

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TIBOY ALBACIN, ACCUSED-APPELLANT.

G.R. No. 133918. September 13, 2000

Ponente: PUNO, J.

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PUNO, J.:

For the Navarro family of Lasang, Davao City, the usual burst of firecrackers on New Year's Eve of 1993 was muted by the resounding gunshots that snuffed out the life of Teresita Navarro and wounded her husband, Florencio Navarro. The accused, Tiboy Albacin, was the author of the dastardly acts.

On March 10, 1994, an information was filed charging the accused Albacin with murder in Criminal Case No. 33,512-94, viz:

"That on or about December 31, 1993, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating and helping with (sic) one John Doe, armed with a gun, with treachery and intent to kill, wilfully (sic), unlawfully and feloniously shot Teresita G. Navarro, thereby inflicting upon the latter gunshot wounds which caused her instantaneous death.

Contrary to law."[1]

On the same day, another information was filed charging the accused with frustrated murder in Criminal Case No. 33, 513-94, viz:

"That on or about December 31, 1993, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating and helping with one John Doe, armed with a gun, with treachery and intent to kill, wilfully (sic), unlawfully, and feloniously attacked and shot with said gun one Florencio S. Navarro hitting his right hand and chest through and through, which injuries would ordinarily cause the death of the said Florencio S. Navarro, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical assistance rendered to the said Florencio S. Navarro that prevented his death.

Contrary to law."[2]

The records show that on December 31, 1993, at about 9:00 p.m., Teresita Navarro, together with her husband, Florencio Navarro, and their two daughters were on their way to church to attend the New Year's Eve mass. Coming from their house, they passed through a two-meter wide muddy path between ramie plants in Lasang Poblacion, Davao del Norte.[3] The ramie plants were thickly planted and reached up to the shoulders of a grown man.[4] Florencio walked about twenty meters behind his daughters while Teresita was about four meters behind him. Although it was a moonlit night, Teresita held a torch to light her way. All of a sudden, Florencio heard a gunshot from behind. He immediately looked back and saw his wife lying on the ground. The torch she was holding fell but continued to burn. With the light coming from the moon and the torch, Florencio saw the accused Albacin approaching him, coming from where his wife was. He recognized Albacin because he personally knew

him as his neighbor for more than twenty years.[5] Then another man wearing a big hat emerged from the ramie plants and approached Florencio on his right side. At a distance of about half a meter at the right front side of Florencio, Albacin pointed a gun at Florencio's forehead. Albacin then fired his gun twice, the first shot hitting Florencio on his right back hand and the second shot grazing the middle portion of his chest. The other man then fired at Florencio's right waist but his pistol jammed.[6]

Florencio fled from the crime scene and caught up with his daughters and told them that their mother had been shot and was feared to be dead. Together, they headed to the Lasang Police Substation.[7] When they got there, Florencio told the police that he was shot twice, but did not reveal the identity of his assailant because he was not in his right mind. He asked for help for him to be brought to the hospital.[8] Florencio, along with one of his daughters, Carmela, were brought to the Davao Medical Center.[9] His other daughter went home. PO Paul Quilisado, the desk officer at the substation, entered the report in the police blotter. Another daughter of Florencio, Teresa Sabac, got wind of the shooting incident and also arrived at the substation. From there, she called up her younger brother who later arrived at the substation and was interviewed by the policemen about the name and age of Florencio. Teresa, along with a policeman named Rufino Dayag, went to her father in the hospital.[10] Another policeman, PO2 Rodel Estrellan, called up the Bunawan Police Station for assistance.[11] SPO1 San Nicolas Palado received the call and entered in the blotter the shooting of Florencio and Teresita Navarro. Palado then informed their station commander about the incident and immediately, the commander, Inspector Ano-os, two other policemen and a CAFGU member from the Bunawan Police Station went to the Lasang Substation,[12] and together with PO2 Estrellan proceeded to the crime scene.[13] The police team found the lifeless body of Teresita Navarro on a private road, lying on her side with her face, neck, chest and clothes burned. A lighted torch standing one meter from the feet of the body clearly lighted it.[14] The body was then brought to the house of Teresita's in-laws who lived nearby.[15] At about 10:00 p.m., the team of policemen returned to the Lasang Substation and entered in the police blotter the identity of the victims.[16] At 1:00 a.m., January 1, 1994, the team from Bunawan Police Station returned there.[17]

