

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. GILBERT BASAO Y MACA AND PEPE ILIGAN Y SALAHAY, ACCUSED, PEPE ILIGAN Y SALAHAY, ACCUSED-APPELLANT.

G.R. No. 128286. July 20, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Accused Gilbert Basao y Maca and accused-appellant Pepe Iligan y Salahay were charged before the Regional Trial Court of Tandag, Surigao del Sur, Branch 27, with one (1) count of Robbery and two (2) counts of murder in three separate Informations, viz:

Criminal Case No. C-14:

"That on the [14th] day of April 1994 at about 12:10 o'clock in the afternoon, more or less, at the National Highway, barangay (sic) Pag-antayan, municipality (sic) of Cantilan, Province of Surigao Del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, with intent to gain, did, then and there, willfully, unlawfully and feloniously take, steal and carry away from the dead body of P/Insp. Joerlick Faburada and Dra. Arlyn Faburada, the following items, to wit:

One (1) Caliber .45 pistol valued at P20,000.00

One (1) ICOM handset Radio - 9,000.00

One (1) PNPA gold ring - 8,000.00

With a total value of P37,000.00 to the damage and prejudice of the heirs of the victims in the aforestated amount.

CONTRARY TO LAW (In violation of Article 294 of the Revised Penal Code)

Criminal Case No. C-15:

That on the 14th day of April 1994, at 12:10 o'clock in the afternoon, more or less, at the National Highway, barangay (sic) Pag-antayan, municipality (sic) of Cantilan, province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court. The above-named accused, conspiring, confederating and mutually helping each other, armed with high-powered firearm, with intent to kill, treachery and evident premeditation, did, then and there, willfully and unlawfully and feloniously assault, attack and shoot Dra. Arlyn Faburada who is four (4) to five (5) months pregnant hitting and inflicting upon the latter, multiple gunshot wounds on her body, which wounds or injuries have caused the instantaneous death of said Dra. Arlyn Faburada, to the damage and prejudice of her heirs in the following amounts:

P50,000.00 - as life indemnity of the victim

10,000.00 - as moral damages

10,000.00 - as exemplary damages

CONTRARY TO LAW (In violation of Article 248 of the Revised Penal Code), with the presence of the

following aggravating circumstances:

- That the crime was committed with insult or in disregard of the respect due to the offended party on account of her sex and rank being a doctor;
- There is abuse of superior strength, treachery and evident premeditation;
- With cruelty by deliberately and inhumanly augmenting the suffering of the victim, outraging or scoffing at her person or corpse.

Criminal Case No. C-16:

That on 14th day of April 1994 at 12:10 o'clock in the afternoon, more or less, at the National Highway, barangay (sic) Pag-antayan, municipality (sic) of Cantilan, province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with a high-powered firearm, with intent to kill, treachery and evident premeditation, did, then and there, willfully, unlawfully and feloniously assault and shoot P/Insp. Joerlick Faburada, Chief of Police, Cantilan Police Station, thereby hitting and inflicting upon the latter multiple wounds on his body, which wounds have caused the instantaneous death of said P/Insp. Joerlick Faburada, to the damage and prejudice of his heirs in the following amounts:

P50,000.00 - as life indemnity of the victim
10,000.00 - as moral damages
10,000.00 - as exemplary damages

CONTRARY TO LAW (In violation of Article 248 of the Revised Penal Code), with the presence of the following aggravating circumstances:

- That the crime was committed with insult or in disregard of the respect due to the offended party on account of his rank being the Chief of Police of the place.
- There is abuse of superior strength, treachery and evident premeditation.

When Branch 41 of the Regional Trial Court of Cantilan, Surigao del Sur was created and duly organized all of the above-mentioned cases were transferred to it.

On January 13, 1995, Gilbert Basao was arrested while the accused-appellant remained at large. Upon his arraignment on August 3, 1995, accused Gilbert Basao, duly assisted by his counsel, entered a plea of "Not Guilty." Thereafter, a separate trial was conducted only as against accused Gilbert Basao of Criminal Cases Nos. C-14, C-15, and C-16.

On August 15, 1996 herein accused-appellant was arrested by the elements of the PNP at the Post Office of Pasay City.

On October 14, 1996, Gilbert Basao y Maca was acquitted^[1] by the trial court in all the three charges for robbery and two (2) separate crimes of murder for failure of the prosecution to prove his guilt beyond reasonable doubt. The trial court found that the evidence of the prosecution has miserably failed to establish the identity of the accused in all these three aforementioned cases. The prosecution had also failed to present Reynaldo Angeles and Pastor Ampo, Sr., the letter sender who informed SPO4 Manuel L. Azarcon that Reynaldo Angeles was the person who pawned the ring of the late Lt. Joerlick Faburada. These persons could have shed light as to the identity of the culprit. The affidavit executed by Gilbert Basao during his custodial investigation was likewise found by the trial court to be inadmissible due to certain constitutional infirmities with respect to his right to counsel, to be informed of such rights and the safeguards enshrined under the Constitution whenever an accused is

under custodial investigation.

On October 17, 1996, the accused-appellant Pepe Iligan y Salahay, duly assisted by his counsel, entered a plea of "Not Guilty" to the aforementioned charges upon his arraignment before same court which tried these cases against Gilbert Basao.

The evidence for the prosecution was derived mainly from the testimonies of accused-appellant's co-accused, Gilbert Basao, and Reynaldo Angeles. The testimonies of SPO4 Manuel Azarcon[2] and SPO2 Dominador Plaza[3] at the separate trial of these same cases against Gilbert Basao were reproduced to buttress the evidence for the prosecution against appellant Iligan. Dr. Luciano Ortega, the physician from Cantilan Polymedic Hospital, issued medical certificates[4] regarding the post-mortem examinations on the bodies of the victims, the Faburada spouses.

Gilbert Basao testified[5] that from 1993 to 1994, herein accused-appellant used to stay in the house of his uncle, Gabino Maca, at Padiay, Sibagat, Agusan del Sur. He knows that the accused-appellant is a member of the Citizens Armed Forces Geographical Unit (CAFGU) assigned at Gacub, Carmen, Surigao del Sur.

Basao recalls that on April 14, 1994 at 9:00 o'clock in the morning, the accused-appellant arrived at the house of his uncle in full CAFGU uniform with an M-16 armalite. The accused-appellant asked him if he could go with him (accused-appellant) to Carrascal for them to "make money". When he (Basao) agreed they both took a jeep from Hinapoyan to Madrid, then from Madrid to Cantilan, Surigao del Sur. They alighted at the Caltex Station Crossing at Cantilan, Surigao del Sur where they proceeded to a waiting shed and herein accused-appellant instructed him to wait for a motorcycle bound for Carrascal. After awhile, the accused-appellant went towards a store just opposite the waiting shed, about 15 meters in distance, to buy some cigarettes. When he hailed an approaching motorcycle, the accused-appellant told him that he still wanted to smoke a cigarette. A few minutes later another motorcycle passed by and he was surprised why the accused-appellant looked at it. When the accused-appellant was about six (6) to eight (8) meters away from the motorcycle, he (accused-appellant) strafed its passengers with his armalite, with more or less 20 bullets, hitting Joerlick Faburada and his wife, Dra. Arlyn Faburada. Dra. Arlyn Faburada, who rode at the back, was thrown on the street while Joerlick Faburada was dragged by the motorcycle until it fell flat on the ground. Joerlick Faburada was then wearing a type "A" Polo shirt police uniform while his wife was wearing a white blouse. After shooting the victims, accused-appellant took one .45 caliber pistol, one ICOM Radio Handset and one PNPA gold ring from the body of Joerlick Faburada. Basao further narrated that herein accused-appellant instructed him to get the motorcycle for their ride but when he was not able to re-start the vehicle, the accused-appellant shouted at him that they will just walk through the coconut plantation and ricefield. Both of them proceeded on foot towards the house of Pastor Pigneo Ampo, accused-appellant's brother-in-law, in Madrid, Surigao del Sur. There, the accused-appellant stayed behind while he (Basao) went to the house of his uncle at Hinapoyan, Carmen, Surigao del Sur before proceeding towards his boarding house in Guingona Subdivision, Butuan City.

