearms Alfredo Tango y Tabinga, Sonny Quintua and Nestor Agustin y Correo, inflicting upon them gunshot wounds, which directly caused their death.”[4]

The third Information, docketed as Crim. Case 1382, now Crim. Case No. 21-1158, charged them with the shooting and wounding, but not the killing, of three other persons as follows:

“That on or about the 1st day of February 1990, in the [M]unicipality of Cordon, [P]rovince of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, together with Edmundo Belleza, Antolin Maragundon and Allan Montenegro who are now deceased, all armed with assorted firearms, conspiring and confederating together and helping one another, with evident premeditation and treachery, with intent to kill suddenly and unexpectedly and without giving them [a] chance to defend themselves, did there and then willfully, unlawfully and feloniously assault, attack and shoot with the said illegally possessed firearms (the possession of which guns, accused were already charged in Criminal Case No. 1381) Michael Guiang, William Simmapan and Fernando Arado, inflicting upon them gunshot wounds, which injuries would ordinarily cause their death, thus performing all 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 aforesaid Michael Guiang, William Simmapan and Fernando Arada which prevented their death.”[5]

Upon arraignment on October 23, 1990, both accused, with the assistance of counsel, entered a plea of not guilty to each of the offenses charged.

After joint trial on the merits, the court rendered the assailed Decision dated February 17, 1995, the decretal portion of which reads:

“WHEREFORE in the light of the foregoing consideration, the Court finds the Accused Danilo Reyes and Willy Manalili GUILTY beyond reasonable doubt of the crime of attempted robbery with homicide and hereby sentences each of them to the penalty of reclusion perpetua. They are also ordered to pay, jointly and solidarily, the heirs of the deceased Alfredo Tango, Sonny Quintua and Nestor Agustin the sum of Fifty Thousand Pesos (P50,000) each.

“However the Court finds the accused NOT GUILTY of the crime of qualified illegal possession of firearms used in multiple murder and hereby ACQUITS them.

“SO ORDERED.”

The counsel for the accused erroneously filed a Notice of Appeal with the Court of Appeals which correctly transmitted the records of this case to the Supreme Court, inasmuch as reclusion perpetua was imposed by the trial court.[6]

The Facts

Version of the Prosecution

The facts as presented by the prosecution are summarized in the Appellees’ Brief[7] in this manner:

“On February 1, 1990, a passenger bus of Ballesteros Liner bound for Manila left its terminal at Ballesteros, Cagayan (p. 3, TSN, June 19, 1991; p. 3, TSN, September 7, 1993). When the bus reached Caquilangan, Cordon, Isabela, appellant Danilo Reyes fired a gun and announced that they [were] staging a hold-up (pp. 5-8, TSN, September 7, 1993; p. 6, TSN, December 12, 1990). The companions of Reyes stood up and likewise announced a hold-up (p. 4, TSN, June 19, 1990; p. 6, TSN, December 12, 1990). Reyes shot and killed the bus helper Sonny Quintua (pp. 6-8, TSN, September 7, 1993; p. 26, TSN, December 12, 1990). The driver stopped the bus (p. 9, TSN, September 7, 1993). Appellant Willy Manalili pointed a gun at Marcelino Liberato (p. 21, TSN, December 12, 1990). Manalili took money from the passenger in seat No. 34 (pp. 16, 17, 21, TSN, December 12, 1990). Suddenly, there was an exchange of gunfire between the robbers and one of the passengers (p. 19, TSN, December 12, 1990). One of the robbers was shot and killed while Manalili was shot on the right shoulder (p. 28-29, TSN, December 12, 1990). The passenger who shot it out with the robbers jumped out of the bus (pp. 20-21, TSN, December 12, 1990). Reyes shot and killed the bus driver, Alfredo Tango (p. 22, TSN, December 12, 1990). Nestor Agustin, a passenger, was also shot and died as a consequence thereof (p. 9, TSN, June 19, 1991). While the robbers were on board a car, the police arrived and fired their guns (p. 27, TSN, December 12, 1990; p. 14, TSN, September 7, 1993). The vehicle used by the robbers turned turtle (p. 4, TSN, December 3, 1990; p. 28, TSN, December 12, 1990). The robbers ran towards the southern direction (p. 5, TSN, December 12, 1990).

“The following morning, Lt. Mariano received a report that the men responsible for the holdup were hiding in the house of Jose Belleza in Diadi, Nueva Vizcaya (p. 5, TSN, December 3, 1990). Lt. Mariano and his men went to Diadi and coordinated with the CAGFU under Lt. Beltejar and thereafter they raided the house of Jose Belleza, but the two men were no longer there because they fled to the BFD plantation in San Luis, Diadi (pp. 5-6, Ibid). Lt. Mariano and his men proceeded to the BFD plantation (p. 6, Ibid). Some of his men chanced upon the holduppers and there was a firefight and Edmund Belleza, one of the holduppers, was killed (p. 6, Ibid; pp. 10-11, TSN, January 20, 1994). They were not able to apprehend the other suspects that night (p. 7, TSN, December 3, 1990). The following day, February 3, 1990, Lt. Mariano received information that two men were buying sandals in Cordon and that one of them was wounded at the back (p. 7, Ibid). He dispatched his men to apprehend the two who turned out to be the appellants and Manalili was the one who had [a] gunshot wound at the back (pp. 7-8, Ibid; p. 12, TSN, January 20, 1994). Appellants admitted that they were the ones who held up the Ballesteros Liner bus (p. 7, TSN, December 3, 1990; p. 12, TSN, January 20, 1994). The two accused also said that the firearms they used [were] hidden in the house of Cesar Belleza (p. 8, TSN, December 3, 1990). Based on this information, Lt. Mariano immediately went to the house of Cesar Belleza (p. 8, Ibid). The wife of Cesar Belleza was in the house and she told the police that the firearms were hidden at the back of the house (p. 8, Ibid). The police searched the place indicated and they were able to find four (4) live bullets, three (3) empty shells and two (2) Cal. 38 with SN 35977 and SN 77271 and one (1) Squires Bingham Cal. 38 with tampered serial number (p. 9, Ibid; p. 6, TSN, February 26, 1991).”

Version of the Defense

The testimonies of the defense witnesses were summarized in the Appellants' Brief,[8] as quoted hereunder:

“DANILO REYES, one of the accused herein, testified that he had nothing to do with the robbery incident. In the afternoon of February 1, 1990 he was at the house of Willy Manalili at San Ricardo, Isabela, Nueva Ecija to ask the latter to accompany him to see his girlfriend at Isabela. He spent the night at Manalili's house. The following day, the two of them decided to seek permission from Manalili's wife who was then at General Ricarte, likewise in Llanera. However, it was only Manalili who went to see his wife as he waited for the latter at the road junction. Thereafter, they proceeded to Cabanatuan City in order to take a ride for Alicia, Isabela. When they reached Alicia, Isabela at 7:00 o'clock in the evening his girlfriend's auntie informed them that [his] girlfriend was in Vigan, Cordon. The two decided to spend the night at Alicia[,] Isabela. The following morning they left for Cordon, Isabela. When they alighted at the town proper of Cordon they were apprehended by armed men. They were brought to the Municipal Hall for investigation. (TSN, pp.1-15,

October 20, 1994).