Meanwhile, Florencio was treated by Dr. Alden Bagarra, a resident surgeon at the Davao Medical Center. He sustained a non-penetrating, grazing gunshot wound on the anterior chest and a penetrating gunshot wound on the space between the thumb and the index finger of his right hand. Both wounds were not serious.[18] Dr. Bagarra testified that if the wound on the right hand was left untreated, infection would probably set in in 48 hours, and eventually cause general infection leading to death. But he also testified that even a small cut if left unattended could cause infection eventually leading to death if left without medical attention.[19] In the medical certificate that Dr. Bagarra prepared, he indicated that the probable healing time of the wounds was fifteen days barring complication.[20] From the location of the wounds, Dr. Bagarra concluded that the assailant was probably on Florencio's side at a distance of more than two feet.[21] At the hospital, the police asked Florencio about the shooting incident. Again, he did not tell the police who the assailant was because he was still not in his right mind.[22] At about 10:00 the following morning, Florencio was discharged from the hospital. He then went to his father-in-law's house for the wake of his wife.[23]

During the wake, Florencio refused to reveal the identity of the assailant and told Teresa that he would avenge the death of Teresita. On January 2, 1994, however, he told Teresa that the accused Albacin was the culprit. Teresa dissuaded her father from taking revenge and prevailed upon him to file a case instead. On January 3, 1994, Florencio, with Teresa, went to the police station to report that it was the accused Albacin who killed his wife and shot him twice.[24] His report was entered by Inspector Ano-os in the police blotter. He executed an affidavit narrating the shooting incident.[25] About a week thereafter, before his wife was buried, Florencio also reported to Barangay Captain Git Navarro that it was the accused Albacin who shot him twice.[26] After his wife was buried, Florencio revealed to his mother-in-law that Albacin shot his wife.[27]

Florencio testified that prior to the shooting incident, the family of the accused Albacin already held a grudge against the Navarro family. The Albacins suspected that the accused's brother was killed by the New People's Army (NPA) upon instruction of the Navarro family because after the killing, the NPA's headed towards the direction of the Navarro residence. In one instance, the mother of the accused Albacin had an altercation and exchanged hot words with the victim, Teresita.[28]

Teresa corroborated Florencio's testimony. She testified that the older brother of the accused was killed by the NPA in October 1993. Teresa was able to read, however, a letter left by the NPA near the body of the older Albacin which stated the offenses committed by the accused against the NPA and that he (the accused) could not be forgiven and should be killed by the NPA. She was told by her mother that the family of the accused suspected their family to have given instructions to the NPA to kill the older Albacin.[29]

Dr. Danila Ledesma, Medico-Legal Officer of the Davao City Health Office, also took the witness stand. He examined the body of the victim, Teresita Navarro, at 7:00 a.m. of January 1, 1994, but the victim's daughter refused to have the body autopsied. His findings show that Teresita sustained a gunshot wound at the left back portion of her head. This was the bullet's point of entry. The point of exit was a star-shaped wound in the upper eyelid portion. There were no other abrasions or contusions on her body. The probable cause of Teresita's death was the gunshot wound on her head. Dr. Ledesma surmised that because of the location of the wounds sustained by Teresita, the assailant was probably standing behind her slightly on the left side. He also concluded that the gun was fired within two feet from the victim.[30]

The accused Albacin had a different story to tell. He testified that he was born in Lasang and resided there until he became a cook of the 75th Infantry Batallion Charlie Company from October 23, 1993 up to 1995, and resided in their camp in Cacao, Panabo, Davao del Norte. During this whole period, he never returned to their house in Lasang.

