

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. INOCENCIO GONZALEZ, JR., ACCUSED-APPELLANT.*G.R. No. 139542. June 21, 2001*

Ponente: GONZAGA-REYES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-139542/>**GONZAGA-REYES, J.:**

Many unfortunate tragedies would not have happened if the improvident use of a firearm did not exacerbate a simple altercation over traffic. This is one of them.

On a day intended to pay homage to the dead, a pregnant woman was shot to death in the course of her husband's altercation with the accused-appellant and his son along the Garden of Remembrance within the Loyola Memorial Park in Marikina. The trial court found the accused guilty of the complex crime of murder and two counts of frustrated murder and accordingly sentenced him to death. This case is before us on automatic review.

The details of what actually transpired in the few seconds immediately preceding the shooting are controverted by both parties but the events leading to this tragedy are not disputed.

In the afternoon of October 31, 1998 at about 2:30 p.m. both the families of the private complainant Noel Andres and that of the accused-appellant Inocencio Gonzalez were on their way to the exit of the Loyola Memorial Park. The appellant was driving a white Isuzu Esteem with his grandson and three housemaids, while the private complainant was driving a maroon Toyota FX with his pregnant wife Feliber Andres, his two year old son, Kenneth, his nephew Kevin and his sister-in-law, Francar Valdez. At the intersection near the Garden of Remembrance, while the accused-appellant Gonzalez was turning left towards the exit and the complainant Noel Andres was headed straight along the road to the exit their two vehicles almost collided. Noel Andres was able to timely step on the brakes. The appellant continued driving along his way while Noel Andres drove behind the appellant's vehicle for some time and cut him off when he found the opportunity to do so.[1] Noel Andres then got out of his vehicle and knocked on the appellant's car window.[2] This is as far as their versions of the incident coincide.

The prosecution's version of the incident is that Noel Andres calmly told the appellant to be careful with his driving and informed the latter that he, Andres, is with his family and to this Gonzalez allegedly replied, "Accidents are accidents, what's your problem." Andres stated that he saw the appellant turning red in anger so he decided to go back to his vehicle when he was blocked by the appellant's son who said, "Anong problema mo sa erpat ko." Andres testified that he felt threatened and so he immediately boarded his vehicle, sat at the driver's seat, closed the door, and partially opened the car window just wide enough to talk back to appellant's son, Dino. Suddenly, one of his passengers said "Binaril kami". He turned to his wife Feliber Andres and saw her bloodied and unconscious. He turned around and saw his son Kenneth and nephew Kevin were also wounded. Andres admitted in court that he and Dino were shouting at each other so that he did not hear the shot. Andres then got out of his vehicle to warn the appellant not to flee. He then took the wounded members of his family to the exit where there was an ambulance standing by. The three were then taken to the Sta. Monica Hospital and were later

transferred to the Quezon City Medical Center.

The defense's version of the incident is that Andres cut the appellant's path by positioning his FX obliquely along the appellant's lane from the latter's left side. Andres then got out of his vehicle, stood beside the appellant's car window, and repeatedly cursed the appellant, "Putang ina mo, ang tanda-tanda mo na hindi ka pa marunong magmaneho. Ang bobo-bobo mo." [3] The appellant stayed inside his car and allegedly replied, "Pasensiya ka na hindi kita nakita, nasilaw ako. Aksidente lang." The appellant Gonzalez and another witness for the defense, Quidic, testified that Noel Andres went back to his vehicle to move it in such a way that it is straight in front of the appellant's car. Andres allegedly got out of his vehicle again and continued shouting and cursing at the appellant. [4] Dino, the appellant's son, who rode in another vehicle decided to go back when he did not see his father's car behind him. When Dino arrived at the scene he confronted Andres and the two had an altercation. Both Dino and the appellant stated that Andres remained outside his vehicle during the altercation with Dino. When Andres suddenly reached for something inside his vehicle, Dino froze on the spot where he stood. This prompted the appellant to get his gun from the glove compartment and feeling that his son was threatened he got out of his car ready to shoot. When he saw that Andres did not have a weapon he put down his hand holding the gun. This is when the appellant's daughter Trisha who was riding in Dino's car arrived at the scene, walked past Dino and Andres, and pushed the appellant away. She hugged her father and in the process held his hand holding the gun. The appellant tried to free his hand and with Trisha's substantial body weight pushing against him the appellant lost his balance and the gun accidentally fired. The accused stated that he did not know he shot somebody until the private complainant's sister-in-law, Francar Valdez, got out of the vehicle carrying a bloodied small boy. The defense claims that the appellant did not try to flee and even told the complainant's sister-in-law to take the wounded to the hospital.

On November 4, 1998 an Information for the complex crime of Murder, Double Frustrated Murder and Attempted Murder was filed against herein accused-appellant:

"That on or about the 31[st] day of October 1998, in the city of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously with intent to kill, attack, assault and employ personal violence by means of treachery and abuse of superior strength upon the person of Noel Andres y Tomas, by then and there shooting him with a Glock cal. 9mm pistol but instead hitting one Feliber Andres y Ordoño, on the left back portion of her head, thereby inflicting upon her serious and mortal wound which directly caused her death, as well as hitting John Kenneth Andres y Ordoño and Kevin Valdez y Ordoño physical injuries which ordinarily would have caused their death, thus performing all the acts of execution which would have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of some cause or causes, independent of their will, that is, the timely and able medical assistance rendered to John Kenneth Andres y Ordoño and Kevin Valdez y Ordoño to their damage and prejudice as well as to the damage and prejudice of the heirs of Feliber Andres y Ordoño."

On arraignment the accused-appellant pleaded "not guilty" to the crimes charged.

The case records show that Feliber Andres, the wife of Noel Andres did not die instantaneously. She lived to give birth to a baby girl [5] by caesarian section and died the following morning on November 1, 1998. The Autopsy Report [6] states:

"FINDINGS: Fairly nourished, fairly developed female cadaver, with post mortem lividity. Conjunctivae are pale. Lips and nail beds are cyanotic. Surgical incisions were noted at left tempero-parietal region. Surgical incisions is also noted at the abdominal region secondary to a caesarian section.

HEAD: (1) gunshot wound, point of entry, left fronto-temporal region, measuring 1 by 0.9 cm, 9 cm from the

anterior midline, with a uniform abraded collar measuring 0.2 cm., directed posteriorwards, slightly downwards, and medialwards, fracturing the frontal, and left temporal bones, lacerating the left cerebral hemisphere, with a deformed slug fragment embedded and recovered at the posterior lobe of the left cerebral hemisphere. (2) hematoma, left orbital region, measuring 4.5 by 2 cm, 4 cm from the anterior midline. There are subdural and subarachnoidal hemorrhages. Stomach contains 1 ½ glassful of partially digested food particles mostly rice and meaty material.

CONCLUSION: Cause of death is gunshot wound on the head."

Kenneth and Kevin were treated for extraction of metallic fragments on their faces. They were discharged from the hospital six days later or on November 6, 1998.