“WILLY MANALILI, the other accused herein likewise testified and asserted that he had no participation in the robbery with homicide incident that occurred inside the bus of Ballesteros Liner. He corroborated all the material aspects of his co-accused Danilo Reyes['] testimony. (TSN, pp.1-18, Nov. 21, 1994)

“ALFONSO SUPSUP, a neighbor of Willy Manalili, testified that in the afternoon of February 1, 1990, while he was in his house he saw Danilo Reyes at the house of Willy Manalili at San Ricardo, Talavera, Nueva Ecija. He heard Danilo Reyes inviting Manalili to accompany him to Alicia, Isabela to see his girlfriend. The two stayed and slept at Manalili's house. [I]t was only on February 4, 1990 when he learned that the two were apprehended and imprisoned for having participated in the commission of the crimes charged. (TSN, pp. 1-13, September 2, 1994)

“RICHARD DIAZ of Ilagan, Isabela, testified that in the evening of February 2, 1990 he was in the house of Juling Cabilion at Alicia [,] Isabela. While he was engaged in a drinking spree with the husband of Juling Cabilion and the latter's friend, the two accused arrived. The duo were looking for Lorna Cabilin, the girlfriend of the accused Danilo Reyes. They spent the night in the house of Juling Cabilion. (TSN, pp. 1-5, August 26, 1994)

“ARNOLD GABRIEL, father-in-law of Willy Manalili, testified and claimed that on February 2, 1990 the latter came to his house at General Ricarte, Llanera, Nueva Ecija and sought permission from Manalili's wife to accompany Danilo Reyes in going to Alicia, Isabela to see the latter's girlfriend. It was only on February 3, 1990, when he learned that his son-in-law was detained at Cordon, Isabela. (TSN, pp. 1-15, Sept. 9, 1994)”

Ruling of the Trial Court

The trial court, in evaluating the evidence presented before it, held:[9]

“It is not disputed that a Ballesteros Liner bus on its way to Manila from Ballesteros, Cagayan, was held up in Caquilingan, Cordon, Isabela, in the evening of February 1, 1990. How the holdup was done was not also controverted by the defense. There is nothing incredible about the story that would inspire disbelief. Thus it was satisfactorily established that four armed men who boarded the bus at Santiago, Isabela, drew out their guns and announced a holdup when the bus reached Caquilingan, Cordon at about the same time that a car suddenly overtook the bus which had to stop. One of the armed men in front initially fired a shot. A passenger, supposedly a military man who was not identified, drew out his gun and exchanged fire with the robbers and then broke the window of the bus and jumped out. The robbers must have lost heart and they also left. There were four persons killed. One [was] their companion who was not identified. The three others were Nestor Agustin who was hit on the back, the driver Alfredo Tango who was shot in the abdomen and the bus helper Sonny Quintua who was shot in the head. It is admitted that these three died as a result of the gunshot wounds they suffered.

“It was not shown who shot Nestor Agustin. The witnesses did not see. On this matter something can be said of those who investigated the crime. For some unexplained reason they did not deem it important to interview the passenger who fought with the robbers. They did not also subject the firearms, both that of the passenger and those recovered during the investigation, to ballistic examination. Had they done so, they would have determined what firearm killed Nestor Agustin. Certainly our crime laboratory ha[s] ballistic experts for that purpose. Without any evidence to show who shot Nestor Agustin, the only inference is that he was shot in the exchange of fire most probably by the robbers based on the place where he was at the time. It was shown that he was sitted [sic] immediately behind the passenger who exchanged fire with the robbers, indicated as Exhibit “A-10” in the sketch. On the other hand the robbers were on the left side slightly behind the passenger and Nestor Agustin.

“How Sonny Quintua was shot was seen by Wilfredo Cando. He positively stated that the robber who was in

front of the bus shot Sonny Quintua.

“It was shown that the other victim Alfredo Tango was deliberately shot by one of the robbers. This was seen by the witness Marcelino Liberato who attested that after the passenger who exchanged fire with the robbers broke the glass window and jumped out, the robbers also got out from the bus, but one of them returned and took the gun of his dead companion and then shot the driver Alfredo Tango on his way out of the bus.

“There were also other passengers who were injured. Only one was identified. He is William Sinampan, the operations manager of the Ballesteros Liner. Sinampan was shot on the left ear. The extent and gravity of his injuries were not established. Sinampan himself did not testify. Neither was a medical certificate presented as evidence.

“Because of the active resistance of one of the passengers, the holduppers fled before they were able to rob the passengers except that the witness Marcelino Liberato saw that one of them took money from one of the passengers. This passenger was not presented as witness to attest that she was robbed of her money. Perhaps the prosecution did not think it necessary because the passenger did not complain so that what was charged [was] only attempted robbery. Definitely the intention of the holduppers was to rob the bus. This is shown by their own declarations when they announced “Hold-up ito.” If they were not able to attain their purpose, it was only because a passenger resisted and fought with them.

“What is contested by the accused is the accusation that they were the holdup men. They denied that they robbed or held up the bus and shot and killed the passengers. They alibied that they were in San Ricardo, Talavera, Nueva Ecija in the evening of February 1, 1990 when the crime was committed. In fact according to them it was only on February 2, 1990 in the morning when they left Nueva Ecija to go to Alicia, Isabela, to see the girlfriend of Danilo Reyes. The accused presented several witnesses to corroborate their alibi. What is interesting about the testimonies of the accused and their witnesses is that they were the same to the last detail. It would seem that they talked and conferred with each other and rehearsed what they [should] testify to. It [was] only [on] the date where they wavered. They had no concrete reference to remember the actual date when the accused left San Ricardo, Talavera. Their point of remembrance [was] that the robbery happened on that date. The possibility that the accused were in Ricarte, Talavera, and left for Alicia, Isabela, [o]n another day than February 1, 1990 is very great.

“The principal issue is whether the accused committed the crime. x x x As a whole the Court carefully analyzed the testimonies of the eyewitnesses. It found no reason to doubt them. The conditions were such that they had the ample opportunity to see and identify the robbers. They actually pointed at the accused as the robbers just two days after the incident when the faces of the robbers were still freshly etched in the minds of the witnesses. The Court found no reason why these witnesses would falsely accuse the accused. ‘The Court has consistently held that where conditions of visibility are favorable and the witness does not appear to be biased against the man on the dock, his or her assertions as to the identity of the malefactor should be normally accepted.’ (People vs. Jaro, 227 SCRA 668).”