On December 31, 1993, he was at the camp. He woke up at 5:00 a.m. and cooked breakfast until 8:00 a.m. At 10:00 a.m., he started preparing lunch. From 1:00 to 5:00 p.m., he took a rest in the sleeping quarters. In the afternoon, he started cooking dinner at 5:00 p.m. and finished at 8:00 p.m. He then cleaned the cooking utensils until 8:30 p.m. From 8:30 p.m. to 11:00 p.m., he joined six soldiers drinking Tanduay at their post in the camp. He was the "gunner" (the person pouring drink into the soldiers' glasses). From 11:00 p.m. to 12:00 p.m., a certain Pfc. Oscar Tongson and he started preparing food for the New Year celebration. At 12:00 midnight, the soldiers partook of the food. The accused Albacin again became the "gunner" from 12:30 a.m. to 2:00 a.m. of January 1, 1994. At 2:00 a.m., he went to bed at the bunkhouse.[31]

The accused Albacin also testified that to get to Lasang from Cacao, he has to take a jeep going to Panabo for one and a half hours. From Panabo, he has to take another jeep going to Lasang for ten minutes. The last trip of these jeeps is at 7:00 p.m. He also admitted that he knew the Navarro family since he was seven years old. The Navarros lived ten minutes away from his house, and would pass by his house on the way to church in Lasang poblacion. He, however, denied having any misunderstanding with them.[32] When asked about his brother who was allegedly shot by the NPA's in October 1993, he could recall the year when he was shot, but not the month because according to him, that was a long time ago already.[33] On cross-examination, however, he testified that he was killed on October 29, 1993.

Herman Bermoy, brother-in-law of William Albacin (brother of the accused Albacin) testified that the accused left Lasang and resided in the camp of the 75th infantry batallion after William was killed on October 29, 1993. He did not come back to Lasang until he was apprehended in the camp in November 1995 in connection with the instant case. He visited the accused in the camp for the first time in January 1995. Coming from his office in the

Lasang market place, it took him only fifteen minutes to get to the camp, and about 25 minutes to return to his office. The second time Bermoy visited the accused was in February 1995. In both visits, he informed the accused Albacin that a case was filed against him for the death of Teresita Navarro and the wounding of Florencio Navarro. The accused was surprised. Bermoy advised the accused Albacin to surrender to the authorities. Albacin agreed to do so but never did. Inconsistent with his earlier testimony that the accused was apprehended in the camp in Cacao, Bermoy stated that the accused surrendered in Bunawan in November 1995.[34]

Pfc. Danilo Buchan, a soldier at the 75th infantry batallion camp, also took the witness stand. He came to know the accused Albacin when the latter became a cook in their camp in Cacao, Panabo, Davao del Norte from July or August 1993 up to 1995.[35] On December 31, 1993, he saw the accused Albacin and another civilian cook, Cesar Caseñas, cook breakfast. The soldiers had breakfast at 7:00 a.m. Again, he saw the accused Albacin and Caseñas preparing lunch. Later, at 4:00 p.m., Albacin and Caseñas prepared supper. At 5:30 p.m., the soldiers took their dinner and finished in fifteen minutes. Shortly after 5:45 p.m., a group of soldiers composed of Morillo, Oscar Tongson, Joe Cales, Buchan, and another soldier instructed Albacin to buy Tanduay "lapad" while Caseñas cleaned the kitchen. Albacin bought the liquor at a store about fifteen to twenty meters away from the group's post in the camp. At 7:00 p.m., the group had consumed their drink and instructed Albacin to buy another bottle. Buchan's group consumed a total of six "lapad" bottles that night. At 1:00 a.m. of January 1, 1994, the group finished drinking and Albacin turned in to sleep while some of the other soldiers took their post. The whole time they were drinking, accused Albacin was beside Buchan acting as "gunner" of the group. However, in his affidavit executed about two months after the shooting of the Navarros, Buchan stated that his group's drinking spree started at 3:00 p.m. of December 31, 1993 and ended at 10:00 that night. When confronted with his affidavit on cross-examination, he stated that their drinking spree ended at 10:00 p.m. Buchan also testified that Cacao is fifteen to twenty kilometers away from Lasang.[36]

Oscar Tongson also took the witness stand. He met the accused in 1990 at the Panabo market. Thereafter, upon Tongson's recommendation, the accused Albacin became a cook of the 75th Charlie Company in Cacao from May 1993 to 1995. On December 31, 1993, he saw Albacin cooking in the camp. From 1:00 p.m. to 5:00 p.m., Albacin helped Tongson prepare the food for the New Year celebration. From 5:00 p.m. to 7:00 p.m., Albacin joined the group of Buchan, Murillo, Dizon, Español and Tongson on a drinking spree of Tanduay "lapad" near the camp's kitchen. He would shuttle back and forth from the kitchen where he was preparing food to Tongson's group.[37] From 7:00 p.m. to 10:00 p.m., the accused, along with some soldiers, helped Tongson prepare the food. From 10:00 p.m. to 11:00 p.m., they prepared the food on the table. At 11:00 p.m., they gathered themselves. Thereafter, at 12:00 midnight, Albacin served the food and the soldiers ate. When they finished eating, Albacin cleaned up the cooking utensils.[38]

