

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLUSAPE SABALONES ALIAS “ROLING,” ARTEMIO TIMOTEO BERONGA, TEODULO ALEGARBES AND EUFEMIO CABANERO, ACCUSED, ROLUSAPE SABALONE...

G.R. No. 123485. August 31, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Factual findings of trial courts which are affirmed by the Court of Appeals are, as a general rule, binding and conclusive upon the Supreme Court. Alibi, on the other hand, cannot prevail over positive identification by credible witnesses. Furthermore, alleged violations of constitutional rights during custodial investigation are relevant only when the conviction of the accused by the trial court is based on the evidence obtained during such investigation.

The Case

These are the principles relied upon by the Court in resolving this appeal from the Court of Appeals (CA)[1] Decision[2] dated September 28, 1995, convicting Rolusape Sabalones and Timoteo Beronga of murder and frustrated murder. The convictions arose from a shooting incident on June 1, 1985 in Talisay, Cebu, which resulted in the killing of two persons and the wounding of three others, who were all riding in two vehicles which were allegedly ambushed by appellants.

After conducting a preliminary investigation, Second Assistant Provincial Prosecutor Juanito M. Gabiana Sr. filed before the Regional Trial Court (RTC) of Cebu City, Branch 7,[3] five amended Informations charging four “John Does,” who were later identified as Rolusape Sabalones, Artemio Timoteo Beronga, Teodulo Alegarbés and Eufemio Cabanero, with two counts of murder and three counts of frustrated murder. The Informations are quoted hereunder.

1) Crim Case No. CBU-9257 for murder:

“That on the 1st day of June, 1985, at 11:45 o’clock in the evening, more or less, at Mansueto Village, Bulacao, Municipality of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with high-powered firearms, with intent to kill and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot GLENN TIEMPO, who was riding [i]n a jeep and who gave no provocation, thereby inflicting upon the latter several gunshot wounds, thereby causing his instantaneous death.

“CONTRARY TO Article 248 of the Revised Penal Code.”

2) Criminal Case No. 9258 for murder:

“That on the 1st day of June, 1985 at 11:45 o’clock in the evening, more or less at Mansueto Village,

Barangay Bulacao, Municipality of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with high-powered firearms, with intent to kill and treachery, did [then] and there wilfully, unlawfully and feloniously attack, assault and shoot ALFREDO NARDO, who was riding on a jeep and who gave no provocation, thereby inflicting upon the latter several gunshot wounds, thereby causing his instantaneous death.

“CONTRARY TO Article 248 of the Revised Penal Code.”

3) Crim Case No. CBU-9259 for frustrated murder:

“That on the 1st day of June, 1985 at 11:45 o’clock in the evening, more or less, at Mansueto Village, Barangay Bulacao, Municipality of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, armed with high-powered firearms, with intent to kill and treachery, did and there wilfully, unlawfully and feloniously attack, assault and shoot REY BOLO who was riding in a car and who gave no provocation, thereby inflicting upon the latter the following injuries to wit:

laceration, mouth due to gunshot wound, gunshot wound (L) shoulder penetrating (L) chest; gunshot wound (R) hand (palm); open fracture (L) clavicle (L) scapula; contusion (L) lung;

thereby performing all the acts of execution which would produce the crime of [m]urder as a consequence but which, nevertheless, did not produce it by reason of causes independent of the will of the perpetrator, i.e. the timely medical attendance.

“IN VIOLATION of Article 248 of the Revised Penal Code.”

4) Criminal Case No. 9260 for frustrated murder:

“That on the 1st day of June, 1985 at 11:45 o’clock in the evening, more or less, at Mansueto Village, Barangay Bulacao, Municipality of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, armed with high-powered firearms, with intent to kill and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot ROGELIO PRESORES, who was riding in a car and who gave no provocation, thereby inflicting upon the latter the following injuries, to wit:

gunshot wound, thru and thru right chest thereby performing all the acts of execution which would produce the crime of [m]urder as a consequence but which, nevertheless, did not produce it by reason of causes independent of the will of the perpetrator, i.e. the timely medical attendance.

“IN VIOLATION of Article 248 of the Revised Penal Code.”

5) Criminal Case No. 9261 for frustrated murder:

“That on the 1st day of June, 1985 at 11:45 o’clock in the evening, more or less, at Mansueto Village, Barangay Bulacao, Municipality of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, armed with high-powered firearms, with intent to kill and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot NELSON TIEMPO, who was riding in a car and who gave no provocation, thereby inflicting upon the latter the following injuries, to wit:

“Gunshot wound neck penetrating wound perforating trachea (cricoid) thereby performing all the acts of execution which would produce the crime of [m]urder as a consequence but which nevertheless, did not produce it by reason of causes independent of the will of the perpetrator, i.e. the timely medical attendance.

“IN VIOLATION of Article 248 of the Revised Penal Code.”

Of the four indictees in the five Informations, Teodulo Alegarbes and Artemio Timoteo Beronga were the first to be arraigned. Upon the arrest of the two, the Informations were amended by the public prosecutor, with the conformity of the defense counsel, by substituting the names of the two accused for the “John Does” appearing in the original Informations. When arraigned, said accused, assisted by their respective lawyers, pleaded not guilty to the five Informations.

Alegarbes died in the course of trial; thus, the cases against him were dismissed. Accused Cabanero remained at large. Sabalones, on the other hand, was eventually arrested. Subsequently, he jumped bail but was recaptured in 1988 and thereafter pleaded not guilty during his arraignment.

The cases against Sabalones and Beronga were jointly tried. Thereafter, the lower court found them guilty beyond reasonable doubt of the crimes charged. The RTC disposed as follows:

“WHEREFORE, premises above-set forth, the Court finds accused ROLUSAPE SABALONES and (ARTEMIO) TIMOTEO BERONGA, [g]uilty beyond reasonable doubt, as principals:

“In Crim. Case No. CBU-9257, for MURDER, defined and penalized in Art. 248 of the Revised Penal Code, hereby sentences each said accused to suffer the penalty of [f]ourteen (14) years, [e]ight (8) months and [o]ne (1) day, as minimum, to [s]eventeen (17) years, [f]our (4) months and [o]ne (1) day, of [r]eclusion [t]emporal, as maximum, to indemnify the heirs of deceased, Glenn Tiempo, the sum of P50,000.00;

“In Crim. Case No. CBU-9258, for MURDER, defined and penalized in Art. 248 of the Revised Penal Code, hereby sentences each said accused to suffer the penalty of [f]ourteen (14) years, [e]ight (8) months and [o]ne (1) day, as minimum, to [s]eventeen (17) years, [f]our (4) months and [o]ne (1) day, of [r]eclusion [t]emporal, as maximum, to indemnify the heirs of deceased, Alfredo Nardo, the sum of P50,000.00;

“In Crim. Case No. CBU-9259, for FRUSTRATED MURDER, defined and penalized in Art. 248 in relation to Art. 50 of the Revised Penal Code, hereby sentences each said accused to suffer the penalty of [e]ight (8) years of prision mayor, as minimum, to [f]ourteen (14) years and [e]ight (8) months of [r]eclusion [t]emporal, as maximum, to indemnify the victim, Rey Bolo, the sum of P20,000.00;

“In Crim. Case No. CBU-9260, for FRUSTRATED MURDER, defined and penalized in Art. 248 in relation to Art. 50 of the Revised Penal Code, hereby sentences each said accused to suffer the penalty of [e]ight (8) years of prision mayor, as minimum, to [f]ourteen (14) years and [e]ight months of [r]eclusion [t]emporal, as maximum, to indemnify the victim, Rogelio Presores, the sum of P20,000.00;

“In Crim. Case no. CBU-9261, for FRUSTRATED MURDER, defined and penalized in Art. 248 in relation to Art. 50 of the Revised Penal Code, hereby sentences each said accused to suffer the penalty of [e]ight (8) years of prision mayor, as minimum, to [f]ourteen (14) years and [e]ight (8) months of [r]eclusion [t]emporal, as maximum, to indemnify the victim, Nelson Tiempo, the sum of P20,000.00; and

“To pay the costs in all instances. The period of their preventive imprisonment shall be credited to each accused in full.

“SO ORDERED.”[4]

Appellants filed a notice of appeal to the Court of Appeals. Thereafter, the CA affirmed their conviction but sentenced them to reclusion perpetua for the murders they were found guilty of. Accordingly, the appellate court, without entering judgment, certified the case to the Supreme Court in accordance with Section 13, Rule 124 of the Rules of Court. The dispositive portion of the CA Decision reads:

“WHEREFORE, the Decision of the trial court convicting accused-appellants Rolusa[p]e Sabalones and

Artemio Timoteo Beronga for murder in Crim. Cases Nos. CBU-9257 and CBU-9258, and [f]rustrated [m]urder in Crim. Cases Nos. CBU-9259, CBU-9260, and CBU-9261 is hereby AFFIRMED; however, the penalties in the [f]rustrated [m]urder and [m]urder cases are hereby MODIFIED, such that both accused-appellants are each sentenced to imprisonment of TEN (10) YEARS of [p]rison [m]ayor medium as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of [r]eclusion [t]emporal medium as maximum in each of the three [f]rustrated [m]urder cases (Crim. Cases Nos. CBU-9259, CBU-9260 and CBU-9261); and are each sentenced to [r]eclusion [p]erpetua in each of the two [m]urder cases (Crim. Cases Nos. CBU-9257 and CBU-9258). The indemnity to the victim in each [f]rustrated [m]urder case shall remain. In conformity with Rule 124, Section 13 of the Rules of Court, however, this Court refrains from entering judgment, and hereby certifies the case and orders that the entire record hereof be elevated to the Supreme Court for review.”[5]

After the Court of Appeals certified the case to this Court, we required appellants to file supplemental briefs. Appellants failed to comply within the prescribed period and were deemed to have waived their right to do so.[6] Thus, in resolving this case, this Court will address primarily the arguments raised by the appellants in their Brief before the Court of Appeals, which assailed the RTC Decision.

