PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO S. ANTONIO, SPO4 JUANITO N. NIETO AND SPO1 HONORIO CARTALLA, JR., ACCUSED-APPELLANTS.

G.R. No. 128900. July 14, 2000

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-128900/

YNARES-SANTIAGO, J.:

This is an appeal from the Decision dated April 30, 1997, rendered by the Regional Trial Court of Pasig City, Branch 156 in Criminal Case No. 111232-H, for Murder, the dispositive portion of which is quoted hereunder, to wit:

> WHEREFORE, finding accused ALBERTO S. ANTONIO @ "Ambet", GUILTY beyond reasonable doubt of the crime of Murder, qualified by treachery as charged in the Information, and there being no mitigating or any aggravating circumstance, he is hereby sentenced to suffer the penalty of reclusion perpetua, pursuant to Sec. 6 of Republic Act No. 7659 entitled "An Act to Impose The Death Penalty On Certain Heinous Crimes" and Art. 63, paragraph 2 of the Revised Penal Code.
>
> In the service of his sentence, accused ALBERTO S. ANTONIO @ "Ambet" shall be credited in full with the period of his preventive imprisonment.
>
> The guilt of both accused JUANITO NIETO y NEMER and HONORIO C. CARTALLA, JR., as accessories, having also been established beyond any reasonable doubt, each of them is hereby sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correcional as minimum to eight (8) years and one (1) day of prision mayor as maximum.
>
> Accused ALBERTO S. ANTONIO @ "Ambet" is likewise hereby ordered to pay, unto the heirs of Arnulfo B. Tuadles, the following sums:
>
> - P50,000.00, as indemnity for the death of Arnulfo B. Tuadles;
>
> - P226,298.36, as actual damages;
>
> - P7,200,000.00, representing compensable earnings lost by reason of Arnulfo B. Tuadles' death;
>
> - P3,000,000.00 or the stipulated P1,000,000.00 each for the three (3) children of Arnulfo B. Tuadles, and another P500,000.00 for the widow, Ma. Odyssa "Suzette" Tecarro-Tuadles, as moral damages;
>
> - P50,000.00, as exemplary damages;
>
> - Costs.
>
> In case of insolvency of accused ALBERTO S. ANTONIO @ "Ambet", accused JUANITO NIETO y NEMER and HONORIO C. CARTALLA, JR., shall be liable to pay, jointly and severally, one-third (1/3) of the above-adjudicated sums or the amount of P3,675,432.78 unto the said heirs of Arnulfo B. Tuadles.
>
> In any event, the foregoing civil liabilities shall all be without subsidiary imprisonment in case of insolvency.

> Being instruments of the crime, let the caliber .9mm Beretta Mode 92F with Serial Number BER-041965-Z, including its black magazine and five (5) live bullets, which are presently under the custody of the Court, be confiscated and forfeited in favor of the Government and turned over to the Firearms and Explosives Office, Camp Crame, Quezon City.
>
> Let a Commitment Order be issued for the transfer of accused ALBERTO S. ANTONIO @ "Ambet" from the San Juan Municipal Jail to the Bureau of Corrections, Muntinlupa City.
>
> SO ORDERED.[1]

On that fateful morning of November 2, 1996, what should have been an amiable game of cards between two erstwhile friends turned into a deadly confrontation resulting in the fatal shooting of one by the hand of the other. The victim, Arnulfo "Arnie" Tuadles, a former professional basketball player, succumbed instantaneously to a single gunshot wound right between the eyes, inflicted with deadly precision by the bullet of a .9mm caliber Beretta pistol.

Convicted of murder by the trial court as the killer is Alberto "Ambet" S. Antonio, a one-time chairman of the Games and Amusement Board (GAB). It was during his stint as such that he and Tuadles became socially acquainted. They somehow lost touch, but later became reacquainted when they both started frequenting the International Business Club (IBC), located along Wilson Street in San Juan, Metro Manila, which houses amenities such as a dining room, music bar and gameroom. Often, the two would meet with other members and friends to play cards in the gameroom at the second floor of the club. Their preferred games were poker or "pusoy dos", ordinary poker or Russian poker. Their bets always ran into the tens of thousands of pesos.

The tragic events began to unravel in the final hours of November 1, 1996. Antonio, Tuadles, and a certain Danny Debdani, then president of the IBC, had agreed to meet at the club for another poker session, their third night in a row. Antonio arrived at the club first, followed by Tuadles at around midnight. Debdani, however, failed to appear, so after waiting for sometime, Antonio and Tuadles decided to play "pusoy dos", a game for two (2) players only. They continued playing until morning, pausing only when either of them had to visit the restroom. They stopped playing at around 9:00 o'clock in the morning of November 2, 1996, to eat breakfast.

When it came time to tally their scores and collect the winnings from the loser, an argument arose. It is at this point where the prosecution and the defense presented two very different scenarios. The prosecution alleged and sought to prove that in the course of an argument, without warning or cause, Antonio pulled his gun from behind his back and shot Tuadles at very close range, thus employing treacherous means to accomplish the nefarious deed. The pivotal evidence presented by the prosecution was the testimony of one Jose Jimmy T. Bobis, a security guard who testified as to how the shooting of Tuadles occurred.

> On the other hand, the defense hinged its opposing arguments on the testimony of accused Antonio himself, who testified that their argument was caused by Tuadles' refusal to pay Antonio's winnings. In the middle of a heated altercation where they traded expletives, Tuadles suddenly grabbed Antonio's gun from atop a sidetable. Fearing for his life, Antonio claimed that he reached for Tuadles' hand and they grappled for possession of the gun. As they wrestled, a single shot roared, Tuadles fell face down to the floor, and Antonio was left too stunned to recall who had actually pulled the trigger. In fine, Antonio alleged that the shooting was accidental, and his only motivation was to defend himself. He also refuted the testimony of the prosecution's eyewitness, averring that SG Bobis could not have seen the actual shooting since he (Bobis) and co-accused SPO4 Juanito Nieto, who were alerted by Antonio's yells, reached the scene when Tuadles had already been shot and was lying on the floor.
>
> While Tuadles lay bloodied and still, no one remembered to call an ambulance or check if he was still alive. Instead, and there is no dispute in these succeeding events, Antonio convinced the two (2) security guards,

prosecution eyewitness SG Bobis included, to accompany him to his home in Greenmeadows Subdivision, Quezon City, after which they proceeded to the San Juan Police Station. With them was SPO4 Nieto, a member of the San Juan Police Force. They remained at Antonio's residence for several hours, during which time Antonio made phone calls and summoned his lawyer. At around 3:00 o'clock in the afternoon, Antonio, accompanied by SPO4 Nieto, placed himself and his gun in the custody of San Juan Mayor Jinggoy Estrada and the police authorities. Later, the two security guards and SPO4 Nieto were driven back to the club where they waited for the police investigators. Sometime thereafter, SG Bobis narrated the events and executed his statement at the police station, a statement which he would repudiate three (3) days later.

On November 18, 1996, an Information was filed against Antonio for the crime of murder. Also charged as accessories were SPO4 Nieto and SPO1 Honorio Cartalla, Jr. The Information alleged that:

On or about November 2, 1996, in San Juan, Metro Manila and within the jurisdiction of this Honorable Court, the accused Antonio, armed with a gun, did then and there wilfully, unlawfully and feloniously, with intent to kill and with treachery, attack, assault and use personal violence upon the person of Arnulfo "Arnie" Tuadles, by then and there suddenly, unexpectedly, deliberately and without provocation, shooting Arnulfo "Arnie" Tuadles on his forehead, right between the eyes, thereby inflicting upon the latter mortal wound which was the direct and immediate cause of his death;

The accused Nieto, without having participated in said crime of murder, either as principal or accomplice, did then and there wilfully, unlawfully and feloniously take part subsequent to its commission, with abuse of his public functions and position as a public officer, by harboring or assisting the accused Antonio, by then and there failing to arrest and surrender immediately the said accused Antonio to the authorities and by giving false information which tended to deceive the investigating authorities; and

The accused Cartalla, Jr., without having participated in said crime of murder either as principal or accomplice, did then and there wilfully, unlawfully and feloniously take part subsequent to its commission, with abuse of his public functions and position as a public officer, by concealing or destroying the effects or instruments of the body of the crime, in order to prevent its discovery, by then and there removing the laser sight of the gun used in shooting Tuadles, deliberately omitting to take steps to preserve the evidence at the scene of the crime, and purposely failing to call on the crime laboratory service of the proper agencies for appropriate action.

Contrary to law.[2]

Upon arraignment, co-accused SPO1 Cartalla, Jr. entered a plea of "Not Guilty." Accused Antonio and SPO4 Nieto both refused to enter a plea, and the trial court entered a plea of "not guilty" for both of them.