On the basis of the foregoing evaluation of the evidence presented, the trial court found appellants guilty of attempted robbery with homicide, viz.:^[10]

“The facts established show that on the occasion of the attempted robbery, four persons were killed and one was injured. It would seem that the crime is the complex crime of attempted robbery with homicide under Article 297 of the Revised Penal Code. But the prosecution filed three separate informations, one for attempted robbery, the other for multiple frustrated murder and the third [for] qualified illegal possession of firearms used in multiple murder. Perhaps this is because of the last portion of said Article 297 which provides:

Attempted and frustrated robbery committed under certain circumstances -- When by reason or on occasion of an attempted or frustrated robbery a homicide is committed the person guilty of such offense shall be punished by reclusion temporal in its maximum period to reclusion perpetua, unless the homicide committed shall deserve a

higher penalty under the provisions of this Code. (underscoring ours)

Indeed the crime of murder entails the heavier penalty of reclusion temporal maximum to death. Still the prosecution should not have split the crime into three. It is only the penalty which shall be modified in that the higher penalty for murder shall be imposed. But of course the accused can be charged [with] the separate crime of qualified illegal possession of firearms under P.D. 1866 because it is penalized by a special law and besides Article 296 provides 'that when any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such unlicensed firearm.' The several killings, be they homicide or murder including the physical injuries are already included in the special complex crime of attempted robbery with homicide because homicide is used in its generic term. The judicial concept of robbery with homicide does not limit the taking of [h]uman life to one single victim making the slaying of human beings in excess of that number punishable as separate independent offenses. All the homicide[s] or murders are merged in the composite, integrated whole that is robbery [sic] with homicide so long as all the killings were perpetuated by reason or on the occasion of robbery. (People vs. Ampo-an 187 SCRA 176) When direct and intimate connection exists between the robbery and the killing, regardless of which of the two precedes the other, the crime committed is the special complex crime of robbery with homicide. It is immaterial that the occurrence of death was by mere accident. (People vs. Opero, 105 SCRA 401. People vs. Gatcho, 103 SCRA 207; People vs. Ombao, 103 SCRA 234) This rule can certainly apply to the special complex crime of attempted robbery with homicide.

"The information charging multiple murder concerns the killing of Alfredo Tango, Sonny Quintua and Nestor Agustin. As earlier discussed it was not clearly established who shot Nestor Agustin. He was shot as a result of the exchange of fire between the accused and the passenger who fought them. It cannot be said therefore that evident premeditation or treachery attended the killing. However the shooting of Sonny Quintua and Alfredo Tango was deliberate and sudden. It was not caused by the exchange of fire because even at the first shot the accused Danilo Reyes already shot Sonny Quintua and after the exchange of fire, he returned inside the bus and shot the driver Alfredo Tango also without any warning. The killing of the two is characterized by treachery, thus it is murder.

"Notwithstanding then that the crime is attempted robbery with homicide, the penalty that shall be imposed is that of murder because the penalty for murder is more severe which is reclusion temporal maximum to death. (Article 248, Revised Penal Code) It was alleged and proven that there were four armed man who committed the crime. Article 296 provides that when more than three malefactors take part in the commission of robbery, it shall be deemed to be committed by a band, and any member of the band shall be punished as principal of any of the assaults committed by a band, unless it be shown that he attempted to prevent the same. In the instant case, it was shown that only the accused Danilo Reyes shot Sonny Quintua and Alfredo Tango. Still his co-accused Willy Manalili is liable as principal for the homicide[s] and murders because it was not shown that he tried to prevent the killings. (People vs. Veloso, 112 SCRA 173; People vs. Guipan, 129 SCRA 541; People vs. Yabut, 226 SCRA 716) Considering that it was not specifically alleged in the informations that the crime was committed by a band, this circumstance shall only be appreciated as a generic aggravating circumstance. (People vs. Dela Cruz, 217 SCRA 285) The penalty to be imposed shall be the maximum period which is death in accordance with Article 64 in relation to Article 77 of the Revised Penal Code. However, because of Article III, Section 19 of the Constitution it may not be imposed. R.A. 7659 which reimposed the death penalty took effect only in December 1993 and it cannot be given retroactive effect. (People vs. Donayo, G.R. No. 111523, Aug. 10, 1994) Thus the penalty to be imposed upon the accused in this case is reduced to reclusion perpetua.

"The other crime charged is qualified illegal possession of firearm used in multiple murder. But the prosecution seemed to have forgotten all about it. They failed to prove the fact that the accused were not authorized to possess firearms. On top of this, the prosecution did not also submit in evidence the firearms.

There is no way therefore that the Court can find the accused guilty of this crime. ‘The prosecution has the burden of proving beyond reasonable doubt that the accused did not have a license to possess a firearm and did not have any legal authority to carry a firearm outside of his residence. It is, of course, the constitutional presumption of innocence that lays that burden upon the prosecution. The absence of such license and legal authority constitutes an essential ingredient or essential element of an offense [and] must be shown by the prosecution by proof beyond reasonable doubt,’ (People vs. Arce, 227 SCRA 407; See also People vs. Ramos, 222 CRA 558).”

Assignment of Errors

Before us, appellants allege the following errors:

“I

The trial court gravely erred in giving undue credence to the testimonies of the prosecution witnesses and in disregarding the defense of alibi interposed by the accused.

II

The trial court gravely erred in finding the accused guilty beyond reasonable doubt of the crime of attempted robbery with homicide.”[11]

Two main questions will be discussed: (1) the credibility and the sufficiency of the prosecution’s evidence and (2) the legal characterization of the crimes committed. Although not raised by the parties, the second question is discussed by the Court motu proprio, consistent with the doctrine that an appeal from a conviction for a capital offense opens the whole case for review.[12]

The Court’s Ruling

The appealed Decision must be modified. The trial court erred in convicting appellants of the special complex crime of attempted robbery with homicide. Under the three Informations filed in this case, appellants should be convicted of attempted robbery and double murder, but acquitted of frustrated murder.

First Issue:

Credibility of Witnesses, Identity of Appellants and Alibi

“It is axiomatic that the trial court’s evaluation of the testimony of a witness is accorded the highest respect because it had the direct opportunity to observe the witnesses on the stand and to determine if they [were] telling the truth or not. The exceptions to this rule are when such evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could have affected the result of the case.”[13]

The trial court, in the present case, gave full faith and credence to the testimonies of the prosecution witnesses who identified appellants as the malefactors. After a careful review of the evidence and the records of this case, we find no reason to modify or overturn the said factual findings of the trial court, which were summarized earlier. In any event, we shall take up each of the factual challenges of the appellants.

The defense contends that the testimonies of Prosecution Witnesses Edwin Cando, Marcelino Liberato and Wilfredo Cando, who positively identified the two appellants as among the perpetrators of the crime, were dubious. In sum, the defense alleges that if the witnesses, as they claimed, were ordered to bow down prior to the exchange of gunfire, then they would not have been in a position to ascertain the identities of the accused.[14] It would have been impossible for said witnesses to get a full glimpse of the appellants’ features.[15]

We disagree. The natural reaction of a person who hears a loud or startling command is to turn towards the speaker. In this case, four men suddenly stood up in the moving bus and, to the shock of the passengers, one of them shouted “Hold up!” and another fired his gun. For the passengers, the most natural reaction was to spontaneously turn their heads toward the person who shouted the warning. While the moment might have been fleeting, it would not have been unlikely for them to look towards the men who commanded their attention, and for some distinguishing features of the malefactors to be etched in their memories.