Witness Basao also declared in court that on April 19, 1994, the accused-appellant went to his boarding house together with Reynaldo Angeles and asked him (Basao) to pawn the class ring of the victim, which request he refused. Accused-appellant then retorted that Reynaldo Angeles will just be the one to pawn the ring. Reynaldo Angeles pawned the ring at M-Lhuillier Pawnshop for P2,100.00 for which a receipt was issued. Afterwards all three of them proceeded to the Red Apple Bar for a drinking spree. While at the said place, the herein accused-appellant admitted to him (Basao) that he (the accused-appellant) shot Lt. Faburada and his wife because "he (Lt. Faburada) committed a wrong or 'atraso' against me" and as to the victim's wife the accused-appellant said that "what can I do, she rode on the motorcycle with Lt. Joerlick Faburada." However, accused-appellant did not tell him what the wrong or 'atraso' was about. He further narrated that Reynaldo Angeles was beside him

when the accused-appellant told the story about the death of the Faburada spouses. After they were through with their drinking spree, he (Basao) and Angeles proceeded to their respective homes while the accused-appellant planned to go to Cagayan the following day. He further said that although he is not related to either of the two victims, the reason why he now testified against the accused-appellant is because the death of the Faburada spouses bothered his conscience.

SPO4 Manuel L. Azarcon, the Deputy Chief of Police of Cantilan, Surigao del Sur, testified[6] that on April 14, 1994, a certain Rodrigo Eleazar reported that a policeman and a woman was shot at about 30 to 40 meters from Cantilan Polymedic Hospital and about 1 km. Away from Barangay Magasang, where he was conducting a pulong-pulong regarding the forthcoming elections. When he and his men reached the scene of the crime they identified the two dead bodies to be that of Lt. Joerlick Faburada, Chief of Police of Cantilan, and his wife Dra. Arlyn Faburada. In the course of his investigation, he found out that Lt. Faburada's .45 caliber pistol valued at P36,000-40,000, Radio ICOM 02N Handset valued at P9,000 and class ring were all missing. After taking some photographs of the bodies of the victims and finishing the customary police investigation, they brought the bodies of the victims to the Cantilan Polymedic Hospital where the two victims were declared dead on arrival.

Several days later, on April 27, 1994, while Azarcon was at his residence in Lininti-an, Cantilan Surigao del Sur, PO2 Warlito Cale brought to him an envelope containing two (2) handwritten letters of Pastor Martin Ampo, Sr., whom he knew very well for the latter frequently visited Cantilan, Surigao del Sur. The letters revealed that the class ring of Lt. Faburada was pawned by Reynaldo Angeles of Cabadbaran, Agusan del Norte at the M-Lhuillier Pawnshop in Butuan City. He presented the letters to the CIS team headed by S/Insp. Buenaventura A. Mendoza for evaluation. On April 29, 1994, as per instruction in the letter, he (SPO4 Azarcon) and the CIS team of S/Insp. Mendoza proceeded directly to the 7th day Adventist Church in Cabadbaran where they met Martin Ampo, Sr. The latter told them that Reynaldo Angeles also stayed in the same compound. Martin Ampo, Sr. called Reynaldo Angeles, who confirmed that the accused-appellant and Gilbert Basao were the ones who told him to pawn the class ring of the victim in Butuan City. They then proceeded to the M-Lhuillier Pawnshop together with Angeles and redeemed the class ring for P2,000 for which a receipt was issued (Exhibit G).

Witness Reynaldo Angeles,. Whose wife is the first cousin of the wife of the accused-appellant, identified Gilbert Basao as his classmate since his elementary grades. He testified[7] that for two (2) years from 1992, accused-appellant has been engaged in logging activities at their place at Padiay, Sibagat, Agusan del Sur. On April 19, 1994 at about 3:00 o'clock in the afternoon, Basao and accused-appellant went to his apartment at Montegrando Km. 3, Baan, Butuan City; accused-appellant asked him to accompany them (Basao and herein accused-appellant) to downtown Butuan City. When they (Angeles, Basao and herein accused-appellant) had reached the place, the accused-appellant asked him "brod I have a ring you will pawn this and you will be the one to sign the receipt," and he acceded to the request. He pawned the ring at the M-Lhuillier Pawnshop for P2,100.00 for which a corresponding receipt was issued. After receiving the said amount, all of them proceeded to the Red Apple in Butuan City to drink beer. There, he said, the accused-appellant admitted to him that he (accused-appellant) shot Lt. Joerlick Faburada, the owner of the ring he pawned, with his M-16 rifle because Lt. Faburada is very strict in enforcing the laws against illegal logging. The accused-appellant also admitted shooting Dra. Arlyn Faburada, the wife of Lt. Faburada, because after the motorcycle turned turtle Dra. Faburada tried to crawl to get the .45 caliber of her husband.

Witness Angeles confirmed the testimony of Azarcon that on April 29, 1994, while he was at Quarry 7th Day Adventist Church, Cabadbaran, Agusan del Norte, Boy Azarcon, together with Captain Mendoza and his men asked him if he was really the one who pawned the ring of Lt. Faburada and he replied that he was merely requested by two persons to pawn the ring at the M-Lhuillier Pawnshop. Afterwards, all of them went to Butuan

City and redeemed the ring from the pawnshop. He also admitted having executed a sworn statement[8] on April 29, 1994 taken by a police officer of Cantilan in connection with this case.

On cross-examination, Angeles testified,[9] among others, that when Basao and the accused-appellant went to his apartment at Montegrande Km. 3 Baan, Butuan City, he did not know the main purpose of their visit; that it was the accused-appellant who invited him to go to Butuan City; that he noticed that the letters "PNPA" were engraved in the outer portion of the ring; that he was requested by Basao and the accused-appellant to pawn the ring; and that when he pawned the ring at the M- Lhuillier Pawnshop "he thought that the gold ring came from a good source."

On re-direct examination, Angeles declared that when he redeemed the ring at the M-Lhuillier Pawnshop together with the CIS team, he saw that the ring had an inner marking of "Joerlick Faburada." He also stated that even if the accused-appellant is related to his wife, being first cousins, he is not afraid to give a statement against the accused-appellant because nobody forced him to testify against the latter and it was his own decision to do so.

SPO2 Dominador Plaza, the Police Community Relations Officer and Investigator of Cantilan Police Station, testified[10] that Lt. Joerlick Faburada is their Chief of Police in Cantilan; that there were many people who got mad at the latter because of his strict implementation of the law especially in illegal logging, illegal possession of firearms and others;[11] and that the latter did not assent to any negotiations with respect thereto. In fact an anonymous letter sent to the office of the mayor, petitioned for the ouster of Lt. Joerlick Faburada because the latter allegedly caused the spread of pest or cholera in their town.

Accused-appellant Pepe Iligan put up the defense of denial and alibi.

The accused-appellant controverted the evidences against him by denying the same. He denied the following, to wit:[12] that he knows the two victims, Joerlick Faburada and Dra. Faburada;[13] that he knows Gilbert Basao and that he has seen the latter on April 14, 1994;[14] that he is related to Reynaldo Angeles; he also denied that he saw Angeles during the month of April 1994;[15] that he was in the house of Angeles at Baan, Agusan del Sur on April 19, 1994;[16] that he requested Angeles to pawn a ring for him;[17] that he was with Basao when Angeles pawned the ring of Lt. Faburada at the Lhuillier Pawnshop, and that he had a drinking spree with them afterwards;[18] that he told a story to Angeles that he personally shot Lt. Joerlick Faburada with an armalite rifle;[19] and that he has ever been in possession of an armalite rifle not an M16, M14 or an even rifle.[20]

Accused-appellant's defense of alibi hinges on his claim that on April 14, 1994 he was on duty as a CAFGU in a detachment in Gacub the whole day. Before he was arrested on August 16, 1996 at a Post Office in Pasay City, he went to Canlubang, Palao Village to work so that he can help his brothers and sisters. At the time of his arrest, he was informed by the arresting officer that a case was filed against him. He only learned about the case when the arresting officer brought him to the police station where he denied that he committed it.

