

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO HILLADO, ACCUSED-APPELLANT.

G.R. No. 122838. May 24, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 46, of San Jose Occidental Mindoro, finding accused-appellant Romeo Hillado guilty beyond reasonable doubt for the murder of Amor Baltazar, and for the frustrated murder of Margarito Balestramon on the early morning of 5 November 1992.

On 15 February 1993, accused-appellant was charged under the following Informations:

1) Criminal Case No. R-3360 for murder:

That on or about the 5[th] day of November, 1992, at around 1:00 o'clock in the morning, in Barangay Nicolas, Municipality of Magsaysay, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with a gun with intent to kill and by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Amor Baltazar, thereby inflicting upon the latter serious wounds which caused his untimely death.

That as a result of the unlawful acts of the accused, the heirs of the said Amor Baltazar suffered actual, moral and compensatory damages for which they should be indemnified in such amount that the Honorable Court may deem just and proper under the premises

CONTRARY TO LAW[2]

2) Criminal Case No. R-3361 for frustrated murder

That on or about the 5[th] day of November, 1992, at around 1:00 o'clock in the morning, in Barangay Nicolas, Municipality of Magsaysay, province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the accused being then armed with a gun, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said weapon one Margarito Balestramon, thereby inflicting upon the latter serious wound, thus performing all the acts of execution which ordinarily would have produced the crime of murder as a consequence, but nevertheless, did not produce it by reason of some causes independent of the will of the accused, that is the timely and able medical attendance rendered to the said Margarito Balestramon which prevented his death.

That as a result of the unlawful acts of the accused, the said Margarito Balestramon suffered actual, moral and compensatory damages for which he should be indemnified in an amount that the Honorable Court may deem just and proper under the premises.

CONTRARY TO LAW.[3]

When arraigned on 10 March 1993, accused-appellant pleaded "Not Guilty" to both crimes. He manifested through his counsel that he was waiving pre-trial. Thereafter, a joint trial was conducted since the crimes charged

were allegedly committed in the same place, date and time.

The prosecution[4] presented evidence establishing the following:

On 5 November 1992, at around 1:00 o'clock in the morning, Margarito Balestramon and his nephew, Amor Baltazar, were in the plaza of Barangay Nicolas, Magsaysay, Occidental Mindoro, where a benefit dance was being held. Accused-appellant Romeo Hillado, a member of the CAFGU, was also there. In the plaza, boxes of fried chicken were being sold. Balestramon and Baltazar went to a nearby store and bought a box of fried chicken and a bottle of gin. Thereafter, they went to the house of a certain Imoc Dizon where they ate the chicken and drank the gin. They stayed in the house of Dizon until 2:30 in the morning. On their way home, they passed by the house of Balestramon's niece, Leticia Ginero, and drank coffee. Afterwards, they left for the house of Balestramon where Baltazar was also temporarily lodging, the latter being new in the place and had nowhere to stay.

While Balestramon and Baltazar were walking towards the house of the former, accused-appellant appeared from the street corner where they were passing, carrying a Garand rifle.[5] In a loud voice, accused-appellant called out to them and said, "Sino `yan? Balestramon, who personally knew accused-appellant and who was much older than the latter, answered the query in a respectable tone and said, "Kami po." Balestramon noticed that accused-appellant was irked by his response for the latter became silent. Sensing anger on the part of accused-appellant, Balestramon and Baltazar walked away and headed to the direction of Balestramon's house. After they have travelled a distance of about one hundred (100) meters, a gunshot was fired from behind.[6] Baltazar fell down on the ground for he was hit by the bullet.[7] This shocked balestramon who was only about an arm's length away from Baltazar. He was unable to move for several seconds. After recovering from shock, Balestramon lifted the body of Baltazar. While he was doing this, another shot was fired. This time both he and his nephew were hit by the second bullet.[8] Balestramon turned his back to the direction from where the shot came. He saw accused-appellant, who was only about five (5) arms length away, carrying a garand rifle which was aimed at him.[9] At this juncture Balestramon shouted for help. A certain Winston Jacinto respondent and brought him to the clinic in Magsaysay, Occidental Mindoro. In the meantime, accused-appellant left the scene.