Witness Marcelino Liberato, whose straightforward and categorical account of the event precluded doubt as to its veracity, testified:

“Q. And while you were in Sitio San Luis, Caquilingan,[16] Cordon, Isabela, on February 1, 1990, do you recall if there was any unusual incident while you were in that Ballesteros Bus Liner?

A. There was, sir. There were four (4) men who suddenly stood up and announced there was a holdup.

Q. By the way, are you in a position to tell the Court how many persons were there in the bus at around 7:30 in the evening of February 1, 1990, while you were in San Luis, Caquilingan, Cordon, Isabela?

A. More or less, thirty (30) passengers, sir.

Q. And you stated there were four (4) persons who suddenly stood up and announced a holdup, what happened next?

A. Somebody in front of the bus fired a firearm and shouted it was a holdup, sir.”[17]

x x x x x x x x

“Q. You said that four (4) persons announced ‘hold-up’, were they seated or standing?

A. They were seated but they stood up when they announced ‘hold-up’, sir.

Q. When they announced ‘hold-up’, what happened next?

A. They pointed to us with their firearms, sir.

Q. How many were armed?

A. All of them, sir.

Q. What kind of firearms?

A. Short barrel firearms, sir.

Q. All of them?

A. Yes, sir.

Q. After pointing their firearms at you, what happened next?

A. They told us to raise our hands and told us not to move because it was a hold-up, sir.

Q. At the time they said it was a hold-up, was the bus still running or did it already stop?

A. It was still in motion but at a low speed, sir.

Q. After announcing hold-up, what happened next?

A. They were able to get cash from one of the passengers seated in front, sir.

Q. If you remember, where was that passenger from whom they got the cash seated using this sketch as your point of reference?

A. Here, sir, (witness pointed to seat No. 34 at the left side of the rows of seats).

Q. Among the persons who announced a hold-up, who received the money?

A. This one, sir (witness pointed at a center seat at the aisle between seats Nos. 30 and 31).”[18]

x x x x x x x x

“Q. Do you know the amount taken from the passenger Seat No. 34?

A. I do not know but I saw the money taken, sir.

Q. What happened next when that money was taken from that passenger Seat No. 34?

A. He even asked the victim what else was she holding in her other hand and the victim gave one of the robbers the rosary she was holding but the robber said ‘I do not need that’.

Q. And after the refusal of one of the robbers to receive the rosary, what happened next?

A. Suddenly, there was a gun report and the person seated at Seat No. 20 stood up, sir.

Q. And what happened when the person in Seat No. 20 stood up?

A. They exchanged fire with the robbers seated at the center seat of the bus (witness pointing at a portion in the sketch already marked Exhibit ‘A-3’).

Q. And what happened with the exchange of fire?

A. I saw that the robber seated at the seat already marked Exhibit ‘A-4’ was already falling down and also the robber seated at the seat down [sic] already marked Exhibit ‘A-5’ fell down because he was shot, sir.

Q. And that passenger seated in No. 20, what firearm did he use in exchanging shots with the robbers?

A. Short firearm, sir.

FISCAL ONG:

May we request, Your Honor, that Seat No. 20 be encircled and marked as Exhibit ‘A-7’.

COURT:

Mark it.

FISCAL ONG:

Q. And after that exchange of fire, where you stated that the person seated in the center seat numbered as ‘A-4’ fell down and also that person seated in Exhibit ‘A-5’ was beginning to fall, what happened next?

A. The person seated at Seat No. 20 started to break the glass windows and jumped outside, sir.

Q. At the time there was an exchange of fire between that person who broke the window and jumped out of the bus, against those persons seated in ‘A-4 and ‘A-5’, do you remember if the bus was still running or had already stopped?

A. The bus was no longer in motion, sir.

Q. These persons who announced hold-up, could you point to them before this Honorable Court if you recognize them at the time of the incident at around 7:30 on February 1, 1990?

A. Yes, sir.

Q. This person seated in ‘A-2’, if he is in Court will you be able to point at him?

A. Yes, sir.

Q. Will you please go down from the witness stand and tap the shoulder of that person seated in ‘A-2’?

A. This one, sir, (Witness touched the shoulder of a person who when asked his name gave it as Danilo Reyes).

Q. How about that person seated in ‘A-3’, the center seat?

A. He is not here, sir.

Q. How about the person in ‘A-4’?

A. He is not here, sir.

Q. How about the person in 'A-5'?

A. This one, sir, (witness pointed to a person who when asked his name gave it as Willy Manalili), because he was the one who directly pointed to me his firearm, sir.

FISCAL ONG:

May we move that these persons identified by the witness be correspondingly placed in the sketch, Danilo Reyes and Willy Manalili).

COURT:

Alright, place the names correspondingly in the sketch.

FISCAL ONG:

Q. That person seated in Seat No. 20, 'A-7', was he able to jump out of the window which he broke?

A. Yes, sir.

Q. What happened after that, after the person seated in No. 20, 'A-7', jumped overboard?

A. This one, (witness pointed to a seat already marked 'A-2', with the corresponding name of Danilo Reyes) and this one, (witness pointed to a seat already marked 'A-5', with the corresponding name Willy Manalili) alighted from the bus but later on, this one (Witness pointing to seat already marked 'A-2' boarded the bus again and went straight to the place where the person [was] seated in 'A-4' and took his hand gun, sir.

Q. And after Danilo Reyes returned and took the handgun of his companion seated in 'A-4', what happened next?

A. Before he alighted from the bus he went near the driver and shot the driver, sir.

Q. Will you please stand up and show the Court how Danilo Reyes went near the driver, assuming that the Interpreter was the driver, and shot him?

A. Before he alighted from the bus he pointed his handgun at the driver near the door and shot him (Witness with his hand as if holding a handgun directed it towards the Interpreter).

Q. What part of the body was pointed at by Danilo Reyes and shot [by] him?

A. Here, sir, (Witness pointed at the right portion of the hip).

FISCAL ONG:

May we also request that the seat of the driver be marked as Exhibit 'A-8'.

COURT:

Mark it.

FISCAL ONG:

Q. And what happened to the driver when he was shot by Danilo Reyes?

A. He fell down sidewise at his right, sir."

x x x x x x x x

Q. These two (2) persons who announced hold-up and who exchanged fire with that person seated in Seat No. 20, do you know what happened to them?

A. One of them died on the spot inside the Bus. (Witness pointed on the seat already marked Exhibit 'A-4').

Q. What happened to the other one?

A. I think the other one also died, sir.

Q. How about Willy Manalili, do you remember whether he was also engaged in that exchange of fire with that person seated in seat No. 20?

