

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AVELINO GALGO, DOMITILO GALGO, DIOSDADO GALGO, AND NELSON GALGO, ACCUSED-APPELLANTS.

G.R. No. 133887. May 28, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

On automatic review is the decision^[1] dated February 16, 1998 of the Regional Trial Court of Iloilo City, Branch 23, in Criminal Case No. 44165, finding herein accused-appellants Avelino, Domitilo, Diosdado, and Nelson, all surnamed Galgo, guilty beyond reasonable doubt of the crime of Murder and imposing upon them the penalty of death.

In an Information filed on October 25, 1994, accused-appellants were charged with the murder of Tranquilino Quiling as follows:

The Provincial Prosecutor, through the undersigned, accuses AVELINO GALGO, DOMITILO GALGO, DIOSDADO GALGO, and NELSON GALGO of the crime of MURDER committed as follows:

That on or about October 2, 1994, in the Municipality of Badiangan, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, conspiring, confederating and helping one another, armed with firearms, with deliberate intent and decided purpose to kill, taking advantage of their superior strength and by means of treachery, did then and there willfully, unlawfully and feloniously shoot one Tranquilino Quiling, with the firearms which the accused were then provided, hitting the victim on the different parts of his body which caused his death.

CONTRARY TO LAW.

On arraignment, accused-appellants pleaded “Not Guilty” and trial ensued thereafter.

The prosecution presented as its witnesses, Fred Guiling, Pablito Japitana, and Dr. Leticia Tobias, the physician who conducted an autopsy on the victim.

Fred Quiling testified that around nine o’clock in the evening of October 2, 1994, he was in a drinking spree inside the house of Jose Japitana in Brgy. Cabaangan, Badiangan, Iloilo together with Jose Japitana, Virgilio Presto, Judy Superio, Gaspar Superio, Jesus Superio, Pablito Japitana,^[2] and the victim Tranquilino Quiling.^[3] After a while, the victim stood up to leave. As soon as he opened the door, the victim was met with gunshots coming from below the house.^[4] Because of the light coming from three kerosene lamps inside the house,^[5] witness saw that the shots were being fired by Nelson and Diosdado Galgo who were outside the house, about an arms length away from the victim and armed with a 12-gauge shotgun each.^[6] The first shot fired by Nelson hit the victim in the chest and the second shot fired by Diosdado hit the victim at the stomach.^[7] Behind Nelson and Diosdado were accused-appellants Avelino and Domitilo Galgo who were also armed with shotguns; however, the two did not fire their guns.^[8] Witness Quiling claimed that he was not aware of any altercation between

accused-appellants and the victim prior to the shooting[9] but he knew that the victim's family and the Galgos once had a dispute when Melchor Quiling and Domitilo Galgo quarrelled as to who between the two of them was braver.[10]

The prosecution also offered the testimony of Pablito Japitana to corroborate Fred Quiling's statements. Japitana narrated that in the evening of October 2, 1994, he was inside the house of Jose Japitana celebrating the arrival of the latter's mother-in-law.[11] With him were Virgilio Persisto, Judy Superio, Jesus Superio, Gaspar Superio, Fred Quiling, Jose Japitana, and the victim. They were drinking elizalde lipid to celebrate the occasion.[12] After some time, the victim got up to leave and as soon as he opened the door, there was a sudden burst of gunshots hitting him.[13] The shots created a pandemonium among the group. Witness Japitana immediately jumped out of the house and took cover behind an acacia tree. From where he was hiding, he heard the voice of accused-appellant Avelino Galgo saying: "You run, what are you waiting for?"[14] Upon hearing the voice, he opened and pointed his flashlight in the direction of the gate of Jose Japitana's house and saw Avelino, Domitilo, Diosdado, and Nelson Galgo.[15] When the four of them left, witness went back inside the house and saw that Tranquilino Quiling (victim) was wounded.[16] The latter allegedly pointed to accused-appellants as the assailants.[17]

Dr. Leticia Tobias, Rural Health Physician of Badiangan, Iloilo, testified that after conducting an autopsy on the victim on October 6, 1994, she concluded that the cause of death was severe hemorrhage due to multiple gunshot wounds. She set forth the following findings in the Autopsy Report:

I. Generalized Rigor Mortis

II.