Margarito Balestramon was given first-aid treatment by Dr. Gerardo Agupitan at the Magsaysay clinic. Afterwards, he was transferred to the San Jose District Hospital at Murtha, San Jose, Occidental Mindoro, for further treatment. In the hospital, Balestramon's attending physician, Dr. Edwin P. Sulit, advised him to seek further treatment in Metro Manila for the wound he sustained. Accompanied by a nurse, he proceeded to the National Orthopedic Hospital where he was confined for about a week.

On the other hand, Amor Baltazar was left behind in the scene of the crime when Balestramon was brought to the clinic. Baltazar died on the spot from the two (2) gunshot wounds he received. Dr. Gerardo V. Agupitan performed the autopsy of the body in Barangay Nicolas, Magsaysay, Occidental Mindoro.

At the witness stand, Dr. Gerardo V. Agupitan testified that he is the Municipal Health Officer of Magsaysay, Occidental Mindoro. He stated that he conducted the autopsy of Amor Baltazar on 5 November 1993. He declared that the injuries sustained by Baltazar were caused by two (2) gunshot wounds. According to his findings, the cause of death was "hypovolenic shock or massive blood loss caused by gunshot wound." [10] The post mortem findings indicated the following:

Gunshot Wound "a"

1. point of entry: 1 cm. right lateral from the 2[nd] cervical vertebrae
2. point of exit: thyroid cartilage

Gunshot Wound "b"

1. point of entry 2 cms. Right lateral from the 2[nd] cervical vertebrae
2. point of exit 2 cms. Right lateral from the thyroid cartilage.[11]

Dr. Edwin Sulit, Medical Officer III of San Jose Emergency Hospital at Murtha, San Jose, Occidental Mindoro testified on the examination he conducted with respect to the wound sustained by Balestramon on his left shoulder. He stated that the wound was caused by a gunshot since the wound was circular in shape and there was a fracture in the area.[12] The Medico-Legal certificate prepared by him contained the following findings:

Diagnosis: Gun Shot Wound left shoulder

Duration: More than Six (6) months

Disposition: Admitted.[13]

Andres Baltazar, on the other hand, testified that he was the one who took the body of Amor Baltazar after the autopsy. He declared that he was not a relative of the deceased although they have similar surnames. He alleged that he was the one who paid for all the expenses incurred during the wake and interment of the deceased.

The defense[14] presented a different version of the incident. Their testimonies may be summarized as follows:

Accused-appellant Romeo Hillado interposed denial and alibi as his defenses. He categorically denied any participation in the commission of the crimes charged against him. According to his testimony, he did not shoot and could not have shot the complainant Margarito Balestramon, much less killed Balestramon's nephew Amor Baltazar, because he was sleeping at the CAFGU detachment in Barangay Nicolas when the incident occurred.[15] He declared that at around 8:30 p.m. of 4 November 1992, he and his companions, namely, Salvador Mindoro, Ingay Mindoro, Cesar Silverio and Mariano Andres, were at the CAFGU detachment. He was the guard-on-duty at their unit that evening from 8:30 p.m. up to 12:00 midnight. When midnight came, he was relieved of his duty and Mariano Andres and Ingay Mindoro took his post. Afterwards, he slept. At around 2:00 o'clock in the morning, accused-appellant was awakened by Andres and Mindoro who told him that somebody was shot in Barangay Nicolas. Accused-appellant claims that he was implicated in the killing of Baltazar and the wounding of Balestramon because he had an altercation with the latter prior to the incident in question.[16] He stated that he confiscated around 700 board feet of lumber belonging to Balestramon as ordered by the Barangay Captain of Nicolas. This incident probably made Balestramon angry at accused-appellant. Two (2) weeks after the occurrence, he was apprehended by the police while playing basketball in Barangay Nicolas and was placed in the municipal jail of Magsaysay.

The testimony of accused-appellant was corroborated by two witnesses for the defense, namely, Ingay Mindoro and Mariano Andres, who related substantially the same story in favour of the former. According to both, accused-appellant was sleeping at the detachment at the time of the incident in question. They testified that they took over the post of accused-appellant at 12:00 midnight. While they were patrolling around the detachment, they heard a single gunshot with a scattered sound ("sabog or wasak"). They were alerted by this sound. Later, a certain Jerry Lualhati who was carrying a lamp, arrived and informed them about the shooting incident. Together, the three of them proceeded to the area where the shooting took place. There they saw the body of the victim. They did not do anything at first. They just returned to the same place the next day and cut grasses surrounding the area in search of a slug. They testified that he CAFGU detachment where they were patrolling was only about a kilometer away from the scene where the body was found. They stated that during the shooting, accused-appellant was sleeping at their detachment.