A. Yes, sir.

Q. What happened?

A. He was wounded, sir.

Q. And what part of his body was wounded?

A. (Witness touched the right portion of his shoulder).

Q. That time when there was an exchange of fire and a hold-up was announced, was there any light in the bus or none?

A. There were, sir.

Q. How many lights were there in the bus?

A. Three, sir.” [19]

The above-quoted testimony established the identity of the malefactors. Appellant Willy Manalili himself pointed a gun at the witness, who consequently remembered him. Appellant Danilo Reyes, meanwhile, lent himself to easy identification by returning to the bus after having alighted, to retrieve the gun of his dead companion, and shooting the driver before finally leaving. Furthermore, when the holdup men departed together after the exchange of fire, it was normal for the passengers to sit back and to start looking around. They were no longer bowing down or covering their faces since they thought that, with the perpetrators gone, the danger had passed. Very likely, then, the aforementioned prosecution witness saw Danilo Reyes when he came back.

Edwin Cando, the conductor, corroborated Marcelino Liberato’s testimony, especially as to the number of perpetrators, their relative positions in the bus, their subsequent acts, and their identity. Below are the salient parts of his testimony:

“Q. And when you reached San Luis, Kakilingan, Cordon, Isabela, do you remember any unusual incident that happened that night in that air-con bus with Plate No. 1008?

A. There was, sir.

Q. What was that unusual incident?

A. When they fired their gun, they declared a hold-up, sir.

Q. How many gun reports did you hear?

A. There was only one gun report before they declared the hold-up, sir.

Q. How many of them fired and declared a hold-up?

A. Some of them announced a hold-up, but I can no longer remember how many gun reports were there.

Q. My question is: how many of them who boarded your air-con bus announced a hold-up?

A. Four of them, sir.

Q. Do you remember where were they positioned in your bus?

A. Yes, sir.

Q. Will you please inform the Court their relative positions?

A. The first hold-upper was seated in the No. 2 seat and the other three were seated in the Nos. 6,7 and 8 of the center seats.

Q. Who among those four fired his gun?

A. All of them, sir.

Q. The first fire before they all declared a hold-up, who fired his gun?

A. The one seated at seat No. 2 of the center seat, sir.

Q. And when that person who was seated at the center seat No. 2 fired his gun and the four of them announced [a] hold-up, what did you do then?

A. One of the hold-uppers ordered me to bow down.

Q. Where were you in the bus when you were ordered to bow down?

A. I was then across seat No. 4 of the center seat.

Q. Did you bow down when you were ordered to bow down?

A. Yes, sir.

Q. And what happened after you bowed down?

A. I heard so many gun reports, sir.

Q. And what happened when you heard so many gun reports?

A. I did not notice because I was bowing down.”[20]

x x x x x x x x

“Q. After the shooting in the bus, was there a light inside the bus?

A. Yes, sir, there was, because it was lighted full-blast.

Q. Were you able to see the hold-up men?

COURT:

Q. How many participated in the hold-up?

A. There were four (4) inside the bus, sir.

COURT:

Proceed.

ASST. PUBLIC PROSECUTOR ONG:

Q. If one of them is in Court, will you be able to identify him?

A. Yes, sir.

Q. Will you please point to the person whom you saw as one of the hold-up men?

A. (The witness went down the witness stand, approached a person seated in the front row of seats inside the session hall and pointed to him, and the latter, when asked, identified himself as Willy Manalili).

Q. Where was Willie Manalili seated when they announced the hold-up?

A. He stayed at the back, sir.

Q. You said they were holding guns, do you know what kind of guns they were holding?

A. Yes, sir, I know what kind of firearm. It was a small type of revolver, sir.

Q. Showing to you two firearms, one is marked ‘C’, caliber .38 and another Caliber .38, do you know if those firearms you ha[d] seen from the hold-uppers were like these firearms?

A. Yes, sir.”[21]

Finally, there is Wilfredo Cando, another passenger in the bus, who positively identified the accused and corroborated the story of the two previous prosecution witnesses. Said witness testified thus:

“A When we were already at Kakilingan there was a car which overtook us and they made a warning shot and

when I turned my head to that direction there was already a hold-up, sir.

Q Let's get it clear. After the vehicle you said overtook the bus you said you heard the words "hold-up". Where did the words "hold-up" come from?

A Inside the bus, sir.

Q Inside the bus?

A Yes, sir.

Q After somebody or someone inside the Ballesteros Liner shouted or said "hold-up", what happened next?

A They gave a warning shot and they shot one of the helpers of the bus, sir.

Q Now, using Exhibit "A" as your reference, could you tell us where was this person who fired the warning shot seated?

ATTY. CHANGALE:

There is no basis, your Honor.

INTERPRETER:

Witness is referring to Exhibit "A-2" which is the seat of a man named Danilo Reyes.

Q Where is the person sitting - I withdraw.

Q You said the helper of the bus was shot. Do you know who shot the helper of the bus?

A I know, sir.

Q Using this Exhibit "A" as reference, where is that person sitting?

A On this second seat, sir.

INTERPRETER:

Witness is referring to Exhibit "A-2" which has the name written Sonny Quintua.

Q What's the name of the helper of the bus?

A Sonny Quintua, sir.

Q Can you still recognize the person who was sitting on this diagram identified as Exhibit "A-2"?

A Yes, sir.

Q If that person is inside the Court room can you point to that man?

A Yes, sir.

Q Will you please point to him.

INTERPRETER:

Witness pointing to a person who gave his name as Danny Reyes.

Q How were you able to recognize that person you pointed this morning?

A When they shouted "hold-up", I turned my head and I saw this (witness pointing to the same man who identified himself earlier as Danny Reyes).

Q Now, who is the man who shouted "hold-up", can you tell us?

INTERPRETER:

Witness pointed to a man who identified himself as Danny Reyes.

Q After Danny Reyes shouted “hold-up”, what did you observe the driver do?

A He stopped the bus, sir.

Q Now, after the bus stopped and after Sonny Quintua was shot by Danny Reyes, what happened?

A They told us to raise up our hands, sir.

Q You are now using the word “they”, how many persons were [sic] held you up that evening?

A I have known it after they were already investigated by the police and I was informed that they [were] four, sir.

Q After the bus stopped and they said “raise your hand”, what happened next?

A What I have heard there was already a gunfire firing at the back, sir.

Q Inside the bus?

A Yes, sir.

Q Now, what did you do when you heard shot[s] fired inside the bus?

A I took cover, sir.

Q After that, what happened next?

A When I [could] hear any more fire they told me to drive the bus so that they could bring the injured to the hospital, sir.

Q Who told that?

A The passengers, sir.

Q During that time, what happened to the driver of the bus?

A He was also wounded. He had a gunshot wound, sir.

Q Now, when the passengers told that the bus be driven to the hospital, what did you do?

A When I was about to go to the driver’s seat to drive the bus and to go to the hospital a person by the name Willy Sinampan came over and was the one who drove the bus, sir.

Q. Is he also an employee of Ballesteros Liner?

A. Yes, sir.

Q. What is his rank or position?

A. He is the operation manager, sir.

Q. Did you come to know later what happened to the other passengers inside the bus that evening?

A. I did not know that any more because I was lying down on the floor, sir.

Q. My question is, afterwards when the shooting stopped, did you come to know what happened to the other passengers of the bus?