- Gunshot wound (entrance) 0.5 cm in diameter, just above the navel to the left directed towards the abdominal cavity hitting the large intestine, making its exit at the back left side.
- Gunshot wound (entrance) 0.5 cm in diameter below the left nipple directed towards the chest cavity hitting the left lower lobe of the lungs, making its exit at the left infrascapular region.
- Gunshot wound (entrance) 0.5 cm in diameter below gunshot wound no. 2 directed towards the chest cavity hitting the lower lobe of the lung making its exit at the back, left side.
- Gunshot wound (entrance) 0.5 cm in diameter adjacent gunshot wound no. 3 directed towards the chest cavity hitting the lungs left side making its exit at the back left side.
- Gunshot wound (entrance) 0.5 cm in diameter at the epigastric region, directed towards the back, without hitting any vital organ, making its exit at the back left side.
- Gunshot wound left elbow, medial side, bullet recovered at the posterior elbow, left.

Cause of Death - Severe Hemorrhage due to multiple gunshot wounds.[18]

Dr. Tobias also stated, on cross-examination, that based on the location of the wounds of the victim, the assailants appeared to have been in front of the victim and the shots were fired in a straight direction.[19]

The defense, on the other hand, presented the testimonies of accused-appellants Nelson, Domitilo and Avelino Galgo, SPO1 Julianito Ortigas, P/Inspector Robert Page and Dr. Leticia Tobias.

Accused-appellant Nelson Galgo testified that around nine o'clock in the evening of October 2, 1994, he was resting inside his house in Barangay Cabaangan, Badiangan, Iloilo when he heard a shot.[20] As he was used to hearing gunshots in the area, he did not do anything.[21] The following day, he went to the house of his father to

inquire what happened.[22] His father, accused-appellant Avelino Galgo, told him that Tranquilino was shot by Pablito Japitana and that he came to know such information because the latter himself confessed to him.[23] After learning such information, Nelson went to work as usual.

Around ten o'clock in the morning of the following day, police officers arrived at his grandfather's house and invited him to go with them to Iloilo City.[24] He was taken to Camp Delgado where he was investigated.[25] After the investigation, he was allowed to go home.[26] On October 7, 1994, around seven o'clock in the evening, several police officers again arrived at his house.[27] Together with his father (accused-appellant Avelino) and brother (accused-appellant Domitilo), they were brought to the Badiangan Municipal Jail.[28] Nelson claimed that while they were in said police station, no investigation was conducted, they were not shown any documents and they did not have the assistance of a lawyer.[29]

Accused-appellant Domitilo Galgo corroborated Nelson's testimony. He claimed that on October 2, 1994, at around nine o'clock in the evening, he was resting in his house together with his wife and four (4) children, when he heard a gunshot in the direction of the house of Jose Japitana which was about 150 meters away from his house.[30] After a while, he heard a shout for help. When he went down his house to inquire, he chanced upon Pablito Japitana.[31] Japitana asked him where he was going and Domitilo replied that he heard somebody shout for help.[32] Saying that he was the one who shot Tranquilino Quiling, Japitana advised Domitilo to go back to his house.[33]

The following day, Domitilo went to his father's house to inquire what happened.[34] When he arrived, his uncle Ruel Galgo, a Barangay Councilman, told him that the victim was already dead.[35] Domitilo then proceeded to work at a bamboo plantation. Soon after, police officers arrived and informed him that he was one of the suspects in the shooting of Tranquilino Quiling.[36] He was brought to Iloilo City for a paraffin test but was also released because the results were negative.[37] Domitilo denied shooting the victim and told the police that it was Pablito Japitana who was responsible for the shooting.[38] Later on, he learned that Pablito Japitana was apprehended at the pier in Iloilo City.[39] Domitilo averred that there was no misunderstanding between their family and the victim. However, he knew that four days before the killing, the victim fired a shot in front of the house of Pablito Japitana and this irked the latter.[40]