On June 25, 1999 the trial court rendered judgement finding that the shooting was attended by the qualifying circumstance of treachery and held the appellant guilty of the complex crime of murder for the death of Feliber Andres and for two counts of frustrated murder for the injuries sustained by Kenneth Andres and Kevin Valdez and sentenced the appellant to the maximum of the imposable penalty which is death. The trial court held:

"Beforehand, the Court takes note of the judicial admissions on the verbal declarations of the accused that the court 'a quo' has jurisdiction over the case; that he owns the black Gluck 9 mm. automatic pistol; that the said gun will never fire even if he drops it; that only one bullet was fired from his gun; and that the victim Feliber Andres is already dead. With this exegesis and the declarations in open court of the eyewitness of both the prosecution and some of the defense, there is no real dispute on the antecedent facts showing that the accused fired on Noel Andres but instead hit and caused the fatal injuries to the victims John Kenneth Andres, Kevin Valdez and Feliber Andres resulting to the ultimate death of the latter. The court takes further judicial admissions of the accused made in their memorandum demonstrating the existence of five (5) sequences of events leading to the death of Feliber Andres and the wounding of John Kenneth Andres and Kevin Valdez which are as follows: First is when Noel Andres overtook the car driven of the accused and cut cross his path; Second is when Noel Andres alighted from his vehicle and confronted Inocencio; Third is when Noel had an argument with Dino Gonzalez, the son of the accused; Forth is when, Inocencio seeing his son having confrontation with Noel, got his gun to protect Dino; and Fifth is when Inocencio had a struggle with his daughter. Trisha Gonzalez, who tried to reach for the gun and as a result of which Inocencio lost his balance and as he was falling backward to his side, his right arm holding the gun hit the rear window of the Tamaraw FX van and the gun accidentally went off hitting the victim, who were all then inside the van.

The court likewise take judicial notice on the feature of the automatic pistol used in this case which is capable of unquestionable demonstration or ought to be known to judges because of their judicial functions. Practically, the stages before an automatic firearm would be capable of firing are as follows: 1) the loading of a bullet into the chamber of the gun; 2) the cocking of the hammer, if uncocked; 3) the releasing of the safety pin; 4) the pressing of the trigger to unleash the hammer so that the firing pin will hit the cartridge to propel the bullet out to hit the target. Realistically, it demonstrates that a gun will not fire even if the bullet is loaded in its chamber if the hammer is uncocked; or even if cocked if the safety pin is engaged; or even if the safety pin is disengaged if the trigger will not be pressed. However, even if the gun is fired if it is not aimed and leveled to the target, the purpose of firing it shall not be achieved. Contrarily, once a gun is drawn against a person, the means methods and forms employed for its execution is already conceived. And once it is tended directly and specifically to insure its execution, it consequently produces the conscious and deliberate intention. Finally if all the acts of execution had been effectively done without risk on the part of the offender arising from any defense coming from the offended party, treachery results. In brief, there is treachery when the offender commits any crime against persons, employing means, methods and forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make (People vs. Mesa 276 SCRA 407; People vs. Carlos Patrolla, Jr. G. R. No. 112445, March 7, 1996). To appreciate treachery two (2) conditions must be present, to wit: 1) the employment of

means of execution that give the person attacked no opportunity to defend himself or retaliate; and 2) the means of execution were deliberately or consciously adopted. (People vs. Azugue, 268 SCRA 711; People vs. Peña, G. R. No. 116022, July 1, 1998, p. 1)

In the case at bar and guided with the above-quoted doctrinal cases, logically, the accused is positive of the crime charged against him. When he alighted with a drawn gun to protect his son and released all the safety measures of his gun as he fired and missed at Noel who was then unarmed, but instead hit Kevin Valdez, John Kenneth Andres and Feliber Andres which resulted to the death of the latter, demonstrate that the accused has executed the two (2) conditions to generate treachery enough to qualify the crime committed to murder."

XXXX XXXXX XXXX

"WHEREFORE, foregoing premises considered, the accused Inocencio Gonzalez, Jr., y Esquivel is hereby found guilty beyond reasonable doubt of the complex crime of Murder with Double Frustrated Murder and Attempted Murder penalized under Art. 248, as amended by Republic Act No. 7659 in relation to Article 48 of the Revised Penal Code and is sentenced to suffer the maximum penalty of Death by lethal injection.

The accused is further ordered to pay the following civil liabilities:

1. To the private complainant Noel Andres:

- a) the amount of P50,000.00 as indemnity for the death of Feliber Andres;
- b) the amount of P3,363,663.60 as indemnity for the loss of earning capacity of the deceased Feliber Andres;
- c) the amount of P98,384.19 as funeral expenses;
- d) the amount of P271,800.56 for the hospitalization expenses incurred for the injuries sustained by the deceased Feliber Andres and the amount of P23,622.58 representing the expenses for the untimely delivery of the child Ma. Clarisse Andres;
- e) the amount of P51,566.00 representing the hospitalization expenses for the injuries sustained by the victim John Kenneth Andres;
- f) the amount of P150,000.00 as moral damages suffered for the untimely death of his wife Feliber Andres and for the injuries caused to his son John Kenneth Andres;
- g) the amount of P50,000.00 as and by way of attorney's fees and a fee of P2,000.00 per appearance; and
- h) the costs of the suit.

2. To the private complainant Nicasio Valdez:

- a) the amount of P73,824.75 as actual damages for the injuries sustained by the victim Kevin Valdez; and
- b) the amount of P75,000.00 as and by way of moral damages.

SO ORDERED."

In his appeal, Gonzalez submits the following assignments of error:

- "1. The trial court committed reversible error when it found that treachery was present.
- 2. The trial court committed reversible error when it presumed that there was treachery by taking judicial notice of the feature of the automatic pistol involved in this case.
- 3. The trial court committed reversible error when it violated the constitutional right of the accused-appellant to due process when it took judicial notice of the feature of the automatic pistol involved in this case without

notice.

4. The trial court committed reversible error when it found Accused-Appellant guilty beyond reasonable doubt of the complex crime of Murder with Double Frustrated Murder.

5. The trial court committed reversible error when it failed to appreciate the mitigating circumstances of passion or obfuscation, lack of intention to commit so grave a wrong, provocation or threat on the part of the offended party immediately preceded the act, incomplete defense of relative, and voluntary surrender.

6. The trial court committed reversible error when it failed to find that the shooting incident was accidental.

7. The trial court committed reversible error when it gave credence to the testimonies of prosecution witnesses Elmer Ramos and Moises Castro.

8. The trial court committed reversible error when it disregarded the basic principle that the accused is presumed innocent and his guilt must be proven beyond reasonable doubt.

9. The trial court committed reversible error when it ordered Accused-Appellant to pay for the civil liabilities."

The appellant seeks a reversal and prays that judgment be rendered exempting him from criminal and civil liabilities. Appellant declared that he had no intention to shoot Noel Andres much less his wife nor the children. He lost his balance when his daughter Trisha approached and pushed him backwards to stop him from joining Dino and Noel Andres but the appellant tried to free his right hand holding the gun and it accidentally fired. The single bullet fired hit the last window on the left side of the Tamaraw FX. The appellant claims that he did not see the passengers inside the vehicle at the time of the shooting. This is corroborated by the testimony of two witnesses for the prosecution who testified that the windows of Andres' vehicle are heavily tinted so that a person outside the vehicle would not be able to see if there are people inside. It is also argued that had the appellant intended to shoot Noel Andres he could have simply done so by shooting at him directly. The defense asserts that the evidence for the prosecution failed to establish the attendance of treachery and without the attendance of the said qualifying circumstance the crime committed is homicide, not murder.