The Facts

Version of the Prosecution

The solicitor general[7] quoted the following factual findings of the trial court:

“Edwin Santos, a resident of Mambaling, Cebu City stated that on June 1, 1985 at 6:00 o’clock in the evening, he was at the residence of Inday Presores, sister of Rogelio Presores, located at Rizal Ave., Cebu City to attend a wedding. He stayed until 9:00 o’clock in the evening and proceeded to the house of Maj. Tiempo at Basak, Mambaling, Cebu City where a small gathering was also taking place. (pp. 3-6, tsn, April 7, 1987)

“Arriving thereat, he saw Nelson and Glenn Tiempo as well as Rogelio Presores, Rogelio Oliveros, Junior Villoria, Rey Bolo and Alfredo Nardo. (p. 7, ibid.)

“At about 11:00 o’clock in the evening, Stephen Lim, who was also at the party, called their group and requested them to push his car. When the engine started, the former asked them to drive his car home. (pp. 7-11, ibid.)

“Together with Nelson Tiempo, who was at the wheel, Rogelio Presores, Rogelio Oliveros and Junior Villoria, they drove to the residence of Stephen Lim at Mansueto Compound, Bulacao, Talisay, Cebu. (p. 12, ibid.)

“Glenn Tiempo, Rey Bolo and Alfredo Nardo also went with them riding in an owner-type jeep, driven by the latter, in order to bring back the group [as] soon as the car of Mr. Lim was parked in his home. (p. 21, ibid.)

“The two vehicles traveled in convoy with the jeep 3 to 4 meters ahead of the car. When they arrived at the gate of the house of Stephen Lim, they were met with a sudden burst of gunfire. He looked at the direction where the gunfire came, and saw [the] persons [who] fired at the jeep. He identified accused, Teodulo Alegarbes, Rolusape Sabalones and Timoteo Beronga as the persons who fired at the vehicle. Except for Teodulo Alegarbes, who was naked from [the] waist up, the gunmen wore clothes. (pp. 21-23; 13-16; 33, ibid.)

“After firing at the jeep, the assailants shot the car they were riding[,] hitting Nelson Tiempo on the throat and Rogelio Presores on the breast. Despite the injury he sustained, Nelson Tiempo was able to maneuver the car back to their residence. (pp. 17-19, ibid.)

“He immediately informed Maj. Tiempo about the incident and the lat[t]er brought the victims to the Cebu Doctor’s Hospital. (p. 20, ibid.)

“Rogelio Presores corroborated in substance the testimony of Edwin Santos, being one of those who were in

the car driven by Nelson Tiempo to the residence of Stephen Lim. (pp. 4-6, tsn, Aug. 14, 1987)

“He further testified that when the jeep driven by Alfredo Nardo with Rey Bolo and Glenn Tiempo as passengers arrived at the front gate of Lim’s residence and while their car was 3 meters from the rear end of the jeep, there was a volley of gunfire. He glanced at the direction of the gunfire and saw the jeep being fired at by four persons, who were standing behind a concrete wall, 42 inches in height, and armed with long firearms. Thenceforth, he saw Alfredo Nardo, Glenn Tiempo and Rey Bolo f[a]ll to the ground. (pp. 6-7, *ibid.*)

“He recognized accused, Rolusape Sabalones, as one of those who fired at the jeep. He also identified in Court accused, Teodulo Alegarbes, Timoteo Beronga and another person, whom he recognized only through his facial appearance. (pp. 7-8, *ibid.*)

“When the shots were directed [at] their car[,] they were able to bend their heads low. When the firing stopped, he directed Nelson Tiempo to back out from the place. As the latter was maneuvering the car, the shooting continued and he was hit in the breast while Nelson Tiempo, in the neck, and the windshield of the vehicle was shattered. (p. 10, *ibid.*)

“Arriving at the house of Maj. Tiempo, they were brought to Cebu Doctor’s Hospital. He and Nelson Tiempo were operated on. He had incurred hospital expenses in the sum of P5,412.69, (Exh. ‘I’, ‘K’). (pp. 11-12, *ibid.*)

“Ladislao Diola, Jr., [m]edico-[l]egal [o]fficer of the PC Crime Laboratory, Regional Unit 7 stationed at Camp Sotero Cabahug, Cebu City remembered having performed a post-mortem examination on the dead body of Glenn Tiempo on June 2, 1985 at the Cosmopolitan Funeral Homes, Cebu City. (p. 7, tsn, Nov. 11, 1987)

“He issued the necessary Death Certificate, (Exh. ‘D’) and Necropsy Report, (Exh. ‘F’) and indicated therein that the victim’s cause of death was ‘[c]ardio respiratory arrest due to [s]hock and [h]emorrhage [s]econdary to [g]unshot wounds to the trunk.’ (p. 8, *ibid.*)

“The victim sustained gunshot wounds in the right chest and left lumbar area. (pp. 10-11, *ibid.*)

“He explained that in gunshot wound no. 1, the wound entrance[,] which [was] characterized by invaginated edges and contusion collar[,] was located in the right chest and the bullet went up to the left clavicle hitting a bone which incompletely fractured it causing the navigation of the bullet to the left and to the anterior side of the body. He recovered a slug, (Exh. ‘G’) below the muscles of the left clavicle. (p. 21, *ibid.*)

“Based on the trajectory of the bullet, the assailant could have been [o]n the right side of the victim or in front of the victim but [o]n a lower level than the latter.

“In both gunshot wounds, he did not find any powder burns which would indicate that the muzzle of the gun was beyond a distance of 12 inches from the target. (p. 15, *ibid.*)

“At the time he conducted the autopsy, he noted that rigor mortis in its early stage had already set in which denote[s] that death had occurred 5 to 6 hours earlier. (pp. 34-5, *ibid.*)

“Maj. Juan Tiempo, father of the victims, Glenn and Nelson Tiempo, testified that when he learned about the incident in question, he immediately summoned military soldiers and together they proceeded to the scene. (pp. 4-6, tsn, Nov. 12, 1988)

“Arriving thereat, he saw the lifeless body of his son, Glenn. He immediately carried him in his arms and rushed him to the hospital but the victim was pronounced Dead on Arrival. (pp. 6-7, *ibid.*)

“They buried his son, who was then barely 14 years old, at Cebu Memorial Park and had incurred funeral expenses (Exhs. ‘K’, ‘L’, ‘O’). (pp. 7-8, *ibid.*)

“His other son, Nelson, then 21 years old and a graduate of [m]edical [t]echnology, was admitted at the Cebu

Doctor's Hospital for gunshot wound in the neck. The latter survived but could hardly talk as a result of the injuries he sustained. He had incurred medical and hospitalization expenses in the sum of P21,594.22, (Exh. 'H'), (pp. 8-10, *ibid.*)

"He had also incurred expenses in connection with the hospitalization of the injured victims, Rogelio Presores and Rey Bolo in the amount[s] of P5,412.69, (exh. 'I') and P9,431.10, (Exh. 'J'), respectively. (p. 11, *ibid.*)

"He further stated that he [was] familiar with the accused, Roling Sabalones, because the latter had a criminal record in their office in connection with the kidnapping of a certain Zabate and Macaraya. (p. 16, *ibid.*)

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"Dr. Jesus P. Cerna, [m]edico-[l]egal [o]fficer of the PC/INP, Cebu Metrodiscom, had conducted an autopsy on the dead body of Alfredo Nardo, who sustained two (2) gunshot wounds in the lower lip and left intraclavicular region, upon the request of the [c]hief of the Homicide Section of Cebu Metrodiscom. He issued the victim's Necropsy Report, (Exh. 'F') and Death Certificate, (Exh. 'G'). (pp. 5-8, *tsn*, Dec. 4, 1987; pp. 4-6, *tsn*, Nov. 29, 1988)

"He stated that the wound of entrance in gunshot wound no. 1 was located in the lower lip, more or less[,] on the left side making an exit in the left mandibular region. (pp. 9-11, *tsn*, Dec. 4, 1987; pp. 6-8, *tsn*, Nov. 29, 1988)

"In gunshot wound no. 2, the wound of entrance was in the left intraclavicular region exiting at the back as reflected in the sketch, (Exh. 'F-2"). This wound was fatal and [could] almost cause an instantaneous death considering that the bullet penetrated the thoracic cavity, lacerating the lungs and perforating the heart before making an exit. (pp. 11-13, *tsn*, Dec. 4, 1987; pp. 13-15, *tsn*, Nov. 29, 1988)

"He found no tattooing around the wound of entrance in both gunshot wounds. (pp. 8-9, *tsn*, Nov. 29, 1988)

"He prepared and issued th[e] Necropsy Report, (Exh. 'F') and Death Certificate, (Exh. 'G') of Alfredo Nardo who was identified to him by the latter's daughter, Anita Nardo. (pp. 26-27, *ibid.*)

"Rey Bolo, one of the victims, testified that when the jeep he was riding [in] together with Glenn Tiempo and Alfredo Nardo, reached the gate of the residence of Stephen Lim, they were suddenly fired upon. (pp. 5-8, *tsn*, March 6, 1989)

"He was hit in the right palm and left cheek. He jumped out of the vehicle and ran towards the car which was behind them but he was again shot at [,] [and hit] in the left scapular region. He was still able to reach the road despite the injuries he sustained and tried to ask help from the people who were in the vicinity but nobody dared to help him, [they] simply disappeared from the scene, instead. (pp. 8-9, *ibid.*)

"He took a passenger jeepney to the city and had himself treated at the Cebu Doctor's Hospital, and incurred medical expenses in the sum of P9,000.00. (p. 9, *ibid.*)

"He was issued a Medical Certificate, (Exh. 'N') by his attending physician.