Epifanio Nicolas, the barangay captain of Barangay Nicolas, testified that he knows both Balestramon and Hillado, being his constituents. He declared that he was able to converse with Ballestramon two weeks after the incident. According to him, Balestramon did not make mention of accused-appellant as his assailant. He further stated that Balestramon did not say anything because he went to the ricefield. During the cross-examination, he acknowledged before the court that he does not know of any disagreement or misunderstanding between the litigants.

The prosecution presented Jerry Lualhati as its rebuttal witness. This witness testified that when he went to the CAFGU detachment on the early morning of 5 November 1992, he did not see accused-appellant there.

After trial, the Regional Trial Court rendered the assailed decision convicting accused-appellant of both charges. The dispositive portion of the decision states:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered as follows:

- In Criminal Case No. R-3360, the court finds the accused, ROMEO HILLADO guilty beyond reasonable doubt of the crime of Murder and hereby sentences him to suffer an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of Prison Mayor as minimum to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal as maximum, with accessories provided by law; and to indemnify the heirs of the deceased, Amor Baltazar, in the sum of FIFTY THOUSAND PESOS (P50,000.00) without subsidiary imprisonment in case of insolvency.

- In Criminal Case No. R-3361, the Court finds the accused, ROMEO HILLADO, guilty beyond reasonable doubt of the crime of Frustrated Murder and hereby sentences him to suffer an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of Prison Mayor as minimum to FOURTEEN (14) YEARS and EIGHT (8) MONTHS OF Reclusion Temporal as maximum, with accessories provided by law; and to indemnify the private offended party, Margarito Balestramon in the sum of NINETEEN THOUSAND FIVE HUNDRED PESOS (P19,500.00) without subsidiary imprisonment in case of insolvency.

The accused shall, however, be entitled to the full term of his preventive imprisonment, provided, that he shall have agreed in writing to abide with the disciplinary rules and regulations imposed on convicted prisoners; otherwise, he shall be credited only (4/5) of his preventive imprisonment.

With costs against the accused in both instances.

SO ORDERED.[17]

Accused-appellant appealed the above decision to the Court of Appeals. In a Resolution[18] dated 9 October 1995, Court of Appeals elevated the case to this Court for review since the penalty to be imposed for the crime of murder is reclusion perpetua, there being no discernible modifying circumstances, which is under the exclusive appellate jurisdiction of this Court.[19]

Upon certification of the case to this Court, we required the parties to submit supplemental briefs.[20] In a Manifestation[21] dated 31 August 1998, accused-appellant through counsel, stated that it is no longer necessary to file a supplemental brief to avoid repetition of arguments, and that the case should already be submitted for decision sans the supplemental brief.

In his Brief, accused-appellant ascribes the following errors to the trial court:

I

THE TRIAL COURT ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE EVIDENCE PUT UP BY THE APPELLANT.

II

THE TRIAL COURT ERRED IN NOT GIVING PROBATIVE VALUE TO EXHIBITS "1" TO "1-G" PROFERRED BY THE DEFENSE.

III

ON THE ASSUMPTION THAT APPELLANT IS GUILTY, THE TRIAL COURT ERRED IN CONVICTING HIM OF MURDER AND FRUSTRATED MURDER IN CRIMINAL CASE NOS R-3360 AND R-3361, RESPECTIVELY.

The above assigned errors raise the following issues: (1) the credibility of the witness for the prosecution, (2) the defenses of denial and alibi, and (3) the characterization of the crimes committed and the penalty therefor.

We find the appeal of accused-appellant devoid of merit. Accused-appellant failed to present any compelling reason to overthrow the findings of the trial court.

FIRST ISSUE: CREDIBILITY OF WITNESS FOR THE PROSECUTION

With regard to the issue of credibility of witnesses, the Court has time and again pointed out that appellate courts will not disturb the findings of the trial court unless it has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case.[22] This is so because the trial judge heard the witnesses testify and had the opportunity to observe their demeanor and manner of testifying.[23] As this Court has reiterated often enough, the matter of assigning values to declarations at the witness stand is best and most competently performed or carried out by a trial judge who, unlike appellate magistrates, can weigh such testimony in light of the accused's behavior, demeanor, conduct and attitude at the trial.[24] This Court has none of the advantages of the trial judge's position, relying as it does only on the cold records of the case and on the judge's discretion.[25] Thus, in the absence of showing that the factual findings of the trial judge were reached arbitrarily or without sufficient basis, these findings are to be received with respect by, and indeed are binding on this Court.