The appellant also points out that the trial court made the factual finding that the shooting happened in a matter of seconds and that it was preceded by a heated argument between the parties. Such being the case, it is argued that the shooting could not have been attended by treachery. There was no time for the appellant to consciously and deliberately employ the mode of attack against Noel Andres, nor against any one of the actual victims, to insure its execution and at the same time to eliminate any form of retaliation from the alleged intended victim. And yet, the trial court, contrary to the evidence on record, held that the loading of the bullet into the chamber of the gun, the cocking of the hammer, the release of the safety pin and the pulling of the trigger by the appellant of his automatic pistol constitute conscious and deliberate effort to employ the gun as a means of committing the crime and resultantly, qualified its commission by treachery. Such a finding presupposes that the appellant loaded the gun to shoot Noel Andres only that very moment when his son Dino and Noel Andres were arguing. This conclusion has no basis on record. The appellant testified that his gun was loaded before he left the house and two witnesses for prosecution stated in court that a few seconds after Noel Andres and Dino started shouting at each other, the appellant got out of his car and shot at the last window on the left side of the complainant's vehicle. Further, the appellant assigns as error the procedure adopted by the trial court in taking judicial notice that the gun used by the appellant is an automatic pistol and as such, it will not fire unless aimed at the intended target. The procedure taken by the trial court is contrary to Section 3, Rule 129 of the Rules of Court.[7] The trial court should have given both parties the opportunity to present evidence, expert evidence, if necessary, to inform the court on the subject matter. The appellant argues that the factual finding borne by such erroneous procedure is equally erroneous. The gun used by the appellant is a semi-automatic and not an automatic pistol which means

that the pistol used has no external safety pin to be released and that the hammer need not be cocked. The pulling of the trigger, intentional or not, will fire the gun. The use of a semi-automatic pistol does not necessarily imply treachery.

Appellant also argues that the testimonies of prosecution witnesses Castro and Ramos were improperly given credence by the trial court. The appellant contends that a reading of their testimonies would show that their narration of the incident is rather absurd and would show that they did not witness the actual shooting. Defense witnesses, Gonzalez and his daughter, Trisha, on the other hand, testified that Castro and Ramos arrived at the scene only after the shooting.

As regards the injuries sustained by Kevin and Kenneth, it is argued that considering that there was no intent to kill and that they stayed in the hospital only for six days, the crime committed is physical injuries. It is argued that the trial court erred in awarding damages. The bunch of receipts allegedly representing the medical expenses incurred for the injuries sustained by the victims was erroneously admitted in evidence, without first requiring the prosecution to establish the authenticity of the receipts. The appellant also points out that the award for loss of earning capacity has no basis as the deceased was unemployed at the time of the incident.

Finally, the appellant assigns as error the trial court's rejection of the mitigating circumstances pleaded by the defense which allegedly attended the commission of the crime, i.e., lack of intent to commit so grave a wrong, passion and obfuscation, incomplete defense of a relative and voluntary surrender. The appellant asserts that these mitigating circumstances were duly proven during the trial and are supported by the evidence on record. The private complainant Noel Andres testified that he saw the appellant getting red in anger after they, Andres and the appellant, had a heated argument immediately prior to the shooting. These admitted circumstances show that the appellant was not in his proper state of mind at the time of the shooting. First, he was angered by Andres' abusive language and later he got out of his car with a loaded gun to protect his son from a perceived danger. The appellant claims that his willingness to help the injured and his voluntary surrender to the police should likewise be considered as mitigating circumstances in the imposition of penalties.

The Solicitor-General agrees with the appellant that the crime was not attended by the qualifying circumstance of treachery and hence the crime committed by the appellant for the death of Feliber Andres is homicide, not murder. The appellee takes into consideration that the shooting was preceded by a heated argument and that the supposed victim was placed on guard that attack was imminent. It also appears that the shooting was done impulsively. There is no evidence that the appellant deliberately employed the means of attack to insure execution of the crime and at the same time eliminate the risk of retaliation from the private complainant. The appellee also agrees with the appellant that the trial court erred in equating the use of an automatic pistol with treachery. The trial court made the factual finding that the appellant's automatic pistol would not fire unless aimed and the trigger is deliberately pulled and hence treachery attended the shooting. The appellee submits that if we follow the reasoning of the trial court it would appear that the appellant intended to shoot at the complainant's vehicle only as the shot was fired at the last window on the left side of the FX away from where Andres was allegedly seated. The fact that the gun was drawn and fired does not mean that the mode of attack was consciously and deliberately employed.

However, with respect to the injuries sustained by Kevin and Kenneth, the appellee disagrees with the contention that the appellant is liable only for slight physical injuries. The injuries sustained by both children are head injuries and could have caused their death if not for the immediate medical attention given them. The number of days spent in the hospital is not determinative of the severity of the wounds. Their nature and location should instead be considered. The appellant cannot escape liability for frustrated homicide for the injuries of the two children on the ground that he fired a single shot at the vehicle of Noel Andres. He is liable for all the

consequences of his unlawful act even if the crime committed is different from that intended.

As regards the pleaded mitigating circumstances, appellee asserts that none can be considered in favor of the appellant. There is evidence on record that the appellant did not voluntarily surrender to the police and it appears from the testimonies of witnesses that he entertained the possibility of flight but his car was stuck in traffic along the exit of the memorial park. His pretense of incomplete defense of a relative is belied by his own admission that when he saw that Noel Andres did not have a gun he lowered his hand holding the gun. There was allegedly no threat on the life of his son at the time of the shooting, no uncontrollable fear nor irresistible force that would mitigate the commission of the offense.

The Solicitor-General also seeks to uphold the pecuniary awards granted by the trial court. The appellee alleges that it is not denied by the appellant that Feliber Andres was a 38 year old registered nurse at the time of the shooting. Although she was then unemployed on account of her pregnancy, she still had earning capacity and the trial court properly applied the salary of a government nurse under the salary standardization scheme in the computation of damages for the loss of earning capacity. The receipts presented in evidence by the prosecution to establish hospitalization and other medical expenses incurred by the private complainants by reason of the injuries suffered by the victims were duly authenticated by the prosecution witnesses and there is no dispute that they are exact copies of the original receipts presented in court. The objections raised by the appellant in this regard were duly met by the evidence presented by the private complainants.

In sum, the appellee asserts that considering that the appellant fired a single shot and in the process committed four offenses the appellant should be held liable for the complex crime of homicide for the death of Feliber Andres, double frustrated homicide against Kevin and Kenneth and attempted homicide against Noel Andres. Under the rules on complex crimes the penalty for the gravest offense, i.e., reclusion temporal for homicide, should be imposed in its maximum period.

The appeal has merit.