"Dr. Miguel Mancao, a [p]hysician-[s]urgeon, recalled having attended [to] the victims, Nelson Tiempo, Rey Bolo and Rogelio Presores at the Cebu Doctor's Hospital on June 2, 1985. (pp. 7-8, 11, 14, *tsn*, May 30, 1989)

"Nelson Tiempo sustained gunshot wound[s] in the neck and in the right chest but the bullet did not penetrate the chest cavity but only the left axilla. He was not able to recover any slugs because the same disintegrated while the other was thru and thru. The wound could have proved fatal but the victim miraculously survived. As a consequence of the injury he sustained, Nelson Tiempo permanently lost his voice because his trachea was shattered. His only chance of recovery is by coaching and speech therapy. He issued his Medical Certificate. (Exh. 'O'). (pp. 8-11, *ibid.*)

“With regard to the patient, Rey Bolo, the latter suffered multiple gunshot wounds in the left shoulder penetrating the chest and fracturing the 2nd, 3rd, and 4th ribs in the process, in the right hand fracturing the proximal right thumb and in the mouth lacerating its soft tissues, per Medical Certificate, (Exh. ‘N’) which he issued. (pp. 11-16, *ibid.*)

“Based on the trajectory of the bullet, the gunman could have been in front of the victim, when gunshot would no. 1 was inflicted. (p. 30, *ibid.*)

“With respect to the patient, Rogelio Presores, the latter suffered [a] gunshot wound in the chest with the wound of entrance in the right anterior chest exiting at the back which was slightly lower than the wound of entrance. He issued the victim’s Medical Certificate, (Exh. ‘M’). (pp. 34-35, *ibid.*)

“Based on the location of the wound, the gunman could have been in front of the victim but [o]n a slightly higher elevation than the latter. (pp. 35-36, *ibid.*)”[8]

Version of the Defense

Appellants interposed denial and alibi. Their version of the facts is summarized by the trial court[9] thus:

“xxx Timoteo Beronga, a cristo or bet caller in the cockpit, testified that in the afternoon of June 1, 1985, he was in the Talisay Sports Complex located at Tabunok, Talisay, Cebu to attend a cock-derby.

“At about 7:00 o’clock in the evening, he was fetched by his wife and they left taking a taxicab going to their residence in Lapulapu City. After passing by the market place, they took a tricycle and arrived home at 8:00 o’clock in the evening.

“After taking his supper with his family, he went home to sleep at 10:30 in the evening. The following morning, after preparing breakfast, he went back to sleep until 11:00 in the morning.

“On February 24, 1987, while he was playing mahjong at the corner of R.R. Landon and D. Jakosalem Sts., Cebu City, complainant, Maj. Juan Tiempo with some companions, arrived and after knowing that he [was] “Timmy,” [which was] his nickname, the former immediately held him by the neck.

“He ran away but the latter chased him and kicked the door of the house where he hid. He was able to escape through the back door and took refuge in Mandaue at the residence of Nito Seno, a driver of Gen. Emilio Narcissi.(Tsn-Abangan, pp. 4-17, October 19, 1989)

“On February 27, 1987, upon the advi[c]e of his friend, they approached Gen. Narcissi and informed him of the incident. The latter brought him to the Provincial Command Headquarters in Lahug, Cebu City to confront Maj. Juan Tiempo.

“After several days, he was brought by Maj. Tiempo to the PC Headquarter[s] in Jones Ave., Cebu City where he was provided with a lawyer to defend him but he was instructed that he should assent to whatever his lawyer would ask of him.

“He was introduced to Atty. Marcelo Guinto, his lawyer, who made him sign an Affidavit, (Exh. “U”) the contents of which, co[u]ched in the dialect, were read to him.

“He also testified that before he was detained at the CPDRC, complainant brought him inside the shop of a certain Den Ong, where he was again mauled after he denied having any knowledge of the whereabouts of Roling Sabalones and the carbine.

“At the instance of Col. Medija, he was physically examined at the Southern Islands Hospital, Cebu City and was issued a [M]edical Certificate. (Tsn-Formentera, pp. 3-36, Jan. 18, 1990).

“Justiniano Cuizon, [a]ccount [o]fficer of the Visayan Electric Company (VECO) South Extension Office,

who is in charge of the billing, disconnection and reconnection of electric current, testified that based on the entries in their logbook, (Exh. "3") made by their checker, Remigio Villaver, the electrical supply at the Mansueto Compound, Bulacao, Talisay, Cebu, particularly the Mansueto Homeowners covered by Account No. 465-293000-0, (Exh. "4-B") was disconnected on January 10, 1985, (Exh. "3-A") for non-payment of electric bills from March 1984 to January 1985 and was reconnected only on June 17, 1985 (Exh. "4", "4-A"). (Tsn-Abangan, pp. 22-27, Jan. 31, 1990).

"Remigio Villaver, a checker of VECO, whose area of responsibility cover[ed] the towns of Talisay and San Fernando, Cebu had kept the record of disconnection of electrical supply of Mansueto Subdivision in Bulacao, Talisay, Cebu and the same showed that on January 10, 1985, (Exh. "3-A"), a service order was issued by their office to the Mansueto Homeowners for the permanent disconnection of their electric lights due to non-payment of their electric bills from March 1984 until January 1985. The actual disconnection took place on December 29, 1984.

"Witness Fredo Canete made efforts to corroborate their testimony. (Tsn-Formentera, pp.3-5, Apr. 20, 1990).

"Vicente Cabanero, a resident of Mansueto Compound in Talisay, Cebu since 1957 until the present, remembered that on June 1, 1985, between 10:00 o'clock and 11:00 o'clock in the evening, he heard a burst of gunfire about 15 to 20 armslength [sic] from his residence.

"He did not bother to verify because he was scared since the whole place was in total darkness. (Tsn-Abangan, pp. 18-23, Feb. 22, 1990).

"Marilyn Boc, another witness for the accused, stated that on the date and time of the incident in question, while she was at the wake of Junior Sabalones, younger brother of Roling Sabalones, who died on May 26, 1985, a sudden burst of gunfire occurred more or less 60 meters away.

"Frightened, she went inside a room to hide and saw accused, Roling Sabalones, sound asleep.

"She came to know accused, Timoteo Beronga, only during one of the hearings of this case and during the entire period that the body of the late Junior Sabalones [lay] in state at his residence, she never saw said accused.

"She was requested to testify in this case by Thelma Beronga, wife of Timoteo Beronga. (Tsn-Abangan, pp. 9-13, February 28, 1990).

"Dr. Daniel Medina, while then the [r]esident [p]hysician of Southern Islands Hospital, Cebu City had treated the patient, Timoteo Beronga on March 18, 1987.

"Upon examination, he found out that the patient sustained linear abrasion, linear laceration and hematoma in the different parts of the body. Except for the linear laceration which he believed to have been inflicted two or three days prior to [the] date of examination, all the other injuries were already healed indicating that the same were inflicted 10 to 12 days earlier.

"He issued the corresponding Medical Certificate (Exh. "2") to the patient. (Tsn-Abangan, pp. 9-13, May 21, 1990).

"Atty. Jesus Pono, counsel for accused Beronga, mounted the witness stand and averred that he [was] a resident of Mansueto Compound, Bulacao, Talisay, Cebu. As shown in the pictures, (Exhs. "3", "4" & "5" with submarkings) his house is enclosed by a concrete fence about 5 feet 6 inches tall. It is situated 6 meters from the residence of accused, Roling Sabalones, which was then being rented by Stephen Lim. Outside the fence [are] shrubs and at the left side is a lamp post provided with 200 watts fluorescent bulb.

"On June 1, 1985 at about 7:00 o'clock in the evening, he saw Roling Sabalones, whom he personally [knew] because they used to be neighbors in Talisay, Cebu, at the wake of his brother, Federico Sabalones, Jr. or

Junior Sabalones, as mentioned repeatedly hereabout. They even had a talk and he noticed accused to be physically indisposed being gravely affected by the loss of his only brother, who met a violent death in the hands of an unknown hitman on May 26, 1985.

“He went home after he saw accused [lie] down on a bamboo bench to rest.

“At about 12:00 o’clock midnight, he was awakened by a rapid burst of gunfire which emanated near his house. He did not attempt to go down or look outside. He [was] in no position to tell whether or not the street light was lighted.

“When he verified the following morning, he noticed bloodstains on the ground as well as inside the jeep which was parked 2 to 3 meters from his fence and 50 to 70 meters from the house where Junior Sabalones [lay] in state. He observed that the jeep was riddled with bullets and its windshield shattered. (Tsn-Abangan, pp. 3-16, June 6, 1990).

“He admitted that he used to be a counsel of accused, Roling Sabalones, in several cases, among which involved the death of a certain Garces and Macaraya, which cases were however, dismissed by the Office of the Provincial Fiscal of Cebu. (Tsn-Tumarao, pp. 2-3, June 13, 1990).

“Doroteo Ejares, a relative of accused, testified that when he attended the wake of Junior Sabalones on June 1, 1985 at 8:00 o’clock in the evening, he saw accused lying on a bamboo bench in the yard of the house of the deceased.

“At past 10:00 o’clock in the evening, accused excused himself as he was not feeling well and entered a room to rest while he remained by the door and slept.

“At almost 12:00 o’clock midnight, he was awakened by a burst of gunfire which took place more or less 20 meters away and saw the people scamper[ing] for safety. He hid inside the room where accused was sleeping and peeped thru the door. Not long after, Marilyn Boc entered and in a low voice talked about the incident.

“They decided to wake up the accused to inform him of what was happening, but the latter merely opened his eyes and realizing that accused was too weak, they allowed him to go back to sleep.

“When he went home at past 5:00 o’clock in the morning of June 2, 1985, he saw a jeep outside of the compound. He did not bother to investigate or inquire about the incident as he was in a hurry to go home and prepare for the burial of Junior Sabalones.

“He was requested to testify in this case by his aunt and mother of accused Rolusape Sabalones. (Tsn-Tumarao, pp. 10-15, June 13, 1990).

“Russo Sabalones, uncle of accused, Sabalones, averred that the latter was once, one of his undercover agents while he was then the [c]hief of the Intelligence Service of the PC from 1966 until 1968.

“As part of their intelligence tradition, an undercover agent is not allowed to carry his real name. In the case of his nephew and accused, Rolusape Sabalones, the latter chose the name “Paciano Laput” which name was recorded in their code of names.

“When he retired in 1968, the accused ceased to be an agent and xxx likewise ceased to have the authority to use the name Paciano Laput. (Tsn-Abangan, p. 12, July 23, 1990).

“Alfonso Allere, a distant relative of the accused, remembered having received a call from Roling Sabalones, one morning after the burial of the latter’s brother, asking for his advise because of the threats [to] his life which he received thru telephone from the group of Nabing Velez and the group of the military.

“After he had advised accused to lie low, he had not heard of him, since then.

“Godofredo Mainegro of the Public Assistance and Complaint Action Office of the Regional Unified Command 7, received a complaint from one Inocencia Sabalones on March 13, 1986.

“He recorded the complaint in their Complaint Sheet, (Exh. “6”) and let complainant affix her signature.