In his testimony, accused-appellant Avelino Galgo narrated that he was in his house around nine o'clock in the evening of October 2, 1994. He, too, heard a gunshot and a shout for help coming from the house of Jose Japitana which was 130 meters away from his own house.[41] He heard noises coming from the direction of the road and saw the victim being loaded into a jeepney.[42] Around 10:30 p.m., Pablito Japitana came to his house and told him, "Nong, please accompany me. I am going to surrender." [43] When asked why, Japitana informed him that he shot Tranquilino Quiling.[44] Because he was suffering from rheumatism, Avelino failed to accompany Japitana to the police station; instead, he advised him to go to the Barangay Captain.[45] He observed that Japitana was wearing fatigue pants and shirt, and was carrying a pistolized "pugakhang" about two feet long.[46]

At seven o'clock in the morning of the following day, October 3, 1994, Avelino's brother, Ruel Galgo, arrived and informed him that the victim died.[47] At that time, his two sons, accused-appellants Nelson and Domitilo, were also in his house. When Galgo left, Japitana arrived and tried to borrow money from him to facilitate his escape.[48] When Avelino refused to lend him money, Japitana left. Soon after, police officers arrived and invited his sons to Iloilo City for an investigation. When his sons came back, they told him that Japitana was already apprehended by the police at Fort San Pedro in Iloilo City.[49] In the evening of October 7, 1994, the police arrived and served a warrant of arrest for him and his sons.[50] Avelino maintained that he and his sons were in good terms with the victim and it was Japitana who bore a grudge against the latter because the victim once fired a shot at the house of Japitana.[51]

The defense also presented two (2) police officers, namely: P/Insp. Robert Taneo Page and SPO1 Julianito Ortigas. P/Insp. Page was the Branch Chief of the Ballistics Crimes Head Office, PNP Crime Laboratory Service, Camp Delgado, Iloilo City, while SPO1 Ortigas was the Investigator in the Badiangan Police Station at the time of the shooting incident.

SPO1 Julianito Ortigas testified that on October 3, 1994, he conducted an investigation at the scene of the crime and arrested two (2) suspects in connection therewith, namely, accused-appellants Diosdado and Domitilo Galgo, who were brought to the Badiangan Municipal Jail.[52] The two suspects were later brought to the crime laboratory at Camp Delgado, Iloilo City for a paraffin test.[53] Acting on the information given by the suspects that it was Pablito Japitana who was responsible for the shooting, the police proceeded to Fort San Pedro and arrested Japitana.[54] Japitana was detained at the Badiangan Police Station, but was also released four days after, October 7, 1994, because the family of the victim did not believe that he had any participation in the crime.[55] However, on the basis of the allegations of the victim's relatives (Rosalina Quiling, Gaspar Superio and Fred Quiling), a criminal case for murder was filed against accused-appellants.[56]

P/Insp. Robert Page's testimony dwelt on the characteristics of an improvised shotgun in comparison with a patented shotgun, particularly the dispersion of the pellets when fired and the distribution pattern of the bullet.[57] He explained that the ammunition used for an improvised shotgun contains nine (9) pellets, and when fired at a distance of one meter, the distribution pattern of the pellets will be confined to a circumference of about two (2) to two-and-a-half (2½) inches radius.[58] At a distance of forty (40) yards, the pellets will be distributed within a circumference of about thirty (30) inches radius.[59]

Lastly, Dr. Leticia Tobias' testimony for the defense merely reiterated her findings that the assailants were in front of the victim and the guns were fired in a straight direction.[60]

On February 16, 1998, the trial court rendered its decision convicting accused-appellants and sentencing them to suffer the penalty of death, to wit:

WHEREFORE, premises considered, judgment is hereby rendered finding accused AVELINO GALGO, DIOSDADO GALGO, DOMITILO GALGO, and NELSON GALGO guilty beyond reasonable doubt and hereby sentences them to suffer the penalty of DEATH. All the accused are likewise to ordered (sic) to pay the family of the late Tranquilino Quiling the sums of P21,475.00 as actual damages and P50,000.00 as death compensation.

SO ORDERED.

With the imposition of the death penalty, the case is now before us for automatic review. Accused-appellants raised the following errors in their Brief:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS BEYOND REASONABLE DOUBT FOR THE CRIME OF MURDER.

THE TRIAL COURT ERRED IN RELYING HEAVILY ON THE EVIDENCE OF THE PROSECUTION.

THE TRIAL COURT ERRED IN DISREGARDING THE TESTIMONIES OF EXPERT WITNESSES.