Treachery under par.16 of Article 14 of the Revised Penal Code is defined as the deliberate employment of means, methods or forms in the execution of a crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the intended victim might raise. For treachery to be appreciated two elements must concur: 1) the employment of means of execution that would insure the safety of the accused from retaliatory acts of the intended victim and leaving the latter without an opportunity to defend himself and 2) the means employed were deliberately or consciously adopted by the offender.[8] The suddenness of the attack, the infliction of the wound from behind the victim, the vulnerable position of the victim at the time the attack was made or the fact that the victim was unarmed do not by themselves render the attack as treacherous.[9] This is of particular significance in a case of an instantaneous attack made by the accused whereby he gained an advantageous position over the victim when the latter accidentally fell and was rendered defenseless.[10] The means employed for the commission of the crime or the mode of attack must be shown to have been consciously or deliberately adopted by the accused to insure the consummation of the crime and at the same time eliminate or reduce the risk of retaliation from the intended victim.[11] Accordingly, it has been consistently held by this court that chance encounters, impulse killing or crimes committed at the spur of the moment or that were preceded by heated altercations are generally not attended by treachery for lack of opportunity of the accused to deliberately employ a treacherous mode of attack.[12] Thus, the sudden attack made by the accused due to his infuriation by reason of the victim's provocation was held to be without treachery. Sudden attacks made by the accused preceded by curses and insults by the victim or acts taunting the accused to retaliate or the rebellious or aggressive behavior of the victim were held to be without treachery as the victim was sufficiently forewarned of reprisal.[13] For the rules on treachery to

apply the sudden attack must have been preconceived by the accused, unexpected by the victim and without provocation on the part of the latter.[14]

This Court has also had occasion to state that whether or not the attack succeeds against its intended victim or injures another or whether the crime committed is graver than that intended is immaterial, as long as it is shown that the attack is attended by treachery, the said qualifying circumstance may still be considered by the court.[15] Thus, the determining factor on whether or not the commission of a crime is attended by treachery is not the resulting crime committed but the mode of attack employed in its execution.[16]

Treachery is never presumed. It is required that the manner of attack must be shown to have been attended by treachery as conclusively as the crime itself. [17]

We affirm the recommendation of the Solicitor-General that the shooting was not attended by treachery and accordingly the crime committed for the death of Feliber Andres is homicide and not murder.

The encounter between Noel Andres and the appellant was a chance encounter. They were total strangers before their vehicles almost collided at an intersection inside the memorial park. Unfortunately, heated exchange of remarks that followed the near collision was fanned by a short temper, which in the case of the appellant, was augmented by the improvident use of a firearm.

From a reading of the transcript of the testimonies of the witnesses, it would appear that Noel Andres, who had his pregnant wife and child with him, among others, on board the Tamaraw FX provoked the altercation. After the near collision of his vehicle with that of the appellant, he tailed behind the latter's car towards the exit until he had the chance to cut him off to scold him for his failure to observe traffic rules.[18] Andres stated in court that he calmly told the appellant to be careful with his driving and denied that he was angry when he alighted from his vehicle to confront the appellant.[19] His statement is belied by the witnesses, two prosecution witnesses included, who uniformly testified that Andres quarreled with or shouted and cursed at the appellant for the latter's recklessness at the intersection.[20] The appellant narrated in court that Andres repeatedly shouted at him, "Putang ina mo, ang tanda-tanda mo na gago ka pa".[21] Andres' hostile behavior towards the appellant is evident from his statement in court that he noticed the appellant turning red in anger.[22] It is highly improbable for Gonzalez to have turned red in anger had Andres been polite, as he claims he was, in scolding Gonzalez. Andres could have simply communicated to the appellant his disgust for the latter's bad driving when he overtook the appellant's car near the scene of the shooting but instead he chose to block the appellant's path, insult and virtually provoke the appellant to retaliate.

Andres stated in court that when he noticed Gonzalez' infuriation he immediately walked towards his vehicle, because according to him the altercation was over. On his way to his FX he met another man, whom he later found out to be the appellant's son, Dino. It appears that the altercation was far from over because again Andres had a shouting match this time with Dino.[23] In a matter of seconds, the appellant alighted from his car and fired a single shot at the last window on the left side of Andres' vehicle at an angle away from Noel Andres. The single bullet fired hit Feliber Andres on the forehead near the temporal region above the left eye and the two children with metallic fragments of the bullet on their faces, one at the cheek and the other below his left eye.

The prosecution did not present evidence as to the exact seating arrangement of the victims inside the vehicle; suffice it to say, that an examination of the pictures of the vehicle[24] one of which shows a mass of blood stains on the left side (towards the driver's seat) of the white seat cover below the head rest[25], would show that the deceased Feliber must have been seated at the front passenger's seat and the children at the middle row behind the driver's seat.[26] Another picture shows a bullet hole on the last window on the left side of the vehicle[27] and another shows that the front windshield appears undamaged.[28] A ballistics expert appeared in court for the

prosecution and testified that the bullet fired at the FX came from the appellant's gun, which fact was admitted by the defense. The prosecution did not inquire from the ballistics expert regarding the trajectory of the bullet or the approximate distance of the appellant from the FX when he fired his gun to establish whether or not the appellant aimed for Noel or Feliber or simply fired indiscriminately at the latter's vehicle.[29]

At first blush it would seem that the shooting of Feliber Andres was attended by treachery as she was inside the FX witnessing her husband's altercation, first, with the appellant then with the appellant's son, totally defenseless from the shot that came suddenly from her left side. Public outrage over the death of Feliber was heightened by the fact that she was then pregnant with her second child and her death left a new born baby girl and a two year old boy motherless.

However, a meticulous review of the evidence prevents a conclusive finding of treachery and any doubt must be resolved, like the fact of the commission of an offense, in favor of the accused. The pictures indicate that Gonzalez fired at the FX at an angle away from Noel Andres and that Gonzalez was not aiming at anybody in particular. It is not disputed that the appellant's car was directly behind the complainant's FX and that Gonzalez who was then seated at the driver's seat alighted from his car, took a few steps then fired at the left side of the FX. Whether Noel Andres was seated at the driver's seat inside his vehicle when Gonzalez fired at the FX, as the prosecution asserts, or was standing by the door of the driver's seat outside his vehicle, as the defense submits, it is clear that the shot was fired away from Noel Andres. The bullet hit Feliber near her temple above the left eye indicating that she was facing left towards her husband when the shot was fired.[30] The direct hit on Feliber's head shows that the angle of the shot was indeed away from Noel Andres. Even the eyewitness for the prosecution testified that had the appellant intended to kill Noel Andres he could have shot directly at him, considering that Noel Andres was just a few steps away from him[31] and that Noel Andres was visible from the outside because his window was partially open.[32] The pictures show that the bullet hole was on the third window on the left side of the Tamaraw FX[33] belying any attempt to shoot Noel Andres. Two prosecution witnesses Ramos and Castro unequivocally declared that "nothing or no one" prevented Gonzalez from shooting directly at Noel Andres and that Gonzalez could have simply done so if he wanted to. But after alighting from his car, Gonzalez took a few steps and shot at the left side window of the FX.[34]

The fact that the appellant fired his gun from behind the victim does not by itself amount to treachery. There is no evidence on record that the appellant deliberately positioned himself behind the victim to gain advantage over him when he fired the shot. On the contrary, the evidence before us reveals that the position of the appellant's car was not of his own doing but it became so when Noel Andres overtook his car and cut off his path.