A. I know, sir.

Q. What did you find out?

A. After that I have known that there was one passenger [who] died, sir.

Q. What else did you find out?

A. One of the holduppers and one helper of the bus, sir.

Q. How many all in all died that evening?

A. Four, sir.”[22]

Alibi Cannot Stand

Appellants likewise attribute error to the trial court's disregard of their defense of alibi. We are not persuaded. Appellants' defense cannot stand in light of their positive identification by the prosecution witnesses. "In countless cases, we have declared that positive identification destroys the defense of alibi and renders it impotent. Further, for alibi to merit serious consideration, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of its commission." [23] We agree with the ruling of the court :

"They were allegedly in San Ricardo, Talavera, Nueva Ecija in the evening of February 1, 1990 when the crime was committed. In fact according to them it was only on February 2, 1990 in the morning when they left Nueva Ecija to go to Alicia, Isabela, to see the girl friend of Danilo Reyes. The accused presented several witnesses to corroborate their alibi. What is interesting about the testimonies of the accused and their witnesses is that they were the same to the last detail. It would seem that they talked and conferred with each other and rehearsed what they [should] testify to. It is only [on] the date where they wavered. They had no concrete reference to remember the actual date when the accused left San Ricardo, Talavera. Their point of remembrance [was] that the robbery happened on that date. The possibility that the accused were in Ricarte, Talavera, and left for Alicia, Isabela, in another day than February 1, 1990 is very great." [24]

Second Issue:

Crime Committed

Finding that "[t]he facts established show that on the occasion of the attempted robbery, four persons were killed and one was injured," [25] the trial court adjudged appellants guilty of the "complex crime of attempted robbery with homicide under Article 297 of the Revised Penal Code." [26]

We disagree. Appellants were not properly charged with this offense in any of the three Informations filed against them. As the trial court itself observed, "the prosecution filed three separate informations, one for attempted robbery, the other for multiple frustrated murder and the third [for] qualified illegal possession of firearms used in multiple murder." [27] There was no information charging the special complex crime of attempted robbery with multiple homicide. Thus, to hold appellants liable for this offense, notwithstanding the absence of the proper information, is to violate the explicit guarantee of the Constitution, which provides: [28]

"(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable." (Italics supplied.)

"The hornbook doctrine in our jurisdiction is that an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be violative of this constitutional right." [29] Indeed, the accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the information filed against him.

Although no single information charged appellants with the said crime, the trial court apparently based its decision on an amalgam of allegations contained in the separate Informations filed. Hence, in the first Information, the court found the element of attempted robbery and the death of one of the robbers; and, in the second, the death of three persons.

Much the same scenario confronted the Court in *People vs. Legaspi*, [30] in which the appellants, charged with two separate Informations for murder and for carnapping, were convicted of the special complex crime of robbery

with homicide. Convicting appellants of two separate crimes, the Court held:

“Their conviction can only be limited to the crime alleged or necessarily included in the allegations in the separate informations. What controls is the description of the offense as alleged in the information.[31] While the trial court can hold a joint trial of two or more criminal cases and can render a consolidated decision, it cannot convict the accused of a complex crime constitutive of the various crimes alleged in the two informations. Thus, the accused were deprived of their constitutional right to be informed of the nature and cause of the accusation against them.”

It is true that the Information for attempted robbery contained the allegation that one of the robbers was killed during such attempt. This, however, does not warrant a conviction for the special complex crime. Article 297 of the Revised Penal Code provides that the attempted robbery and the killing be perpetrated by the same person.[32] Said article speaks of the same person “being guilty of such offenses”; that is, robbery and homicide. In this case, it is clear that the dead robber was killed not by his cohorts but by one of the passengers.

Hence, although there is enough evidence on record to sustain a conviction for attempted robbery with homicide, we are constrained to convict the accused only for the crimes charged and duly proven against them. Under the first Information, the appellants can be held guilty only of the crime of attempted robbery. The accused commenced their planned robbery with direct overt acts by announcing a holdup, firing a warning shot in the air and ordering the passengers to raise their hands and bow their heads. They failed to carry out all acts of execution which should have consummated the crime of robbery, due to the resistance of a passenger who exchanged fire with them, and not because of their own voluntary desistance[33]

Although a prosecution witness testified that one of the malefactors took money from a woman passenger, the said victim never took the witness stand. In any event, appellants cannot be held liable for consummated robbery, for the said Information merely charged them with attempted robbery. When there is variance between the offense charged in the information and that proved, Section 4 of Rule 120 mandates that the accused may be convicted only “of the offense charged included in that which is proved.”

Again, we emphasize that, though the Information in Crim. Case No. 21-1156 (first case) alleged that “one of the hold-up men was killed,” there is absolutely no evidence that appellants were responsible for such death. On the other hand, while the prosecution proved the appellants’ liability for the murder of Alfredo Tango and Sonny Quintua, their deaths were not alleged in said Information in the first case. Hence, we can sustain appellants’ conviction only for attempted robbery, not for attempted robbery with homicide.

Multiple Frustrated Murder

Although the dispositive portion of the assailed Decision failed to pass upon the charge of multiple frustrated murder in the third case, its main body contained the following statement:

“There were also other passengers who were injured. Only one was identified. He is William Sinampan, the operations manager of the Ballesteros Liner. Sinampan was shot on the left ear. The extent and gravity of his injuries were not established. Sinampan himself did not testify. Neither was a medical certificate presented as evidence.”[34]

Since the trial court did not specifically rule on the guilt of the appellants as to said charge (multiple frustrated murder), the constitutional presumption of innocence prevails. The quoted paragraph, together with the absence of a disposition regarding the Information on multiple frustrated murder, demonstrates that they were not convicted of such indictment.

Verily, our examination of the records shows that there is a dearth of evidence to convict them of multiple

frustrated murder. None of the persons allegedly wounded in the incident was presented to testify to the gravity of the wounds allegedly sustained, or to the fact that they were sustained at all during said event. Neither was a medicolegal report regarding said injuries submitted. Hence, appellants must be acquitted of this charge.

Multiple Murder

The court did not err in its factual finding that appellants killed Alfredo Tango and Sonny Quintua. However, it did err in its legal conclusion combining such killing and attempted robbery as one complex crime. The second Information (Crim. Case No. 21-1157) charged them, *inter alia*, as follows:

“xxx herein accused, conspiring and confederating together and helping one another, with evident premeditation and treachery, with intent to kill suddenly and unexpectedly and without giving them [a] chance to defend themselves did then and there wilfully, unlawfully, and feloniously assault, attack and shoot with said illegally possessed firearms Alfredo Tango y Tabinga, Sonny Quintua and Nestor Agustin y Correo, inflicting upon them gunshot wounds, which directly caused their death.”

The foregoing, we repeat, was embodied in the Information for a crime, which the trial court designated as “qualified illegal possession of firearms used in multiple murder.” It is hornbook doctrine, however, that “what determines the real nature and cause of the accusation against an accused is the actual recital of facts stated in the information or complaint and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law.”[35] From its recital of facts, said Information charged appellants with the offenses of illegal possession of firearms and murder. Thus, the scope of this review encompasses the offenses actually charged in the Information, which the prosecution sought to prove.