On cross-examination, however, Tongson narrated that on December 31, 1993, he saw the accused sitting at the post of the camp. At 4:00 p.m., he saw the accused in the kitchen of the camp. The latter was still in the kitchen at 5:00 p.m. A group of soldiers including Albacin and he started drinking Tanduay in the camp at 6:00 p.m. They consumed six Tanduay "lapad" bottles until 10:00 p.m. Thereafter, they prepared food from 10:00 p.m. to 12:00 midnight in the kitchen. At 12:00 midnight up to 1:00 a.m., they ate. Afterwards, they resumed drinking Tanduay "lapad" until 2:00 a.m. of January 1, 1994. Tongson went to bed at 2:00 a.m. That morning, he saw the accused cooking at 7:00 a.m.[39]

On rebuttal, Gilbert Navarro, Barangay Captain of Lasang, took the witness stand. He testified that Lasang is the last barangay of Davao City. Its boundary is Panabo. Between Lasang and Cacao, a barangay in Panabo, there are two barangays. From Lasang, Cacao can be reached via the national highway. Alternatively, a barangay road where jeeps, trucks, and motorcycles pass may be taken. The distance between these two barangays via the

barangay road is about eight kilometers.[40]

Florencio Navarro was recalled on rebuttal. He testified that when he would buy pigs, he would always traverse by foot the distance between Lasang poblacion to the 75th infantry batallion camp in Cacao. Walking at a slow pace, it would take him one hour to cover the distance of only six kilometers because the camp is at the edge of Barangay Katipunan which is only five kilometers away from Lasang. Barangay Katipunan is adjacent to Barangay Cacao. The distance of eight kilometers from Lasang to Cacao, on the other hand, refers to the center of Cacao. He reiterated that the accused Albacin shot both his wife and himself (Florencio).[41]

The trial court sustained the prosecution's version of the shooting incident and ruled, viz:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime charged in the two informations, without any modifying circumstances attendant:

In Criminal Case No. 33,512-94 for Murder, he is hereby sentenced to Reclusion Perpetua, and to pay the cost; to indemnify the offended party the sum of P50,000.00 as compensatory damages for the death of Teresita Navarro and P29,000.00 for actual damages for burial expenses.

In Criminal Case No. 33,513-94 for Frustrated Murder, he is hereby sentenced to an indeterminate penalty of seven (7) years, one (1) day of Prision Correccional Maximum to Prision Mayor Medium as the minimum range to thirteen (13) years and one (1) day of Prision Mayor Maximum to Reclusion Temporal medium as the maximum range and to pay the cost."[42]

Hence this appeal by the accused Albacin with the following assignment of errors:

I.

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED, NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO ERRED IN GIVING CREDENCE TO THE IDENTIFICATION MADE BY FLORENCIO S. NAVARRO.

The appeal is partly meritorious in both cases of murder and frustrated murder.

We first deal with Criminal Case No. 33,512-94 for murder. The defense faults the trial court for taking Florencio Navarro's word that the accused Albacin was the perpetrator of the crime considering that it took him three days before he revealed the assailant's identity. In the accused's Brief, he punctures Florencio's testimony, viz:

"... the identification made by Florencio was clearly an afterthought on his part. . . It is altogether possible that Florencio never really saw who his assailant was but because of his desire to take revenge upon his assailant, he tried to picture who he was in his mind."[43] (emphasis supplied)

We cannot subscribe to the accused's contention anchored in the realm of possibilities. In a criminal case, moral certainty and not merely possibilities determines the guilt or innocence of the accused. The positive identification made by Florencio lends such degree of certainty enough for this Court to conclude that the accused Albacin was responsible for the untimely demise of Teresita Navarro. Upon hearing the gunshot which snuffed out the life of his wife, Florencio immediately looked back and saw the accused Albacin coming from his fallen wife and approaching him. Albacin then pointed a gun to Florencio's head.