We note further, that the appellant did not act belligerently towards Noel Andres even after the latter cut off the appellant's path. Andres stated in court that the appellant did not alight from his car nor opened his window until he, Andres, tapped on it.[35] For his part Gonzalez categorically stated in court that he did not point his gun nor threatened Andres during their short spat.[36] Gonzalez, although he had his gun in his car, did not react to Andres' cursing until the latter was having an altercation with the appellant's son, Dino. Gonzalez claimed that he perceived that his son was in imminent danger.[37] Whether he overreacted or he shot at Andres' vehicle out of rage over Andres' aggressive behavior, one thing appears clear to us, that the shooting was not done in cold blood. It is undisputed that the windows of the FX are heavily or darkly tinted so that a person outside would not see if anybody was inside.[38] The pictures of the FX[39] on record confirm the testimonies of both prosecution and defense witnesses that the other passengers of the FX were not visible from the outside. Gonzalez admitted in court that Noel Andres mentioned that he has passengers with him while he was shouting and cursing at Gonzalez but there is no indication that Gonzalez had any opportunity to see the passengers when he fired the shot. The totality of the evidence on record fails to support a conclusion that Gonzalez deliberately employed the mode of

attack to gain undue advantage over the intended nor the actual victim. Without any decisive evidence to the contrary, treachery cannot be considered; thus the crime committed is homicide.[40]

The trial court's finding that the loading of the gun, the cocking of the hammer and finally the pulling of the trigger constitute a deliberate effort on the part of appellant to use the gun as a means of a treacherous attack is patently erroneous. A single and continuous attack cannot be divided into stages to make it appear that treachery was involved.[41] The entire incident happened in a matter of minutes, as testified to by witnesses, and as noted by the trial court.[42] It was error to our mind for the trial court to divide the assault in stages to arrive at the conclusion that the mode of attack was consciously employed by the appellant. Contrary to the finding of the trial court that the appellant prepared the gun before getting out of his car, the appellant testified that he loaded his gun before he left the house and that it was ready to fire when he alighted his car. There was no time for him to reflect on the mode of attack since he just picked up his gun and alighted from his car and shot at the FX a few seconds after Dino and Noel Andres started shouting at each other.[43] We note further that the trial court pointed out that from the fact that the appellant prepared his gun to shoot, this was an indication of the deliberate employment of the gun as a means to kill; i.e. that the use of an automatic pistol shows that the shooting was attended by treachery.

We do not agree that the weapon used, by itself, is determinative of treachery, unless it is shown, and it is not herein shown, that the appellant deliberately used the gun to insure the commission of the crime and to render the unarmed victim defenseless. As discussed above, the encounter between the appellant and the Addressees was a chance encounter and the appellant's gun was in the glove compartment of his car even before he left his house. The shooting was clearly a spur of the moment or impulsive decision made by the appellant preceded by a heated altercation at the instance of the private complainant. Jurisprudence teaches us that under the circumstances, treachery is not obtaining. In the case of *People vs. Valles*,[44] the accused, a security guard, fired his Armalite and mortally wounded the victim when the latter approached the accused four times insisting on entering the workplace wearing improper uniform, then cursed and insulted and challenged the accused to a fight. We held that the shooting was not attended by treachery as the shooting was preceded by a heated altercation at the instance of the victim. It is to be noted that the kind of weapon used against an unarmed victim was not taken into consideration in determining the attendance of treachery; it is the mode of attack employed by the accused under the particular circumstances of a case that determines its attendance in the commission of a crime. We find that the prosecution has not discharged its burden to show that the shooting was attended by treachery and we are convinced that the crime committed for the death of Feliber Andres is homicide.

As regards the injuries sustained by the two children we find that the crime committed are two counts of slight physical injuries. The intent to kill determines whether the crime committed is physical injuries or homicide and such intent is made manifest by the acts of the accused which are undoubtedly intended to kill the victim.[45] In a case wherein the accused did not know that a person was hiding behind a table who was hit by a stray bullet causing superficial injuries requiring treatment for three days, the crime committed is slight physical injuries.[46] In case of doubt as to the homicidal intent of the accused, he should be convicted of the lesser offense of physical injuries.[47] We have earlier pointed out that the intent to kill is absent in this case. It was also found that one small metallic fragment was extracted from Kenneth below his left eye while another fragment was extracted from Kevin "immediately below the level of his skin before the cheek bone".[48] An examination of the testimonies of the attending physicians, showed that the wounds sustained by the two children from the metallic fragments are not in themselves fatal but may cause death if left untreated. One of the attending physician testified in court that the fragments themselves "will not cause complication, it is the entry of the fragment" or the open wound that is susceptible to infection.[49] Two small fragments were no longer extracted from the face of Kevin Valdez, as the doctor deemed it to be without danger of complication.[50] We note that the various sizes of the

metallic fragments were not established, at least to give an indication of the severity of the wounds sustained. Both children were discharged after six days of treatment and there is no showing that they required subsequent treatment or that they were immobilized for a greater number of days by reason of the injuries sustained. Considering the nature and location of their injuries and the number of days required for their treatment, we find that the crime committed for the injuries sustained by the children are two counts of slight physical injuries under Art. 266 of the Revised Penal Code which imposes a penalty of *arresto menor* or imprisonment for 1 to 30 days for injuries sustained that has incapacitated the victim for one to nine days or required medical attendance for the same period. For evident lack of criminal intent to kill the complainant, Noel Andres, as above stated, the information for attempted homicide must fail.

The mitigating circumstances of voluntary surrender, passion and obfuscation, incomplete defense of a relative and lack of intent to commit so grave a wrong, pleaded by the defense, were not convincingly proved and none can be considered in the imposition of penalties. The testimony of prosecution witness contradicts the appellant's pretense of voluntary surrender. Witness Ramos testified that the appellant drove away towards the gate of the memorial park while he was questioning him after the shooting and had not Noel Andres and onlookers blocked his path the appellant could have fled the scene of the crime.[51]

The mitigating circumstance of passion and obfuscation is also not obtaining. For this mitigating circumstance to be considered, it must be shown that (1) an unlawful act sufficient to produce passion and obfuscation was committed by the intended victim; (2) that the crime was committed within a reasonable length of time from the commission of the unlawful act that produced the obfuscation in the accused's mind; and that (3) "the passion and obfuscation arose from lawful sentiments and not from a spirit of lawlessness or revenge".[52] Noel Andres' act of shouting at the appellant's son, who was then a nurse and of legal age, is not sufficient to produce passion and obfuscation as it is claimed by the accused. Besides, the appellant's son, Dino was shouting back at Noel Andres. It was not a case wherein the appellant's son appeared helpless and oppressed that the appellant lost his reason and shot at the FX of Noel Andres. The same holds true for the appellant's claim of provocation on the part of Noel Andres. Provocation must be sufficient to excite a person to commit the wrong committed and that the provocation must be commensurate to the crime committed. The sufficiency of provocation varies according to the circumstances of the case.[53] The aggressive behavior of Noel Andres towards the appellant and his son may be demeaning or humiliating but it is not sufficient provocation to shoot at the complainant's vehicle.

The plea for the appreciation of the mitigating circumstance of incomplete defense of a relative is also unmeritorious since the act of Andres in cursing and shouting at the appellant and his son do not amount to an unlawful aggression against them, Dino Gonzalez. Finally, the plea for the appreciation of the mitigating circumstance of lack of intent to commit so grave a wrong is likewise devoid of merit. This mitigating circumstance is obtaining when there is a notable disparity between the means employed by the accused to commit a wrong and the resulting crime committed. The intention of the accused at the time of the commission of the crime is manifested from the weapon used, the mode of attack employed and the injury sustained by the victim.[54] The appellant's use of a gun, although not deliberately sought nor employed in the shooting, should have reasonably placed the appellant on guard of the possible consequences of his act. The use of a gun is sufficient to produce the resulting crimes committed.