On cross-examination,[21] accused-appellant testified that he was a CAFGU member assigned at the 67th Infantry Battalion; that although there were M-16 armalite rifles in said infantry battalion he was only issued a garand rifle; that from the time he became a CAFGU member in 1993 to the time he was dropped from the rolls he never went to the 67th Infantry Battallion; that he was dropped from the rolls as a CAFGU in the year 1994 due to the pendency of these cases against him, and that he did not surrender to the authorities because he was afraid that he might be shot; that he met Reynaldo Angeles in Kolambugan, Agusan del Sur when he stayed there for 6 months; and stated that he knows the wife of Angeles because the wife of Angeles is the first cousin of his (accused-appellant) wife; that he does not know why Angeles testified against him for there was no instance when he filed a case against the latter nor that the latter filed a case against him; contrary to his earlier denial he admitted that he knew Gilbert Basao when he was at Padiay, Agusan del Sur in 1992 and that the latter resides in

Butuan City because Basao studies in that place.

To corroborate the accused-appellant's alibi, the defense presented the testimony of Alfredo Yagao, who for three years was the Barangay Captain of Hinapoyan, Carmen, Surigao del Sur. Yagao testified[22] that he knew the accused-appellant to be a resident of Sitio Gacub, Hinapoyan, Carmen, Surigao del Sur. On April 14, 1994, he was in Gacub hauling bananas from morning to afternoon where other people, some of whom were CAFGU's, were also present. He saw accused-appellant at the waiting shed, the place where bananas were stocked. The accused-appellant was with five (5) companions and when he asked them where they were going they answered that they were just roaming. He also testified that accused-appellant was still at the waiting shed when he left in the afternoon.

On cross-examination,[23] Yagao testified that the accused-appellant is a CAFGU member of the 67th Infantry Battalion; that on April 14, 1994 he saw herein accused-appellant carrying a long firearm, and was then accompanied by several CAFGU members; that he arrived at the waiting shed at 8:00 o'clock in the morning to haul bananas and left the place at 4:00 o'clock in the afternoon.

The trial court found the accused-appellant guilty beyond reasonable doubt of two counts of Murder and one (1) count of Robbery. It opined that the accused-appellant really intended to kill Lt. Faburada and not to go to Carrascal, Surigao del Sur contrary to what he originally told Gilbert Basao. The court, taking note of the fact that Angeles and the accused-appellant are in-laws whose wives are first cousins and that the accused-appellant has influence over Angeles by reason of his being a CAFGU member, relied on the testimony of Reynaldo Angeles that it was the accused-appellant who requested him (Angeles) to pawn the ring of Lt. Joerlick Faburada. It also found that the motive of accused-appellant in killing Lt. Faburada was due to the latter's very strict enforcement of the laws particularly on illegal logging and took judicial notice of the fact that the municipalities of Cantilan, Carrascal, Madrid, Carmen and Lanuza fall within the territorial jurisdiction of RTC, Branch 41 and are gifted with abundant virgin forest. The trial court rejected the defense of denial and alibi and did not give probative value to the testimony of Alfredo Yagao, the defense witness, considering that during the preliminary investigation against Gilbert Basao and herein accused-appellant, Yagao claimed in his affidavit that on April 14, 1994 he was at Gacub at 12:00 o'clock up to 1:00 o'clock p.m. while during his direct testimony, Yagao testified that he was at Gacub, Hinapoyan, Carmen Surigao del Sur from 8:00 o'clock a.m. up to 4:00 o'clock p.m. and saw accused-appellant and his five (5) companions without mentioning Gilbert Basao.

The dispositive portion of the judgment reads:

"WHEREFORE, in view of all the foregoing considerations, this Court finds:

a) In Criminal Case No. C-14, accused Pepe Iligan y Salahay, guilty beyond reasonable doubt of the crime of Robbery as defined and penalized under Paragraph 5 of Article 294 of the Revised Penal Code, there being no aggravating nor mitigating circumstances and applying the indeterminate sentence law, he is hereby sentenced to suffer an imprisonment ranging from four (4) years to two (2) months and one (1) day of Prision Correccional as minimum to eight (8) years and One day of Prision Mayor as maximum. to pay the victim through the heirs of Lt. Joerlick Faburada the sum of P37,000.00 without subsidiary imprisonment in case of insolvency and to pay the cost. Being detained, he is credited in the service of his sentence with the full term of his preventive imprisonment, if he agreed in writing to abide by the disciplinary rules imposed upon convicted prisoners, otherwise 4/5 hereof.

b) In Criminal Case No. C-15, accused Pepe Iligan y Salahay, guilty beyond reasonable doubt of the crime of Murder qualified by treachery as defined and penalized under Article 248 of the Revised Penal Code as amended and amended by Section 6 of the Republic Act No. 7659, is hereby sentenced to the maximum penalty of death. To pay the heirs of the victim Dra. Arlyn Faburada, the sum of P50,000.00 as life indemnity

of the victim; P100,000.00 for burial and actual expenses; P500,000.00 for moral damages and P10,000.00 for exemplary damages and to pay the cost.

c) In Criminal Case No. C-16, accused Pepe Iligan y Salahay, guilty beyond reasonable doubt of the crime of Murder qualified by treachery defined and penalized under Article 248 of the Revised Penal Code as amended and amended by Section 6 of Republic Act No. 7659, is hereby sentenced to the maximum penalty of death. To pay the heirs of the victim Lt. Joerlick Faburada the sum of P50,000.00 as life indemnity of the victim; P100,000.00 for burial and actual expenses; P500,000.00 for moral damages and P10,000.00 for exemplary damages and to pay the cost.

Pursuant to Section 22 of Republic Act No. 7659, let the criminal records in criminal cases nos. C-15 and C-16 be forwarded to the Supreme court of the Philippines for automatic review within twenty (20) days but not earlier than fifteen days after the promulgation of these judgments.

The Director of Prisons, New Bilibid Prisons, Muntinlupa City through the Provincial Warden of Surigao del Sur is ordered to take immediate custody of the convicted prisoner.

SO ORDERED."[24]

The accused-appellant raises the following assignment of errors in his brief:

I

THE TRIAL COURT COMMITTED GRAVE ERROR IN ADMITTING IN EVIDENCE THE TESTIMONY OF GILBERT BASAO AS A WITNESS FOR THE PROSECUTION.

II

THE TRIAL COURT COMMITTED GRAVE ERROR IN RELYING ON THE TESTIMONY OF REYNALDO ANGELES.

We find this appeal unmeritorious.

Our examination of the evidence convinces us that the trial court correctly relied on the testimony of Gilbert Basao which positively established that herein accused-appellant shot the Faburada spouses with an armalite rifle as they were riding tandem on a motorcycle in the afternoon of April 14, 1994; Lt. Faburada sustained 18 gunshot wounds[25] on his face and several parts of his body, and he was dragged by the motorcycle as it turned turtle. His wife Dra. Arlyn Faburada, then four (4) months pregnant, was thrown off the motorcycle and also sustained nine (9) gunshot wounds,[26] and when she attempted to reach her husband's firearm the latter was again shot by herein accused-appellant[27]. Afterwards the accused-appellant took away Lt. Joerlick Faburada's "PNPA" gold ring, one .45 caliber pistol and the latter's radio handset.

It has been time tested doctrine that a trial court's assessment of the credibility of a witness is entitled to great weight -- even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influences as in this case.[28] For the determination of credibility is the domain of the trial court, and the matter of assigning values to the testimonies of witnesses is best performed by it[29] which had the opportunity to observe the demeanor of the witnesses and is in a better position to evaluate their testimonies.[30] Thus, unless the trial judge plainly overlooked certain facts of substance and value which if considered might affect the result of the case, his assessment on credibility of witnesses must be respected.[31] In the case at bar, we find no cogent justification to depart from long standing jurisprudence.

In support of his first assigned error, the accused-appellant imputes inconsistencies to the testimony of Gilbert Basao. He avers that Gilbert Basao's testimony was a complete turn-around from his previous testimonies in the

trial of the cases against him; and when Gilbert Basao was on the witness stand during his own trial for these same offenses of murder and robbery, he vehemently denied having had something to do with the ambush-sl原因ing of Joerlick Faburada and his wife on April 14, 1994.