“After the document was subscribed and sworn to before him, (Exh. “6-C”), he indorsed it to their [c]ommanding [o]fficer, Apolinario Castano. (Tsn-Formentera, pp. 3-10, July 24, 1990).

“Ret. Col. Apolinario Castano, recalled that while he was then with the Regional Unified Command 7, his niece, Racquel Sabalones together with her husband Roling Sabalones, came to him for advi[c]e because the latter was afraid of his life brought about by the rampant killings of which his brother and the son of Maj. Tiempo were victims.

“Considering that accused’s problem was a police matter, they approached Gen. Ecarma, the then [c]ommander of the PC/INP, Recom 7, and the latter referred them to his [c]hief of [s]taff, Col. Roger Denia, who informed them that there was no case filed against the accused. Nevertheless, the latter was advised to be careful and consult a lawyer.

“Inocencia Sabalones, mother of accused, Roling Sabalones, narrated that on March 12, 1986 at past 10:00 o’clock in the evening, she was roused from sleep by a shout of a man demanding for Roling Sabalones.

“Upon hearing the name of her son, she immediately stood up and peeped through the door of her store and saw men in fatigue uniforms carrying long firearms. Thenceforth, these men boarded a vehicle and left.

“On the following morning, she was again awakened by the persistent shouts and pushing of the gate. When she verified, the man who introduced himself to her as Maj. Tiempo, ordered her to open the gate. Once opened, the men of Maj. Tiempo entered the house and proceeded to search for Roling Sabalones, whom Maj. Tiempo suspected to have killed his son and shot another to near death. When she demanded for a search warrant, she was only shown a piece of paper but was not given the chance to read its contents.

“Racquel Sabalones, wife of accused, Rolusape Sabalones, maintained that on June 1, 1985 at 1:00 o’clock in the afternoon, she was at the wake of her brother-in-law, Junior Sabalones, at his residence in Bulacao, Talisay, Cebu.

“At 11:00 o’clock in the evening of the same day, together with her 3 daughters as well as Marlyn Sabarita, Rose Lapasaran and Gloria Mondejar, left the place in order to sleep in an unoccupied apartment situated 30 meters away from the house where her deceased, brother-in-law, Junior, was lying in state, as shown in the Sketch, (Exh. “7” and submarkings) prepared by her. They brought with them a flashlight because the whole place was in total darkness.

“As they were about to enter the gate leading to her apartment she noticed a sedan car coming towards them. She waited for the car to come nearer as she thought that the same belong[ed] to her friend, but the vehicle instead stopped at the corner of the road, (Exh. “7-F”) and then proceeded to the end portion of Mansueto Compound, (Exh. “7-G”). As it moved slowly towards the highway, she rushed inside the apartment.

“Few minutes later, she heard a burst of gunfire outside their gate. She immediately gathered her children and instructed Marlyn Sabarita to use the phone situated at the third door apartment and call the police.

“After the lull of gunfire, she went to the terrace and saw people in civilian and in fatigue uniforms with firearms, gathered around the place. One of these men even asked her about the whereabouts of her husband, whom she left sleeping in the house of the deceased.

“At 8:30 in the morning of June 2, 1985, during the burial of Junior Sabalones, they were informed by Pedro Cabanero that Roling Sabalones was a suspect for the death of Nabing Velez and the son of Maj. Tiempo.

“She believed that the reason why her husband was implicated in the killing of Nabing Velez was because of the slapping incident involving her father-in-law, Federico Sabalones, Sr. and Nabing Velez which took place prior to the death of Junior Sabalones.

“After the funeral, she began to receive mysterious calls at their residence in Sikatuna St., Cebu City where they began staying since 1978. She also noticed cars with tinted windows strangely parked in front of their residence.

“Frightened and cowed, they decided to seek the advice of Col. Apolinario Castano, who after relating to him their fears, advised her husband to lie low and to consult a lawyer.

“To allay their apprehension, accused, Roling Sabalones, left Cebu City for Iligan, Manila and other cities to avoid those who were after him. When she learned about the threat made by Maj. Tiempo on her husband, she forewarned the latter not to return to Cebu.

“Marlyn Sabarita, an illegitimate daughter of Rolusape Sabalones, stated that in the night in question, she was at the wake of Junior Sabalones and saw her Papa Roling, the herein accused, lying on the lawn of the house of the deceased.

“She was already in the apartment with her Mama Racquel when she heard a burst of gunfire. Upon instructions of the latter, she went out to call the police thru the phone located [in] the third apartment occupied by a certain Jet. (Tsn-Tumarao, pp. 3-15, Oct. 15, 1990).

“Edward Gutang, [a]sst. lay-out [e]ditor and [a]sst. [s]ports [e]ditor of Sun-Star Daily, while then a military and police reporter had covered the shooting incident which took place on June 1, 1985 at the Mansueto Compound, Bulacao, Talisay, Cebu.

“At past 1:00 o’clock dawn, together with their newspaper photographer, Almario Bitang, they went to the crime scene boarding the vehicle of the Cosmopolitan Funeral Homes. Arriving thereat, they decided not to proceed inside the compound because of fear. The place was then in complete darkness.

“Upon being informed that the victims were brought to Cebu City Medical Center, they rushed to the place and met Maj. Tiempo hugging the dead body of his 14-year old son. His photographer took a picture of that pathetic scene. (Exh. “8-B”).

“Samson Sabalones, a retired [a]mbassador and uncle of Rolusape Sabalones, posted a bail bond for his nephew with Eastern Insurance Company, when a warrant for his arrest was issued by the Municipal Court, on March 12, 1986 because he was bothered by the fact that the latter was being unreasonably hunted by several groups. He even advised the accused to appear in [c]ourt to clarify the nature of the case filed against him.

“Virgincita Pajigal, a resident of Butuan City, met accused, Rolusape Sabalones, who introduced himself to her as “Paciano Laput” nicknamed, Ondo, in a massage clinic where she was working.

“For less than a year, they lived together as husband and wife without the benefit of marriage because according to her the accused was married but separated from his wife, whose name was never mentioned to her. For such a short span of time being together, her love for the accused developed to the extent that whatever happen[ed] to him, she [would] always be there to defend him.

“With the help of Maj. delos Santos, who advised her to always stay close [to] the accused, she was able to board the same vessel. She saw the latter clad in green T-shirt, (Exh. “14”) and pants, handcuffed and guarded.

“Reaching Cebu City, they took a taxicab and as the vehicle went around the city, she was instructed by Maj. Tiempo to place the towel, (Exh. “15”) which she found inside her bag, on the head of the accused. They stopped at the Reclamation Area and Maj. Tiempo pulled them out of the vehicle but she held on tightly to Ondo, ripping his shirt. This pulling incident happened for several times but complainant failed to let them out

of the vehicle.

“The accused was finally brought to the Provincial Jail while she stayed in the residence of the accused. She returned to Butuan after a week. (Tsn-Formentera, pp. 5-33, Jan. 22, 1991).

“Accused, Rolusape Sabalones, alias “Roling”, in his defense, with ancillary incidental narrations, testified , that on June 1, 1985 at 6:00 o’clock in the evening, he was at the wake of his only brother, Junior Sabalones, who was killed on May 26, 1985.

“He had no idea as to who was responsible for the killing of his brother inasmuch as the latter had plenty of enemies. He also did not exert effort to look into the case and to place it under police authority since he had lost faith in the capabilities of the police. The matter was however reported by his uncle, Ambassador Sabalones, to the authorities.

“He stayed at the wake until 10:00 o’clock in the evening because he was not feeling well. He retired in a small room adjacent to the sala of the house of the deceased. Not long after, he felt somebody waking him up but he merely opened his eyes and went back to sleep as he was really exhausted.

“At 6:30 the following morning, he was roused by his wife so he could prepare for the burial. He came to know about the burst of gunfire which took place the previous night upon the information of his wife. He did not take the news seriously as he was busy preparing for the burial of his deceased brother, Jun.

“The funeral started at past 8:00 o’clock in the morning and he noticed the presence of Maj. Eddie Ricardo and his men, who were sent by Col. Castano purposely to provide the burial with military security, upon the request of his wife.

“He had a conversation with Maj. Ricardo who inquired about the shooting incident which resulted in the death of the son of Maj. Tiempo and others in his company. Also in the course of their conversation, he came to know that Nabing Velez was killed earlier on that same night in Labangon, Cebu [C]ity.

“On the same occasion, Pedro Cabanero also notified him that he was a suspect in the killing of Nabing Velez, a radio commentator of ferocious character, who was engaged in a protection racket with several under his control.

“He remembered that a month prior to the death of Nabing Velez, his father, Federico Sabalones, Sr. and the deceased while matching their fighting cocks at the Talisay Sports Complex, had an altercation and the latter slapped his paralytic father and challenged him to ask one of his sons to avenge what he had done to him. He came to know about the incident only after a week.

“He did not deny the fact that he was hurt by the actuation of the deceased for humiliating his father but it did not occur to him to file a case or take any action against the deceased because he was too busy with his business and with his work as a bet caller in the cockpit.

“He advised his father to stay in Bohol to avoid further trouble because he knew that the latter would frequent the cockpit[,] being a cockfight aficionado.

“Likewise, during the burial, he was informed by a PC soldier, Roger Capuyan, that he was also a suspect in the killing of the son of Maj. Tiempo and even advised him to leave the place.

“On the following days after the burial, his wife started to notice cars suspiciously parked in front of their house and [she] also received mysterious calls.

“Together with his wife, they decided to see Col. Apolinario Castaño to seek his advise. The latter verified from the Cebu Metrodiscom and learned that there was no case filed against him.

“In the evening of June 6, 1985, he left for Iligan and after a month, he transferred to Ozamis and then to

Pagadian. He likewise went to Manila especially when he learned that his uncle, Samson Sabalones, had arrived from abroad. The latter posted a bond for his temporary liberty immediately after being informed that a case was filed against him, before the Municipal Court of Talisay.

“Despite xxx the bond put up by his uncle, he did not return to Cebu City because it came to his knowledge that Maj. Tiempo inquired from the bonding company as to his address.