For the death of Feliber Andres, and in the absence of any mitigating circumstance, the appellant is hereby sentenced to an indeterminate sentence of 8 years and 1 day of *prision mayor*, in its medium period, as minimum to 14 years 8 months and 1 day of *reclusion temporal* in its medium period, as maximum. For each count of the slight physical injuries committed against Kenneth Andres and Kevin Valdez, the appellant is hereby sentenced to 20 days of *arresto menor* in its medium period.

The rules on the imposition of penalties for complex crimes under Art. 48 of the Revised Penal Code are not applicable in this case. Art. 48 applies if a single act constitutes two or more grave and less grave felonies or when an offense is a necessary means of committing another; in such a case, the penalty for the most serious offense shall be imposed in its maximum period. Art. 9 of the Revised Penal Code in relation to Art. 25 defines grave felonies as those to which the law attaches the capital punishment or afflictive penalties from reclusion perpetua to prision mayor; less grave felonies are those to which the law attaches a penalty which in its maximum period falls under correctional penalties; and light felonies are those punishable by arresto menor or fine not exceeding two hundred pesos. Considering that the offenses committed by the act of the appellant of firing a single shot are one count of homicide, a grave felony, and two counts of slight physical injuries, a light felony, the rules on the imposition of penalties for complex crimes, which requires two or more grave and/or less grave felonies, will not apply.

The pecuniary award granted by the trial court for actual damages was duly established by the testimonies of the prosecution witnesses as supported by the original receipts for hospitalization and other medical expenses presented in evidence by the prosecution. The award for loss of earning capacity is likewise sustained for the reason that while Feliber Andres was pregnant and was unemployed at the time of death, it is not disputed that she was a registered nurse and had earning capacity. Noel Andres also testified that he and his wife had plans to go back to Saudi Arabia to work after Feliber had given birth to their second baby. While there is no evidence as to Feliber's actual income at the time of her death, in view of her temporary separation from work because of her pregnancy, we do not consider it reversible error for the trial court to peg her earning capacity to that of the salary of a government nurse under the salary standardization law, as a fair estimate or reasonable assessment of her earning capacity at the time of her death. It would be grossly inequitable to deny her spouse and her minor children damages for the support that they would have received, considering clear evidence on record that she did have earning capacity at the time of her death.

The awards for moral damages for the death of Feliber Andres and for the injuries sustained by the two children, which under the circumstances are reasonable, are likewise sustained.

WHEREFORE, the decision of the trial court is hereby MODIFIED. The appellant is hereby found guilty of homicide for the death of Feliber Andres and is sentenced to an indeterminate sentence of 8 years and 1 day of prision mayor in its medium period, as minimum, to 14 years 8 months and 1 day of reclusion temporal in its medium period, as maximum. For each count of the slight physical injuries committed against Kenneth Andres and Kevin Valdez, the appellant is hereby sentenced to 20 days of arresto menor.

The pecuniary awards granted by the trial court are hereby sustained.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Mendoza, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Pardo, J., see dissenting opinion.

Puno, Kapunan, and Panganiban, JJ., joins the dissenting opinion of J. Pardo.

[1] Andres, tsn., March 16, 1999, pp. 14-18; Gonzales, tsn., May 25, 1999, pp.15-22.

[2] Andres, *ibid.*, p. 26.

[3] Amaba, tsn., May 11, 1999, p. 26.

[4] Gonzalez, tsn., *ibid.*, pp. 23-33; Quidic, tsn., March 22, 1999, pp. 8; 18-22.

[5] named Ma. Clarisse.

[6] Exh. "B", p. 2, Folder of Exhibits.

[7] "Sec. 3. Judicial notice, when hearing necessary. -During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter to be heard thereon if such matter is decisive of a material issue in this case."

[8] *People vs. Cabodoc*, 263 SCRA 187; *People vs. Malabago*, 265 SCRA 198.

[9] Reyes, Revised Penal Code, vol I, 1998 ed., pp. 409-410.

[10] *People vs. Caday*, 2 SCRA 388; *People vs. Ardisa*, 55 SCRA 245; *People vs. Genial*, 228 SCRA 283.

[11] Regalado, Criminal Law Conspectus, 2000 ed., p. 96; Aquino, Revised Penal Code, vol. II, 1997 ed., p. 573.

[12] *People vs. de Jesus*, 118 SCRA 516; *People vs. Magadattu*, 124 SCRA 594.

[13] *People vs. Manlapaz*, 55 SCRA 598; *People vs. Valles*, 267 SCRA 103; *People vs. Real*, 242 SCRA 671.

[14] *Sison vs. People*, 250 SCRA 58, citing *People vs. Abapo*, 239 SCRA 469.

[15] *U.S. vs. Mabug-at*, 51 Phil. 967; *People vs. Cagoco*, 58 Phil 524.

[16] Aquino, Revised Penal Code, 1997 ed., vol.2, pp. 575-576.

[17] [*People vs. Manalo*, 148 SCRA 98.]

[18] Andres, tsn., March 16, 1999, pp. 16-19, Gonzales, tsn. May 25, 1999, p. 17-23.

[19] *Ibid.*, p. 66.

[20] Ramos, tsn., March 15, 1999, pp. 64-65; Castro, tsn., March 15, 1999, p. 134.

[21] Gonzales, tsn., May 25, 1999, pp. 36-39.

[22] Andres, *ibid.*, p. 79.

[23] *Ibid.*, tsn., pp. 87-88.

[24] Exhibit P and its submarkings, pp. 79-81, Folder of Exhibits.

[25] Exh. "PP-5", p. 80, folder of Exhibits.

[26] See also, Andres, tsn., March 16, 1999, pp. 32-33.

[27] Exh. "PP", p. 79, Folder of Exhibits.

[28] Exh. "PP-3", *ibid.*

[29] Insp Salamat, tsn., April 14, 1999, pp. 7-8.

[30] Autopsy Report, *supra*.

- [31] Ramos, tsn., March 15, 1999, p. 23.
- [32] Andres, tsn., March 16, 1999, p. 85.
- [33] See Exh. "PP-7", p. 81, Folder of Exhibits.
- [34] Ramos, *ibid.*, p. 122; Castro, tsn, March 15, 1999, pp. 176-177.
- [35] Andres, tsn, March 16, 1999, p. 26; Ramos, *ibid.*, p. 13.
- [36] Andres, tsn., March 16, 1999, p. 76; Gonzales, tsn., *ibid.*, pp. 39-41.
- [37] Gonzales, *ibid.*, p. 43.
- [38] Ramos, tsn., p. 71; Castro, tsn., pp. 174-175.
- [39] Exh. "PP to PP-2", p. 79, Folder of Exhibits.
- [40] Aquino, Revised Penal Code, 1997 ed., vol. 1, p. 401.
- [41] Aquino, *ibid.*, 1997 ed., vol 1 , p. 426.
- [42] Ramos, tsn., March 15, 1999, p. 77; Amaba, tsn., May 11. 1999, p.39; RTC Decision, p. 82.
- [43] Ramos, *ibid.*

[44] 267 SCRA 103.