“It is a well-settled doctrine that an appeal throws the whole case wide open for review and empowers (even obligates) the appellate court to correct such errors as may be found in the appealed judgment even if they have not been assigned.”[36] It is likewise settled that “[w]hen an accused appeals, he stands for a new trial of the whole case.”[37] Since the said Information contained a specific allegation of every fact and circumstance necessarily constituting both the crimes of illegal possession of firearms and of murder, the separate crime of multiple murder may thus be validly taken into account in the resolution of the present appeal, although appellants have been acquitted of illegal possession of firearms. Manifestly, appellants were fairly apprised of the nature of the crime of multiple murder and granted a fair opportunity to defend themselves.

We are not unaware of the rule that an information charging more than one offense is fatally defective[38] and may be quashed on the ground of duplicity of offenses.[39] The rationale for this rule was explained in this wise:

“The rule enjoining the charging of two or more offenses in an information has for its aim to give the defendant the necessary knowledge of the charge to enable him to prepare his defense. The State should not heap upon the defendant two or more charges which might confuse him in his defense.”[40]

However, when the accused fails, before arraignment, to move for the quashal of such information and goes to trial thereunder, he thereby waives the objection, and may be found guilty of as many offenses as those charged in the information and proved during the trial.[41] In this case, the appellants failed to move for quashal before arraignment; thus, they are deemed to have waived the defect and are considered charged with the offenses of illegal possession of firearms and multiple murder. Indeed, they were not deprived of their constitutional right to be informed of the accusation against them. The heart of this constitutional guarantee was explained in *US v. Karelsen*[42] in this manner:

“The object of this written accusation was - first, to furnish the accused with such a description of the charge against him as will enable him to make his defense; second, to avail himself of his conviction or acquittal, for

protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had.”

A careful review of the records of the case reveals that appellants were given the opportunity to defend themselves from the charges against them. And they did, in fact, defend themselves.

Granting *arguendo* that the Information in Criminal Case No. 21-1157 charged the single offense of illegal possession of firearms used in the killing of three persons, appellants could still be convicted of double murder. The Rules of Court provides that an accused may be convicted not only of the offense charged in the information, but also of the offense necessarily included therein.[43] An offense is necessarily included in that which is charged when some of the elements of the latter, as alleged in the information, constitute the former.[44] As already stated, an examination of the allegations in the above-mentioned Information reveals that all the elements of murder are included therein. It must be stressed further that these elements were sufficiently established during the trial.

Appellants’ acquittal for illegal possession of firearms under the said Information did not include their exoneration from double murder. In fact, the trial court itself found that appellants were responsible for the murder of Alfredo Tango and Sonny Quintua.[45] Instead of finding appellants liable for double murder, however, the court erroneously appreciated these in the crime of attempted robbery with homicide.[46]

As correctly observed by the trial court, appellants could be held liable for the murder of Alfredo Tango and Sonny Quintua only, and not of Nestor Agustin. To quote the lower court, “[I]t was not clearly established who shot Nestor Agustin. He was shot as a result of the exchange of fire between the accused and the passenger who fought them. It cannot be said therefore that evident premeditation or treachery attended the killing. However the shooting of Sonny Quintua and Alfredo Tango was deliberate and sudden. It was not caused by the exchange of fire because even at the first shot the accused Danilo Reyes already shot Sonny Quintua and after the exchange of fire, he returned inside the bus and shot the driver Alfredo Tango also without warning. The killing of the two is characterized by treachery; thus it is murder.”[47]

Proving the foregoing are the testimonies of Marcelino Liberato and Wilfredo Cando. Liberato testified:

“FISCAL ONG:

Q. And after Danilo Reyes returned and took the handgun of his companion seated in ‘A-4’, what happened next?

A. Before he alighted from the bus he went near the driver and shot the driver, sir.

Q. Will you please stand up and show the Court how Danilo Reyes went near the driver, assuming that the Interpreter was the driver, and shot him?

A. Before he alighted from the bus he pointed his handgun at the driver near the door and shot him (Witness with his hand as if holding a handgun directed it towards the Interpreter).”[48]

Also reproduced below is a salient part of Cando’s testimony:

“Q After somebody or someone inside the Ballesteros Liner shouted or said “hold-up”, what happened next?

A They gave a warning shot and they shot one of the helpers of the bus, sir.”[49]

We agree with the lower court that the killings of both Sonny Quintua and Alfredo Tango were attended by treachery but not by evident premeditation. “Treachery is committed when two conditions concur, namely, that the means, methods, and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate[;] and that such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person.”[50] In the instant case, these requisites were evidently present, as

Appellant Danilo Reyes, without any warning, shot the bus helper, Sonny Quintua; and on his way down after retrieving the gun of his fellow robber, did the same to the bus driver, Alfredo Tango. The suddenness of the actions of the appellants and the obvious helplessness of the victim provided no opportunity for the latter to defend themselves.

For the aggravating circumstance of evident premeditation to be appreciated, there must be proof, as clear as the evidence of the crime itself, of the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender clung to his or her determination; and (3) a lapse of time between the determination and the execution sufficient to allow the offender to reflect upon the consequences of the act.[51] These requisites were never established by the prosecution.

To recapitulate: the Information in Criminal Case No. 21-1157 (the second case) charged two crimes; namely, the illegal possession of firearms and the multiple murder of Alfredo Tango, Sonny Quintua and Nestor Agustin. The trial court acquitted appellants of illegal possession; hence, we can no longer review this aspect of the Decision without violating the right against double jeopardy. However, the prosecution amply proved, and even the trial court conceded the elements of the double murder of Tango and Quintua. Through their failure to object to the duplicitous charges, the accused effectively waived their right against multiple offenses in a single information. More important, they had been informed of the elements of the multiple murder charged against them in the second case; in fact, they defended themselves from it by attacking the credibility of the prosecution witnesses and by setting up the defense of alibi, albeit unsuccessfully. And granting that the appellants were charged with the single crime of illegal possession of firearms used in the killing of three persons, they could still be convicted of murder in spite of their acquittal for illegal possession.

WHEREFORE, the assailed Judgment is hereby MODIFIED as follows:

1. In Crim. Case No. 21-1156 (the first case), appellants are found GUILTY as principals of attempted robbery and are hereby SENTENCED to four months of arresto mayor.[52]
2. In Crim. Case No. 21-1157 (the second case), appellants are found GUILTY as principals of the double murder of Alfredo Tango and Sonny Quintua and are each SENTENCED to two terms of reclusion perpetua. Furthermore, they are each ORDERED to pay, jointly and severally, the sum of P50,000 as civil indemnity to the heirs of Alfredo Tango and another P50,000 also as civil indemnity to the heirs of Sonny Quintua. They are ACQUITTED of any responsibility for the death of Nestor Agustin, for failure of the prosecution to prove their guilt beyond reasonable doubt.
3. In Crim. Case No. 21-1158 (the third case), appellants are likewise ACQUITTED of any criminal liability, for failure of the prosecution to prove any crime.