We are not convinced that there are such contradictions. Accused-appellant failed to point out specific contradictory statements to support his contention. The records show that the defense counsel had the opportunity, in the course of Basao's cross-examination, to confront said witness with his alleged inconsistent statements and utilize the same to discredit his testimony. During the cross-examination of witness Basao, the counsel for the defense only argued with the witness as regards the reason for the latter's acquittal. Thereafter, the defense counsel voluntarily waived his right to further cross-examine the said witness with respect to particular points of his testimony[32] which herein accused-appellant now points to this Court as a complete turn-around from said witness' previous testimony before the same court.

Where an allegedly inconsistent statement was not related to the witness during the cross-examination and was never asked to explain the same, it cannot later be used to discredit his entire testimony.[33] *Naval v. Panday*, 275 SCRA 654.33 For failure to raise the same when the time was ripe to do so, the defense has defaulted and waived its right to discredit the testimony of Basao. We have examined carefully the transcripts but we fail to find any material inconsistency in the testimony of Gilbert Basao that would impair his credibility and render his testimony unworthy of credence.

Notwithstanding the defense counsel's voluntary waiver to further cross-examine Basao, the trial court conducted its own searching questions of the latter. Despite the questions posed, Basao remained steadfast in relating his eyewitness account of the events that transpired before, during and after the incident when accused-appellant successfully carried out his criminal design to kill Lt. Faburada. Thus:

"COURT TO THE WITNESS:

Q After that .45 caliber pistol was taken from the body of Lt. Faburada, one ICOM Radio Handset and a class ring, who carried those items?

A Pepe Iligan.

Q When you arrived at Madrid was Pepe Iligan still holding these articles?

A Yes, sir.

Q

When you parted ways according to you, you went home at 9:00 o'clock in the morning, where were these articles, 1 .45 caliber pistol, 1 ICOM Radio Handset and a class ring?

A Pepe Iligan.

Q Considering that you were two (2) at the time when these articles were taken, did you not asked (sic) for your share?

A No, sir because I did not know the purpose when that was taken.

Q The next time when you saw him at Guingona Subdivision at Butuan City did you see that caliber .45 pistol, ICOM Radio Handset, and the class ring?

A No, sir.

Q What did you find?

A Only a ring.

Q Do you have any knowledge if the caliber .45 pistol was also pawned by Pepe Iligan?

A No, sir.

Q Did he not tell you about the ICOM Radio Handset and the caliber .45 pistol?

A No, sir.

Q Tell the court frankly, how did you know that the gun which was taken from Lt. Faburada is caliber .45?

A I saw it when we were walking.

Q Where did he placed (sic) that .45 caliber pistol?

A At his waist.

Q How about the ICOM Radio Handset?

A At his waist also.

Q You testified that Lt. Faburada was shot 6 to 8 meters away from Pepe Iligan, what was the position of Pepe Iligan when he shot Lt. Faburada?

A He was facing and pointing his gun to Lt. Faburada.

Q What position, please demonstrate?

A (Witness was pointing his firearm in horizontal position the barrel directing towards the victim.)

Q When Pepe Iligan visited you at Guingona Subdivision Butuan City did you have an agreement that you will proceed to Butuan City and he will follow?

A No, sir. I was even surprised why he arrived there.

Q In that morning on April 14, 1994 when he came to your house and invited you to go to Carrascal, did he tell you the purpose in going to Carrascal?

A He told me that may be we can make money in Carrascal.

Q From what source if you can remember, tell the Court?

A He told me he is a former worker at Ventura Timber Company he might me[e]t (sic) his friends working at Ventura.

Q Tell the Court at the time when you left your place, did you plan to kill Dra. Arlyn Faburada and Lt. Joerlick Faburada?

A No, sir.

Q The Court observed you the way you talk, and testified I am convinced that you are a friend of Pepe Iligan, is that correct?

A Yes, sir.

Q

Did Pepe Iligan confided (sic) to you that he will kill somebody that is why you accompany him?

A No, sir because if he told me I will not accompany him.

Q When you arrived at Cantilan and stop at Caltex, did you not notice his unusual doing?

A No, sir.

Q Were you not surprised why he was fully armed?

A No, sir because I know he was a CAGU.

Q Was it the first time he was in uniform?

A Yes, sir.

Q What prompted you to testify against him considering that he is your friend?

A I was bothered by my conscience that Lt. Joerlick Faburada and Dra. Arlyn Faburada will not be given justice.

Q That amount which was the proceeds of pawned ring, how much is your share?

A He did not give me because I did not asked for it.

Q Did not your friend told you that the reason he shot Faburada and his wife as a consequence because he was hired by somebody to kill Faburada?

A No, sir.

I have no more questions."[34]

Even though Basao may have deliberately failed to immediately reveal or disclose accused-appellant's identity when these cases were tried against him, it is settled that such delay does not, by itself, render such testimony less worthy of credence[35] especially where possible reatliation from the accused could not be dismissed as merely fanciful, since at that time accused-appellant was still at large. If the law and the rules of procedure do not prohibit an accused who has been found guilty of a crime from qualifying as a witness, there is no reason why Basao should be disqualified from testifying against his co-accused because of his acquittal. We find no reason to doubt the narration of Basao, who was present when the shooting occurred identifying herein accused-appellant as the one responsible for the death of the Faburada spouses.

Reynaldo Angeles corroborated Basao's testimony; Angeles pawned the ring of Lt. Faburada upon the request of the accused-appellant, who subsequently admitted to him that he fired at the Faburada spouses.

Under the second assignment of error, accused-appellant contends that the signature of Reynaldo Angeles in the pawn ticket and in the redemption receipt discredits the prosecution's claim that accused-appellant is the possessor of the ring and that he asked Angeles to pawn the same.

We are not persuaded. In light of the testimony of witness Angeles satisfactorily explaining his possession of the pawned ring, as corroborated by the testimony of witness Basao, the contention of herein accused-appellant cannot be believed. Other than accused-appellant's bare denials, no satisfactory explanation or evidence was offered to controvert the positive testimonies of witnesses Basao and Angeles before the trial court. As between the categorical testimony which has a ring of truth on one hand and a bare denial on the other, the former is generally held to prevail.[36] Accordingly, the positive testimony of Angeles that the ring came from herein accused-appellant; and that Angeles was just asked by the latter to pawn the ring must be upheld. At the witness stand, Angeles was resolute in pointing to herein accused-appellant as the source of the ring he pawned at the M-Lhuillier Pawnshop, viz:

"DIRECT EXAMINATION

ATTY. CAÑEDO:

x x x x x x x x

Q You said that you were requested by who?

A Pepe Iligan.

Q Now, please tell this Honorable Court what was then the reason why you were merely requested by Pepe Iligan to go with them to Butuan City?

A When I was still in the apartment I do not know what was their purpose.

COURT

Q You said you personally know Pepe Iligan, how were you introduced with them when they arrived at Padiay, Sibagat, Agusan del Sur?

A I was introduced by my wife.

Q Why, is your wife related to Pepe Iligan?

A Yes, sir.

Q Does Pepe Iligan usually go to your house at Padiay, Sibagat, Agusan del Sur?

A He always go there in the year 1992?

Q

What is the relationship of your wife and Pepe Iligan, if you know?

A Maybe they were first cousins or third cousins because they have the same family name.

Proceed

ATTY. CAÑEDO

X X X X X X X X

Q When you arrived in Butuan City at about 3:30 o'clock in the afternoon, what happened?

A

We arrived at Butuan City, Pepe Iligan gave me a ring and asked me "brod I have a ring you will pawn this and you will be the one to sign the receipt".

Q Did you agree with the request of Pepe Iligan to pawn the ring?

A Yes, sir.

Q In what pawnshop did you pawn the ring?

A M-Lhuillier Pawnshop.

Q Showing to you that particular ring can you still identify it?

A Yes, sir.