THE TRIAL COURT ERRED IN DISREGARDING COMPLETELY THE DEFENSE OF ALIBI DESPITE WEAKNESS OF THE PROSECUTION'S EVIDENCE.[61]

The errors raised by accused-appellants concern primarily the credibility of witnesses. It is a well-settled rule in criminal jurisprudence that the Supreme Court will not interfere with the trial court's determination of the credibility of witnesses unless there appear on record some facts or circumstances of weight and influence which

have been overlooked or the significance of which has been misinterpreted by the trial court.[62] The reason behind this dictum is that the trial judge enjoys the peculiar advantage of observing directly and at first hand the witnesses' deportment and manner of testifying, and is, therefore, in a better position to form accurate impressions and conclusions on the basis thereof.

The Court has consistently reiterated that "xxx the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected in the record." [63] The comportment of the person on the witness stand is a good gauge of one's credibility, it can reveal if the witness is telling the truth or lying.

After a careful study and review, the Court does not find sufficient grounds to deviate from the trial court's appreciation of the credibility of the witnesses for the prosecution. The trial court, which had the opportunity to hear directly the testimonies of these witnesses, gave credence to Fred Quiling's assertion that he saw accused-appellants shoot the victim, and to Pablito Japitana's declaration that he saw accused-appellants fleeing from the scene of the crime immediately after the incident. The Court does not doubt the credibility of said witnesses. There is no showing that they had any ill motive in imputing a grave offense to accused-appellants but were merely interested in seeing that the assailants are meted justice. Thus, we have the following positive and categorical testimony from eyewitness Fred Quiling:

Q

While you were there, do you recall of any unusual incident that happened?

A

Yes, sir.

Q

Please tell the Honorable Court?

A

Tranquilino Quiling was shot.

Q

By whom?

A

By Diosdado and Nelson Galgo.

Q

Was he hit?

A

Yes sir, he was hit on the stomach and chest.

Q

How many times did Diosdado Galgo shot Tranquilino?

A

They shot him twice from each of them.

Q

What was the firearm used by Diosdado?

A

12 gauge shotgun.

Q

How about Nelson?

A

Also a 12 gauge shotgun.

Q

Where was Tranquilino situated when he was shot by the Galgos?

A

At the door.

Q

Door of the house?

A

Yes, sir.

Q

What was he doing at the door?

A

He was standing.

Q

Where was he facing?

A

Facing outside.

Q

In relation to Diosdado, where was he when he shot Tranquilino?

A

Downstairs.

Q

How far was Diosdado from Tranquilino?

A

About one (1) arms length.

Q

How about Nelson, where was he located from Tranquilino when he delivered the shot?

A

Beside Diosdado.

Q

How far?

A

Also one (1) arms length.

Q

You said that the assailants were downstairs, how many steps had this stairs?

A

3 steps.

Q

Was Tranquilino hit by the shot delivered by Diosdado and Nelson?

A

Yes, sir.

xxx

Q

Was Tranquilino armed at that time?

A

No, sir.

Q

Before Nelson and Diosdado shot Tranquilino, did they converse?

A

No, sir.

Q

So there was no previous altercation before the shooting?

A

No, sir.

Q

Do you know their companions?

A

Avelino Galgo and Dometilo Galgo.

Q

Where was Avelino Galgo and Dometilo Galgo in relation to Diosdado and Nelson Galgo at the time of the shooting?

A

At their back.

Q

What were they doing?

A

They were also standing there with their arms.

Q

What were they doing with the firearms at the time Diosdado and Nelson were shooting Tranquilino?

A

They were holding their firearms.

Q

They were not pointing their firearms at Tranquilino?

A

No, sir.

Q

What were their firearms?

A

12 gauge shotgun.

xxx

Q

What Avelino and Dometilo were doing, they were merely standing there and holding their firearms and did nothing more?

A

Yes, sir.

Q

And they did not utter any word?

A

No, sir.

Q

Neither did they prevent Nelson and Diosdado from shooting the victim?

A

No, sir.

xxx

Q

Considering that the incident took place at 9:00 o'clock in the evening, how were you able to see the four accused and identified them?

A

I saw them.

Q

Why, considering that it was nighttime?