After trial on the merits, all three accused were found guilty as charged, imposing on them the appropriate penalties and ordering them to pay to the heirs of Tuadles various amounts as and for indemnity and damages, set forth in the dispositive portion quoted above. All three accused filed separate appeals assailing the trial court's findings and disposition.

Appellant Antonio assails the trial court's judgment on the following assigned errors:

I

THE TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF JOSE "JIMMY" BOBIS WHICH CONFLICTS DRASTICALLY NOT ONLY WITH HIS INITIAL DECLARATIONS BUT ALSO WITH HIS PREVIOUSLY EXECUTED STATEMENT, AND WHICH TESTIMONY IS TAINTED WITH SERIOUS INCONSISTENCIES, INCREDIBILITIES, AND OMISSIONS ON SUBSTANTIAL MATTERS.

II

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

THE TRIAL COURT ERRED IN HOLDING THAT TREACHERY ATTENDED THE COMMISSION OF THE OFFENSE CHARGED.

III

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE VERSION OF APPELLANT ALBERTO "AMBET" ANTONIO.

IV

THE TRIAL COURT ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCES OF VOLUNTARY SURRENDER.

V

THE TRIAL COURT ERRED IN NOT FINDING THAT SUFFICIENT PROVOCATION ON THE PART OF THE VICTIM ARNULFO "ARNIE" TUADLES IMMEDIATELY PRECEDED THE COMMISION OF THE IMPUTED ACT, AND IN NOT APPRECIATING THIS MITIGATING CIRCUMSTANCE.

VI

THE TRIAL COURT ERRED IN AWARDING THE SUM OF P7,200,000.00 AS COMPENSABLE EARNINGS LOST BY REASON OF ARNIE TUADLES' DEATH, DESPITE INADEQUATE EVIDENCE TO SUPPORT SUCH AWARD.

VII

THE TRIAL COURT ERRED IN AWARDING PALPABLY EXCESSIVE MORAL DAMAGES TO THE HEIRS OF ARNIE TUADLES.

VIII

THE TRIAL COURT ERRED IN FINDING APPELLANT ALBERTO "AMBET" ANTONIO GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.[3]

Appellant SPO4 Nieto likewise questions the trial court's decision, arguing that:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING NIETO AS AN ACCESSORY

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE CRIME COMMITTED BY THE PRINCIPAL ACCUSED ANTONIO WAS MURDER[4]

Appellant Cartalla, Jr. also challenged the said decision on the following grounds:

I

THE COURT OF ORIGIN HAS COMMITTED A BLATANT ERROR IN CONVICTING SPO1 HONORIO CARTALLA, JR. AS ACCESSORY TO THE CRIME CHARGED DESPITE THE FACT THAT THE RECORD IS SO REPLETE WITH EVIDENCES THAT THERE ARE REASONABLE DOUBTS TO HOLD HIM AS SUCH.

II

THE COURT A QUO COMMITTED A GRAVE ERROR AND HAS NOT SHOWN FAIRNESS IN NOT

CONSIDERING FULLY THE GOOD FAITH, DILIGENCE AND HARD WORK EXERTED BY SPO1 HONORIO CARTALLA, JR. WHEN HE INVESTIGATED THE CASE ON HAND TILL THE TIME HE DELIVERED THE SPECIMEN OR PIECES OF PHYSICAL EVIDENCE OF THE CRIME TO THE PNP-CLS, CAMP CRAME, QUEZON CITY.

III

THE LOWER COURT HAS COMMITTED A SERIOUS MISTAKE IN DISREGARDING THE SIXTEEN (16) YEARS OF ACTIVE POLICE SERVICE OF SPO1 HONORIO CARTALLA, JR. SHOWN WITH DEDICATION AND LOYALTY THERETO SUSTAINING MORE HIS INNOCENCE OF THE CRIME CHARGED HEREIN.[5]

Considering that appellant Antonio is the principal accused, we shall deal first with the issues raised in his appeal, foremost of which is the credibility of the prosecution's sole eyewitness, SG Jose Jimmy Bobis. Appellant Antonio challenges SG Bobis' worth and credibility as an eyewitness on two (2) grounds.

First, SG Bobis, in his first sworn statement before the San Juan authorities averred that he did not see the actual shooting since he was still ascending the stairs leading to the second floor where the crime took place when he heard the gunshot. Days later, in a second statement taken at the Eastern Police District (EPD) and in his testimony before the trial court, SG Bobis negated his earlier statement, this time averring that he had indeed seen appellant Antonio pull his gun from behind, and with neither warning nor provocation, aim the gun at the head of Tuadles and shoot the latter pointblank. This complete turnabout in SG Bobis' testimony, according to appellant Antonio, is a sure sign of the said witness' unreliability, incredibility, and unworthiness. He also points out the contradictions and inconsistencies between SG Bobis' first and second statements and court testimony.

Second, appellant Antonio belittles SG Bobis' reasons for giving the San Juan Police investigators false information in his first statement, saying that nobody threatened SG Bobis if he testified against appellant Antonio. On the other hand, appellant Antonio suggests that it was Colonel Lucas Managuelod of the EPD who coerced SG Bobis to change his statement and testimony so that the murder charge against appellant Antonio would be strengthened.

There is no question that SG Bobis' second statement and court testimony, on the one hand, contradicted what he previously narrated in his first statement, on the other hand. The question therefore is: Which is more credible and of more value to the courts in ascertaining the guilt or innocence of the accused?

It is a matter of judicial experience that affidavits or statements taken ex parte are generally considered incomplete and inaccurate. Thus, by nature, they are inferior to testimony given in court, and whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight.[6] Moreover, inconsistencies between the declaration of the affiant in his sworn statements and those in open court do not necessarily discredit said witness.[7] Thus, the trial court followed precedents in giving more credence to SG Bobis' testimony given in open court despite his having executed an earlier statement which was inconsistent with his testimony.

Besides, when confronted with his first contradictory statement, SG Bobis explained the reasons why he was moved to give false information in his first statement. He had testified that moments after he saw appellant Antonio shoot Tuadles, the appellant warned him: "Ikaw, 'wag kang tumistigo, ha."[8] Later, he and the other security guard, SG Olac, were allegedly coerced to go to the appellant's house in Quezon City. He also testified that while they were there, appellant Antonio and his lawyer instructed him (Bobis), should the police investigator ask him who shot Tuadles, to say that what happened was only an accident.[9]

At the police station, appellant SPO4 Nieto allegedly told SG Bobis to say that they were both outside the club

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

when the trouble started, saying: “kailangan ipalabas natin na nasa labas tayo ng club.”[10] Bobis stated that he was confused and afraid, and, therefore, told the police investigator, appellant Cartalla, Jr., on November 2, 1996, that he did not see appellant Antonio shoot Tuadles because he was still ascending the stairs when the gun went off.

Apparently, it was not only fear that ruled his thoughts and actions at that time, but also remorse and confusion. As found by the trial court:

> He admits that he had acted contrary to the ethical standards and code of conduct of private security guards when he did not make a formal report to his superior about the shooting incident of November 2, 1996 at the Club but countered that this was because accused Antonio had taken him to the latter’s house. This being so, neither was he able to put said accused Antonio under arrest.
>
> Added to this was the fact that even accused Nieto, a policeman in active service who was with them at the time and who should have done so, had also failed to arrest accused Antonio, more so with him and SG Olac who are just ordinary security guards. (“Dahil po ma’am, si SPO4 Nieto, pulis na po ang kasama namin, hindi niya po nagawa na arestuhin si Mr. Ambet Antonio mas lalo po kami na ordinary guard lang po.”)
>
> True, he had his service .38 caliber in his possession at the time. Nevertheless, because accused Antonio looked: “parang galit pa sila sa amin” he can not, as in fact he did not, insist that instead of going to the house of accused Antonio, he will effect the arrest.[11]

Nevertheless, Bobis stated that his conscience bothered him, and seeing Tuadles’ widow crying on television, he gathered enough resolve and courage to finally tell the truth to the police authorities at the EPD. When he testified in open court, SG Bobis did not waver in his declaration that he witnessed appellant Antonio suddenly pull his gun from behind and shoot Tuadles three (3) feet away.

Rule 132, Section 13 of the Rules of Court provides that:

> Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them. (Underscoring ours).
>
> Thus, this Court has uniformly held that:
>
> Previous statements cannot serve as bases for impeaching the credibility of a witness unless his attention was first directed to the discrepancies and he was then given an opportunity to explain them. It is only when no reasonable explanation is given by a witness in reconciling his conflicting declarations that he should be deemed impeached.[12]

We find no reason to discredit the trial court’s finding that the reasons given by SG Bobis sufficiently explained the conflicting declarations he made in his two (2) sworn statements and in his court testimony. Therefore, he cannot be impeached as an eyewitness. This Court also recognizes that the initial reticence of witnesses to volunteer information about a criminal case and their aversion to be involved in criminal investigations due to fear of reprisal is not uncommon, and this fact has been judicially declared not to adversely affect the credibility of witnesses.[13]

Apart from the issue of SG Bobis’ having given an earlier contradictory statement, his direct testimony and answers under cross-examination appear clear and convincing. We agree with the trial court when it held:

> But it is SG Bobis whom the Court finds credible.