The accused was the only person Florencio saw with his fallen wife immediately after he heard a gunshot from where his wife was. With the light coming from the moon and Teresita's torch, Florencio was able to recognize

the accused Albacin who has been his neighbor for more than twenty years. He testified as follows:

“Q: While walking in that position, your daughter ahead of you 20 meters and your wife 4 meters (sic), you said you heard a gunshot?

A: Yes, sir, I heard a gunshot.

Q: What was your reaction when you heard that gunshot?

A: I looked at my (sic) back and saw my wife already fell down.

Q: What else did you see aside from see (sic) your wife already fell down?

A: What I saw was the same person (sic) and he approached me.

Q: How many persons did you see aside from your wife?

A: Only one. Later on, there was another one who approached me.

Q: You said a person, when you turned your back and saw your wife fell down you saw a person was approaching you. Who is that person who approached you?

A. I do not know, sir, he was wearing a hat.

Q: Earlier you pointed to the accused. What did the accused do after your wife fell?

A: That is why after that, he approached me and pointed a gun at me.

COURT:

Q: When you saw the accused you saw the accused approaching you where did he come from?

A: From the place where my wife fell down.”[44] (emphasis supplied)

Dr. Ledesma, the medico-legal expert who examined Teresita's body, testified that Teresita probably died of the gunshot wound she sustained on her head. He also concluded that she was shot from within two feet. Albacin carried a gun with which he shot Florencio. These circumstances lead us to no other conclusion than that the accused Albacin fatally shot Teresita. Direct evidence, i.e., an eyewitness account of the commission of the crime, is not always necessary to identify the accused as the perpetrator of the crime. A witness may not have actually seen the very act of commission of a crime, but he may nevertheless identify the accused as the assailant as when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime.[45] sustain the conviction of an accused through circumstantial evidence, the rules on evidence and jurisprudence require that: (1) there must be more than one circumstance; (2) the inference must be based on proven facts; and (3) the combination of all circumstances produces a conviction beyond reasonable doubt of the guilt of the accused.[46]

Contrary to accused Albacin's allegation, the three-day delay in Florencio's identification of the accused Albacin as the assailant does not erode his credibility. We have previously ruled that delay in revealing the author of the crime does not impair the credibility of witnesses, more so if such delay is satisfactorily explained.[47] Florencio admitted that initially, he was not able to reveal the identity of the assailant because he was not in his right mind immediately after the shooting incident. A few days after the dastardly act was committed, he refused to reveal the identity of the perpetrator of the crimes because he wanted to take revenge against the accused Albacin. It was only upon insistence of his daughter Teresa that he was prevailed upon to report to the authorities the identity of the assailant and accordingly file a case against him.

The accused Albacin has not succeeded in destroying the credibility of Florencio. It is worth noting that the trial court found Florencio's testimony "sincere, clear, convincing, and straightforward." [48] Well-settled is the rule that a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness. [49] The trial court also ruled that the "(e)vidence is completely wanting of any motive or reason for the complainant Florencio Navarro to falsely testify against the accused for crimes as heinous as that charged." Well-entrenched in our jurisprudence is the rule that where there is no evidence that the principal witnesses of the prosecution were actuated by ill-motive, their testimony is entitled to full faith and credit. [50]

On the other hand, in a bid to exculpate himself, the accused interposed the defense of denial and alibi. These defenses prove futile when juxtaposed with Florencio's positive identification of accused Albacin as Teresita's and his assailant. Considered as inherently weak defenses, alibi and denial must be buttressed by other convincing evidence of non-culpability to merit credibility. [51] It all the more fails in light of the positive identification made by a credible witness who has no ill-motive to testify against the accused as in the case at bar. [52]

Moreover, for the defense of alibi to prosper, it must be proved that it was physically impossible for the accused to have been at the scene of the crime at the approximate time of its commission. [53] The accused has failed to adduce such evidence. As borne out by the testimony of defense witness Bermoy, the camp in Cacao where Albacin allegedly spent the New Year's Eve was only about fifteen to twenty-five minutes away from Lasang by jeep. The prosecution witnesses also stated that the distance between Lasang and the camp is about five to eight kilometers. Thus, even if the accused Albacin was seen at the camp on New Year's Eve, it was not physically impossible for him to have gone to Lasang at the time the crimes were committed and gone back to the camp in Cacao.