We have found nothing in the present case to justify a reversal or modification of the findings of the trial court.

Margarito Balestramon, a survivor of the assault, positively pointed to, and identified, accused-appellant as the author of the crime. He narrated in a candid and truthful manner the events that transpired on that fateful early morning, to wit:

Q: While on your way home, what happened, if any?

A: On our way home, we passed by the house of my niece.

Q: And what did you do there in that house?

A: We drank coffee, Sir.

Q: By the way, what is the name of that niece of yours?

A: Leticia Ginero, Sir.

Q: After drinking coffee in that house of Mrs. Ginero, what did you do?

A: We went home, Sir.

Q: Were you able to reach home that night?

A: We were not able to reach home, Sir.

Q: Can you tell the court the reason why you did not reach your house on that early morning of November 5, 1992?

A: Yes, sir.

Q: What happened?

A: Amor Baltazar was shot, Sir.

Q: Where was he shot?

A: He was shot at Barangay Nicolas, Magsaysay.

Q: How far were you from him when he was shot?

A: About one (1) arm length, Sir.

Q: What happened to Amor Baltazar when he was shot as you said?

A: He fell down to the ground.

Q: How about you, what did you do when he was shot?

A: I was surprised, so I was not able to run.

Q: And what happened to you when you were not able to run?

A:

I was about to sit down to get Amor Baltazar but I was shot on my left armpit.

Q: By the way, do you know of the name of the person who fired at your relatives (sic) Amor Baltazar and you?

A: Yes, Sir.

Q: Who is that person?

A: Romeo Hillado, Sir.

Q:

That incident happened in the early morning of November 5, 1992, how were you able to recognize Romeo Hillado as your assailant and the assailant of your relatives (sic) Amor Baltazar.

A: When I fell down and when I turned my back, I saw him standing.

Q: What was he holding, if any?

A: "Garan", Sir.

Q:

What was he doing with that "garan"?

A: It was aimed to (sic) me, Sir.

Q: What did you do when the gun of Romeo Hillado was aimed at you?

A: I shouted, Sir.

Q: For what?

A:

I shouted for help, Sir.

Q: Was there any one who responded to your shout for help?

A:

Yes, Sir.

Q: At that moment, when you shouted for help, where was Romeo Hillado?

A: At my back, Sir.

Q: How far?

A: More or less five (5) arms length, Sir.[26]

Q: When you shouted for help, what did Romeo Hillado do, if any?

A: He ran away, Sir.

We have carefully examined the testimony of Margarito Balestramon, the lone eyewitness, and have found no reason to disturb the conclusion of the trial court that his testimony was straightforward, guileless and credible.

Accused-appellant assails the credibility of prosecution witness Margarito Balestramon because his testimony was not corroborated.[27] According to him the lone testimony of Balestramon cannot prevail over the testimonies of the witnesses for the defense which were corroborated by each other. Accused-appellant has no reason to be distressed over such an argument. Well-settled in our jurisdiction is the principle that the testimony of a single witness, if straightforward and categorical, is sufficient to convict.[28] Thus, the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony

bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner.[29] Witnesses are to be weighed, not numbered.[30] Evidence is assessed in terms of quality and not quantity. Therefore, it is not uncommon to reach a conclusion of guilt on the basis of the testimony of a lone witness. For although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number and conviction can still be had on the basis of the credible and positive testimony of a single witness.[31] Corroborative evidence is deemed necessary "only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate." [32] In the case before us, the trial court found the testimony of Margarito Balestramon convincing and trustworthy. We find no reason to depart from such finding.

To bolster his argument that Balestramon was not a credible witness, accused-appellant claims that the former's identification of him as the assailant was not clear, positive, and convincing because at the time the incident occurred, the place was dark for there was no moon.[33] To prove this allegation, he proffered as evidence three calendars which showed that the first quarter moon on 2 November 1992, and the full moon on 10 November 1992, so that on the early morning of 5 November 1992, there was no moon yet.[34] The trial court, however, did not lend weight to the evidence presented by the defense, preferring to believe the statement of the prosecution witness that the moon was bright during that time.