> Why he had executed a first, then a second statement, totally in conflict with each other, SG Bobis had fully explained to the satisfaction of the Court. His lowly station in life had been taken advantage of by accused Antonio and Nieto. These two (2) had thought that they had succeeded in completely prevailing upon SG Bobis. For did not SG Bobis tell their lies?
>
> Still, the conscience of a good man had won over.
>
> SG Bobis had redeemed himself. He gave spontaneous and straightforward answers to the gruelling questions propounded on him and had stuck to his truth.
>
> The Court had painstakingly, taken note of each of the witnesses' demeanor on the stand. While SG Bobis was steadfast with his words, accused Antonio and Nieto were evidently recalling from a script. The other prosecution witnesses, SG Olac and Romeo M. Solano were, like SG Bobis, untainted in their testimonies.[14]

Finding nothing that would compel us to conclude otherwise, we respect the findings of the trial court on the issue of the credibility of SG Bobis as an eyewitness, especially considering that the trial court was in a better position to decide the question, having heard the witness himself and observed his deportment and manner of testifying during the trial.[15]

In the recent case of People v. Pili, this Court had occasion to rule that:

> It is doctrinally settled that the assessments of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.[16]

And in People v. Deleverio, this Court ruled that:

> It is axiomatic to point out, furthermore, that in an appeal, where the culpability or innocence of an accused would hinge on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are entitled to and given the highest degree of respect.[17]

Moreover, in People v. Reynaldo, we reiterated the principle that:

> The matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh the testimony of a witness in the light of his demeanor, conduct and attitude as he testified, and is thereby placed in a more competent position to discriminate between the true and the false.[18]

There are other reasons why the eyewitness testimony of SG Bobis was given full faith and credit. SG Bobis, a mere security guard, realized he was no match to appellants Antonio and SPO4 Nieto. The former, a wealthy businessman, is known as an intimate friend of people in power. Appellant Antonio admitted in court that he surrendered himself and his gun to Mayor Jinggoy Estrada, who was his good friend. Hours later, he went to see then Vice President Joseph Estrada in Tagaytay City so he (Antonio) could tell his friend, the Vice President, what happened in his own words.[19]

Appellant SPO4 Nieto was a member in active duty of the San Juan Police Force who was close to appellant Antonio. Considering SG Bobis' lowly station in life, as compared to that of the said appellants, it is

understandable that his initial reaction to the shocking events would be one of intimidation, if not fear. SG Bobis believed then, and no one can fault him for thinking so, that going against the instructions and dictates of appellant Antonio and SPO4 Nieto would make life very difficult for him, knowing they were well-connected to the powers that be. This perceived threat, whether real or imagined, compelled him to take the easy way out and just repeat what appellants told him to say.

There is an oft-quoted adage that a person may be able to avoid his enemies, but he can never run away from himself. SG Bobis may have momentarily avoided incurring the wrath of the appellants by acceding to their dictates, but he could not escape the proddings of his conscience. He realized he had to right a wrong, and this he did with selflessness and at great risk to himself.

Furthermore, appellants could not impute any ill motive on the part of SG Bobis except the statement that it was Colonel Lucas Managuelod of the EPD who told him how to testify. Thus, his positive and categorical declarations on the witness stand under solemn oath without convincing evidence to the contrary deserve full faith and credence.[20]

Appellant Antonio, however, would seek to completely avoid culpability by claiming that the shooting of Tuadles was caused by mere accident without his fault or intention of causing it, or that he acted in self-defense.

Well-entrenched in our jurisprudence is the rule that where an accused admits having killed the victim but invokes self-defense to escape criminal liability, he assumes the burden of proof to establish his plea of self-defense by clear, credible and convincing evidence.[21] To successfully interpose self-defense, appellant Antonio must clearly and convincingly prove: (1) unlawful aggression on the part of the victim; (2) the reasonable necessity of the means employed to prevent or repel the attack; and (3) the person defending himself must not have provoked the victim into committing the act of aggression.[22]

Without granting that his testimony is an accurate narration of the events that took place, we shall discuss the points raised by appellant Antonio only for the purpose of determining whether the requisites of self-defense were attendant as claimed. In his testimony appellant Antonio alleged that Tuadles committed an act of aggression when he (Tuadles) grabbed the gun which was on top of a sidetable. Appellant Antonio then concluded that Tuadles had the sole intention of using the gun against him (Antonio), so he grappled with Tuadles to prevent the latter from shooting him. His bare testimony, uncorroborated as it is, does not convince us that Tuadles would, so to speak, beat him to the draw. The testimony of Bobis shows that Tuadles was calm in answering Appellant Antonio's loud invectives, and it would be hard to imagine Tuadles as the aggressor under such a situation. And even if Tuadles had grabbed the gun, it could very well have been that Tuadles intended to keep the gun away from appellant Antonio to prevent the latter from using it against him considering the state of mind and the foul mood appellant Antonio was in. This would be a more believable scenario since even appellant Antonio admitted that he was suffused with anger, his temper short due to three (3) consecutive sleepless nights.

Appellant Antonio never said that Tuadles aimed or pointed the gun at him. There is no evidence, apart from appellant Antonio's uncorroborated testimony, that Tuadles made an attempt to shoot him. Hence, there is no convincing proof that there was unlawful aggression on the part of Tuadles. For unlawful aggression to be appreciated, there must be an actual, sudden, unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude.[23] The burden of proving unlawful aggression lay on appellant Antonio, but he has not presented incontrovertible proof that would stand careful scrutiny before any court. Lacking this requirement, appellant Antonio's claim of self-defense cannot be appreciated. He cannot even claim it as an extenuating circumstance.[24]

Besides, it cannot be said that appellant Antonio did not provoke Tuadles, if indeed the latter had grabbed the gun

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

from the table. Antonio himself admitted that he was shouting and cursing Tuadles while in a furious rage. Such a threatening stance could be interpreted as a provocation which could have prompted Tuadles to get the gun so that appellant Antonio, in his anger, would not be able to use it against Tuadles. If ever there was provocation, it was certainly coming from appellant Antonio, not from Tuadles.

In the alternative, appellant Antonio claims that the shooting of Tuadles was an accident. He further argues that Tuadles was killed while he, Antonio, was performing a lawful act with due care, and without fault or intention of causing it. Having ruled that appellant Antonio failed to prove his claim of self-defense, (i.e., there was no unlawful aggression on the part of Tuadles and provocation coming from Antonio himself), there is no basis for us to argue with appellant Antonio that he was performing a lawful act when he shot Tuadles.[25]

We note that appellant Antonio's version of how the shooting took place leaves much room for conjecture. It is true that there is no fixed dictum on the reaction of a person under the circumstances of a sudden death he may have caused. He could react in a variety of ways, some of them even irrational. However, we respect the trial court's findings. The trial court upheld the prosecution's version thus sustaining the theory that if Antonio indeed shot Tuadles by accident, the natural reaction expected of him would be to immediately see to it that Tuadles be brought to a hospital or get medical attention at the quickest time possible. Instead, appellant Antonio left Tuadles, who was supposed to be his good friend, lying dead on the floor for several hours. If indeed he and Tuadles both had their hands on the gun and there was no telling who actually pulled the trigger, we agree that appellant Antonio should have seen to it that no one else would touch the gun barehanded to preserve the fingerprints on it. Instead, he gave the gun to SPO4 Nieto who had no concern for preserving the fingerprints on the gun. Not only that, appellant Antonio also handed the gun to Mayor Jinggoy Estrada. Thus, one tangible piece of evidence that could have proven his claim of self-defense or accident was unfortunately lost due to his lack of presence and due care.

Appellant Antonio's ambivalence in his choice of defenses is clear from the records. First, he denies that he pulled the trigger because it was Tuadles who was holding the gun. Then he says that he cannot recall who fired the gun so it could have very well been either him or Tuadles who did it. Next, he admits firing the gun, but he did it in self-defense. Only, he could not indubitably prove that there was unlawful aggression on the part of Tuadles. Failing there, he again admitted shooting Tuadles, but that it was an accident. Again, he failed to prove that he was in the process of performing a lawful act when he shot Tuadles.