“He also stayed in Marikina in the house of his friend and during his stay in the said place, he registered as a voter and was issued a Voter’s Affidavit, (Exh. ‘19’; Exh. ‘R’ for the prosecution) which bore the name ‘Paciano Mendoza Laput’ which [was] his baptismal name. He explained that the name[s] Mendoza and Laput [were] the middle name and surname, respectively of his mother. The name ‘Rolusape’ was given to him by his father and the same [was] not his registered name because during the old days, priests would not allow parents to name their children with names not found in the Almanac; thus, Paciano [was] his chosen name and the same appeared in his Baptismal Certificate, (Exh. ‘20’) issued by the Parish of the Blessed Trinity of Talibon, Bohol. In his Birth Certificate, it [was] the name ‘Rolusape’ which appeared based upon the data supplied by his father.

“He had used the name Paciano during the time when he [was] still a secret agent under his uncle, Gen. Russo Sabalones, when the latter was still the [c]hief of the C-2 in 1966 until 1967 and as such, he was issued a firearm. He likewise used said name at the time he was employed at the Governor’s Office in Agusan and when he registered in the Civil Service Commission to conceal his identity to protect himself from those who were after him.

“From Marikina he proceeded to Davao and then to Butuan City where he was made to campaign for the candidacy of Gov. Eddie Rama. When the latter won in the election, he was given a job at the Provincial Capitol and later became an agent of the PC in Butuan using the name, ‘Paciano Laput.’

“During his stay in Butuan, he met Virgie Pajigal, a manicurist who became his live-in partner.

“On October 23, 1988 while he was at the Octagon Cockpit in Butuan with Sgt. Tambok, he was arrested by Capt. Ochate and was brought to the PC Headquarter[s] in Libertad, Butuan City and was detained. Among the papers confiscated from him was his Identification Card No. 028-88, (Exh. ‘21’) issued by the PC Command bearing the name Paciano Laput.

“On October 26, 1988 he was taken from the City Jail by Capt. Ochate and some soldiers, one of whom was Maj. Tiempo whom he met for the first time.

“On their way to Nasipit to board a vessel bound for Cebu City, Maj. Tiempo made him lie flat on his belly and stepped on his back and handcuffed him. He cried in pain because of his sprained shoulder. A certain soldier also took his watch and ring.

“Arriving in Cebu at 7:00 o’clock in the morning, he and Virgie Pajigal, who followed him in the boat, were made to board a taxicab. Maj. Tiempo alighted in certain place and talked to a certain guy. Thereafter, they were brought to the Reclamation Area and were forced to go down from the vehicle but Virgie Pajigal held him tightly. They were again pulled out of the taxi but they resisted.

“From the Capitol Building, they proceeded to CPDRC and on their way thereto, Maj. Tiempo sat beside him inside the taxi and boxed him on the right cheek below the ear and pulled his cuffed hands apart.

“At the Provincial Jail, he was physically examined by its resident physician, Dr. Dionisio Sadaya, and was also fingerprinted and photographed, (Exh. ‘21’). He was issued a Medical Certificate, (Exh. ‘22’).

“He further stated that he [was] acquainted with his co-accused Timoteo Beronga, known to him as ‘Timmy’ being also a bet caller in the cockpit. (Tsn-Formentera, pp. 5-23, Feb. 26, 1991; Tsn-Abangan, pp. 3-33, Feb. 27, 1991; Tsn-Abangan, pp. 4-18, Apr. 10, 1991).

“As surrebuttal witness, accused Rolusape Sabalones denied that he bribed a certain soldier because at the time he was arrested, his wallet as well as his wristwatch and ring worth P2,000.00 each were confiscated and his hands tied behind his back.

“He also denied the allegation of Maj. Tiempo that he offered the latter the amount of P1,000,000.00 to drop the case against him, the truth being that while they were on board a vessel bound for Cebu City, Maj. Tiempo compelled him to tell [who] the real killers of his son [were] because he knew that he (Rolusape Sabalones) was not responsible. The former also inquired from him as to the whereabouts of the carbine.

“He also rebutted complainant’s testimony that upon their arrival here in Cebu City and while on board a taxicab, he directed the former [to] first go around the city to locate a certain Romeo Cabañero, whom he did not know personally.”[10]

Ruling of the Court of Appeals

Giving full credence to the evidence of the prosecution, the Court of Appeals affirmed the trial court’s Decision convicting appellants of two counts of murder and three counts of frustrated murder. Like the trial court, it appreciated the qualifying circumstance of treachery and rejected appellants’ defense of alibi.

The Court of Appeals, however, ruled that the penalties imposed by the trial court were erroneous. Hence, for each count of murder, it sentenced appellants to reclusion perpetua. For each count of frustrated murder, it imposed the following penalty: ten years (10) of prision mayor (medium), as minimum, to seventeen years (17) years and four (4) months of reclusion temporal (medium), as maximum. Sustaining the trial court, the Court of Appeals awarded indemnity of P20,000 to each of the victims of frustrated murder. However, it was silent on the indemnity of P50,000 awarded by the trial court to the heirs of each of the two deceased.

Having imposed reclusion perpetua on the appellants, the Court of Appeals, as earlier noted, refrained from entering judgment and certified the case to the Supreme Court for review, in conformity with Section 13, Rule 124 of the Rules of Court.

Hence, this appeal before this Court.[11]

The Issues

In his Brief,[12] Appellant Sabalones raised the following errors allegedly committed by the trial court:

I

“The court a quo erred in finding that accused Sabalones and his friends left the house where his brother Sabalones Junior was lying in state and “went to their grisly destination amidst the dark and positioned themselves in defense of his turf against the invasion of a revengeful gang of the supporters of Nabing Velez.

II

“The court a quo erred in finding that accused Sabalones and his two co-accused were identified as among the four gunmen who fired at the victims.

III

“The court a quo erred in overlooking or disregarding physical evidence that would have contradicted the testimony of prosecution witnesses Edwin Santos and Rogelio Presores that the gunmen were shooting at them from a standing position.

IV

“The court a quo erred in holding that the instant case is ‘one of aberratio ictus’, which is not a defense, and that the ‘defense of alibi’ interposed by the accused may not be considered.

V

“The court a quo erred in not finding that the evidence of the prosecution has not overcome the constitutional presumption of innocence in favor of the accused.

VI

“The court a quo erred in not acquitting the accused on ground of reasonable doubt.”

In a Manifestation dated December 20, 1995, Appellant Beronga, through counsel, adopted as his own the Brief of Sabalones.[13]

The foregoing assignment of errors shall be reformulated by the Court into these three issues or topics: (1) credibility of the witnesses and sufficiency of the prosecution evidence, (2) defense of denial and alibi, and (3) characterization of the crimes committed and the penalty therefor.

The Court’s Ruling

The appeal is devoid of merit.

First Issue:

Credibility of Witnesses and Sufficiency of Evidence

Well-entrenched is the tenet that this Court will not interfere with the trial court’s assessment of the credibility of the witnesses, absent any indication or showing that the trial court has overlooked some material facts or gravely abused its discretion,[14] especially where, as in this case, such assessment is affirmed by the Court of Appeals. “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.”[15] Giving credence to the testimonies of the prosecution witnesses, the trial court concluded:

“Stripped of unnecessary verbiage, this Court, given the evidence, finds that there is more realism in the conclusion based on a keener and realistic appraisal of events, circumstances and evidentiary facts on record, that the gun slaying and violent deaths of Glenn Tiempo and Alfredo Nardo, and the near fatal injuries of Nelson Tiempo, Rey Bolo and Rogelio Presores, resulted from the felonious and wanton acts of the herein accused for mistaking said victims for the persons [who were] objects of their wrath.”[16]

We stress that “factual findings of the lower courts, the trial court and the Court of Appeals are, as a general rule, binding and conclusive upon the Supreme Court.”[17] We find nothing in the instant case to justify a reversal or modification of the findings of the trial court and the Court of Appeals that appellants committed two counts of murder and three counts of frustrated murder.

Edwin Santos, a survivor of the assault, positively pointed to and identified the appellants as the authors of the crime. His categorical and straightforward testimony is quoted hereunder:[18]

“COURT:

Q You stated there was a gun fired. What happened next?

WITNESS:

A There was a rapid fire in succession.

Q When you heard this rapid firing, what did you do?

A I tried to look from where the firing came from.

Q After that, what did you find?

A I saw persons firing towards us.

Q Where were these persons situated when they were firing towards you?

A Near the foot of the electric post and close to the cemented wall.

Q This electric post, was that lighted at that moment?

A Yes, sir, it was lighted.

Q How far were these persons firing, to the place where you were?

A From here to there (The witness indicating the distance by pointing to a place inside the courtroom, indicating a distance of about 6 to 7 meters, making the witness stand as the point of reference).

Q Were you able to know how many persons fired towards you?

A I only saw 3 to 4 persons.

Q How long did these persons fire the guns at you?

A Until we went home. The persons were still firing, until we went home.

Q You stated that you saw these persons who were firing at you. Do you know these persons?

A I can identify [them] when I [see] them.

Q Try to look around this courtroom, if these persons you saw who were firing at you are present in the courtroom[.]

A Yes, sir.

Q Can you point to these persons?

A Yes, sir.

Q Point at them.

COURT INTERPRETER:

The Court directed the witness to go down from the witness stand and [point] at them, Beronga and Alegarbes.

FISCAL GABIANA:

I would like to make it of record that on the bench of prisoner, only the two accused were seated.

COURT:

Make it of record that only two prisoners were present.

Q Now, Mr. Santos, aside from these two accused you identified as among those who fired [at] you on that evening, were there other persons that you saw on that particular occasion who fired at you?

A Yes, sir, there were[;] if I can see them, I can identify them.”

Corroborating the foregoing, Rogelio Presores, another survivor, also pointed to Timoteo Beronga, Teodulo Alegarbes and Roling Sabalones as the perpetrators of the crime. His testimony proceeded in this manner:[19]

“Q When you arrived at the residence of Stephen Lim, can you remember of any unusual incident that took place?

A Yes, sir.

Q What was that? A When the jeep arrived, the car was following.

Q What happened next?

A When the jeep was near the gate, the car was following.

Q The car was following the jeep, at what distance?

A 3 to 4 meters.

Q While the car was following the jeep at that distance of 3 to 4 meters, what happened?

A All of a sudden, we heard the burst of gunfire.

Q From what direction was the gunfire?

A Through the direction of the jeep.