A

Because there were lights.

Q

Where did the lights come from?

A

From the door.

Q

Of the house?

A

Yes, sir.

Q

Where were you located in relation to the door where Tranquilino was at the time of the shooting?

A

I was also at the doorway.

xxx[64]

This testimony was corroborated by Pablito Japitana who recounted circumstances before and immediately after the shooting incident, to wit:

Q

On October 2, 1994, at 9:00 o'clock in the evening where were you?

A

I was in the house of Jose Japitana.

xxx

Q

Why were you in the house of Jose Japitana?

A

There was a celebration.

xxx

Q

Please tell us who were your companions?

A

Virgilio Persisto, Judy Superio, Jesus Superio, Gaspar Superio, Fred Quiling, Tranquilino Quiling, Jose Japitana and Pablito Japitana.

xxx

Q

In connection with that celebration what were you doing?

A

Drinking.

xxx

Q

During that time that you were drinking lipid, can you recall any unusual incident that took place?

A

Tranquilino Quiling was about to open the door when he was shot.

xxx

Q

When he was shot what did you do?

A

When the gun burst I jumped.

Q

And what happened after you jumped?

A

I covered myself at the acacia tree.

Q

How about your other companions?

A

They also jumped.

Q

While you were there hiding at the acacia tree, what happened?

A

I heard a voice.

Q

Whose voice was that?

A

That of Avelino Galgo.

xxx

Q

What did he say?

A

“You run, what are you waiting for?”

Q

What did you do when you heard that?

A

I opened my flashlight towards the gate of the house of Jose Japitana.

Q

When you flashed the flashlight, what did you see if you saw anything?

A

I saw Avelino Galgo.

Q

Was he alone?

A

There were 3 persons ahead of Avelino Galgo.

Q

Do you know these 3 persons?

A

Yes, sir.

Q

Who were they?

A

Dometilo, Diosdado and Nelson.

Q

Since it was dark that evening, how did you recognize the three?

A

Because I opened my flashlight to them.

Q

Did you notice if they were carrying something?

A

Yes, sir, they were carrying something.

Q

What were they carrying?

A

I am not certain but I saw it was short.

xxx

Q

After they have ran away, what did you do?

A

I went back to the house of Jose Japitana.

Q

For what purpose?

A

To see what happened to Tranquilino Quiling.

Q

What did you see?

A

Tranquillino Quiling was already wounded.

Q

Was he still alive?

A

Yes, sir, we even talked.

Q

What did you talk about?

A

He told me that he was shot by the Galgos.

xxx[65]

Accused-appellants insist that the trial court should have discredited the prosecution witnesses' testimonies inasmuch as they were inconsistent and conflicting. In particular, accused-appellants point out that the testimonies of Fred Quiling and Pablito Japitana differed as to the exact number and names of people present when the shooting incident happened, and the reason for the celebration in the house of Jose Japitana. They also argue that Fred Quiling's testimony that he saw accused-appellants shoot the victim was belied by his own admission that he was looking down on the floor when the victim was shot.

The Court finds these perceived inconsistencies to be immaterial and absolutely without any relevance to the

issues at hand. Inconsistencies that refer only to minor details and collateral matters do not affect the substance of the prosecution's declarations, their weight and their veracity.[66] Equally important, inconsistencies which refer only to minor and insignificant details, such as those pointed out by accused-appellants, serve to reinforce rather than weaken the credibility of a witness. In fact, such inaccuracies prove that the statements were spontaneous and unrehearsed.[67] Moreover, such kind of inconsistencies have never been grounds for acquittal.

As to the assertion that witness Fred Quiling did not actually see the victim when he was shot because he was looking down on the floor, this has been sufficiently explained by the witness. He testified that when the victim was bidding goodbye to them, he was looking down on the floor. However, he was very resolute in stating that he was then seated facing the door when the victim opened the door and was greeted by a burst of gunshots, coming from accused-appellants Nelson and Diosdado who were right outside the door firing 12-gauge shotguns. He explained, thus:

xxx

Q

Successively?

A

Successively.

Q

What is the time interval more or less between the first and second shots?

A

About seconds only.

Q

Since you claimed you have seen Nelson and Diosdado fired (sic) the shots, tell the Court who fired the first shot?