When an accused invokes self-defense or claims that it was an accident to escape criminal liability, he admits having caused the death of the victim. And when he fails to prove by clear and convincing evidence the positiveness of that justifying circumstance, having admitted the killing, conviction of the accused is inescapable.[26] Appellant Antonio had to rely on the strength of his evidence and not on the weakness of the prosecution's evidence for, even if the latter were weak, his invoking self-defense is already an open admission of responsibility for the killing.[27] As it was, appellant Antonio's testimony is not only uncorroborated by independent and competent evidence, but also doubtful by itself[28] for being ambivalent and self-serving.[29]

Having admitted responsibility for the killing of Tuadles, appellant Antonio claims the mitigating circumstance of voluntary surrender. On this score, we find merit in his claim considering that all the elements in order that voluntary surrender may be appreciated were attendant in his case. First, he had not been actually arrested; Second, he surrendered himself to a person in authority; and Third, his surrender was voluntary. It is of no moment that appellant Antonio did not immediately surrender to the authorities, but did so only after the lapse of about six (6) hours. In the case of People v. Bautista,[30] the voluntary surrender of the accused to a police authority four (4) days after the commission of the crime was considered attenuating. There is no dispute that appellant Antonio voluntarily surrendered to the mayor, a person in authority, before he was arrested, hence the

mitigating circumstance of voluntary surrender should be considered in appellant Antonio's favor.[31]

Appellant Antonio also claims the mitigating circumstance of sufficient provocation on the part of Tuadles. To avail of this mitigating circumstance, it must be shown that the provocation originated from the offended party.[32] However, apart from his own testimony, appellant Antonio has not proven by convincing evidence that he was provoked by Tuadles. He claimed that Tuadles provoked him when the latter refused or could not pay his winning. Refusal to pay cannot be a mitigating provocation for appellant Antonio to kill Tuadles. An unpaid debt cannot, and never will, be a reason to shoot the debtor dead. Besides, appellant Antonio had no other proof that he won and that the argument arose from Tuadles' refusal to pay. His bare testimony is, at best, self-serving. Accordingly, appellant Antonio is not entitled to the benefit of the mitigating circumstance of sufficient provocation.[33]

There is, however, a significant and consequential aspect of the case which the trial court overlooked and disregarded.

As earlier stated, we find no sufficient reason to disagree with the trial court when it relied on the testimony of SG Bobis. However, we have carefully examined said testimony, the records of this petition, and the justifications of the trial court upon which it based its decision.

There is no basis for the trial court's conclusion "that accused Antonio consciously and deliberately adopted his mode of attack to insure the accomplishment of his criminal design without risk to himself."[34] It ruled that treachery qualified the killing to murder. The trial court did not explain the basis for the qualification except for a terse citation that there was a sudden attack and the victim had no opportunity to defend himself or to retaliate. As stated by counsel for appellant, out of the 71-page decision, typed single space, the trial court devoted only a few sentences to the issue of treachery.

There was no treachery in this case.

It is not only the sudden attack that qualifies a killing into murder. There must be a conscious and deliberate adoption of the mode of attack for a specific purpose.

All the evidence shows that the incident was an impulse killing. It was a spur of the moment crime.

The precedents are many. They are consistent. Among them:

> "Mere suddenness of attack is not enough to constitute treachery where accused made no preparation or employed no means, method and form of execution tending directly and specially to insure the commission of a crime and to eliminate or diminish risk from defense which the victim may take."[35]
>
> "A sudden and unexpected attack would not constitute alevosia where the aggressor did not consciously adopt a mode of attack intended to perpetrate the homicide without risk to himself."[36]
>
> "A sudden and unexpected attack constitutes the absence of alevosia where it did not appear that the aggressor had consciously adopted a mode of attack intended to facilitate the perpetration of the homicide without risk to himself, as where the appellant followed the victims when the latter refused appellant's invitation to have some more alcoholic drinks."[37]
>
> "The mere suddenness of attack does not, of itself suffice for a finding of alevosia if the mode adopted by the accused does not positively tend to prove that they thereby knowingly intended to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that might be offered."[38]
>
> "The aggravating circumstance of treachery is not present when decision to attack was arrived at on the spur of the moment."[39]

The annotations are similarly consistent. It is not enough that the means, methods, or form of execution of the offense was without danger to the offender arising from the defense or retaliation that might be made by the offended party. It is further required, for treachery to be appreciable, that such means, method or form was deliberated upon or consciously adopted by the offender.[40] Such deliberate or conscious choice was held non-existent where the attack was the product of an impulse of the moment.[41]

The trial court's ruling that the mere suddenness of an attack makes the killing a murder because of treachery is not consistent with the decisions of this Court.[42] Conscious deliberation or conscious adoption of the mode of attack has to be proved beyond reasonable doubt. For it is likewise an established principle that the quantum of evidence to prove a person's being guilty of a crime is also required to prove treachery. The same degree of proof to dispel any reasonable doubt is required before any conclusion may also be reached respecting the attendance of treachery, whether as qualifying or aggravating, in a criminal case.[43] There is no such proof in this case.

There is no dispute that prior to the shooting, appellant Antonio and Tuadles spent several hours having fun playing "pusoy dos." The situation turned ugly, however, when Tuadles could not pay to appellant Antonio his alleged winnings. An argument arose, with appellant Antonio and Tuadles standing face to face three (3) feet away from each other, a fact attested to by the defense and even by the prosecution eyewitness himself.

Accordingly to SG Bobis, Tuadles and Antonio were arguing. Antonio even called out: “Sarge! Sarge! Sarge!” Just before the shooting, Bobis heard Antonio saying: “Putang ina ka kasi.” The argument precluded the presence of treachery. If Antonio had consciously adopted means and methods to kill Tuadles, there was no reason to call for a Sergeant or any eyewitness for that matter.

To the point is our ruling in the case of People v. Alacar,[44] where we held that there was no treachery where the attempt to kill resulted from a verbal altercation. More recently, in People v. Salvador, we pronounced that:

> “There would be no treachery when the victim was placed on guard, such as when a heated argument preceded the attack, or when the victim was standing face to face with his assailants and the initial assault could not have been unforseen.”[45] (Underscoring Ours)

Even if it could be said that the attack was sudden, there would still be no treachery. In People v. Chua,[46] we reiterated our consistent view that:

> “While the killing itself appears to have occurred on sudden impulse, it was preceded by acts of appellant showing hostility and a heated temper that indicated an imminent attack and should have put the deceased on guard.”

Thus, treachery could not be appreciated where the victim was forewarned and could have anticipated the aggression of the accused. Since the sudden shooting of Tuadles was preceded by a heated verbal altercation between Tuadles and appellant Antonio, as admitted by both prosecution and defense, then it cannot be concluded that the shooting was committed with treachery.

It is also clear that appellant Antonio did not set out or plan to kill Tuadles in the first place. His criminal act was an offshoot of their argument which neither of them had foreseen. Hence, there was no treachery because treachery requires that the mode of attack must have been thought of by the offender and must have sprung from an unforeseen occurrence.[47]

In People v. Nitcha,[48] we held that:

> “To establish treachery, the evidence must show that the accused made some preparation to kill the victim in such a manner as to ensure the execution of the crime or to make it impossible or hard for the person attacked to defend himself. A killing done at the spur of the moment is not treacherous.” (Underscoring ours)

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

It was Antonio's sudden anger and heated passion which drove him to pull his gun and shoot Tuadles. Said passion, however, cannot co-exist with treachery. In passion, the offender loses his reason and control. In treachery, on the other hand, the means employed is adopted consciously and deliberately. One who, in the heat of passion, loses his reason and self-control, cannot consciously employ a particular means, method or form of attack in the execution of the crime.[49] Thus, the killing of Tuadles by appellant Antonio was not attended by treachery.

That the treachery, which was alleged in the information and favorably considered by the trial court to elevate the killing to murder, was not proven by convincing evidence[50] is advocated by the Solicitor General in the Appellee's Brief. He agreed with Appellant Antonio's contention on the matter:

> On the basis of the evidence at hand, appellee is constrained to agree with this particular submission of Antonio. Antonio and Tuadles engaged in “pusoy dos”. In the beginning, they were heard laughing and kidding each other (nagtatawanan at nagkakantiyawan). Later, the banter turned into verbal altercation.
>
> Under the circumstances, Tuadles became aware of the incipient violence. Hence, Tuadles could have braced himself with the aggression of Antonio. There is no treachery when the killing results from a verbal altercation or spat between the victim and the assailant such that the victim must have been forewarned of the impending danger. In this case, Bobis testified that he saw Antonio and Tuadles facing each other before Antonio raised his hand and shot Tuadles on the forehead. The proximate distance of three feet between Tuadles and Antonio immediately before the fatal shooting allowed and gave Tuadles opportunity to defend himself.[51]

Consequently, Antonio can only be convicted of the lesser crime of homicide under Article 249 of the Revised Penal code.