Q After hearing the gunfire, what happened?

A We looked at the jeep.

Q What did you see?

A We saw Alfredo Nardo and Glenn Tiempo and Rey Bolo f[a]ll to the ground. There were only 3.

Q Who was driving the jeep at that time?

A Alfredo Nardo.

Q What happened after that?

A So, I looked, whence the burst of gunfire came from.

Q What did you see from that gunfire?

A I saw 4 persons standing at the back of the fence.

Q What were those 4 persons doing when they were standing at the back of the fence?

A They were bringing long firearms.

Q Did you recognize these persons?

A I can clearly recognize one and the 3 persons[.] I can identify them, if I can see them again.

Q If you are shown these persons, can you recognize them? Can you name these persons?

A No, sir. Only their facial appearance.

Q What about the 3 persons?

A That's why the 3 persons, I do not know them. I can recognize only their facial appearance.

Q What about one person?

A Yes, sir.

Q What is the name of the person?

A Roling Sabalones.

Q If Roling Sabalones is inside the courtroom, can you recognize Roling Sabalones?

A Yes, sir, he is around.

Q Can you point to Roling Sabalones?

A Yes, he is there (The witness pointing to the person who answered the name of Roling Sabalones).

Q I would like [you] again to please look around and see, if those persons whom you know through their faces, if they are here around?

A The two of them (The witness pointing to the 2 persons, who, when asked, answered that his name [was] Teofilo Beronga and the other [was] Alegarbes)."

Indeed, we have carefully waded through the voluminous records of this case and the testimonies of all the fifty-nine witnesses, and we find that the prosecution has presented the required quantum of proof to establish that appellants are indeed guilty as charged. Appellants' arguments, as we shall now discuss, fail to rebut this conclusion.

Positive Identification

Appellants allege that the two witnesses could not have properly identified the appellants because, after the first burst of shooting, they both crouched down, such that they could not have seen the faces of their assailants. This contention does not persuade. Both eyewitnesses testified that the firing was not continuous; thus, during a lull in the firing, they raised their heads and managed a peek at the perpetrators. Edwin Santos testified as follows:

“Atty. Albino, counsel for accused Beronga:

Q You mean to say that when you bent you heard the successive shots, [and] you again raised your head. Is that correct?

A There were times that the shots were not in succession and continuous and that was the time I raised my head again.”[20]

Like Santos, Rogelio Presores also stooped down when the firing started, but he raised his head during a break in the gunfire:

“Atty. Albino:

Q So, what did you do when you first heard that one shot?

A So, after the first shot, we looked towards the direction we were facing and when we heard the second shot, that was the time we stooped down.”[21]

He further testified:

“Atty. Acido: [Counsel for Appellant Sabalones]

Q And you said you stooped down inside the car when you heard the first firing to the jeep. Is that what you want the Court to understand[?]

Presores:

A Yes, sir.

Q So, you never saw who fired the successive shots to the car as you said you stooped down inside the car?

A The bursts of gunfire stopped for a while and that was the time I reared of [sic] my head.

Q And that was the first time you saw them?

A Yes, sir.”[22]

The records clearly show that two vehicles proceeded to the house of Stephen Lim on that fateful day. The first was the jeep where Alfredo Nardo, Glenn Tiempo and Rey Bolo were riding. About three to four meters behind was the second car carrying Nelson Tiempo, Guillermo Vilorio, Rogelio Oliveros and the two prosecution witnesses -- Edwin Santos and Rogelio Presores.[23] As stated earlier, said witnesses attested to the fact that after the first volley of shots directed at the jeep, they both looked at the direction where the shots were coming from, and they saw their friends in the jeep falling to the ground, as well as the faces of the perpetrators.[24] It was only then that a rapid succession of gunshots were directed at them, upon which they started crouching to avoid being hit.

Hence, they were able to see and identify the appellants, having had a good look at them after the initial burst of shots. We stress that the normal reaction of a person is to direct his sights towards the source of a startling shout or occurrence. As held in *People v. Dolar*,^[25] “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.”

In bolstering their claim that it was impossible for the witnesses to have identified them, appellants further aver that the crime scene was dark, there being no light in the lampposts at the time. To prove that the service wire to the street lamps at the Mansueto Compound was disconnected as early as December 1984 and reconnected only on June 27, 1985, they presented the testimonies of Vicente Cabanero,^[26] Remigio Villaver,^[27] Fredo Canete^[28] and Edward Gutang.^[29] The trial court, however, did not lend weight to said testimonies, preferring to believe the statement of other prosecution witnesses that the place was lighted during that time.

The Court of Appeals sustained said findings by citing the testimonies of defense witnesses. Fredo Canete of the Visayan Electric Company (VECO), for instance, admitted that it was so easy to connect and disconnect the lights. He testified thus:

“Atty. Kintanar:

Q Now, as a cutter, what instruments do you usually use in cutting the electrical connection of a certain place?

Canete:

A Pliers and screw driver.

Q Does it need xxx very sophisticated instruments to disconnect the lights?

A No, these are the only instruments we use.

Q Ordinary pliers and ordinary screw driver?

A Yes, sir.

Q And does [one] need to be an expert in electronic [sic] in order to conduct the disconnection?

A No, sir.

Q In other words, Mr. Canete, any ordinary electrician can cut it?

A That is if they are connected with the Visayan Electric Company.

Q What I mean is that, can the cutting be done by any ordinary electrician?

A Yes, sir.”^[30]

Said witness even admitted that he could not recall if he did in fact cut the electrical connection of the Mansueto Compound.^[31] The Court of Appeals further noted that “none of the above witnesses were at the crime scene at or about the exact time that the ambush occurred. Thus, none was in a position to state with absolute certainty that there was allegedly no light to illuminate the gunmen when they rained bullets on the victims.”^[32]

Even assuming *arguendo* that the lampposts were not functioning at the time, the headlights of the jeep and the car were more than sufficient to illuminate the crime scene.^[33] The Court has previously held that the light from the stars or the moon, an oven, or a wick lamp or gasera can give ample illumination to enable a person to identify or recognize another.^[34] In the same vein, the headlights of a car or a jeep are sufficient to enable eyewitnesses to identify appellants at the distance of 4 to 10 meters.

Extrajudicial Statement of Beronga

Appellants insist that Beronga’s extrajudicial statement was obtained through violence and intimidation. Citing the *res inter alios acta* rule, they also argue that the said statement is inadmissible against Sabalones. Specifically,

they challenge the trial court's reliance on the following portions of Beronga's statement:

"Q After Roling knew that Na[b]ling Velez was killed, have you observed [if] Roling and his companions prepared themselves for any eventuality?

A It did not take long after we knew that Na[b]ling was killed, somebody called up by telephone looking for Roling, and this was answered by Roling but we did not know what they were conversing about and then Roling went back to the house of Junior after answering the phone. And after more than two hours, we heard the sound of engines of vehicles arriving, and then Meo, the man who was told by Roling to guard, shouted saying: "They are already here[;]" after that, Roling came out carrying a carbine accompanied by Tsupe, and not long after we heard gunshots and because of that we ran towards the house where the wake was. But before the gun-shots, I heard Pedring Sabalones father of Roling saying: "You clarify, [t]hat you watch out for mistake[n] in identity," and after that shout, gunshots followed. [sic] Then after the gun-shots Roling went back inside still carrying the carbine and shouted: 'GATHER THE EMPTY SHELLS AND MEO[,] YOU BRING A FLASHLIGHT,' and then I was called by Meo to help him gather the empty shells of the carbine and also our third companion to gather the empty shells."

These arguments have no merit. In the first place, it is well to stress that appellants were convicted based primarily on the positive identification of the two survivors, Edwin Santos and Rogelio Presores, and not only on the extrajudicial statement, which merely corroborates the eyewitness testimonies. Thus, said arguments have no relevance to this case. As the Court held in *People vs. Tidula*:^[35] "Any allegation of violation of rights during custodial investigation is relevant and material only to cases in which an extrajudicial admission or confession extracted from the accused becomes the basis of their conviction."

In any case, we sustain the trial court's holding, as affirmed by the Court of Appeals, that the extrajudicial statement of Beronga was executed in compliance with the constitutional requirements.^[36] "Extrajudicial confessions, especially those which are adverse to the declarant's interests are presumed voluntary, and in the absence of conclusive evidence showing that the declarant's consent in executing the same has been vitiated, such confession shall be upheld."^[37]

The exhaustive testimony of Sgt. Miasco, who undertook the investigation, shows that the appellant was apprised of his constitutional rights to remain silent and to have competent and independent counsel of his own choice.^[38] Said witness also stated that Beronga was assisted by Atty. Marcelo Guinto during the custodial investigation.^[39] In fact, Atty. Guinto also took the witness stand and confirmed that Appellant Beronga was informed of his rights, and that the investigation was proper, legal and not objectionable. Indeed, other than appellants' bare allegations, there was no showing that Beronga's statement was obtained by force or duress.^[40]

Equally unavailing is appellants' reliance on the *res inter alios acta* rule under Section 30, Rule 130 of the Rules of Court, which provides:

"The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration."

Appellants assert that the admission referred to in the above provision is considered to be against a co-conspirator only when it is given during the existence of the conspiracy. They argue that Beronga's statement was made after the termination of the conspiracy; thus, it should not be admitted and used against Sabalones.

The well-settled rule is that the extrajudicial confession of an accused is binding only upon himself and is not admissible as evidence against his co-accused, it being mere hearsay evidence as far as the other accused are concerned.^[41] But this rule admits of exception. It does not apply when the confession, as in this case, is used as

circumstantial evidence to show the probability of participation of the co-accused in the killing of the victims[42] or when the confession of the co-accused is corroborated by other evidence.[43]

Beronga's extrajudicial statement is, in fact, corroborated by the testimony of Prosecution Witness Jennifer Bingham. Pertinent portions of said testimony are reproduced hereunder:

"Q While you were at the wake of Jun Sabalones and the group were sitting with Roling Sabalones, what were they doing? A They were gathered in one table and they were conversing with each other.

x x x x x x x x

Q On that same date, time and place, at about 10:00 [i]n the evening, can you remember if there was unusual incident that took place?

A I heard over the radio at the Sabalones Family that a certain Nabing Velez was shot.