Costs against appellants.

SO ORDERED.

Davide Jr., Bellosillo, Vitug and Quisumbing, JJ. concur.

[1] ollo, pp. 27-41; records, pp. 258-272.

[2] Presided by Judge Fe Albano Madrid.

[3] Records of Case No. 21-1156, p.1.

[4] Decision, p. 2, Rollo, p.28.

[5] Records of Case No. 21-1158, p. 1.

[6] This Court received the Appellees' Brief on June 5, 1997 and, in a Resolution dated November 26, 1997, dispensed with the filing of a reply brief. On February 26, 1998, the Court received another "Brief for Accused Appellants" dated January 12, 1998, which apparently was prepared by appellants themselves while confined in the NBP. In fairness to the appellants, this last pleading, while superfluous under the Rules, was still considered by the Court during its deliberations on this appeal. The case was thus deemed submitted for resolution on January 12, 1998.

[7] Pp. 6-9; signed by Solicitor General Silvestre H. Bello III, Assistant Solicitor General Pio C. Guererro, Assistant Solicitor General Aurora P. Cortes and Associate Solicitor Gabriel Francisco A. Ramirez, Jr.

[8] Pp. 8-10; Rollo, pp. 80-82; signed by Public Attorney IV Arceli Adan Rubin, Public Attorney III Amelia C. Garchitorena and Public Attorney II Arabella S. Altuna.

[9] RTC Decision, pp.8-12; Rollo, pp.34-38.

[10] Ibid., pp. 13-15; Rollo, pp. 39-41.

[11] Appellants' Brief, p. 10; Rollo, p. 82.

[12] People v. Sol, G.R. No. 118504, May 7, 1997; Quemel v. Court of Appeals, 22 SCRA 44, January 16, 1968; People v. Villagrancia, 226 SCRA 374, September 14, 1993; People v. Godines, 196 SCRA 765, May 7, 1991.

[13] People v. Magdamit, et al., G.R. No. 1118130, September 24, 1997, per Regalado, J.; People v. Galendez, et al., 210 SCRA 360, June 26, 1992; People v. Lugaw-aw, et al., 229 SCRA 308, January 18, 1994; People v. Corpuz, et al., 231 SCRA 480, March 28, 1994.

[14] Appellants' Brief, p. 11; Rollo, p. 83.

[15] Ibid., p. 12; rollo, p. 84.

[16] Also referred to as "Kakilingan."

[17] TSN, December 12, 1990, p. 6.

[18] TSN, December 12, 1990, pp. 15-16.

[19] TSN, December 12, 1990, pp. 19-23 and 28-29.

[20] TSN, June 19, 1991, pp. 4-5.

[21] TSN, June 19, 1991, pp. 10-11.

[22] TSN, September 7, 1993, pp. 6-12.

[23] People v. Vasquez, G.R. No.105008, October 23, 1997, per Romero, J.; People v. Fabrigas, 261 SCRA 436, September 5, 1996; People v. Alshaika, 261 SCRA 637, September 11, 1996; People v. Daquipil, 240 SCRA 314, January 20, 1995; People v. Morin, 241 SCRA 709, February 24, 1995.

[24] Assailed Decision, p. 10; Rollo, p. 36.

[25] Assailed Decision, p. 13; Rollo p.39. Italics supplied.

[26] Ibid.

[27] Ibid.

[28] Article III, Section 14, par. 2 of the 1987 Constitution.

[29] *People v. Ortega, Jr.*, G.R. No. 116736, July 25, 1997, per Panganiban, J.; *People v. Guevarra*, 179 SCRA 740, December 4, 1989, citing *Matilde, Jr. v. Jabson*, 68 SCRA 456, December 29, 1975 and *U.S. v. Ocampo*, 23 Phil. 396.

[30] 246 SCRA 206, 213, July 14, 1995, per Quiason, J.

[31] *Santos v. People*, 181 SCRA 487, January 29, 1990.

[32] This is clear from the language of the provision, which reads:

“ART. 297. Attempted and frustrated robbery committed under certain circumstances. - When by reason or on occasion of an attempted or frustrated robbery, a homicide is committed, the person guilty of such offenses shall be punished by reclusion temporal in its maximum period to reclusion perpetua, unless the homicide committed shall deserve a higher penalty under the provisions of this Code.” (Underscoring supplied.)

[33] Article 6, Revised Penal Code; *People v. Abalos*, 57 SCRA 330, May 31, 1974; *People v. Carunungan*, 109 Phil. 534, September 30, 1960; *People v. Vivas*, 54 Phil. 85, December 2, 1929.

[34] Decision, p.9; Rollo, p.35.

[35] *Pecho v. People*, 262 SCRA 518, September 27, 1996, per Davide, J.; citing *Matilde v. Jabson*, 68 SCRA 456, December 29, 1975.

[36] *People v. Llaguno*, GR No. 91262, January 28, 1998, per Panganiban, J.; *People v. Alejandro*, 225 SCRA 347, August 17, 1993.

[37] *People v. Llaguno*, supra; citing Francisco, Rules on Criminal Procedure, p.496.

[38] Section 13, Rule 110, Rules of Court.

[39] Section 3(e), Rule 117, Rules of Court.

[40] *People v. Ferrer*, 101 Phil. 234, April, 29, 1957.

[41] *People v. Conte*, 247 SCRA 583, August 23, 1995; *People v. Dulay*, 217 SCRA 132, January 18, 1993; *People v. Basay*, 219 SCRA 404, March 3, 1993; *People v. Ducay*, 225 SCRA 1.

[42] 3 Phil 223, January 21, 1904, per Johnson, J; citing *Matilde v. Jobson*, supra; *People v. Labado*, 98 SCRA 730, July 24, 1980.

[43] Section 4, Rule 120. See also *People vs. Judy Reyes*, G.R. No. 91262; January 28, 1998.

[44] Section 5, Rule 120.

[45] RTC Decision, p. 14; Rollo, p. 102.

[46] Ibid., p. 13; Rollo, p. 101.

[47] Ibid., p. 14; Rollo, p. 102.

[48] TSN, December 12, 1990, pp. 22-23.

[49] TSN, September 7, 1993, pp. 6-8

[50] *People vs. Maalat*, G.R. No. 1009814, July 5, 1997, per Romero, J.; *People v. Tuson*, GR No. 106345-46,

September 16, 1996.

[51] *People v. Baydo*, G.R. No. 113799, June 17, 1997; *People v. Halili*, 245 SCRA 340, June 27, 1995.

[52] Because the penalty for consummated robbery under Article 294 (5) of the Revised Penal Code is prision correccional in its maximum period to prision mayor in its medium period, the imposable penalty for attempted robbery is two degrees lower, that is, destierro in its maximum period or arresto mayor in its minimum and medium periods. Accordingly, the Court imposes upon appellants four months of arresto mayor. The Indeterminate Sentence Law does not apply, since the maximum term of imprisonment “does not exceed one year.” (Section 2, Act No. 4103, as amended)

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.