Having been found guilty of the crime of homicide, the penalty that should be imposed on appellant Antonio should be reduced to reclusion temporal under Article 249 of the Revised Penal Code. There being one (1) mitigating circumstance of voluntary surrender, the penalty to be imposed shall be the minimum period of reclusion temporal, that is, from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Applying the Indeterminate Sentence Law, the minimum of the penalty to be imposed shall be the penalty next lower which is prision mayor in any of its periods.[52] Therefore, appellant Alberto Antonio is hereby sentenced to an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum.

Appellant Antonio challenges the award of compensatory and moral damages to the heirs of Tuadles, arguing that said award was unsupported by adequate evidence. In arriving at the amount of P7,200,000.00 as compensatory damages, the trial court relied completely on the testimony of the victim's widow, Suzette Tuadles, who stated that at the time of his death, Tuadles was earning P50,000.00 a month from his construction business. Applying the formula laid down by this Court in the cases of Villa Rey Transit v. CA,[53] and People v. Quilaton,[54] the trial court arrived at the amount of P7,200,000.00 as compensatory damages for loss of earning capacity. Appellant Antonio argues that the trial court cannot just rely on the sole testimony of Suzette Tuadles, otherwise, it would be basing its computation on mere speculation, conjecture, or guess work.

In People v. Silvestre[55] and People v. Verde,[56] we held that the absence of documentary evidence to support the prosecution's claim for damages for loss of earning capacity of the deceased does not preclude recovery of said damages. There, we awarded damages for loss of earning capacity computed on the basis of the testimonies of the victim's wives. This was reiterated in People v. Dizon,[57] where we held that:

> “As a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. In People vs. Verde (G. R. No. 119077, February 10, 1999), the non-presentation of documentary

> evidence to support the claim for damages for loss of earning capacity did not prevent this Court from awarding said damages. The testimony of the victim's wife as to the earning capacity of her murdered husband, who was then 48 years old and was earning P200.00 a day as a tricycle driver, sufficed to establish the basis for such an award. x x x As in People vs. Verde, the Court is inclined to grant the claim for damages for loss of earning capacity despite the absence of documentary evidence." (Underscoring ours)

In the case at bar, however, the award for compensatory damages should be calculated as follows:

Net earning capacity (x) =

life expectancy x

gross annual income

- living expenses
(50% of gross annual income)

x = 2(80-40) x [P600,000.00 - 300,000.00]

3

= 26.67 x P300,000.00

= P8,001,000.00

Considering that moral damages may be awarded without proof of pecuniary loss, the Court shall take into account the circumstances obtaining in the case and assess damages according to its discretion.[58] We agree with appellant Antonio that the trial court's award of moral damages was excessive. While there is no hard and fast rule in the determination of what would be a fair amount of moral damages, each case must be governed by its own peculiar circumstances.[59] And though moral damages are incapable of pecuniary estimation to compensate the claimants for actual injury, they are not designed to enrich the complainants at the expense of the accused.[60]

Applied to this case, we recognize that Tuadles was the sole support of his family and they will also be deprived of his love and companionship. No amount of money could ever compensate for their loss. While the award of moral damages may help ease the emotional and psychological trauma that they continue to suffer, this Court has not granted so large an amount as moral damages. Accordingly, we find that the amount of P3,000,000.00 granted by the trial court in this case is excessive, and the same is therefore reduced to P500,000.00. Moreover, there being no aggravating circumstances attendant in this case, the award of exemplary damages should also be deleted.[61]

We now come to the errors assigned by appellant SPO4 Juanito M. Nieto. He argues that the trial court erred in convicting him as an accessory. The trial court's grounds for finding him guilty are: (1) he failed to arrest appellant Antonio; and (2) he gave false information tending to deceive the investigating authorities.[62]

The Revised Penal Code in Article 19 defines an accessory as one who has knowledge of the commission of the crime, yet did not take part in its commission as principal or accomplice, but took part in it subsequent to its commission by any of three modes: (1) profiting himself or assisting the offender to profit by the effects of the crime; (2) concealing or destroying the body of the crime, or the effects or instruments thereof in order to prevent its discovery; and (3) harboring, concealing, or assisting in the escape of the principals of the crime, provided the accessory acts with abuse of his public functions or when the offender is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.[63]

Under paragraph 3 of Article 19 of the Revised Penal Code, there are two (2) classes of accessories, one of which is a public officer who harbors, conceals or assists in the escape of the principal. Such public officer must have acted with abuse of his public functions, and the crime committed by the principal is any crime, provided it is not a light felony. Appellant SPO4 Nieto is one such public officer, and he abused his public function when he failed to effect the immediate arrest of accused Antonio and to conduct a speedy investigation of the crime committed.

The evidence in the case at bar, insofar as appellant Nieto's culpability is concerned, shows that in the middle of the argument between appellant Antonio and the deceased, Antonio called Nieto by shouting, “Sarge! Sarge!” Hearing this, SG Bobis woke Nieto up and the latter went upstairs. Immediately thereafter, appellant Antonio shot Tuadles, and then ordered Nieto to get the scoresheet and the cards from the table, which Nieto did. Antonio, Nieto and Bobis went downstairs. Antonio told guards Bobis and Ernesto Olac to go with them, and they all boarded Antonio's Mercedes Benz van, including Nieto. They arrived at Antonio's residence in Greenmeadows Subdivision at around 11:30 o'clock in the morning. There, they had coffee while Antonio made some telephone calls. Soon after, a certain Atty. Abaya arrived and talked to the two security guards, while Nieto was present. Nieto then told Bobis that in his statement, he should say that the two of them, i.e., Bobis and Nieto, were seated outside the entrance of the Club when the incident took place. At 5:00 o'clock in the afternoon, Nieto, Bobis and Olac returned to the Club. They waited outside until members of the San Juan police, together with Mayor Jinggoy Estrada and Vice Mayor Philip Cezar, arrived at 6:00 o'clock in the evening. After the police investigated the scene, they proceeded to the police station. There, Nieto reiterated his instruction to Bobis to say that the two of them were outside the club. While Bobis gave his statement to the police, Nieto remained in front of him and dictated to him what he should answer to the questions of the police investigator.[64]

The foregoing facts were culled from the testimony of SG Bobis. Appellant Nieto's actuations immediately after the commission of the crime demonstrate his liability as an accessory. Being a police officer in the active service, he had the duty to arrest appellant Antonio after the latter committed a crime in his presence, and which he himself witnessed. Unfortunately, he failed to do what was incumbent upon him to do. Instead, he rode with the offender to the latter's house where they stayed for more than five (5) hours. In the early case of U. S. v. Yacat, et al., it was held:[65]

> It is, however, unquestionable that Pedro Ureta, who was the local president of the town of Cabiao at the time the crime was committed, has incurred criminal liability. Abusing his public office, he refused to prosecute the crime of homicide and those guilty thereof, and thus made it possible for them to escape, as the defendant Pedro Lising did in fact. This fact is sufficiently demonstrated in the records, and he has been unable to explain his conduct in refusing to make an investigation of this serious occurrence, of which complaint was made to him, and consequently he should suffer a penalty two degrees inferior to that designated by paragraph 2 of article 405 of the Code, by virtue of article 68 thereof.

Appellant Nieto knew of the commission of the crime. Right before the shooting, appellant Antonio called him and he immediately went upstairs. He saw that appellant shot Tuadles. Despite this knowledge, he failed to arrest appellant and, instead, left the crime scene together with the latter. To this extent, he assisted appellant Antonio in his escape.[66]

Furthermore, as correctly found by the trial court, appellant Nieto provided false information to deceive the investigating authorities. He instructed Bobis to answer falsely to the questions of the investigating officer, in order to make it appear that there were no eyewitnesses to the incident and thus make it more difficult for the police to solve the crime.

Accordingly, the court a quo was correct in convicting appellant as an accessory to the crime, and he should be sentenced to suffer the penalty prescribed by law. Applying the Indeterminate Sentence Law, we impose on

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

appellant Nieto the indeterminate penalty of six (6) months of arresto mayor, as minimum, to four (4) years of prison correccional, as maximum.

Finally, we come to appellant SPO1 Honorio Cartalla, Jr.'s appeal. After carefully reviewing the facts and issues raised therein, we find that the trial court erred in finding said appellant guilty as an accessory.

The trial court's sole reason for convicting appellant SPO1 Cartalla, Jr. was his failure to produce the laser sight of the gun as evidence during the trial. However, such omission does not amount to concealing or destroying the body of the crime or effects or instruments thereof to prevent its discovery. The laser sight had been surrendered to the police authorities so there was no more need for discovery. Its loss thereafter does not make appellant SPO1 Cartalla, Jr. an accessory. At most, as custodian thereof, he may be made answerable administratively.