Accused-appellant's argument deserves scant consideration. As enunciated by the Court in the case of *People v. Oliano*: [35]

Visibility at nighttime is possible not only at the exact minute and date when the moon is full as indicated in the calendar.

Thus, a person's nocturnal eyesight is not necessarily diminished just because there is no illumination from the moon, because it is a fact that our eyes can actually adjust to the darkness, so that we can still see objects clearly even without sufficient lighting. In the case at bar, Balestramon and Baltazar were able to walk some distance from the plaza up to the place where the shooting occurred without the aid of any lamp or the light from the moon. If this was so, surely it would not be so hard for Balestramon to identify a person's face especially if the latter is only about five (5) arms length away from him. We stress that the normal reaction of a person is to direct his sight towards the source of a startling shout or occurrence.[36] As held in *People v. Dolar*, [37] "the most natural reaction for victims of criminal violence is to strive to see the looks and faces of their assailants and to observe the manner in which the crime is committed." Added to this is the fact that accused-appellant and Balestramon were barriomates and that they have known each other quite well before the incident. As aptly explained by the trial court, accused-appellant and Balestramon are familiar with each other:

It must be observed that the complainant testified - and the accused admitted - that they personally know each other, the latter having known the former since childhood so much so that they became familiar with each other's face and physical features.[38]

Generally, people in rural communities know each other both by face and name.[39] The constant interaction between them through the years would necessarily lead to familiarity with each other such that, at the very least, one would have been able to recognize the other easily.[40] For the foregoing reasons, the Court believes that it was very much possible for Balestramon to easily identify accused-appellant as his assailant.

Accused-appellant imputes ill-motive on the part of Balestramon in order to impugn the latter's credibility. According to accused-appellant, he confiscated about 700 board of lumber from Balestramon, and for this reason the latter harbored ill feelings towards him which led to his implication in this case.[41] Accused-appellant argues that the trial court should not have accepted the tainted testimony of Balestramon because he has a motive to

testify falsely against him.

We are not persuaded. First, the alleged motive - confiscation of lumber - is too paltry a cause for any person to testify falsely against another and cause his incarceration for the most part of his life. Second, if it was indeed true that accused-appellant confiscated the lumber from Balestramon, he should have presented during trial the written order to confiscate allegedly issued by Barangay Captain Epifanio Nicolas. This he failed to do. Finally, Barangay Captain Epifanio Nicolas, a witness for the defense, stated that there was no misunderstanding between accused-appellant and Balestramon. Quoted hereunder is the statement of Nicolas regarding this matter:

Court:

Q: Mr. Brgy. Captain, of course, you know every happening in your Barangay, is it not?

A: Yes, Sir.

Q: And as a matter of fact, that is one of your duty (sic) to maintain peace and order?

A: Yes, your Honor.

Q: You said that you are very familiar with Margarito Balestramon as well as with Romeo Hillado, do you know also (sic) any instance wherein they had a misunderstanding?

A: None, your Honor.

Q: Nothing was reported to you on the matter?

A: None, your Honor.[42]

Clearly, accused-appellant failed to overcome the presumption that Balestramon was not actuated by improper motive, and, as such, his testimony is entitled to full faith and credence.

SECOND ISSUE: ALIBI and DENIAL

In his brief, accused-appellant denies any participation in the killing of Baltazar and the wounding of Balestramon, and interposes the defense of alibi. Accused-appellant contends that at early morning of 5 November 1992, he was sleeping at the CAFGU detachment in Barangay Nicolas. His alibi was corroborated by Ignacio Mindora and Mariano Andres, who were also members of the CAFGU.

We find appellant's denial and alibi bereft of merit. When alibi is alleged as a defense, it is incumbent upon the accused to show that not only was he at some other place at the time of the commission of the crime, but that it was also physically impossible for him to be at the locus delicti or within its immediate vicinity.[43] Alibi must be established by positive, clear and satisfactory evidence, the reason being that it is easily manufactured and,

usually so unreliable that it can rarely be given credence.[44] Accused-appellant failed miserably to satisfy the requirement of physical impossibility. Ignacio Mindoro and Mariano Andres, both witnesses for the prosecution testified that the CAFGU detachment is only about a kilometer, or about thirty (30) minutes away from the place where the shooting occurred.[45] Since the locus of the crime was only a few hundred meters away from the CAFGU detachment, accused-appellant was free to commit the dastardly act, and return to the headquarters and pretend to sleep afterwards. Hence, it was not at all impossible for him to commit the crimes charged. In any event, we cannot accord credence to this defense in the face of the credible and positive identification made by Balestramon. It is time-honored rule that positive identification prevails over denials and alibis.