A

Nelson fired first.

Q

What firearm did he use?

A

12 gauge shotgun.

Q

Who fired second shot?

A

Diosdado.

Q

What firearm?

A

Also a 12 gauge.

xxx[68]

Q

Since you were not expecting anything to happen, you were not able to look around inside the house of Jose Japitana when Tranquilino was bidding goodbye to Jose Japitana?

A

I looked on the floor.

Q

You said that you were one (1) foot away from Tranquilino when the successive gunfire explosions happened?

A

No Ma'am I was sitting down the floor when Tranquilino was bidding goodbye.

Q

When Tranquilino was bidding goodbye you were sitting on the floor and facing the kitchen?

A

I was facing the door.

xxx[69]

Accused-appellants' defense of denial and alibi must likewise fail. For alibi to prosper, the requirements of time

and place must be strictly met. Accused-appellants must not only prove their presence at another place at the time of the commission of the offense, but they must also demonstrate that it would be physically impossible for them to be at the scene of the crime when it was committed.[70] Where the distance between the scene of the crime and the alleged whereabouts of the accused is only two (2) kilometers,[71] three (3) kilometers,[72] or even five (5) kilometers,[73] the same are not considered to be too far as to preclude the possibility of the presence of the accused at the locus criminis,[74] even if the sole means of travelling between the two places at that time was by walking. In this case, accused-appellants' respective houses were found to be more or less only one-half kilometer away from the scene of the crime. They were, in fact, within earshot of the place because they all testified that they heard the gunshots from their respective houses. Hence, it was not physically impossible for accused-appellants to have been within the vicinity of the house of Jose Japitana at the time the victim was shot.

The claim that prosecution witness Pablito Japitana was the one responsible for the crime because he allegedly confessed to accused-appellant Avelino Galgo on the same night is incredible and nothing more than a last ditch effort to escape punishment. We quote with favor the trial court's disquisition on this point, to wit:

The attempt to put the blame on Pablito Japitana for the death of the victim should likewise be taken with a grain of salt. The court is not prepared to lend credence and weight to such claim otherwise, the culprit can always resort to an expedient subterfuge of pointing to any person as the assailant and thereby avoid criminal culpability. It is worthy to note that, as testified to by defense witness SPO1 Julianito Ortigas, even the family of the late Tranquilino Quiling was convinced that Pablito Japitana does not have any responsibility whatsoever to the alleged crime. Except by the bare allegations of the accused, there is not a bit of evidence on record to support the assertion of the defense that Pablito Japitana was indeed accountable for the alleged crime.[75]

Accused-appellants capitalize on the testimony of Police Inspector Page that the size and location of the wounds found on the body of the victim do not correspond to the kind of gun used in shooting him down. Witness Page opined that a shotgun fired at a distance of two feet would result in wounds about one inch in diameter and only about 2 to 2-1/2 inches apart. Accused-appellants point out that the wounds found by the physician on the body of the victim were inconsistent with the expert testimony inasmuch as they were only 0.5 centimeter in diameter and were far from each other.

The Court does not find such testimony compelling enough so as to overturn the trial court's decision and acquit accused-appellants. The shotgun used in the shooting was improvised and did not pass through the regular quality control procedures. The factors influencing the character of a gunshot wound and degree of dispersal are the "muzzle-target distance, gauge of the shotgun, degree of choke and the type of ammunition." [76] P/Insp. Page was not able to physically examine the shotguns and ammunition used in the shooting so that he had no way of knowing the actual gauge, degree of choke and type of ammunition employed in the shooting of the victim. These factors are crucial in explaining the size and dispersal of the victim's wounds.

In any criminal prosecution, the only requisite is that the prosecution proves the guilt of the accused beyond reasonable doubt.[77] Proof beyond reasonable doubt does not mean such a degree of proof that, excluding the possibility of error produces absolute certainty.[78] Only moral certainty is required, or the degree of proof which produces conviction in an unprejudiced mind.[79] From the evidence presented by the prosecution, we are convinced that such quantum of evidence has been satisfied. However, as the Solicitor General pointed out, the penalty imposed on accused-appellants must be lowered from death to reclusion perpetua.