ATTY. CAÑEDO

I would request your honor that aside from this ring there will be other ring shown to this Witness so that to avoid further objection from the Defense.

x x x x x x x x

ATTY. CAÑEDO

Q

We are now showing to you Mr. Angeles a ring will you please try to examine this and tell this Honorable Court what relation has this ring to the ring you mentioned earlier that was pawn[ed] at M-Lhuillier Pawnshop in Butuan City?

(Witness is trying to examine the ring by looking at the front side and the inner side of the ring).

A This is the ring.

COURT

Q Why did you know that, that is the said ring that you pawn in M-Lhuillier Pawnshop, Butuan City?

A there is a marking inside and the outside.

Q What is the marking inside?

A Joerlick Faburada.

Proceed.

ATTY. CAÑEDO

Q

How about the markings outside?

A PNP Academy.

x x x x x x x x"[37]

"CROSS EXAMINATION

COURT

Q Who invited you to go to Butuan City?

A Pepe Iligan.

Proceed.

ATTY. ARREZA

Q When Pepe Iligan invited you to Butuan City, Gilbert Basao did not say anything?

A No, sir.

Q Did Gilbert Basao followed (sic) you and Pepe Iligan to Butuan City?

A Yes, sir.

Q And when you reached Butuan City you went to M-Lhuillier Pawnshop, am I right?

A Yes, sir.

x x x x x x x x

Q Up to the last minute when you were already in the pawnshop Gilbert Basao did not say anything?

A No, sir.

Q Because only as a matter of fact it was only Pepe Iligan [who] talked to you?

A

Yes, sir.

Q And he did not say any word about the ring?

A Yes, sir.

Q And it was you who did the talking about the pawning?

A Yes, sir.

Q So you controlled the whole transactions?

A

No, sir, when it comes to the pawning I was the one who pawn [ed] the ring.

COURT

Q And where did that ring come from?

A Pepe Iligan.

Proceed.

ATTY. ARREZA

Q And Pepe Iligan did not say anything when you told him that who is the owner?

A No, sir.

Q And you did not try to see the inner inscription of the ring?

A No, sir.

Q And you did not also notice that in the outer portion of the ring there is a PNPA engrave[d] in that ring?

A Of course I read it.

COURT

Q When you say of course "I read [it]" what have you seen"

A PNP Academy.

Q How about inside the ring?

A I did not see the inscription of the engrave when I pawn the ring.

Proceed."[38]

"RE-DIRECT EXAMINATION

ATTY. CAÑEDO

Q

Mr. Reynaldo Angeles a while ago you said that when you were asked by the counsel of the defense you said you were able to see and read the markings outside in this ring and identified by you as the ring pawned by you at M-Lhuillier Pawnshop, now please tell the Court at what point of time you were able to see and read the inner markings of this ring.

ATTY. ARREZA

Objection, your honor that is misleading?

COURT

Objection overruled, witness may answer.

WITNESS

A At the time when we already redeemed the ring together with the CIS team.

ATTY. CAÑEDO

Q What have you read in the inner marking.

A Joerlick Faburada."^[39]

Angeles thus positively identified the accused-appellant as the person who gave the ring to him and who asked him to pawn the same ring of the late Lt. Joerlick Faburada.

The accused-appellant failed to convincingly ascribe any ill-motive on the part of Angeles, well enough to truly make him fabricate such a serious imputation as that recited in his testimony. The defense counsel, even the accused-appellant himself, could not impute any improper motive to the said witness during the trial which might have impelled him to testify falsely, thus:

"Q

And in fact you were also testif[y]ing Mr. witness for the passed (sic) 6 months you never had a quarrel with Reynaldo Angeles, is that correct?

A

No sir.

Q

And in fact Mr. Pepe Iligan up to the very time that Reynaldo Angeles testified here in open Court that you were the one who requested to pawn the ring to the pawnshop, the ring of Joerlick Faburada and you never have an alter[c]ation with Reynaldo Angeles, is that correct?

A

No sir.

Q

Do you know the wife of Reynaldo Angeles?

A

Yes sir.

Q

What is the name of the wife of Reynaldo Angeles?

A

I forgot the name.

Q

And in fact Mr. Witness you will agree with me that the wife of Reynaldo Angeles is related to your wife?

A

Yes sir.

Q

What is the relation of your wife to the wife of Reynaldo Angeles?

A

The mother of the wife of Reynaldo Angeles is the brother of the father of my wife.

Q

In short your wife and the wife of Reynaldo Angeles is first degree cousin?

A

Yes sir.

Q

From the very time you were with Reynaldo Angeles at brgy. Kolambugan, Agusan del Sur up to the very time when Reynaldo Angeles pinpointed (to) you as the person who requested to pawn the ring to the pawnshop is it not the wife of Reynaldo Angeles has a good relation to your wife?

A

Yes sir.

Q

In fact Mr. Pepe Iligan you cannot remember of any incident that your wife and the wife of Reynaldo Angeles quarreled?

A

No sir.

Q

How about your family and the family of Reynaldo Angeles, like the parents of your wife and the parents of the wife of Reynaldo Angeles, do you know if they quarreled?

A

No sir.

Q

So that when Reynaldo Angeles testified here, you will agree that there was no alter(c)ation why he pointed (to) you as the person who requested him to pawn the ring, is that correct?

A

I did not know why he pointed (to) me because I have not done wrong.

Q

Was there any incident that you filed a case against Reynaldo Angeles?

A

No sir.

Q

There was an incident that Reynaldo Angeles filed a case against you?

A

No sir."^[40]

Angeles' testimony is entitled to credence.

The trial court also correctly held that the defense of denial and alibi failed to pass the test of credibility. Accused-appellant failed to prove that his presence at the place of the crime at the time it was committed was physically impossible.^[41] Alibi was not convincingly established.

First, accused-appellant's testimony that on April 14, 1994, the date when the crime took place, he was on duty the whole day in a detachment in Gacub, Carmen, Surigao del Sur was not sufficient. Although alibi, like denial, is inherently weak and can be easily fabricated,^[42] it could also serve as basis for an acquittal if it could really be shown by clear and convincing evidence that it was indeed physically impossible for him to be at the crime scene at that time.^[43] In this case, the accused-appellant did not even reveal whether or not he had companions when he was on duty, who could support his claim. There was no corroborative evidence (i.e., assignment order, log book showing his time of report and discharge, testimony of a superior or other persons also assigned in said place, etc.) to substantiate his claim that he was indeed in Gacub the whole day. Accused-appellants failure to present witnesses who could have supported his claim tends to show that they would not have corroborated his allegations had they testified.^[44]

Moreover, accused-appellant failed to prove that the distance between Gacub and the crime scene made it physically impossible for him to be at the locus criminis at the time of its commission. For alibi to offset the

evidence of the prosecution demonstrating the guilt of an accused-appellant, the latter must establish not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[45] It is not enough that the appellant allege that he was somewhere else when the offense was committed for the requisites of time and place must be strictly met.[46] Accordingly, accused-appellant's bare assertions cannot prevail over the positive testimony of the prosecution's principal witness, Gilbert Basao. For as between the self-serving testimony of the accused and the positive identification by the prosecution witness, the latter deserves greater credence.[47]

The testimony of Alfredo Yagao fails to impress us. As observed by the trial court, Alfredo Yagao offered conflicting statements before the court. In his affidavit submitted during the preliminary investigation against Gilbert Basao and the herein accused-appellant, he claimed that he was at Gacub, Hinapoyan, Carmen Surigao Del Sur from 12:00 o'clock up to 1:00 o'clock in the afternoon while in his direct testimony given in open court he testified that he was in Gacub from 8:00 o'clock a.m. up to 4:00 o'clock p.m. where he still saw herein accused-appellant and his five companions.[48] Such omission in the affidavit referred to a material point in accused-appellant's defense of alibi that one relating as an eyewitness would not be expected to fail to mention. In such a case, both sworn statements, before the court and in the affidavit, being contradictory statements impeaches Yagao's own credibility.[49]

Finally, the Court notes that on direct examination, the accused-appellant claimed that he only learned about these cases when he was arrested in 1996.[50] However, upon his cross-examination, he said that he was asked to surrender his firearm by the Cadreman at the 67th Infantry Battalion and was dropped from the rolls of the CAGU's in 1994 due to the pendency of these cases against him; that when he went to Canlubang, Manila he was already aware of these cases against him and he did not surrender to the authorities for fear of being shot by them.[51] It would appear that after he was charged for these offenses on August 30, 1994, he became a "fugitive from justice," i.e. one who after being charged, flees to avoid prosecution.[52] It is a well-entrenched doctrine that an accused's flight from the scene of the crime and his act of hiding himself until he was arrested are circumstances highly indicative of his guilt, for as has been wisely said, the wicked flee even when no man pursueth but the righteous are as bold as a lion.[53] For a truly innocent person would normally grasp the first opportunity to defend himself and to assert his innocence over a crime imputed against him.[54]

For the death of Lt. Joerlick Faburada, subject of Criminal Case No. C-16, and Dra. Arlyn Faburada, subject of Criminal Case No. C-15, the crime committed was murder qualified by treachery or alevosia.