It is not only accused-appellant's testimony which is questionable. His witnesses' testimony are also dubious and incredible. As the trial court held, they are biased or interested witnesses whose testimonies have the aspects of fabrication.[46] Both Mindoro and Andres, like the accused-appellant, are CAFGU members whose interest is to protect one of their own. The following transcript of stenographic notes reveal their partiality to accused-appellant:

Court:

Q: By the way, how long have you known the accused?

A: Since 1991, your honor.

Q: And is he a (sic) single or married?

A: Married, your Honor.

Q: And since 1991, up to the present you have been always (sic) together?

A: Yes, your Honor.

Q: Because you belong to the same detachment?

A: Yes, you Honor.

Q: And all those time that you have been together, the acquaintance (sic) that you have with him became very close, is it not?

A:

Yes, your Honor.

Q: The same is also true with the accused Romeo Hillado, that he was always going (sic) with you, is it not?

A: Yes, your Honor.

Q:

That's why you came over to testify for and in his behalf, is it not?

A: Yes, your Honor.

Q: Despite the fact that when the incident happened on November, 1992, you never volunteered yourself to give a statement to the police authority?

A: Yes, your Honor.[47]

Moreover, during the cross-examination of Mindoro, he admitted that he was merely compelled by their leader, Mariano Andres, to testify in favor of accused-appellant in order to support his alibi.[48]

Not only was partially apparent in the testimony of the defense witnesses, it was also obvious that their testimonies were rehearsed. The testimonies of Mindoro and Andres on direct examination were too perfect and too similar even on the finer details. The uniformity of the declarations of the defense's witnesses, and their lack of disinterestedness show that their testimonies were tailored-fit to establish that accused-appellant was in a place other than where the crime was committed. Obviously, it was a concocted story. Both Mindoro and Andres concurred that at the time of the incident accused-appellant was sleeping in their detachment. However, during the cross-examination of Mindoro, it was revealed that they actually did not see accused-appellant sleeping in their headquarters immediately before and after the occurrence of the shooting, because they were on patrol. The following is a recital of the testimony of Mindoro showing that he did not actually see accused-appellant sleeping in their detachment prior to the incident:

Fiscal G. Olarte: On cross-examination

Q: At that precise moment that this Lualhati came, you were then going around that detachment?

A: Yes, Sir.

Q:

You did not go inside the detachment when Lualhati arrived?

A:

No Sir, we were only outside, Sir.

Q: And you said during that time, Lualhati was outside of the detachment?

A:

We let him enter the detachment when we recognized him.

Q: By the way, did you not say that you stayed outside the detachment when Lualhati arrived?

A:

We went inside, Sir.

Q: At that time when you went inside, you saw that Romeo Hillado was sleeping?

A: Yes, Sir.

Q: And you will admit that fact that your detachment is located in Barangay Nicolas?

A: Yes, Sir.

Q: In fact, it was the first time that you saw Romeo Hillado sleeping in the detachment when Lualhati arrived?

A: Yes, Sir.

Q:

It is very clear from your own testimony that you saw Romeo Hillado only at the time that Lualhati arrived. Before that, you never saw Romeo Hillado inside the detachment?

A: Yes, Sir.

Q: In fact, when you were going around the detachment, you were not able to see Romeo Hillado outside the detachment?

A: No, Sir.

Q: How long did you perform your duty in the detachment before the arrival of Lualhati?

A:

One half (1/2) hour, Sir.

Q: And (sic) within that period of one half (1/2) hour, you can go to the place where the alleged killing was done, is it not?

A:

Yes, Sir.

Q: And (sic) you are now certain that it was you and Mariano Andres who were only performing (sic) duty at that detachment?

A: We were the next shift from Romeo Hillado.[49]

For the foregoing reasons, accused-appellant's defenses of alibi and denial are brushed aside.