In imposing the supreme penalty of death, the trial court appreciated the aggravating circumstances of treachery and abuse of superior strength. Treachery was held to have qualified the crime to murder under Art. 248 of the Revised Penal Code and abuse of superior strength was considered as a separate generic aggravating

circumstance; hence, the imposition of the greater penalty under par. 1, Art. 63 of the Code.

We agree with the trial court that the aggravating circumstance of treachery was duly proven by the prosecution. The shooting of a victim at a distance without the least expectation on his part that he would be assaulted is characterized by treachery.[80] In criminal jurisprudence, there is treachery when (1) at the time of the attack the victim was not in a position to defend himself; and (2) the offender consciously adopted the particular means, method or form of attack employed by him.[81]

In the present case, it was obvious that accused-appellants consciously adopted the mode of attack, which was a sudden and unexpected firing upon the victim when the latter was about to step out of the house. Accused-appellants deliberately waited outside Jose Japitana's house and fired upon the victim as he was coming out the door. The suddenness of the attack caught the victim unaware and precluded him from defending himself, thus ensuring the execution of the crime. There was not the slightest provocation on the part of the victim. The trial court was, therefore, correct in appreciating treachery as a qualifying circumstance which changed the nature of the crime to murder.

However, we take exception to the trial court's appreciation of abuse of superior strength as a separate aggravating circumstance warranting the imposition of the higher penalty which is death. It is already settled that where treachery is present, abuse of superior strength is deemed absorbed[82] and the same cannot be taken separately from treachery. Since treachery, which absorbs abuse of superior strength, already qualifies the crime to murder, and there being no other aggravating circumstance, the lesser penalty shall be applied in accordance with Article 63 in relation to Article 248[83] of the Revised Penal Code, to wit:

ART. 63. Rules for the application of indivisible penalties. xxx - 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:

xxx

- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

Finally, we approve the trial court's finding of conspiracy among accused-appellants. Previous agreement to commit the crime need not be proved to establish conspiracy.[84] Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[85] Eyewitness Fred Quiling saw all four accused-appellants at the scene of the crime. Although he testified that only Nelson and Diosdado Galgo actually fired shots at the victim, he declared that Avelino and Domitilo Galgo were right behind them and likewise armed with shotguns. The other witness, Pablito Japitana, averred that when Avelino shouted, "Run!," all four immediately fled from the scene of the crime. Their physical presence at the scene of the crime, their being armed with shotguns and their act of simultaneously running away after the victim was shot, manifest a common design and a unity of purpose and action among accused-appellants leading to the indubitable conclusion that they were in conspiracy.

We have ruled that moral damages, which include mental anguish, serious anxiety and wounded feelings, may be recovered in criminal offenses resulting in the victim's death.[86] Thus, in addition to civil indemnity and actual damages awarded by the trial court, the Court additionally grants moral damages to the victim's heirs in the amount of P50,000.00.

WHEREFORE, the decision of the Regional Trial Court of Iloilo City, Branch 23, in Criminal Case No. 44165, finding accused-appellants guilty beyond reasonable doubt of the crime of murder is hereby **AFFIRMED** save for

the MODIFICATION that the penalty of death is hereby lowered to RECLUSION PERPETUA. Accused-appellants are further ordered to pay the heirs of the victim the amount of P50,000.00 as moral damages in addition to the civil indemnity and actual damages awarded by the trial court.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.
De Leon, Jr., J., on official leave.

[1] Penned by Exec. Judge Tito G. Gustilo.

[2] TSN of February 7, 1995, p. 2.

[3] TSN of March 15, 1995, p. 6.

[4] *supra*, Note 1, pp. 3-4.

[5] *Id.*, at 7-8 and *supra*, Note 2, p. 10.

[6] *Id.*

[7] *Id.*, at 4-5.

[8] *Id.*, at 5-6.

[9] *Id.*

[10] *Id.*, at 7.

[11] TSN of July 16, 1995, p. 3.

[12] *Id.*, at 4.

[13] *Id.*

[14] *Id.*, at 4-5.

[15] *Id.*

[16] *Id.*, at 6.

[17] *Id.*

[18] Autopsy Report, Exhibit "A," (p. 129 of Records).

[19] TSN of February 27, 1995, pp. 14-15.