We disagree with the trial court's finding, however, that treachery attended the killing of Teresita. Treachery exists when the following facts are shown: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the deliberate and conscious adoption of the means of execution. [54] Moreover, this Court has previously held that where treachery is alleged, the manner of attack must be proven. Absent any particulars on the manner in which the aggression commenced or how the act which resulted in the victim's death unfolded, treachery cannot be appreciated. [55] Florencio testified that Teresita Navarro walked four meters behind him. Florencio did not therefore witness the manner his wife was attacked by accused Albacin. He looked back to his wife only after he heard the fatal gunshot and saw Teresita already fallen. There is a dearth of evidence whether Teresita had no opportunity to defend herself or to retaliate, nor on whether the means of execution was consciously adopted even assuming *arguendo* that the attack was sudden. [56]

In light of the absence of any circumstance to qualify the accused Albacin's killing of Teresita Navarro to murder, we find him guilty beyond reasonable doubt of homicide. Accordingly, the penalty imposed upon the accused Albacin should be lowered to reclusion temporal in its medium period, there being no aggravating or mitigating circumstance. Applying the Indeterminate Sentence Law, the minimum term is anywhere within the range of prision mayor, or from six (6) years and one (1) day to twelve (12) years, and the maximum within the range of reclusion temporal in its medium period, or from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. [57]

We now come to the charge of frustrated murder in Criminal Case No. 33,513-94. The trial court convicted accused Albacin of frustrated murder upon the person of Florencio Navarro based on Florencio's identification of Albacin as his assailant and the testimony of Dr. Alden Bagarra, resident surgeon of Davao Medical Center, who treated Florencio's gunshot wounds. Florencio testified that after hearing a gunshot from behind, he looked back.

With the light coming from the moon and Teresita's torch, he saw the accused Albacin walking towards him. Albacin then pointed a gun at Florencio's forehead and at a distance of about half a meter from him, Albacin fired a penetrating shot into Florencio's right hand and a grazing shot on his chest. Florencio's testimony was corroborated by Dr. Bagarra who testified that Florencio sustained a grazing, non-penetrating gunshot wound on the chest and a penetrating wound on the right hand, on the space between the index finger and the thumb. Of the two, the latter is a more serious wound which if left untreated, infection would probably set in in 48 hours, and eventually cause general infection leading to death.

Accused Albacin's use of a gun in assaulting Florencio on the same occasion that he shot and killed Teresita shows his intent to kill Florencio. In *Araneta, Jr. v. Court of Appeals*[58] where the accused inflicted only a slight gunshot wound on the victim, we ruled that, "(t)he use of a gun fired at another certainly leads to no other conclusion than that there is intent to kill." Nevertheless, we cannot sustain the trial court's conviction of the accused Albacin of frustrated murder.

Dr. Bagarra's statements regarding the nature of the wounds inflicted upon Florencio should be taken in the proper context. Indeed, Dr. Bagarra declared that in comparison to the gunshot wound sustained by Florencio on his chest, the wound on his right hand was more serious. But he also testified that both wounds on Florencio's chest and hand were not serious.[59] While Dr. Bagarra testified that if the wound on Florencio's right hand is left untreated, infection would probably set in in 48 hours and eventually cause general infection leading to death, he also stated that even a small non-fatal cut if left unattended could cause infection eventually leading to death if left without medical attention. The possible infection eventually leading to death cannot therefore be the basis for concluding that the gunshot wound on Florencio's right hand was of such nature that it would have been fatal were it not for timely medical intervention.