In his testimony, he made clear that the loss was not intentional. He further stated:

Q

Finally, Mr. Cartalla, what can you say about the charge against you as alleged in the information that you tried to conceal or destroy the effects or body of the crime to prevent its discovery?

A

It's not true, sir.

Q

Why?

A

Because I did not conceal anything, I did not destroy anything on the body of the crime and as far as I know, I did all my job as investigator and I worked for it up to the wee hours of the morning up to the next morning, I still did it and I gathered evidence and I submitted it to the Crime Laboratory and even when at the time, I have been hearing that I will not be the one who will investigate, they got it from me without proper notice, that they will take over the investigation, I still did my job, and on the fifth, I was asked by Prosecutor Llorente to retrieve the slug and what I did was even the investigation is not with me, I still did it, I still went to the IBC and I still worked hard, I even remember...

Atty. Flaminiano

We want to make of record that the witness is now in tears at this moment.

COURT

Continue.

A

The companion of Inspector de Leon and PO2 Rojas even said that this policeman is very hardworking, even the investigation is not with him anymore, but still, he's working and I answered him, whatever, whatever they will charge to me, maybe it's just their job and so, I will also do my job. Because as far as I know, I will not be implicated because I have not done anything, I have not done the charges that they filed against me, I was surprised when I was given a confirmation that I was an accessory that is why my youngest child even told me

"kala ko Papa, Mabait ka?" and I told him that it's not true. For me, I have not done anything like that.

Atty. Fernandez

That's all for the witness, your Honor.

COURT

The way I look at your case, you are indicted here as an accessory because according to one of the witnesses, the gun together with the laser sight was handled to you and when that gun reached Crame, the laser sight was no longer there, answer me, what happened?

A

The truth, your Honor, is, when the gun was submitted to me by Inspector Cabrera, the laser sight was there, I immediately made the transmittal for the laboratory and I described what is there, together with the laser and after that, I placed it in a brown envelope, I placed it in my drawer. On the second day, I was really busy on that day because I was the only one. I was asking for assistance because I would go out, I will investigate and then I just found out when I was about to submit the laser to the laboratory, I gave the envelope together with the transmittal and when it was being received, he checked it and he said “Sgt. Where is the laser sight?” and I said “it's there, attached.” And he said “please look at it.”

COURT

Who told you that?

A

The person who received, your Honor.

COURT

But in your transmittal, you wrote there that there was a laser?

A

Yes, your Honor. When I saw the envelope, there was no laser, I was planning to go back right away but I just said, “okay, I will just cross it” out and I did not erase because I want that I will not hide anything. It has happened because maybe somebody is interested or I might have left in my drawer. Because I will not hide it. That's why I did not sno-pake it and I just crossed it out so it can be read together with my initial and when I came back, I asked them who touched my things.

COURT

What answer did you get?

A

There was no answer. Nobody was answering me, nobody was talking.[67]

From the foregoing, it is clear that appellant SPO1 Cartalla, Jr. did not intentionally conceal or destroy the laser sight, and the prosecution failed to prove that he did so with intent to derail the prosecution of the principal

accused. On the other hand, while the laser sight was an accessory device attached to the gun, it was not essential to the commission, investigation and prosecution of the crime. The gun itself, which was the instrument of the crime, was surrendered to the authorities and presented as evidence in court. The failure of appellant SPO1 Cartalla, Jr. to present the laser sight as part of the evidence did not in any way affect the outcome of the trial, much less prevent the discovery of the crime. Furthermore, there is no showing that appellant SPO1 Cartalla, Jr. profited by the non-presentation of the laser sight.

Thus, under the definition of an accessory under the Revised Penal Code and jurisprudence, appellant Cartalla, Jr.'s omission does not make him liable as an accessory to the crime committed by appellant Antonio. Even the Solicitor General submits that there are no grounds to convict appellant Cartalla, to wit:

> At the time the laser sight was turned over to Cartalla, the crime or its corpus delicti had been discovered. Hence, the loss of the laser sight could not have prevented the discovery of the crime. The essential instrument of the crime, namely, a caliber .9 mm Beretta Model 92F with serial number BER-041965-7 and black magazine had been preserved and presented as evidence.
>
> Neither could Cartalla be said to have profited with the non-presentation of the laser sight as this was not proved by the prosecution. Either way, concealing or profiting, there is no convicting motive for Cartalla to have so committed. More so, as Cartalla was the investigating officer on the case.
>
> It is submitted that the non-production of the laser sight by Cartalla did not make him an accessory to the crime committed by Antonio, although he may be administratively liable for the loss of a part of the evidence for the prosecution in this case.[68]

WHEREFORE, in view of all the foregoing, the appealed Decision in Criminal Case No. 111232-H is hereby MODIFIED. Accused-appellant Alberto "Ambet" Antonio is found GUILTY beyond reasonable doubt of the crime of HOMICIDE and is correspondingly sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum to fourteen (14) years and eight (8) months of reclusion temporal, as maximum. Accused-appellant Juanito Nieto y Nemer is likewise found GUILTY beyond reasonable doubt as accessory to the crime of HOMICIDE, and is correspondingly sentenced to suffer the indeterminate penalty of six (6) months of arresto mayor, as minimum, to four (4) years of prision correccional, as maximum.

Accused-appellant Antonio is likewise ordered to pay to the heirs of Arnulfo B. Tuadles the following sums:

(1) P50,000.00 as indemnity for the death of Arnulfo B. Tuadles;

(2) P226,298.36 as actual damages;

(3) P8,001,000.00 as compensatory damages for loss of earning capacity;

(4) P500,000.00 as moral damages; and

(5) Costs.

For failure to prove accused-appellant SPO1 Honorio Cartalla, Jr.'s guilt beyond reasonable doubt as accessory to the crime, he is ACQUITTED and absolved of all liability, both criminal or civil.

In case of insolvency of appellant Alberto S. Antonio @ “Ambet”, appellant Juanito Nieto y Nemer shall be liable to pay one-half (1/2) of the above-adjudicated sums or the amount of P4,388,649.18 unto the said heirs of Arnulfo B. Tuadles.

In all other respects, the judgment of the trial court is AFFIRMED.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

SO ORDERED.

Davide, Jr., C.J. (Chairman), joins Justice Puno in his concurring & dissenting opinion.
Puno, J., see concurring & dissenting opinion.
Kapunan, and Pardo, JJ., concur.

---

[1] Decision, Rollo, pp. 104-105.

[2] Information, Rollo, pp. 14-15.

[3] Appellant Antonio's Brief, pp. 8-10.

[4] Appellant Nieto's Brief, pp. 9-10.

[5] Appellant Cartalla, Jr.'s Brief, Rollo, pp. 237-238.

[6] People v. Castro, 276 SCRA 572 (1997); People v. Salazar, 277 SCRA 67 (1997).

[7] People v. Nang, 289 SCRA 16 (1998); People v. Padao, 267 SCRA 64 (1997); Naval v. Panday, 275 SCRA 654 (1997); People v. Banguis, 291 SCRA 279 (1998).

[8] TSN, January 15, 1997, p. 46.

[9] TSN, January 15, 1997, p. 54.

[10] TSN, January 15, 1997, p. 55.

[11] Decision, Rollo, pp. 45-46.

[12] People v. De Guzman, 288 SCRA 346 (1998).

[13] People v. Matubis, 288 SCRA 210 (1998).

[14] Decision, Rollo, p. 102.

[15] People v. Aquino, 284 SCRA 369 (1998); People v. Baccay, 284 SCRA 296 (1998); Espano v. CA, 288 SCRA 558 (1998).

[16] G.R. No. 124739, 289 SCRA 118 (1998).

[17] G.R. No. 118937, 289 SCRA 547 (1998).

[18] G.R. No. 116305, 291 SCRA 701 (1998).

[19] TSN, April 11, 1997, p. 97.

[20] People v. Ebrada, 296 SCRA 353 (1998); People v. Gatchalian, 300 SCRA 1 (1998).

[21] People v. Sambulan, 289 SCRA 500 (1998); People v. Galapin, 293 SCRA 474 (1998).

[22] People v. Aguilar, 292 SCRA 349 (1998); People v. Villamor, 292 SCRA 384 (1998).

[23] People v. Ebrada, supra.

[24] People v. Patotoy, 261 SCRA 37 (1996); People v. Balamban, 264 SCRA 619 (1996).

[25] People v. Cario, 288 SCRA 404 (1998).

[26] People v. Aguilar, supra.

[27] People v. Peña, 291 SCRA 606 (1998).

[28] People v. De la Cruz, 291 SCRA 164 (1998).28

[29] People v. Umadhay, 293 SCRA 545 (1998).

[30] People v. Bautista, G.R. No. 109800, 254 SCRA 621 (1996).