THIRD ISSUE: CHARACTERIZATION of the CRIMES COMMITTED and the PENALTY therefor

The last issue presented by accused-appellant is the propriety of his conviction for the crime of murder and frustrated murder. He claims that if found guilty, he should only be convicted for homicide and frustrated homicide because the prosecution was not able to establish the existence of treachery to qualify the crime to murder.

We are not convinced. We agree with the trial court that accused-appellant is guilty for the death of Amor Baltazar. Treachery was proven by the prosecution and this qualified the killing to murder. The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim.[50] It is deemed present in the commission of the crime, 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.[51] In this case, Amor Baltazar and Margarito Balestramon, were totally unaware of the misfortune that would befall upon them. They were just walking along the road when they were shot. They were unable to defend themselves from the unexpected attack. Both had no weapon with which to defend themselves. They had not provoked accused-appellant; they had no previous altercation or serious

misunderstanding with him. Based on the above, the requisites of treachery were evidently present in the action of accused-appellant, which caused Baltazar's death.

The trial court also convicted accused-appellant of frustrated murder for the injury sustained by Balestramon. As evidenced by the medical certificate and the testimony of Dr. Edwin P. Sulit, Balestramon's wound would have caused his death had it not been for the timely medical intervention. Hence, we affirm the ruling of the trial court that accused-appellant is guilty of frustrated murder.

The Court of Appeals correctly elevated the case to this Court. For the crime of murder, the trial court imposed an indeterminate penalty of ten (10) years and one (1) day of prision mayor as maximum. On the other hand, for frustrated murder the trial court sentenced accused-appellant to an indeterminate penalty of ten (10) years and one (1) day of prision mayor as minimum to fourteen (14) years and eight (8) months of reclusion temporal as maximum.

As correctly pointed out by the Office of the Solicitor General, the penalty for murder under Article 248 of the Revised Penal Code is reclusion temporal in its maximum period to death.[52]. This was the penalty for Murder under Art. 248, prior to its amendment under RA 7659.52 There being no attendant aggravating or mitigating circumstance clearly established during the trial, the mid-range penalty of reclusion perpetua should be imposed upon accused-appellant. The trial court committed an error when it applied the Indeterminate Sentence Law when such does not apply if the penalty involved is reclusion perpetua.[53] Thus, for the crime of murder, accused-appellant should have been sentenced to reclusion perpetua in accordance with the Revised Penal Code.

On the other hand, with regard to the offense of frustrated murder, under Article 50 of the Revised Penal Code, the penalty for a frustrated felony is the "next lower in degree than that prescribed by law for the consummated felony." The imposable penalty for frustrated murder, therefore, is prision mayor in its maximum period to reclusion temporal, in its medium period.[54] Because there are no aggravating or mitigating circumstances present in this case, the penalty prescribed by law should be imposed in its medium period.[55] Applying the Indeterminate Sentence Law, we hereby impose the penalty of eight (8) years of prision mayor (minimum) as minimum, to fourteen (14) years and eight (8) months of reclusion temporal (minimum) as maximum.[56]

WHEREFORE, the appeal is DENIED and the assailed Decision is AFFIRMED. However, the penalties are hereby MODIFIED as follows:

1) In Criminal Case No. 3360, for MURDER, accused-appellant is hereby sentenced to reclusion perpetua and to indemnify the heirs of the deceased, Amor Baltazar, in the sum of P50,000.00.

2. In Criminal Case No. 3361, for FRUSTRATED MURDER, accused-appellant is hereby sentenced to suffer the penalty of eight (8) years of prision mayor (minimum), as minimum, to fourteen (14) years and eight (8) months of reclusion temporal (minimum) as maximum.

Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Melo, Pardo, and Ynares-Santiago, JJ., concur.

[1] Penned by Judge Restituto L. Aguilar

[2] Original Records, Volume 1, p. 24.

[3] Original Records, Volume 11, p. 17.