The doctrinal rule is that where the wound inflicted on the victim is not life threatening, the accused not having performed all the acts of execution that would have brought about death, the crime committed is only attempted murder.[60] In the instant case, however, there being no circumstance to qualify the assault upon Florencio to attempted murder, the crime committed with respect to Criminal Case No. 33,513-94 is attempted homicide. Art. 249 of the Revised Penal Code provides the penalty of reclusion temporal for the crime of homicide. Under Art. 51 of the Revised Penal Code, the penalty for an attempted crime is two degrees lower than that prescribed by law. Attempted homicide is thus punishable by prision correccional. Applying the Indeterminate Sentence Law, the minimum penalty to be meted out on the accused Albacin should be anywhere within the range of one (1) month and one (1) day to six (6) months of arresto mayor, and the maximum should be within the range of six (6) months and one (1) day to six (6) years of prision correccional. Considering that no aggravating or mitigating circumstance attended the commission of the crime, the accused Albacin shall be sentenced to an indeterminate prison term of two (2) months and one (1) day of arresto mayor as minimum, to two (2) years, four (4) months and one (1) day of prision correccional medium as maximum.[61]

Anent the damages awarded for the death of Teresita Navarro, we find that the award of P50,000.00 is in accord with settled jurisprudence. The appellee cites *People v. Esteban Victor*[62] in claiming that the award should be raised to P75,000.00. This contention is without merit. As we held in *People v. Jose*,[63] the Victor case increased the award of indemnity in rape cases that are effectively qualified by any of the circumstances which calls for the death penalty and has no application to a prosecution for murder or, as in the instant case, homicide.[64] The amount of P29,000.00 cannot be awarded as actual damages as only P10,130.00 finds support from the evidence on record.

IN VIEW WHEREOF, the impugned decision is MODIFIED. In Criminal Case No. 33,512-94, the accused-appellant is found guilty of Homicide and sentenced to an indeterminate sentence of eight (8) years and

one (1) day of prision mayor medium as minimum, and fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium as maximum, and to pay P50,000.00 for civil indemnity and P10,000.00 for funeral and other related expenses. In Criminal Case No. 33, 513-94, the accused-appellant is found guilty of Attempted Homicide and sentenced to suffer imprisonment of arresto mayor in its medium period or from two (2) months and one (1) day as minimum, and two (2) years, four(4) months and one (1) day of prision correccional as maximum, and to pay P130.00 for medical expenses and to pay the costs.

SO ORDERED.

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

[1] Rollo, p. 9.

[2] Id., pp. 33-34.

[3] TSN, Rodel Estrellan, March 4, 1996, pp. 13-14; TSN, Florencio Navarro, March 12, 1996, p. 4; TSN, Florencio Navarro, May 23, 1996, pp. 2-3.

[4] TSN, SPO2 Rufino Jugo, March 5, 1996, p. 16.

[5] TSN, Florencio Navarro, March 12, 1996, pp. 3-6.

[6] Id. pp. 6-10; May 23, 1996, p. 6.

[7] TSN, Florencio Navarro, May 23, 1996, pp. 14-16.

[8] Id., March 12, 1996, pp. 11-12.

[9] Id., May 23, 1996, p. 20.

[10] TSN, Teresa Sabac, May 28, 1996, pp. 5-10.

[11] TSN, SPO1 Rodel Estrellan, March 4, 1996, p. 4.

[12] TSN, San Nicolas Palado, February 7, 1996, pp. 3-4.

[13] TSN, Paul Quilisadio, March 11, 1996, pp. 3-5; TSN, Rodel Estrellan, March 4, 1996, pp. 4-5; TSN, SPO1 San Nicolas Palado, February 7, 1996, pp. 3-6; Exhibit "D-1"; Exhibit "A".

[14] TSN, SPO2 Rufino Jugo, March 5, 1996, p. 8.

[15] TSN, Rodel Estrellan, March 4, 1996, pp. 4-10.

[16] TSN, Paul Quilisadio, March 11, 1996, p. 5; Exhibit "D-2".

[17] TSN, SPO1 San Nicolas Palado, February 7, 1996, p. 5.

[18] TSN, Dr. Alden Bagarra, March 4, 1996, p. 25.

[19] Id., pp. 21-25.

[20] Exhibit "E".

[21] TSN, Dr. Alden Bagarra, March 4, 1996, pp. 1-25.