[31] People v. Amamanpang, 291 SCRA 638 (1998); People v. Medina, 286 SCRA 44 (1998).

[32] Almeda v. CA, 269 SCRA 643 (1997).

[33] Austria v. CA, 273 SCRA 296 (1997).

[34] Decision, p. 81.

[35] People v. Cabiling, 74 SCRA 285 (1976).

[36] People v. Satorre, 74 SCRA 106 (1976).

[37] People v. Boduso, 60 SCRA 60 (1974).

[38] People v. Torejas, 43 SCRA 158 (1972); People v. Flores, 43 SCRA 342 (1972).

[39] Perez v. Court of Appeals, 13 SCRA 444 (1965).

[40] People v. Tumaob, 83 Phil. 738; People v. Dadis, 18 SCRA 699 (1966).

[41] People v. Macalisang, 22 SCRA 699 (1968).

[42] See Annotations, 27 SCRA 564 (1980).

[43] People v. Torejas, supra.

[44] G. R. Nos. 64725-26, 211 SCRA 580 (1992).

[45] People v. Salvador, 279 SCRA 164 (1997).

[46] People v. Chua, 297 SCRA 229 (1998).

[47] People v. Demonteverde, 290 SCRA 175 (1998).

[48] G.R. No. 113517, 240 SCRA 283 (1995).

[49] People v. Germina, 290 SCRA 146 (1998).

[50] People v. Ganzagan, Jr., 247 SCRA 220 (1995).

[51] Appellee's Brief, Rollo, pp. 385-386.

[52] People v. Saley, 291 SCRA 715 (1998).

[53] 31 SCRA 511 (1970).

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

[54] 205 SCRA 279 (1992).

[55] G.R. No. 127573, May 12, 1999.

[56] 302 SCRA 690 (1999).

[57] G.R. No. 129893, December 10, 1999, p. 12.

[58] Fule v. CA, 286 SCRA 698 (1998).

[59] PNB v. CA, 266 SCRA 136 (1997).

[60] Kierulf v. CA, 269 SCRA 433 (1997).

[61] Civil Code, Article 2230.

[62] Decision, Rollo, p. 103.

[63] People v. Malvenda, 288 SCRA 225 (1998).

[64] Decision, Rollo, pp. 40-44.

[65] 1 Phil. 443, 446 (1902).

[66] Cf.: People v. Lojo, 122 SCRA 753, 757 (1983).

[67] TSN, March 14, 1997, pp. 21-23.

[68] Appellee' Brief, Rollo, p. 395.

CONCURRING AND DISSENTNG OPINION

PUNO, J.:

I agree with the majority decision except its finding that treachery did not attend the killing of the victim, Arnulfo Tuadles, and the conclusion that the accused-appellant, Alberto "Ambet" Antonio, should not be held guilty of murder but only of homicide.

For proper perspective, I wish to relate the relevant facts on the issue of treachery.

On November 2, 1996, at about 9:30 a.m., the victim, Arnulfo "Arnie" Tuadles, 40 years old, a former professional basketball player and a family man, was shot to death by accused-appellant Alberto "Ambet" Antonio, 59 years old and former Chairman of the Games and Amusement Board. The murder weapon was a 9mm Beretta Model 92F pistol, with a laser sight.[1] Tuadles sustained a single gunshot wound on the forehead, between the eyes.[2] The bullet hit the brain and exited at the right portion of the back of the head.[3] He died due to "intracranial hemmorhage."[4]

Dr. Jaime Leal, Medico-Legal Officer at the PNP Crime Laboratory, conducted the autopsy examination on the Tuadles. His examination showed that Tuadles was shot at close range, specifically at a distance of less than 12 inches.[5] The bullet's trajectory was directed backwards, slightly upwards and to the right.[6]

The autopsy also revealed that Tuadles suffered five (5) abrasions ("gasgas"), located on his forehead, nose, tip of nose, cheek, and right lower lip. He sustained these abrasions as he collapsed on the floor after he was shot. There were also contusions on Tuadles' forehead and lower lip that could have been sustained when his face hit a hard

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

blunt object, and hematomas on both eyes caused by the "pulling of the blood in the spaces between the eyes." He had a lacerated wound on the cheek which could have been caused by a forcible contact of the skin with a hard blunt object, such as chairs or tables, when he was falling to the floor.[7] All the injuries were located on the head of the victim.

Security guard Jose Jimmy Bobis gave the eyewitness account of the shooting. He reported at the IBC Club in Greenhills, San Juan, on November 2, 1996 at 7:00 a.m. He relieved co-security guard Ernesto Olac. At that time, there were only five (5) people inside the club: Antonio, Tuadles, SP04 Juanito Nieto, Olac and Bobis. Antonio and Tuadles were at the second floor playing "pusoy dos", SP04 Nieto and Olac were sleeping in the dining area at the ground floor, while Bobis was in the bar, also at the ground floor, keeping watch of the premises.

In the course of his duty, Bobis heard Antonio and Tuadles laughing and teasing each other ("nagkakantiyawan") while playing "pusoy dos". He recognized the voice of Antonio because it was loud in contrast to Tuadles' voice which was soft. At past 9:00 a.m., he heard Antonio say in a loud voice: "Di ba may usapan tayo na ang mag pa pass ay mag-ta-tap ng dalawang beses sa ibabaw ng mesa?" Antonio then said "Sige ". Tuadles' response was almost inaudible because he spoke in a soft, cool voice (mahina at malamig ang boses).[8] Again, Antonio spoke: "Barya lang itong pinagla-laruan natin" (We are only playing for loose change). Tuadles kept silent. Antonio then called: "Sarge, Sarge, Sarge!," referring to SPO4 Nieto. Bobis walked to the sleeping Nieto and informed him that Antonio was calling him. They went to the second floor and saw Antonio and Tuadles standing between the billiard table and the "pusoy" table. They were facing each other but at a certain angle, and about three feet of space separated them. Antonio appeared, hiding his right hand behind his back. He (Antonio) cursed "putang ina ka kasi". Tuadles uttered something which Bobis could not understand because Tuadles' back was turned on him. Antonio then quickly raised his right hand, pointed a gun at the face of Tuadles and fired the gun ("Mabilis na inangat niya ang kanang kamay niya at itinapat sa mukha ni Arnie Tuadles at ipinutok ang baril ").[9] Tuadles twisted to the right and fell on the floor face down. Antonio removed the gun's magazine, cocked it and replaced its magazine. The gun had a laser light attached to its end.[10] Antonio ordered SPO4 Nieto to get the score sheet and the cards laying on top of a table. SPO4 Nieto placed the cards on a paper, folded it several times, and placed it inside the clutch bag of Antonio. Bobis was taken aback by the incident. When he regained his composure, he asked Antonio: "Boss, bakit nangyari ito." Antonio did not immediately respond but later pointed his finger at Bobis and then warned: "Ikaw, huwag kang tumistigo, ha!" Bobis kept quiet due to fear. They all went downstairs. Olac who heard the gunfire inquired from Bobis what happened. He told him that Antonio shot Tuadles. Antonio then commanded Bobis to get the key of Tuadles' car. He did as he was told. Only two vehicles were parked in the premises of the club: the Mercedes Benz van of Antonio and the car of Tuadles. They boarded the van, with Antonio driving. Following them was the car of Tuadles driven by Antonio's driver. The driver left Tuadles' car near Shaw Blvd. and rode in the van. They headed to the house of Antonio. They left the club at 10:00 a.m. and arrived at Antonio's house in Green Meadows at 11:30 a.m. On instruction of Antonio, his driver burned the score sheet and the cards. They stayed at Antonio's house for several hours while Antonio conferred with his lawyer. Antonio's lawyer told Bobis that he should say that the shooting was an accident. SPO4 Nieto instructed Bobis to claim that he was outside the entrance of the club when the shooting took place. Bobis, Nieto, Olac and Antonio's driver returned to the club at 5:00 p.m. Thirty minutes later, a team of policemen from San Juan arrived. They found the lifeless body of Tuadles sprawled on the second floor.

Police investigator SPO1 Cartalla, Jr. took the statement of Bobis that same day. In his statement, Bobis denied seeing the shooting incident. On November 4, 1996, Bobis happened to watch the television and he saw the crying Mrs. Tuadles while being interviewed. Bothered by his conscience, he requested the operations manager of their security agency to bring him to the Eastern Police District. On November 5, 1996, he gave another statement to the EPD and revealed the truth that fateful day of November 2, 1996.

Given these facts, the majority holds that treachery did not attend the killing of Tuadles.

There is treachery (alevosia) when the offender commits any of the crimes against the 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 the defense which the offended party might make.[11]

The two elements that must be proved to establish treachery are: (1) the employment of means of execution which would ensure the safety of the offender from defensive and retaliatory acts of the victim, giving the victim no opportunity to defend himself, and (2) the means, method and manner of execution were deliberately and consciously adopted by the offender.[12]

I respectfully submit that the killing of Tuadles was characterized by treachery.