- [4] The prosecution presented the following witnesses: Dr. Gerardo Agupitan, Jr., Dr. Edwin Sulit, Carlos Bagatsolon, Margarito Balestramon, and Andres Baltazar. Jerry Lualhati testified for the prosecution as rebuttal witness.
- [5] Decision, p. 3.
- [6] TSN, May 17, 1993, p. 6.
- [7] TSN, May 12, 1993, p. 6.
- [8] Decision, p. 3.
- [9] TSN, May 12, 1993, pp. 6-7.
- [10] TSN, April 26, 1993, p. 7.
- [11] Exhibit A, Original Records, Volume II, p. 100.
- [12] TSN, May 5, 1993, p. 7.
- [13] Exhibit C, Original Records, Volume II, p. 100.
- [14] The defense presented four (4) witnesses, namely: Epifanio Nicolas, Ignacio Mindoro, Andres Mariano and Romeo Hillado.
- [15] TSN, May 25, 1993, p. 3.
- [16] *Id.*, at 5.
- [17] Decision, p. 7.
- [18] Penned by J. Emerito C. Cui and conducted by JJ. Delilah V. Magtolis and Romeo J. Callejo, Sr..
- [19] Article VIII, Sections 5, par. 2 [d] of the 1987 Constitution; *People v. Cua, et al.*, G.R. No. 82292, March 1, 1995.
- [20] Per Resolution of the Third Division dated 20 July 1998.
- [21] Rollo, p. 4.
- [22] *People v. Gatchalian*, G.R. No. 90301, December 10, 1998.
- [23] *Ibid.*, citing *People v. Eubra*, 274 SCRA 180 (1997).
- [24] *People v. Aranjuez*, 285 SCRA 466, 473 (1998) citing *People v. Castillo*, 273 SCRA 22 (1997).
- [25] *People v. Tulop*, G.R. No. 124829, April 21, 1998.
- [26] TSN, May 12, 1993, pp. 5-7.
- [27] Appellant's Brief, p. 7, CA Rollo, p. 24.
- [28] *People v. Navarro*, G.R. No. 129566, October 7, 1998; *People v. Villanueva*, 284 SCRQA 501 (1998); *People v. Hayahay*, 279 SCRA 567 (1997).
- [29] *People v. Tulop*, *supra* note 28.
- [30] *People v. Villanueva*, *supra* note 31, citing *People v. de Roxas*, 241 SCRA 369 (1995).

[31] *People v. Rayray*, 241 SCRA 1 (1995); *People v. Jumao-as*, 230 SCRA 70 (1994).

[32] *People v. Tulop*, supra note 28, citing *People v. Dela Cruz*, 207 SCRA 632 (1992).

[33] Appellant's Brief, p. 7, CA Rollo, p. 24.

[34] Exhibits 1, 1-A, 1-B, 1-C, 1-D, 1-E, 1-F and 1-G, Original Records, Volume II, pp. 114-117.

[35] G.R. No. 119013, March 6, 1998.

[36] *People v. Sabalones*, G.R. No. 123485, August 31, 1998.

[37] 231 SCRA 414 (1994).

[38] Decision, p. 5.

[39] *People v. Ballesteros*, 285 SCRA 438, 444-445 (1998), citing *People v. Rosario*, 246 SCRA 658 (1995).

[40] Ibid.

[41] Appellant's Brief, p. 9, CA Rollo, p. 26.

[42] No footnote(alex)

[43] *People v. Galapin, et al.*, G.R. No. 124215, July 31, 1998; *People v. Cawaling, et al.*, G.R. No. 117970, July 28, 1998; *People v. Ravaness*, 284 SCRA 634 (1998); *People v. Baydo*, 273 SCRA 526 (1997).

[44] *People v. Gargar, et al.*, G.R. Nos. 110029-30, December 29, 1998; *People v. Ravaness*, 284 SCRA 634 (1998); *People v. Hayahay*, 279 SCRA 567 (1997); *People v. Salcedo*, 273 SCRA 473 (1997).

[45] TSN, May 19, 1993, p. 6; May 25, 1993, p. 6.

[46] Decision, p. 6.

[47] Id., at 14.

[48] TSN, May 19, 1993, p. 9.

[49] Id., at 8-9.

[50] *People v. Oliano*, supra note 38, citing *People v. Abrenica*, 252 SCRA 54 (1996) and *People v. Vallado*, 257 SCRA 515 (1996).

[51] *People v. Gatchalian*, G.R. No. 90301, December 10, 1998.

[52] Appellee's Brief, p. 13, CA Rollo, p.

[53] *Serrano v. Court of Appeals*, 247 SCRA 203.

[54] See Article 61.3, Revised Penal Code.

[55] Article 64.1, Revised Penal Code.

[56] See Section 1, Indeterminate Sentence Law.

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