- [22] TSN, Florencio Navarro, May 23, 1996, p. 22.
- [23] Id., March 12, 1996, p. 14.
- [24] TSN, Teresa Sabac, May 28, 1996, pp. 11-12.
- [25] TSN, Florencio Navarro, March 12, 1996, pp. 15-16; TSN, SPO2 Rufino Jago, March 5, 1996, p. 13.
- [26] TSN, Florencio Navarro, March 12, 1996, p. 18.
- [27] Id., May 23, 1996, p. 25.
- [28] Id., May 23, 1996, p. 11, 29.
- [29] TSN, Teresa Sabac, May 28, 1996, pp. 13-15; 30.
- [30] TSN, Dr. Danilo Ledesma, February 14, 1996, pp. 2-5.
- [31] TSN, Wilhelm Albacin, August 20, 1997, pp. 1-13.
- [32] Id., pp. 13-15; 21-22.
- [33] Id., p. 23.
- [34] TSN, Herman Bermoy, November 6, 1996, pp. 3-4, 6-15.
- [35] TSN, Danilo Buchan, February 7, 1997, pp. 3-4.
- [36] Id., pp. 4, 8-21, 23-24, 30.
- [37] TSN, Oscar Tongson, June 27, 1997, p. 26.
- [38] Id., pp. 4-12.
- [39] Id., pp. 16-24.
- [40] TSN, Gilbert Navarro, November 12, 1997, pp. 3-9.
- [41] TSN, Florencio Navarro, November 13, 1997, pp. 3-6.
- [42] Rollo, p. 50.
- [43] Rollo, p. 91; Appellant's Brief, p. 22.
- [44] TSN, Florencio Navarro, March 12, 1996, pp. 6-7.
- [45] People v. Gallarde, G.R. No. 133025, February 17, 2000.
- [46] Id., p. 8, citing Sec. 4, Rule 133, Rules of Court; People v. Abrera, 283 SCRA 1 (1997).
- [47] People v. Paraiso, G.R. No. 127840, November 29, 1999, citing People v. Ronnie Reyes and Nestor Pagal, G.R. No. 120642, July 2, 1999.
- [48] Rollo, p. 49; Decision, p. 17.
- [49] People v. Mumar, et al., G.R. No. 123155, June 8, 2000, citing People v. Noay, 296 SCRA 292 (1998) and People v. Ilao, 296 SCRA 658 (1998).
- [50] People v. Milliam, et al., G.R. No. 129071, January 31, 2000, citing People v. Leoterion, G.R. Nos. 111940-06, 21 November 1996, 264 SCRA 608.

[51] *People v. Barona, et al*, G.R. No. 119595, January 25, 2000, citing *People v. Burce*, 269 SCRA 293 (1997) cited in *People v. Cayago*, G.R. No. 131151, August 18, 1999.

[52] *Id.*, citing *People v. Quijada*, 328 Phil 503 (1996); *People v. Belga*, 328 Phil. 93 (1996); *People v. Alunan*, 328 Phil. 293 (1996); *People v. Hernandez*, 328 Phil. 1123 (1996).

[53] *People v. Monieva*, G.R. No. 123912, June 8, 2000, citing *People v. Maguad*, 287 SCRA 535 (1998).

[54] *People v. Aquino*, G.R. No. 128887, January 20, 2000, citing *People v. Hubilla*, 252 SCRA 471, 481 (1996); *People v. Realin*, 301 SCRA 495 (1999).

[55] *People v. Rios*, G.R. No. 132632, June 19, 2000, citing *People v. Nalangan*, 336 Phil 970, 975 (1997).

[56] See *People v. Geguirra, et al.*, G.R. No. 130769, March 13, 2000.

[57] *People v. Geguirra, et al.*, *supra*.

[58] 187 SCRA 123 (1990).

[59] TSN, Dr. Alden Bagarra, March 4, 1996, p. 25.

[60] *People v. Tiu, et al.*, 216 SCRA 140 (1992), citing *People v. Trinidad*, 169 SCRA 51, citing *People v. Garcia*, 96 SCRA 497 and *People v. Pilonas*, 84 SCRA 167. See also *People v. Maguikay*, 237 SCRA 587 (1994), citing *People v. Tiu, et al.*, *supra*.

[61] *People v. Yam-id*, 308 SCRA 651 (1999).

[62] 292 SCRA 186 (1998).

[63] G.R. No. 130666, January 31, 2000.

[64] *People v. Jose, et al.*, *supra*, citing *People v. Costelo*, G.R. No. 134311, October 13, 1999.

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