Treachery exists "when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make." [55] Settled is the rule that an unexpected and sudden attack under circumstances which render the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack, constitutes alevosia.[56] Alevosia is taken into account, even if the deceased was face to face with his assailant(s), when the attack was so sudden and unexpected that the victim was not in a position to offer an effective defense.[57] In the instant case, the accused-appellant attacked Lt. Faburada while the latter was manning his motorcycle which he (Lt. Faburada) and his wife was riding. When the accused-appellant was only about "six (6) to eight (8) meters away"[58] from the speeding motorcycle he suddenly strafed them with his armalite rifle, attacking the Faburada spouses while they were not in any position to offer an effective defense against their aggressor. Both of these victims were completely oblivious of any possible harm the accused-appellant would inflict upon them.

The aggravating circumstance of treachery, in Criminal Case No. C-15, was also properly appreciated by the trial court in the death of Dra. Arlyn Faburada, the wife of Lt. Joerlick Faburada. For even assuming that

accused-appellant only intended to kill Lt. Joerlick Faburada, the treacherous nature of the attack was made in continuous aggression that cannot be broken up to constitute a separate, distinct and independent attack. The settled rule is that in order to appreciate treachery in continuous aggression, the same must be shown present at the inception of the attack,. as in this case.[59] Assuming that the real object of the assault is Lt. Faburada and that the death of Arlyn was purely accidental as a result of the accused-appellant's firing of his M-16 rifle, it does not modify the nature of the crime nor lessen accused-appellant's criminal liability under Article 4 paragraph 1 of the Revised Penal Code, to wit:

"Article 4. Criminal Liability. -- Criminal Liability shall be incurred:

1. By any person committing a felony (delito) although the wrongful act done be different from that which he intended."

Our ruling in *People v. Guevarra*,[60] is instructive:

"The crime committed by the appellant is murder qualified by treachery. When he shot the victim, appellant was well hidden behind a tree that the victim, who was unarmed and unaware, had no way of defending himself. Thus, appellant employed means, methods or forms to insure the execution of the crime, without risk to himself."

"As the appellant committed the act with intent to kill and with treachery, the purely accidental circumstance that as a result of the shots a person other than the one intended was killed, does not modify the nature of the crime nor lessen his criminal responsibility, and he is responsible for the consequences of his acts."[61]

"The qualifying circumstance of treachery may be properly considered, even when the victim of the attack was not the one whom the defendant intended to kill, if it appears from the evidence that neither of the two persons could in any manner put up defense against the attack or become aware of it."[62]

Also in *People vs. Trinidad*,[63] we have held that treachery attended the commission of the felony even though the victim of the attack was not the person whom accused-appellant intended to kill, thus:

"That another person, and not the victim, was the intended victim is not incompatible with the existence of treachery. Treachery may be taken into account even if the victim of the attack was not the person whom the accused intended to kill."

We, however, disagree with the finding of the trial court that the aggravating circumstance of evident premeditation attended the killing of the Faburada spouses. Despite the established fact that the victims were suddenly attacked, while riding a motorcycle without the victims having an opportunity to defend themselves from such sudden attack, the prosecution was not able to prove with clear and convincing evidence that the aggravating circumstances of evident premeditation also attended the commission of the crime in both Criminal Cases Nos. C-15 and C-16. This aggravating circumstance cannot be used to increase the penalty as the prosecution failed to show when accused-appellant meditated and reflected upon his decision to kill the victim and the intervening time that elapsed before this plan was carried out. The records and the transcripts of stenographic notes are barren of positive evidence of any prior reflection on, followed after some time by persistence in, the criminal resolution of the herein accused-appellant. Evident premeditation exists when the following requisites are present:

- The time when the offender determined to commit the crime;
- An act manifestly indicating that the culprit has clung to his determination;
- A sufficient lapse of the time between the determination and execution, to allow him to reflect upon the consequences of his act.[64]

While the motive for the commission of the crime may be duly established it does not constitute sufficient ground to consider the existence of evident premeditation.[65] Motive may be used to indicate the time when the offender determined to commit the crime and the outward act manifestly indicating that the culprit has clung to such determination. However, the fact of motive alone is not sufficient to prove the most important element, the third element, proof that sufficient lapse of time between the determination and the execution intervened to allow the offender to reflect on the consequences of his act.

To warrant a finding of evident premeditation, it must appear not only that the accused decided to commit the crime prior to the moment of its execution but also that this decision was the result of meditation, calculation, reflection, or persistent attempt.[66] In the case at bar, no evidence was presented regarding the time when the accused-appellant planned to kill the victim, and to show that he clung to his determination to kill the deceased, and that sufficient time had elapsed between the determination and execution of the crime to allow his conscience to overcome the resolution of his will. Settled is the rule that when it is not shown as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered.[67]

The aggravating circumstance of abuse of superior strength alleged in the aforementioned two Informations for the death of the spouses Faburada is already absorbed in the qualifying circumstance of alevosia or treachery so the same need not be appreciated separately.[68]

The aggravating circumstance of "cruelty by deliberately and inhumanly augmenting the suffering of the victim, outraging or scoffing at his/her person," cannot be appreciated, in both Criminal Cases Nos. C-15 and C-16, for lack of sufficient basis in the evidence. Cruelty as an aggravating circumstance cannot be appreciated in the absence of any showing that herein accused-appellant, for his pleasure and satisfaction, caused the victim to suffer slowly and painfully and inflicted on him unnecessary physical and moral pain.[69] The test in appreciating cruelty as an aggravating circumstance is whether the accused-appellant deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission or inhumanly increased the victim's suffering or outraged or scoffed at his person or corpse.[70]

The specific aggravating circumstance of "with insult or in disregard of the rank of the offended party" alleged in Criminal Cases Nos. C-15 and C-16 is, likewise, unavailing in both cases. The prosecution failed to establish proof of the specific facts demonstrating that the accused-appellant's act of killing Lt. Joerlick Faburada and Dra. Arlyn Faburada was deliberately intended to disregard or insult the respect due them on account of their rank, age, or sex. Although the trial court found that herein accused-appellant's act of killing the deceased Lt. Joerlick Faburada was motivated by his resentment at the latter's strict enforcement of the laws nonetheless, motive alone is not sufficient to show that herein accused-appellant deliberately intended to offend or insult the rank of the victim. It is essential that the deliberate intent to offend or insult the rank of the victim must be shown.[71] The aggravating circumstance of with insult or in disregard due to rank is appreciated against an accused only when there is proof of fact of disregard and deliberate intent to insult the rank of the victim.[72] For the circumstances aggravating the penalty of an offense must be proved as conclusively as the act itself, mere suppositions or presumptions being insufficient to establish their presence.[73]

Likewise in Criminal Case No. C-15, for the death of Dra. Arlyn Faburada; the same aggravating circumstance cannot be appreciated since no intent was established to demonstrate that accused-appellant inflicted such harm by reason of her being a physician or her relative position in civil or social life as a physician. For the aggravating circumstance of "with insult or in disregard of the respect due the offended party on account of his rank, age, or sex" to be appreciated, intent to deliberately cause injury by reason of the rank, age, or sex of the victim must be indubitably established.[74] We, therefore, find reason to reduce the death sentences imposed by the trial court in

Criminal Cases Nos. C-15, for the death of Dra. Arlyn Faburada, and C-16, for the death of Lt. Joerlick Faburada. Murder is punishable under Article 248 (1) of the Revised Penal Code, as amended by R.A. 7659, which provides:

"Article 248. Murder. -- Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or means of persons to insure or afford impunity.
2. x x x.
3. x x x.
4. x x x.
5. x x x.
6. x x x."