Q That [a] certain Nabing Velez was shot? What else xxx transpired?

A I observed that their reactions were so queer, - as if they were running.

x x x x x x x x

Q In that evening of June 1, 1985, when you went there at the house of Jun Sabalones, have you seen an armalite?

A Yes, sir.

Q Where did you see this armalite?

A At the table where they were conversing.

Q How many armalites or guns [did you see] that evening in that place?

A Two (2).

x x x x x x x x

Q This armalite that you saw, - how far was this in relation to the groups of Sabalones?

A There (The witness indicating a distance of about 4 to 5 meters).

ATTY. KINTANAR:

Q When you looked xxx through the window and saw there were two vehicles and there were bursts of gunfire, what happened after that?

A I did not proceed to look xxx through the window because I stooped down.

Q When you stooped down, what happened?

A After the burst of gunfire, I again opened the window.

Q And when again you opened the window, what happened?

A I saw two persons going towards the jeep.

Q What transpired next after [you saw] those 2 persons?

A When they arrived there, they nodded their head[s].

Q After that, what happened?

A So, they went back to the direction where they came from, going to the house of Sabalones.

Q While they were going to the direction of the house of Sabalones, what transpired?

A I saw 5 to 6 persons coming from the highway and looking to the jeep, and before they reached the jeep, somebody shouted that 'it's ours'.

Q Who shouted?

A The voice was very familiar to me.

Q Whose voice?

A The voice of Roling Sabalones.

Q What else have you noticed during the commotion [when] wives were advising their husbands to go home?

A They were really in chaos.”[44]

A careful reading of her testimony buttresses the finding of the trial court that Rolusape Sabalones and his friends were gathered at one table, conversing in whispers with each other, that there were two rifles on top of the table, and that they became panicky after hearing of the death of Nabing Velez on the radio. Hence, the observation of the trial court that “they went to their grisly destination amidst the dark and positioned themselves in defense of his turf against the invasion of a revengeful gang of supporters of the recently slain Nabing Velez.”[45]

Alleged Inconsistencies

Appellants also allege that the prosecution account had inconsistencies relating to the number of shots heard, the interval between gunshots and the victims’ positions when they were killed. These, however, are minor and inconsequential flaws which strengthen, rather than impair, the credibility of said eyewitnesses. Such harmless errors are indicative of truth, not falsehood, and do not cast serious doubt on the veracity and reliability of complainant’s testimony.[46]

Appellants further claim that the relative positions of the gunmen, as testified to by the eyewitnesses, were incompatible with the wounds sustained by the victims. They cite the testimony of Dr. Ladislao Diola, who conducted the autopsy on Glenn Tiempo. He declared that the victim must necessarily be on a higher level than the assailant, in the light of the path of the bullet from the entrance wound to where the slug was extracted. This finding, according to appellant, negates the prosecution’s account that the appellants were standing side by side behind a wall when they fired at the victims. If standing, appellants must have been on a level higher than that of the occupants of the vehicles; if beside each other, they could not have inflicted wounds which were supposed to have come from opposite angles.

We are not persuaded. The defense presumes that the victims were sitting still when they were fired upon, and that they froze in the same position during and after the shooting. This has no testimonial foundation. On the contrary, it was shown that the victims ducked and hid themselves, albeit in vain, when the firing began. After the first volley, they crouched and tried to take cover from the hail of bullets. It would have been unnatural for them to remain upright and still in their seats. Hence, it is not difficult to imagine that the trajectories of the bullet wounds varied as the victims shifted their positions. We agree with the following explanation of the Court of Appeals:

“The locations of the entry wounds can readily be explained. xxx Glenn Tiempo, after looking in the direction of the explosion, turned his body around; and since the ambushers were between the jeep and the car, he received a bullet in his right chest (wound no. 1) which traveled to the left. As to wound No. 2, it can be explained by the spot where Major Tiempo found his fallen son.

‘Atty. Kintanar:

Q: Upon being informed by these occupants who were ambushed and [you] were able to return the car, what did you do?

Major Tiempo:

A: I immediately got soldiers and we immediately proceeded to the area or to the place where my fallen son was located and when we reached x x x the place, I saw my fallen son [in] a kneeling position where both knees [were] touching the ground and the toes also and the forehead was touching towards the ground.’ (TSN, Feb. 12, 1988, p. 6)

In such position, the second bullet necessarily traveled upwards in relation to the body, and thus the entry wound should be lower than the exit wound. There is no showing that both wounds were inflicted at the same time.”[47]

In any event, the witnesses saw that the appellants were the gunmen who were standing side by side firing at them. They could have been in a different position and in another hiding place when they first fired, but this is not important. They were present at the crime scene, and they were shooting their rifles at the victims.

Aberratio Ictus

Appellants likewise accuse the trial court of engaging in “conjecture” in ruling that there was aberratio ictus in this case. This allegation does not advance the cause of the appellants. It must be stressed that the trial court relied on the concept of aberratio ictus to explain why the appellants staged the ambush, not to prove that appellants did in fact commit the crimes. Even assuming that the trial court did err in explaining the motive of the appellants, this does not detract from its findings, as affirmed by the Court of Appeals and sustained by this Court in the discussion above, that the guilt of the appellants was proven beyond reasonable doubt.

In any event, the trial court was not engaging in conjecture in so ruling. The conclusion of the trial court and the Court of Appeals that the appellants killed the wrong persons was based on the extrajudicial statement of Appellant Beronga and the testimony of Jennifer Binghoy. These pieces of evidence sufficiently show that appellants believed that they were suspected of having killed the recently slain Nabing Velez, and that they expected his group to retaliate against them. Hence, upon the arrival of the victims’ vehicles which they mistook to be carrying the avenging men of Nabing Velez, appellants opened fire. Nonetheless, the fact that they were mistaken does not diminish their culpability. The Court has held that “mistake in the identity of the victim carries the same gravity as when the accused zeroes in on his intended victim.”[48]

Be that as it may, the observation of the solicitor general on this point is well-taken. The case is better characterized as error in personae or mistake in the identity of the victims, rather than aberratio ictus which means mistake in the blow, characterized by aiming at one but hitting the other due to imprecision in the blow.

Second Issue:

Denial and Alibi

Appellants decry the lower courts’ disregard of their defense of alibi. We disagree. As constantly enunciated by this Court, the established doctrine requires the accused to prove not only that he was at some other place at the time of the commission of the crime, but that it was physically impossible for him at the time to have been present at the locus criminis or its immediate vicinity.[49] This the appellants miserably failed to do.

Appellant Beronga testified that, at the time of the incident, he was in his residence in Lapulapu City, which was not shown to be so remote and inaccessible that it precluded his presence in Mansueto Subdivision. The alibi of Sabalones is even more unworthy of belief; he sought to establish that he was a mere 20-25 meters away from the scene of the crime. He was allegedly in the house of his brother who was lying in state, which was so near the ambush site that some of the defense witnesses even testified that they were terrified by the gunfire. Clearly, appellants failed to establish the requisites of alibi.

Furthermore, the defense of alibi cannot overcome the positive identification of the appellants.[50] As aptly held by this Court in *People v. Nescio*:^[51]

“Alibi is not credible when the accused-appellant is only a short distance from the scene of the crime. The defense of alibi is further offset by the positive identification made by the prosecution witnesses. Alibi, to reiterate a well-settled doctrine, is accepted only upon the clearest proof that the accused-appellant was not or could not have been at the crime scene when it was committed.”

Flight

Appellants further object to the finding that Sabalones, after the incident, “made himself scarce from the place of commission. He left for Manila, thence Mindanao on the supposition that he want[ed] to escape from the wrath of Maj. Tiempo and his men for the death of Glenn Tiempo and the near fatal shooting of the other son or from the supporters of Nabing Velez. x x x On his supposedly borrowed freedom, he jumped bail and hid himself deeper into Mindanao, under a cloak of an assumed name. Why, did his conscience bother him for comfort?”^[52]

Appellants rationalized that Sabalones was forced to jump bail in order to escape two groups, who were allegedly out to get him, one of Nabing Velez and the other of Major Tiempo. Their ratiocination is futile. It is well-established that “the flight of an accused is competent evidence to indicate his guilt, and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn.”^[53] It must be stressed, nonetheless, that appellants were not convicted based on legal inference alone but on the overwhelming evidence presented against them.

Third Issue:

Crime and Punishment

We agree with the appellate court that accused-appellants are guilty of murder for the deaths of Glenn Tiempo and Alfredo Nardo. The allegation of treachery as charged in the Information was duly proven by the prosecution. “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.”^[54] These requisites were evidently present when the accused, swiftly and unexpectedly, fired at the victims who were inside their vehicles and were in no position and without any means to defend themselves.

The appellate court also correctly convicted them of frustrated murder for the injuries sustained by Nelson Tiempo, Rey Bolo and Rogelio Presores. As evidenced by the medical certificates and the testimony of Dr. Miguel Mancao who attended to the victims, Nelson Tiempo sustained a neck wound which completely shattered his trachea and rendered him voiceless, as well as a wound on the right chest which penetrated his axilla but not his chest cavity.^[55] Rey Bolo sustained three injuries which affected his clavicle, ribs and lungs.^[56] Rogelio Presores, on the other hand, sustained an injury to his lungs from a bullet wound which entered his right chest and exited through his back.^[57]

The wounds sustained by these survivors would have caused their death had it not been for the timely medical intervention. Hence, we sustain the ruling of the Court of Appeals that appellants are guilty of three counts of frustrated murder.

We also uphold the Court of Appeals’ modification of the penalty for murder, but not its computation of the sentence for frustrated murder.

For each of the two counts of murder, the trial court imposed the penalty of fourteen (14) years, eight (8) months

and one (1) day of reclusion temporal (medium), as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal (maximum), as maximum. This is incorrect. Under Article 248 of the Revised Penal Code, the impossible penalty is reclusion temporal, in its maximum period, to death. There being no aggravating or mitigating circumstance, aside from the qualifying circumstance of treachery, the appellate court correctly imposed reclusion perpetua for murder.

The Court of Appeals, however, erred in computing the penalty for each of the three counts of frustrated murder. It sentenced appellants to imprisonment of ten years of prision mayor (medium) as minimum to seventeen years and four months of reclusion temporal (medium) as maximum. It modified the trial court's computation of eight (8) years of prision mayor (minimum), as minimum, to fourteen (14) years and eight (8) months of reclusion temporal (minimum) as maximum.