- [45] People vs. Listerio, G.R No. 122099, July 5, 2000.
- [46] People vs. Violin, 266 SCRA 224.
- [47] Aquino, Revised Penal Code, vol 2, 1997 ed., pp. 627-628.
- [48] Dr. Lyndon Ong, tsn., February 23, 1999, pp. 73-77, 81; Dr. Antonio Chua, tsn., February 23, 1999, pp. 33-45; 59-60.
- [49] Dr. Chua, tsn., February 23, 1999, pp. 61-64.
- [50] *Ibid.*, p. 60.
- [51] Ramos, tsn., March 15, 199, pp. 36-37; 45-46.
- [52] Reyes, Revised Penal Code, 1998 ed., vol 1, p. 272.
- [53] Reyes, *ibid.*, p. 261
- [54] Reyes, *ibid.*, p. 254-255.

DISSENTING OPINION

Pardo J.:

We agree that there are indeed many unfortunate tragedies that have happened because of the improvident use of a firearm to exacerbate a simple altercation over traffic. One was the Rolito Go case. He shot in cold blood a college graduate of De La Salle University^[1] after their cars nearly collided in a one-way street, snuffing the young life of the victim. He was convicted of murder. This case is another such senseless killing.

This case occurred on the eve of All Saints Day 1998, along the Garden of Remembrance within Loyola Memorial Park, Marikina City, Metro Manila. The trial court convicted the accused of murder and sentenced him to death. The case is now before us on automatic review. The majority would convict the accused only of homicide, not of murder. I regret that I cannot give my concurrence.

In the afternoon of October 31, 1998, at about 2:30, both the family of complainant Noel Andres and that of accused Inocencio Gonzales were on their way to the exit of the Loyola Memorial Park, Marikina. The accused was driving a white Isuzu Esteem van with his grandson and three housemaids, while the complainant was driving a maroon Toyota FX with his pregnant wife Feliber Andres, his two year old son, Kenneth, his nephew Kevin and his sister-in-law, Francar Valdez. At the intersection near the Garden of Remembrance, the accused Gonzalez was turning left toward the exit while the complainant Noel Andres was headed straight along the road to the exit; their two vehicles almost collided. Noel Andres was able to step timely on the brakes. The accused continued driving along his way while Noel Andres drove behind accused's vehicle for some time and cut him off when he found the opportunity to do so.[2] Noel Andres got out of his vehicle and knocked on the accused car's window.[3]

According to complainant Noel Andres, he calmly told the accused to be careful with his driving and informed the latter that he was with his family. To this, accused replied "Accidents are accidents, what's your problem." Andres saw the accused turning red in anger, so he decided to go back to his vehicle when he was blocked by accused's son who said "Anong problema mo sa erpat ko." Feeling threatened, Andres immediately boarded his vehicle, sat at the driver's seat, closed the door and partially opened the car window just wide enough to talk back to accused's son. Suddenly, one of his passengers said "Binaril kami." He turned to his wife Feliber Andres and saw her bloodied and unconscious. He turned around and saw his son Kenneth and nephew Kevin also wounded. Noel Andres did not hear the shot. He got out of his vehicle to warn the accused not to flee. He then took the wounded members of his family to the exit where there was an ambulance standing by and the three injured were boarded in the ambulance to be brought to the Sta. Monica Hospital and later transferred to the Quezon City Medical Center.

According to the accused, complainant Andres got out of his vehicle and repeatedly cursed the accused while he stood beside the accused car's window. The accused stayed inside his car and replied. "Pasensiya ka na hindi kita nakita, nasilaw ako. Aksidente lang." The complainant would not stop shouting and cursing at him. Dino, the accused's son, who rode in another vehicle arrived at the scene, confronted complainant Andres and the two had an altercation. Complainant Andres remained outside his vehicle during the altercation with Dino. When complainant Andres tried to reach for something inside his vehicle, Dino froze where he stood. This prompted the accused to get his gun from the glove compartment and feeling that his son was threatened, got out of his car ready to shoot the complainant. When he saw that complainant Andres was not armed, he put down his gun. At this point, accused's daughter Trisha arrived at the scene, walked past Andres and pushed her father, the accused, away. She hugged him and in the process he fired the gun accidentally. The accused did not know that he hit somebody until the complainant's sister-in-law, Francar Valdez got out of the vehicle carrying a bloodied small boy. The accused claimed that he did not try to flee and even pharisaically told the complainant's sister-in-law to bring the wounded to the hospital. Perhaps he meant the cemetery.

On November 4, 1998, the prosecution filed with the Regional Trial Court, Marikina City, an Information charging the accused with the complex crime of murder, double frustrated murder and attempted murder, as follows:

"That on or about the 31[st] day of October 1998, in the city of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and

feloniously with intent to kill, attack, assault and employ personal violence by means of treachery and abuse of superior strength upon the person of Noel Andres y Tomas, by then and there shooting him with a Glock cal. 9mm pistol but instead hitting one Feliber Andres y Ordoño, on the left back portion of her head, thereby inflicting upon her serious and mortal wound which directly caused her death, as well as hitting John Kenneth Andres y Ordoño and Kevin Valdez y Ordoño physical injuries which ordinarily would have caused their death, thus performing all the acts of execution which would have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of some cause or causes, independent of their will, that is, the timely and able medical assistance rendered to John Kenneth Andres y Ordoño and Kevin Valdez y Ordoño to their damage and prejudice as well as to the damage and prejudice of the heirs of Feliber Andres y Ordoño."

On arraignment, the accused pleaded "not guilty" to the charges. Trial ensued. Feliber Andres, wife of complainant Noel Andres did not die instantaneously. She lived to give birth to a baby girl[4] by caesarian section and died the following morning on November 1, 1998. Cause of death was a gunshot wound on the head.[5] Doctors treated Kenneth and Kevin for extraction of metallic fragments on their faces. They were discharged from the hospital six days later on November 6, 1998. After due trial, on June 25, 1999, the trial court rendered a decision finding that the killing was attended by the qualifying circumstance of treachery and holding the accused guilty of the complex crime of murder for the killing of Feliber Andres and for two counts of frustrated murder for the injuries sustained by Kenneth Andres and Kevin Valdez and sentenced the accused to death. The dispositive portion of the decision reads as follows:

"WHEREFORE, foregoing premises considered, the accused Inocencio Gonzalez, Jr., y Esquivel is hereby found guilty beyond reasonable doubt of the complex crime of Murder with Double Frustrated Murder and Attempted Murder penalized under Art. 248, as amended by Republic Act No. 7659 in relation to Article 48 of the Revised Penal Code and is sentenced to suffer the maximum penalty of Death by lethal injection."

The accused is further ordered to pay the following civil liabilities: 1. To the private complainant Noel Andres:

- a) the amount of P50,000.00 as indemnity for the death of Feliber Andres;
- b) the amount of P3,363,663.60 as indemnity for the loss of earning capacity of the deceased Feliber Andres;
- c) the amount of P98,384.19 as funeral expenses;
- d) the amount of P271,800.56 for the hospitalization expenses incurred for the injuries sustained by the deceased Feliber Andres and the amount of P23,622.58 representing the expenses for the untimely delivery of the child Ma. Clarisse Andres;
- e) the amount of P51,566.00 representing the hospitalization expenses for the injuries sustained by the victim John Kenneth Andres;
- f) the amount of P150,000.00 as moral damages suffered for the untimely death of his wife Feliber Andres and for the injuries caused to his son John Kenneth Andres;
- g) the amount of P50,000.00 as and by way of attorney's fees and a fee of P2,000.00 per appearance; and
- h) the costs of the suit.