[20] TSN of August 14, 1996, pp. 22-23.

[21] *Id.*

[22] *Id.*, at 24.

[23] *Id.*, at 24-25.

[24] *Id.*, at 26.

- [25] Id., at 27.
- [26] Id., at 27-28.
- [27] Id., at 29-30.
- [28] Id., at 30-31.
- [29] Id.
- [30] TSN of February 28, 1996, pp. 3-5.
- [31] Id., at 5.
- [32] Id., at 6.
- [33] Id.
- [34] Id.
- [35] Id., at 7-8.
- [36] Id., at 8-9.
- [37] Id., at 9-10.
- [38] Id.
- [39] Id., at 11.
- [40] Id., at 13-14.
- [41] TSN of March 27, 1996, pp. 2-3.
- [42] Id., at 4-5.
- [43] Id.
- [44] Id.
- [45] Id.
- [46] Id., at 6.
- [47] Id., at 7.
- [48] Id., at 8.
- [49] Id., at 9-10.
- [50] Id., at 10-12.
- [51] Id., at 13-14.
- [52] TSN of July 17, 1996, pp. 4-5.
- [53] Id., at 6.
- [54] Id., at 7.
- [55] Id., at 8-9.

[56] *Id.*, at 9-12.

[57] TSN of August 14, 1996, pp. 3-11.

[58] *Id.*, at. 9.

[59] *Id.*, at 5-6.

[60] TSN of June 13, 1996, pp. 4-8.

[61] Rollo, pp. 42-43.

[62] *People vs. Jimenez*, 302 SCRA 607 (1999); *Cervantes vs. Court of Appeals*, 304 SCRA 26 (1999); *People vs. Tahop*, 315 SCRA 465 (1999).

[63] *People vs. Binas*, 320 SCRA 22 (1999).

[64] *Supra*, Note 2, pp. 3-8.

[65] *Supra*, Note 11, pp. 3-6.

[66] *People vs. Sanchez*, 302 SCRA 21 (1999); *People vs. Khor*, 307 SCRA 295 (1999).

[67] *People vs. Reyes*, 309 SCRA 622 (1999); *People vs. Gondora*, 265 SCRA 408 (1996).

[68] *Supra*, Note 3, pp. 12-15.

[69] *Id.*, at 18.

[70] *People vs. Barellano*, 319 SCRA 567 (1999); *Abalos vs. Court of Appeals*, 321 SCRA 446 (1999); *People vs. Agsunod, Jr.*, 306 SCRA 781 (1999).

[71] *People vs. Floro*, 316 SCRA 304 (1999).

[72] *People vs. Binsol*, 100 Phil. 713 (1957).

[73] *People vs. Manabat*, 100 Phil. 603 (1967).

[74] *People vs. Floro*, 316 SCRA 304 (1999).

[75] RTC decision, p. 8.

[76] Solis, *Legal Medicine*, 1987 ed., p. 377.

[77] *People vs. Villanueva*, 302 SCRA 380 (1999).

[78] *People vs. Bautista*, 308 SCRA 620 (1999).

[79] *Darwin vs. Court of Appeals*, 292 SCRA 534 (1998).

[80] *People vs. Tamani*, 55 SCRA 153 (1974).

[81] *People vs. Mabuhay*, 185 SCRA 675,680 (1998); *People vs. Sabado*, 168 SCRA 681 (1988); *People vs. Rellon*, 167 SCRA 75 (1988).

[82] *People vs. Cawaling*, 293 SCRA 267 (1998); *People vs. Carzano*, 95 SCRA 146 (1980); *People vs. Renejane*, 158 SCRA 258 (1988); *People vs. Centeno*, 172 SCRA 607 (1989); *People vs. Liston*, 179 SCRA 415 (1989).

[83] Art. 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:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

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[84] People vs. Botona, 304 SCRA 712 (1999); People vs. Nullan, 305 SCRA 679 (1999).

[85] People vs. Antonio, 303 SCRA 414 (1999); People vs. Taclan, 308 SCRA 368 (1999); People vs. Bitoon, Sr., 309 SCRA 209 (1999).

[86] People vs. Gonzales, 311 SCRA 547 (1999); People vs. Salcedo, 273 SCRA 473 (1997).

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