In consonance with Article 63 of the Revised Penal Code, the absence of any aggravating or mitigating circumstance justifies the application of a lesser penalty, thus:

"Article 63. Rules for the application of indivisible penalties.

"x x x x x x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. x x x.
2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
3. x x x.
4. x x x."

Accordingly, the penalty of reclusion perpetua, not death, should be meted upon herein accused-appellant in both Criminal Cases Nos. C-15 and C-16.

We come now to the award of damages in both Criminal Cases Nos. C-15 and C-16 which was just stipulated by both counsels for the heirs of the two deceased and the counsel for herein accused-appellant.

With respect to Criminal Case C-15, for the death of Dra. Arlyn Faburada, the amount of P100,000.00 for the burial and other expenses incurred in connection therewith was stipulated upon and may be deemed reasonable; the award of P50,000.00 as death indemnity is in accord with established jurisprudence.[75]

However, the award of P500,000.00 as moral damages is excessive and should be correspondingly reduced, bearing in mind that the purpose for making such award is not to enrich the heirs of the victim but to compensate them for injuries to their feelings.[76] Accordingly, an award of P50,000.00 would be adequate and reasonable pursuant to established jurisprudence.[77]

The award of P10,000.00 for exemplary damages cannot be sustained pursuant to Article 2230 of the New Civil Code which provides that exemplary damages may be imposed only when the crime is committed with one or

more aggravating circumstances.[78]

As regards Criminal Case No. C-16, pertaining to the death of Lt. Joerlick Faburada, there is also a need to modify the award of damages made by the trial court.

As in Civil Criminal Case No. C-15, the P500,000.00 award for moral damages must be reduced to P50,000.00 only and the award of P10,000.00 as exemplary damages should be deleted.

Likewise, the amount of P100,000.00 reimbursement for the burial and incidental expenses was agreed upon by the prosecution and the heirs of the deceased; the indemnity of P50,000.00 by reason of the death of Lt. Joerlick Faburada is in order.

As regards Criminal Case No. C-14, the trial court held that herein accused-appellant's primary criminal intent was to kill the late Lt. Joerlick Faburada because of his very strict enforcement of the laws in Cantilan, Surigao del Sur and not to deprive the latter of his personal belongings.[79] It concluded that herein accused-appellant was guilty of robbery under Article 293 of the Revised Penal Code which provides:

"Article 293. Who are guilty of robbery.-- Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery."

There are only two ways in which the crime of robbery can be committed: 1) by means of violence against or intimidation of any person, or 2) by means of force upon anything.[80] The evidence on record in this case is devoid of basis to support the conclusion reached by the trial court that the crime committed is robbery.

Our ruling in *People v. Salazar*[81] is doctrinal:

"if the original criminal design does not clearly comprehend robbery, but robbery follows the homicide as an afterthought or as a minor incident of the homicide, the criminal act should be viewed as constitutive of two offenses and not of a single complex crime. Robbery with homicide arises only when there is a direct relation, an intimate connection, between the robbery and the killing, even if the killing is prior to, concurrent with, or subsequent to the robbery."

In the instant case, it is apparent that the taking of the personal properties from the victim was an afterthought. The personal properties were taken after accused-appellant has already successfully carried out his primary criminal intent of killing Lt. Faburada and the taking did not necessitate the use of violence or force upon the person of Lt. Faburada nor force upon anything. Thus, the crime is theft under Article 308 of the same Code which provides, viz:

"Art. 308. Who are liable for theft. - Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent. x x x."

Although the crimes of robbery and theft under the Revised Penal Code have in common the elements of (a) unlawful taking; (b) with intent to gain; (c) taking of personal property; and (d) the property taken belongs to another, they differ in the manner in which they are asported. Considering that the victim was already heavily wounded when his personal properties were taken, there was no need to employ violence against or intimidation upon his person. Thus, in Criminal Case No. C-14, accused-appellant can only be held guilty of the separate offense of theft under Article 308, penalized under Article 309 of the Revised Penal Code.

During the trial, the value of the stolen personal effects was the subject of the testimony[82] of SPO4 Manuel L. Azarcon, Deputy Chief of Cantilan, Surigao del Sur; who declared that his .45 caliber pistol was valued at

P36,000.00 to P40,000.00; the ICOM handset radio at P9,000.00 and the PNPA gold ring at P8,000. Under the rule on opinions of ordinary witnesses, it is a standing doctrine that the opinion of a witness is admissible in evidence on ordinary matters known to all men of common perception.[83] Here, the witness is not just an ordinary witness, but virtually an expert, since his work as a Deputy Chief of Police has given him the exposure to and experience in fixing the value of such ordinary police paraphernalia. It is noted that during the trial, the defense never cross-examined SPO4 Azarcon on these points. Such opportunity to cross-examine takes the testimony of said witness out of the hearsay rule. The lack of objection by the counsel for the defense to the value placed by the aforesaid witness gives credence to Azarcon's testimony.

Article 309, of the Revised Penal Code provides:

"Penalties. - Any person guilty of theft shall be punished by:

- The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceed the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and for purposes of the other provisions of this Code, the penalty shall be termed prison mayor or reclusion temporal, as the case may be."

Since the total value of the stolen property is P53,000.00 the accused-appellant should be meted the penalty of the maximum period of the penalty prescribed by Article 309 which is the maximum of prision mayor in its minimum and medium periods plus one year for each additional ten thousand pesos in excess of P22,000.00.[84] Applying the Indeterminate Sentence Law, the penalty for this particular offense of theft that may thus be imposed is anywhere from two (2) years, four (4) months and one (1) day of prision correccional minimum period to six (6) years of prision correccional maximum period, as minimum, to anywhere from eight (8) years, eight (8) months and one (1) day to ten (10) years of prision mayor medium period, plus three (3) years for the additional P30,000.00 in excess of P22,000.00 value of the property taken, or eleven (11) years of prision mayor maximum period, as maximum.

WHEREFORE, the decision, dated December 10, 1996, of the Regional Trial Court of Cantilan, Surigao del Sur (Branch 41) is AFFIRMED with the MODIFICATION that:

- In Criminal Case No. C-14, accused-appellant is found guilty beyond reasonable doubt of theft and is hereby sentenced to a prison term of two (2) years, four (4) months and one (1) day of prision correccional minimum period, as minimum, to eight (8) years, eight (8) months and one (1) day of prision mayor plus three (3) years for the additional P30,000.00 in excess of P22,000.00 value of the property taken, or a total of eleven (11) years, eight (8) months and one (1) day, as maximum period and to pay the amount of P45,000.00[85] as reparation for the unrecovered stolen articles;

- In Criminal Case No. C-15, accused-appellant is found guilty beyond reasonable doubt of the crime of murder qualified by treachery and is hereby sentenced to suffer the penalty of reclusion perpetua; he is also ordered to pay the heirs of the victim:

a) Death indemnity

-

P50,000.00

b) Moral damages

-

P50,000.00

c) Actual damages

-

P100,000.00

- In Criminal Case No. C-16, accused-appellant is found guilty beyond reasonable doubt of the crime of murder qualified by treachery and is hereby sentenced to suffer the penalty of reclusion perpetua; he is also ordered to pay the heirs of the victim:

a) Death indemnity

-

P 50,000.00

b) Moral damages

-

P 50,000.00

c) Actual damages

-

P100,000.00

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, and Ynares-Santiago, JJ., concur.

[1] RTC Decision, October 14, 1996, p. 35; Penned by Judge Romeo C. Buenaflor; Records C-16, p. 238.

[2] Exhibit "N-7-N-32;" Tsn., September 13, 1995, pp. 8-32; Record C-16, pp. 396-420.

[3] Exhibit "M-5-M-16;" Tsn., November 15, 1995, pp. 6-17; Record C-16, pp. 374-385.