First. There is little doubt that the first element of treachery was proved by the prosecution. The victim, Tuadles, had absolutely no opportunity to defend himself from the aggression of Antonio. The attack was sudden, coming as it did like a thunderbolt from a blue sky. It was preceded by a not too serious argument about a rule of the "pusoy dos" game which appeared to have been overlooked by Tuadles. The little argument agitated Antonio but not Tuadles. Hence, the attack was unexpected especially because Tuadles and Antonio did not have any prior misunderstanding. Tuadles even endearingly called Antonio "uncle". Likewise, Tuadles was a basketball player when Antonio served as Chairman of the Games and Amusement Board.

Second. The prosecution also proved the second element of treachery that "the means, method and manner of execution were deliberately and consciously adopted by the offender." This element deals with the subjective aspect of treachery, hence, the more difficult element to determine. We are not, however, without any established jurisprudence in determining whether the accused-appellant deliberately and consciously adopted the means, method and manner of killing the victim. The authoritative La Fave and Scott, after a survey of court rulings, tell us of the relevant evidence to consider, viz:[13]

> "On the basis of events before and at the time of the killing, the trier of fact will sometimes be entitled to infer that the defendant actually premeditated and deliberated his intentional killing. Three categories of evidence are important for this purpose: (1) facts about how and what the defendant did prior to the actual killing which show he was engaged in activity directed toward the killing, that is, planning activity; (2) facts about the defendant's prior relationship and conduct with the victim from which motive may be inferred; and (3) facts about the nature of the killing from which it may be inferred that the manner of killing was so particular and exacting that the defendant must have intentionally killed according to a preconceived design. Illustrative of the first category are such acts by the defendant as prior possession of the murder weapon, surreptitious approach of the victim, or taking the prospective victim to a place where others are unlikely to intrude. In the second category are prior threats by the defendants to do violence to the victim, plans or desires of the defendant which would be facilitated by the death of the victim, and prior conduct of the victim known to have angered the defendant. As to the third category, the manner of killing, what is required is evidence (usually based upon examination of the victim's body) showing that the wounds were deliberately placed at vital areas of the body. The mere fact that the killing was attended by much violence or that a great many wounds were inflicted is not relevant in this regard, as such a killing is just as likely (or perhaps more likely) to have been on impulse. Conduct by the defendant after the killing in an effort to avoid detection and punishment is obviously not relevant for purposes of showing premeditation and deliberation, as it only goes to show the defendant's state of mind at the time and not before or during the killing." (emphasis ours)

The evidence proves the deliberateness of the attack made by Antonio. The attack was done with swiftness. It was motivated by the failure of Tuadles to follow an agreement on the "pusoy" game. The deliberateness of the attack is also shown by the fact that Tuadles was shot at close range, with the muzzle of the gun less than 12 inches from

Tuadles' forehead. Antonio aimed at Tuadles' forehead, between the eyes. The bullet penetrated Tuadles' brain, destroyed its right hemisphere and caused Tuadles' instantaneous death. Clearly, Antonio chose to shoot Tuadles at a vital part of his body. As a result, Tuadles became an instant statistic of the graveyard.

With due respect, I do not agree with the majority that the case at bar involves a spur of the moment killing, hence, there is no treachery. The majority states that there was a prior heated altercation between Tuadles and Antonio. The heated altercation allegedly forewarned Tuadles of the attack. The so-called heated altercation, however, is not well-established by the evidence. A replay of the facts will reveal that eyewitness Bobis initially heard the two teasing each other ("nagkakantiyawan"). Later, an argument developed between them which cannot be characterized as a "heated altercation." Bobis testified as follows: [14]

"Q:

Now, this matter of 'kantiyawan' and 'nagtatawanan' iyong dalawa, how long did this continue during the period of time you were there?

A:

A few seconds only.

x x x x x x x x x

Q:

Would you be in a position to recognize the voices of Ambet Antonio and Arnie Tuadles?

A:

Yes, sir.

Q:

Why?

A:

Arnie Tuadles' voice is soft and Ambet Antonio's voice is loud.

Q:

Let's focus on Mr. Antonio, you said his voice was loud, did you hear him mentioned (sic) anything at that time?

Atty. Flaminiano:

Leading, your Honor.

COURT:

Answer.

A:

Yes, sir.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Q:

What did you hear?

x x x x x x x x x

A:

Di ba may usapan tayo na ang mag-pa-pass ay mag-ta-tap ng dalawang beses sa ibabaw ng mesa?

x x x x x x x x x

Q:

Before you heard this statement, did you hear other things from Mr. Ambet Antonio apart from what you have said, before that?

A:

None, sir.

x x x x x x x x x

Q:

Was there any comment that you heard from Mr. Tuadles?

A:

Yes, sir.

Q:

What did you hear from Mr. Tuadles?

A:

I could not understand because his voice was soft and ...

Prosecutor Llorente:

May we put on record the answer of the witness in Tagalog?

COURT:

Granted.

A:

"Mahina at malamig ang boses."

Despite the soft response from Tuadles, Antonio continued with his outburst, thus:[15]

"Q:

Going back now to Mr. Antonio, did you hear him again mentioned (sic) or say other things?

A:

Yes, sir.

Q:

What did you hear from Mr. Ambet Antonio?

A:

'Barya lang and pinagla-laruan natin.' It's only a (sic) loose change that we are playing with here.

Q:

Did you hear any word from Mr. Tuadles?

A:

No more, sir."

In sum, it was only Antonio who appeared agitated during the alleged altercation. Tuadles spoke in a soft and cool voice that Bobis could hardly hear and understand him. The characterization of the argument that preceded the shooting of is decisive of the issue of treachery. I submit that the argument between Antonio and Tuadles was trivial for it merely concerned the inadvertence of Tuadles to tap the table when making a pass. Nothing in the records shows that Tuadles violated the rule intentionally. Nothing shows the degree of damage suffered by Antonio as a consequence of Tuadles' omission. It is thus my submission that the argument appears to be slight and cannot justify the conclusion that Antonio acted in the heat of passion or on impulse in killing the victim.

The case of People vs. Cruz [16] is apropos. In said case, the accused and the victim were "compadres" for having stood as sponsors in the baptism of a common friend. The accused used to drive one of the tricycles of the victim until the latter sold the tricycle the accused was driving. It was claimed that the accused bore a grudge against the victim because of the said incident. At any rate, while the victim was talking with a co-tricycle driver along the street while waiting for passengers, the accused appeared and approached the victim. Upon nearing the victim, accused angrily uttered, "Pare, walang presidente presidente sa akin" as he simultaneously drew out a gun from the front portion of his waist and shot the victim with it point blank, hitting the upper left eyebrow of the latter which caused him to fall on the ground. Thereafter, accused left. This Court rejected the claim of the accused that the shooting was accidental and noted with approval the observation of the Solicitor General that "if the shooting of the victim were accidental, accused would have come to his aid and taken him to a hospital, instead of abandoning him." The Court further held that the accused was liable for murder. The victim was unarmed. He did not have the least suspicion of the accused's design to shoot him. In contrast, accused had a gun. The victim, therefore, had no chance to defend himself against the latter's frontal attack. Treachery qualified the killing to murder.

With due respect to the majority, I find the killing of the victim Tuadles qualified by treachery. I vote to convict accused-appellant Antonio of murder as charged.

---

[1] Firearms Idenitification Report No. FAID-204-96, Original Records, p. 35.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

[2] See Sketch of Medico-Legal Division, Original Records, p. 38.

[3] TSN, Dr . Jaime Rodrigo Leal, PNP Medico-Legal Officer, January 29, 1997, p. 77.

[4] Medico-Legal Report No. M-2559-96 of the PNP Crime Laboratory, dated November 12, 1996, Original Records, p. 36.

[5] TSN, Dr. Jaime Rodrigo Leal, Janaury 29, 1997, pp. 77-80.

[6] Id., p. 79.

[7] Id., pp. 81-85.

[8] TSN, Jose Jimmy Bobis, TSN, January 15, 1997, pp. 20-22.

[9] Id., p. 35.

[10] Id., p. 71.

[11] Article 14, paragraph 16, Revised Penal Code.

[12] People v. Malabago, 265 SCRA 198 (1996).

[13] Criminal Law, 2nd ed., (Hornbook Series) p. 644-645.

[14] TSN, Jaime Bobis, January 15, 1997, pp. 18-22.

[15] TSN, Jose Jaime Bobis, Janaury 15, 1997, p. 24.

[16] 213 SCRA 611 (1992).

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

Start free at https://batas.org

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

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

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