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 x x x." The impossible penalty for frustrated murder, therefore, is prision mayor in its maximum period to reclusion temporal in its medium period.[58] Because there are no aggravating or mitigating circumstance as the Court of Appeals itself held,[59] the penalty prescribed by law should be imposed in its medium period. With the application of the Indeterminate Sentence Law, the penalty for frustrated murder should be 8 years of prision mayor (minimum), as minimum, to 14 years and 8 months of reclusion temporal (minimum) as maximum.

Although the Court of Appeals was silent on this point, the trial court correctly ordered the payment of P50,000 as indemnity to the heirs of each of the two murdered victims. In light of current jurisprudence, this amount is awarded without need of proof other than the fact of the victim's death.[60] The trial court and the CA, however, erred in awarding indemnity of P20,000 each to Nelson Tiempo, Rogelio Presores and Rey Bolo. There is no basis, statutory or jurisprudential, for the award of a fixed amount to victims of frustrated murder. Hence, they are entitled only to the amounts of actual expenses duly proven during the trial.

Thus, Nelson Tiempo, who was treated for a gunshot wound on the neck which shattered his trachea, should be awarded indemnity of P21,594.22 for his medical expenses. This is evidenced by a statement of account from Cebu Doctor's Hospital.[61]

Rogelio Presores, who was likewise treated for gunshot wound in the same hospital, presented a statement of account amounting to P5,412.69 for his hospitalization.[62] Hence, he is likewise entitled to indemnity in the said amount.

Rey Bolo, on the other hand, incurred an expense of P9,431.10 for the treatment of his gunshot wounds, as evidenced by a statement of account from the same hospital.[63] This amount should be awarded to him as indemnity.

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

- 1) In Crim. Case No. CBU-9257, for MURDER, the accused-appellants are each hereby sentenced to reclusion perpetua and to indemnify, jointly and severally, the heirs of the deceased, Glenn Tiempo, in the sum of P50,000;
- 2) In Crim. Case No. CBU-9258, for MURDER, the accused-appellants are each hereby sentenced to reclusion perpetua and to indemnify, jointly and severally, the heirs of the deceased, Alfredo Nardo, in the sum of P50,000;
- 3) In Crim. Case No. CBU-9259, for FRUSTRATED MURDER, the accused-appellants are each hereby

sentenced to suffer the penalty of 8 years of prision mayor (minimum), as minimum, to 14 years and 8 months of reclusion temporal (minimum) as maximum; and to jointly and severally pay the victim, Rey Bolo, in the sum of P9,431.10 as actual damages;

4) In Crim Case No. CBU-9260, for FRUSTRATED MURDER, the accused-appellants are hereby sentenced to suffer the penalty of 8 years of prision mayor (minimum), as minimum, to 14 years and 8 months of reclusion temporal (minimum) as maximum; and to jointly and severally indemnify the victim, Rogelio Presores, in the sum of P5,412.69 for actual damages;

5) In Crim. Case No. CBU-9261 for FRUSTRATED MURDER, the accused-appellants are hereby sentenced to suffer the penalty of 8 years of prision mayor (minimum), as minimum, to 14 years and 8 months of reclusion temporal (minimum) as maximum; and to jointly and severally indemnify the victim, Nelson Tiempo, in the sum of P21,594.22 as actual damages.

Let copies of this Decision be furnished the Secretary of Interior and Local Government and the Secretary of Justice so that Accused Eufemio Cabanero may be brought to justice.

Costs against appellants.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug and Quisumbing, JJ., concur.

[1] Penned by J. Jesus M. Elbinias and concurred in by JJ. Buenaventura J. Guerrero and B.A. Adefuin-Dela Cruz.

[2] CA Rollo, pp. 205-236.

[3] Presided by Judge Generoso A. Juaban.

[4] RTC Decision, pp. 31-32; CA Rollo, pp. 58-59.

[5] CA Decision, pp. 31-32; CA Rollo, pp. 235-236.

[6] SC Resolution of September 9, 1996; Rollo, p. 11.

[7] The Appellee's Brief was signed by Assistant Solicitor General Cecilio O. Estoesta and Solicitor Ma. Cielo Se-Rondain; CA Rollo, pp. 171-178.

[8] Appellee's Brief, pp. 7-14; CA Rollo, pp. 171-178.

[9] The Appellants' Brief contained no statement of facts.

[10] RTC Decision, pp. 14-26; CA Rollo, pp. 41-53.

[11] The case was deemed submitted for resolution on August 29, 1997, upon receipt by the Court of the confirmation of the detention of Appellant Beronga at the National Bilibid Prisons.

[12] Brief of Accused-Appellant Sabalones before the CA, pp. 3, 8, 21, 29 and 39, signed by Atty. Pedro L. Albino.

[13] CA Rollo, p. 78.

[14] People v. Turingan, GR No. 121628, December 4, 1997; People v. Sumbillo, 271 SCRA 428, April 18, 1997; People v. Ombrog, 268 SCRA 93, February 12, 1997; People v. Arce, 227 SCRA 406, October 26, 1993.

- [15] *People v. Aranjuez*, GR No. 121898, January 29, 1998, per Romero, J.; *People v. Castillo*, 273 SCRA 22, June 12, 1997.
- [16] RTC Decision, p. 26; CA Rollo, p. 53.
- [17] *Del Mundo v. Court of Appeals*, 252 SCRA 432, January 29, 1996, per Romero, J.; *Aspi v. CA*, 236 SCRA 94, September 1, 1994; *Coca-Cola Bottlers Philippines, Inc. v. CA*, 229 SCRA 151, January 27, 1994.
- [18] TSN, April 7, 1987, pp. 13-17.
- [19] TSN, December 19, 1988, pp. 27-29.
- [20] TSN, August 7, 1987, p. 10.
- [21] TSN, October 15, 1987, p. 6.
- [22] TSN, January 26, 1989, p. 14.
- [23] TSN, December 19, 1988, p. 26.
- [24] *Ibid.*, pp. 28-29; TSN, April 7, 1987, pp. 14 and 23.
- [25] 231 SCRA 414, March 24, 1994, per Puno, J.; *People v. Satagoda*, 221 SCRA 251, April 7, 1993.
- [26] TSN, February 22, 1990, pp. 22-23.
- [27] *Ibid.*, pp. 8-9.
- [28] TSN, April 20, 1990, pp. 3 and 5.
- [29] TSN, December 11, 1990, pp. 1-4.
- [30] TSN, April 20, 1990, p. 6. This was quoted in the CA Decision, pp. 20-21; CA Rollo, pp. 224-225.
- [31] TSN, April 20, 1990, p. 4.
- [32] CA Decision, p. 18; CA Rollo, p. 222.
- [33] TSN, April 7, 1987, p. 23.
- [34] *People v. Briones*, 202 SCRA 708, October 15, 1991, per Paras J.; citing *People v. Vacal*, 27 SCRA 24; *People v. Puelas*, 127 SCRA 746; *People v. dela Cruz*, 147 SCRA 359; *People v. Aboga*, 147 SCRA 404.
- [35] GR No. 123273, July 16, 1998, per Panganiban, J.
- [36] RTC Decision, p. 27; CA Rollo, p. 54.
- [37] *People v. Nimo*, 227 SCRA 69, October 5, 1993, per Romero, J.; *People v. Luvendino*, 211 SCRA 36, July 3, 1992; *People v. Quijano*, 197 SCRA 761, May 31, 1991.
- [38] TSN, May 31, 1989, pp. 4-23.
- [39] TSN, June 2, 1989, pp. 4-10.
- [40] *Ibid.*, pp. 18-19 and 24-25.
- [41] *People v. Liwag*, 225 SCRA 46, August 3, 1993; *People v. Alegre*, 94 SCRA 109, November 7, 1979.
- [42] *People v. Alvarez*, 201 SCRA 364, September 5, 1991; *People v. Vasquez*, 113 SCRA 772, April 27, 1982.

[43] *People v. Victor*, 181 SCRA 818, February 6, 1990; *People v. Paz*, 11 SCRA 667, August 31, 1964; *People v. Agdeppa*, 30 SCRA 782, December 24, 1969.

[44] TSN, November 28, 1988, pp. 5-20.

[45] RTC Decision, p. 27; CA Rollo, p. 54.

[46] *People v. Gaorana*, GR Nos. 109138-39, April 27, 1998.

[47] CA Decision, p. 29; CA rollo, p. 233. Underscoring supplied.

[48] *People v. Pinto, Jr.*, 204 SCRA 9, 31, November 21, 1991, per Fernan, CJ; *Calderon v. People*, 96 Phil. 216 (1954); *People v. Esteban*, 103 SCRA 520, March 30, 1981.

[49] *People v. Tulop*, GR No. 124829, April 21, 1998; *People v. Ballesteros*, GR No. 120921, January 29, 1998; *People v. Sumbillo*, *supra*.

[50] *People v. Arellano*, GR Nos. 119078-79, December 5, 1997; *People v. Apongan*, 270 SCRA 713, April 4, 1997; *People v. Castillo*, *supra*.

[51] 239 SCRA, December 28, 1994, per Romero, J.

[52] RTC Decision, p. 29; CA Rollo, p. 56.

[53] *People v. Gomez*, 251 SCRA 455, December 19, 1995, per Davide, Jr. J.

[54] *People v. Castillo*, GR No. 120282, April 20, 1998, per Panganiban, J.; *People v. Maalat*, GR No. 109814, July 8, 1997; *People v. Tuson*, 261 SCRA 711, September 16, 1996.

[55] TSN, May 30, 1989, pp. 10, 22 and 23.

[56] *Ibid.*, pp. 13 and 23.

[57] TSN, May 30, 1989, pp. 15 and 24.

[58] As earlier noted, the penalty for consummated murder is reclusion temporal, in its maximum period, to death.

[59] CA Decision, p. 31; CA Rollo, p. 235.

[60] *People v. Cayabyab*, 274 SCRA 387, June 19, 1997; *People v. Dones*, 254 SCRA 696, 710, March 13, 1996.

[61] TSN, February 12, 1988, p. 9

[62] *Ibid.*, p. 11.

[63] *Id.*, p. 12.

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