[4] Exhibit "G-G-2," on Dra. Arlyn Paralan Faburada; Record C-15, p. 49 and Exhibit "H-H-2," on Joerlick Faburada; Record C-16, p. 29.

[5] Basao, Tsn., November 6, 1996, pp. 5-22.

[6] Exhibit "N-8-N-18;" Tsn., September 13, 1995, pp. 9-17; Record C-16, pp. 397-407.

[7] Angeles, Tsn., November 6, 1996, pp. 7-23.

[8] Record C-15, pp. 41-43.

[9] Angeles, Tsn..., November 6, 1996, pp. 24-30.

[10] Exhibit, "M-5--M-10", November 15, 1995, pp. 6-11; Record, C-16, pp. 374-379."

[11] Exhibit, "M-15", November 15, 1995, p. 16; Record, C-16, p. 384.

- [12] Iligan, Tsn., November 7, 1996, pp. 10-14.
- [13] Ibid., p. 10.
- [14] Ibid.
- [15] Ibid.
- [16] Ibid., p. 11.
- [17] Ibid., p.13.
- [18] Ibid., p. 11.
- [19] Ibid.
- [20] Ibid., p. 14.
- [21] Iligan, Tsn., November 7, 1996, pp. 15-27.
- [22] Yagao, Tsn., November 8, 1996, pp. 2-6.
- [23] Yagao, Tsn., November 8, 1996, pp. 6-15.
- [24] RTC Decision, December 10, 1996, pp. 22-24; Record C-15, pp. 407-409.
- [25] Post-mortem Certificate conducted by Dr. Luciano B. Ortega, Hospital Chief, Cantilan Polymedic Hospital, Record C-16, p. 31.
- [26] Post-mortem Certificate conducted by Dr. Luciano B. Ortega, Hospital Chief, Cantilan Polymedic Hospital, Record C-15, p. 47.26
- [27] Angeles, Tsn., November 6, 1996, p. 18.27
- [28] People v. Edgar S. Alojado, G.R. No. 122966-67, March 25, 1999.28
- [29] Austria v. CA, 273 SCRA 296; People v. Bundang, 272 SCRA 641.29
- [30] People v. Roncal, 272 SCRA 242.30
- [31] People v. Butron, 272 SCRA 352.31
- [32]
- [33] See Basao, Tsn., November 6, 1996, pp. 22-23.32
- [34] Basao, Tsn., November 6, 1996, pp. 23-26.
- [35] See People v. Cabuang, 217 SCRA 675; People v. Santos, 270 SCRA 650; People v. Bundang, 272 SCRA 641; People v. Herbieta, 269 SCRA 472.
- [36] People v. Bello, 237 SCRA 347; People v. Biago, 182 SCRA 411; People v. Abonada, 169 SCRA 530.
- [37] Angeles, Tsn., November 6, 1996, pp. 9-12.
- [38] Angeles, Tsn., November 6, 1996, pp. 25-27.
- [39] Ibid. at pp. 30-31.
- [40] Iligan, Tsn., November 7, 1996, pp. 19-21.

[41] People v. Edgar S. Alojado, *supra*. citing People v. Canada, 253 SCRA 277, 286, February 6, 1996; People v. Tulop, GR No. 124829, April 21, 1998; People v. Pili, GR No. 124739, April 15, 1998; People v. Balmoria, GR Nos. 120620-21, March 20, 1998; People v. Pallarco, GR No. 119971, March 26, 1998; People v. Cabebe, GR No. 125910, May 21, 1998; People v. Sabalones, GR No. 123485, August 31, 1998; and People v. Cawaling, GR No. 117970, July 28, 1998.

[42] People v. Pontillar, Jr., 275 SCRA 338; People v. Marollano, 276 SCRA 84; People v. Ombrog, 268 SCRA 93.

[43] People v. Carlos Bation y Alamag, G.R. No. 123160, March 25, 1999 citing People v. Villapando, 178 SCRA 341 (1989); People v. Manzanares, 177 SCRA 427 (1989).

[44] People v. Dansal, 275 SCRA 549; First Philippine International Bank v. CA, 252 SCRA 259.

[45] People v. Dadles, 278 SCRA 393, People v. Zamora, 278 SCRA 60; People v. Tagolimot, 282 SCRA 231; People v. Arellano, 282 SCRA 500; People v. Midtomod, 283 SCRA 395.

[46] People v. Carlos Bation y Alamag, *supra*. citing People v. Abaya, 170 SCRA 691 (1989).

[47] People v. Henry Benito, G.R. No. 128072, February 19, 1999.

[48] RTC Decision, December 10, 1996, p. 15; Rollo, p. 400.

[49] People v. Artiaga, 274 SCRA 685.

[50] Iligan, Tsn., November 7, 1996, pp. 12-13.

[51] *Ibid.* pp., 16-17.

[52] People v. Senen Prades, G.R. No. 127569, July 30 1998.

[53] People v. Tanote, 238 SCRA 443.

[54] People v. Rey Solis, G.R. No. 124127; June 29, 1998.

[55] Article 14 (16), Revised Penal Code of the Philippines.

[56] People v. Alvarez, 267 SCRA 266.

[57] People v. Maribao, 279 SCRA 70; People v. Sancholes, 271 SCRA 527; People v. Dinglasan, 267 SCRA 26; People v. Tampon, 258 SCRA 115.

[58] Basao, Tsn., November 6, 1996, p. 14.

[59] People v. Zumil, 275 SCRA 182.

[60] 23 SCRA 58.

[61] *Ibid.* at p. 72.

[62] *Ibid.* citing People v. Guillen, 85 Phil. 907; People v. Tolentino, et al., 82 Phil. 808; People v. Mamasalayan, 92 Phil. 639; People v. Gatbunton, L-2435, May 10, 1950.

[63]

[64] People v. Sergon and Ramil Manes, G.R. No. 122737, February 17, 1999 citing People v. Bongadillo, 234 SCRA 233.

- [65] *People v. Rolando Valdez*, G.R. No. 127663, March 11, 1999.
- [66] *People v. Antonio V. Eribal*, G.R. No. 127662, March 25, 1999.
- [67] *People v. Derilo*, 271 SCRA 633.
- [68] *People v. SPO1 Romulo Gutierrez, Jr.*, G.R. No. 116281 [February 8, 1999]; *People v. Cheng*, 279 SCRA 129.
- [69] *People v. Sion*, 277 SCRA 127.
- [70] *People v. Ferrer*, 255 SCRA 19.
- [71] *People v. Verchez*, 233 SCRA 174.
- [72] Luis B. Reyes, "The Revised Penal Code, Book One: Articles 1-113," 14th Ed., 1998, p. 330 citing *People v. Talay*, 101 SCRA 332, 347; also in *People v. Peña*, 291 SCRA 606.
- [73] *People v. Derilo*, 271 SCRA 633.
- [74] See Note 71; *People v. Collado*, 196 SCRA 519; *People v. Capillas, et al.*, 108 SCRA 173; *People v. Pagal, et al.*, 79 SCRA 570.
- [75] *People v. Peña*, 291 SCRA 606; *People v. Aringue*, 283 SCRA 291, 307 (1997) citing *People v. Teehankee, Jr.*, 249 SCRA 110-114; *Sulpicio Lines, Inc. v. CA*, 246 SCRA 376.
- [76] *People v. Mariano Verde*, G.R. No. 119077, February 10, 1999.
- [77] *Ibid.* citing *People v. Aringue*, *supra*.
- [78] Article 2230, New Civil Code.
- [79] Record C-15, p. 402.
- [80] *People v. Gungon*, 287 SCRA 618.
- [81] 277 SCRA [1997] citing Aquino, the Revised Penal Code, Vol. III, 1998 ed., pp. 113-117.
- [82] Exhibit "N-11," Tsn. September 13, 1995, p. 12; Record, C-16, p. 400.
- [83] *People v. Martinez*, 274 SCRA 259, 272-273 [1997].
- [84] See *People v. Gungon*, 287 SCRA 618, 643.
- [85] The PNP gold ring, valued at P8,000.00 is in the custody of the trial court.

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