2. To the private complainant Nicasio Valdez:

- a) the amount of P73,824.75 as actual damages for the injuries sustained by the victim Kevin Valdez; and
- b) the amount of P75,000.00 as and by way of moral damages.

"SO ORDERED."

In this review, the accused claimed that the shooting was purely accidental. This is another of his false pretensions. He declared that he had no intention to shoot Noel Andres much less his wife nor the children. He lost his balance when his daughter Trisha pushed him backward to stop him from joining the confrontation between Dino and Noel Andres. He tried to free his right hand holding the gun and it accidentally fired hitting the rear window of the left side of the Tamaraw FX. He claimed that he did not see the passengers inside the vehicle at the time of the shooting. The accused asserted that the prosecution failed to establish the attendance of treachery and without said qualifying circumstance, the crime committed was homicide, not murder. We find such pretenses to be utterly false and bigoted. The evidence plainly shows that he directly aimed his pre-loaded pistol with multi-missile bullets, released its safety trigger and deliberately pulled the trigger aiming the gun at complainant Andres. What a poor shot he was. The bullet hit the innocent pregnant wife of complainant. She did not die instantly, although she could have. Divine intervention enabled her to give light to a baby girl born the next day.

The trial court held that the accused's act of loading the bullet into the chamber of the gun and the cocking of the trigger of his automatic pistol constitute conscious and deliberate effort to employ the gun as a means of committing the crime and resultantly, treachery qualified its commission. The accused testified that his gun was loaded before he left the house and he got out of his car and shot at the rear window on the left side of the complainant's vehicle. This testimony could not be true, unless the accused was an instinctive killer who envisioned that he would use his gun to kill someone as he left his house to go to the cemetery. The accused also argued that the gun he used was a semi-automatic, not an automatic pistol which meant that the pistol used had no external safety pin to be released and that the hammer need not be cocked. The pulling of the trigger, intentional or not, would fire the gun. This is another prevarication. Even a semi automatic pistol has to be cocked to chamber load the same with a bullet and activate the trigger-hammer. In the Glock semi-automatic 9mm pistol as the one accused used, the trigger has a built-in safety lever and must be cocked and the trigger purposely pulled to fire the gun.

Accused argued that the trial court improperly gave credence to the testimonies of prosecution witnesses Castro and Ramos. Their narration of the incident was rather absurd and would show that they did not witness the actual shooting. Defense witnesses, on the other hand, testified that Castro and Ramos arrived at the scene only after the shooting.

As regards the injuries sustained by Kevin and Kenneth, the accused argued that there was no intent to kill and that they stayed in the hospital only for six days, the crimes committed were two counts of slight physical injuries. The trial court erred in awarding damages and in admitting in evidence the bunch of receipts representing the medical expenses incurred for the injuries sustained by the victims, without first requiring the prosecution to establish the authenticity of the receipts. The accused also pointed out that the award for loss of earning capacity had no basis as the deceased was unemployed at the time of the incident.

Finally, the accused submitted that the trial court erred in rejecting the mitigating circumstances pleaded by the defense which attended the commission of the crime, i.e., lack of intent to commit so grave a wrong, passion and obfuscation, incomplete defense of a relative and voluntary surrender. The accused asserted that the mitigation circumstances were duly proven and supported by the evidence. The complainant Noel Andres testified that he saw the accused getting red in anger after they had a heated argument immediately prior to the shooting. These circumstances showed that the accused was not in his proper state of mind at the time of the shooting. He was angered by Andres' abusive language directed at him and he got out of his car with a loaded gun to protect his son from a perceived danger. The accused claimed that his willingness to help the injured and his voluntary surrender to the police should likewise be considered as mitigating circumstances in the imposition of the penalties. The

Solicitor General agreed with the accused that the crime was not attended by treachery, and hence, the killing of Feliber Andres was homicide, not murder.

The Solicitor General was of the view that the shooting was preceded by a heated argument and that the victim was placed on guard that attack was imminent. There was no evidence that the accused deliberately employed the means of attack to insure execution without danger of retaliation from the victim. However, with respect to the injuries sustained by Kevin and Kenneth, the Solicitor General disagreed with the accused that he was liable only for slight physical injuries. The injuries sustained by both children were head injuries and could have caused their death if not for the immediate medical attention given them. The number of days they spent in the hospital is not determinative of the severity of the wounds. The accused is liable for frustrated homicide for the injuries of the two small children because he fired the shot at Noel Andres that hit instead his pregnant wife and two small children. He is liable for all the consequences of his unlawful act even if the crime committed is different from that intended (*aberratio ictus*).

As regards the mitigating circumstances, the Solicitor General asserted that none can be considered in favor of the accused. The accused did not voluntarily surrender to the police and he even entertained the possibility of flight but his car was stuck in traffic along the exit of the memorial park. His claim of incomplete defense of relative was belied by his own admission that complainant Noel Andres did not have a gun and there was no unlawful aggression on his part. There was no threat to his life or the life of his son at the time of the shooting, no uncontrollable fear nor irresistible force that would mitigate the commission of the offense.

The Solicitor General also agreed with the pecuniary awards the trial court granted. He agreed that the late Feliber Andres was a 38-year old registered nurse at the time of the killing. Although she was then not employed because she was pregnant, she still had earning capacity and the trial court properly applied the salary of a government nurse under the salary standardization scheme in the computation of damages for the loss of earning capacity. The receipts presented in evidence by the prosecution to establish hospitalization and other medical expenses incurred by the complainant by reason of the injuries suffered by the victims were duly authenticated by the prosecution witnesses and there is no dispute that they are exact copies of the original receipts presented in court.

In sum, the Solicitor General asserted that the accused fired a single shot but because of the multiple missile bullet that he used committed four offenses. He is liable for the complex crime of homicide for the death of Feliber Andres, double frustrated homicide against Kevin and Kenneth and attempted homicide against Noel Andres, and that the penalty for the gravest offense, that is, homicide, shall be imposed, in its maximum period, which is seventeen (17) years, four (4) months and one (1) day to twenty (20) years reclusion temporal.

We find the appeal without merit. We do not agree with the views of the Solicitor General.

Treachery under Article 14, paragraph 6 of the Revised Penal Code is defined as the deliberate employment of means, methods or forms in the execution of a crime against persons which tend directly and specially to insure its execution without risk to the offender arising from the defense which the intended victim might raise.[6] For treachery to be appreciated, two elements must concur: (1) the employment of means of execution that would insure the safety of the accused from retaliatory acts of the intended victim and leaving the latter without an opportunity to defend himself or retaliate; and (2) the means of execution employed were deliberately or consciously adopted by the offender.[7] The means employed for the commission of the crime or the mode of attack must be shown to have been consciously or deliberately adopted by the accused to insure the consummation of the crime and at the same time eliminate or reduce the risk of retaliation by the victim.[8] At the time of the shooting, the complainant was having a tiff with accused's son. He knew that the complainant was not armed and there was no imminent and grave danger to the life of his son. His conscious use of a firearm with

pre-loaded multiple missile bullets against a defenseless man who was totally unaware of the danger to his life, as the events moved fast and he did not even hear the shot constitutes treachery. Accused insured the success of the crime without risk to himself arising from defense or retaliation. The complainant could not defend himself from such firepower, much less retaliate. He was without any firearm. Even if the attack was frontal, it was sudden and the victim was unarmed.

Whether or not the attack succeeds against its intended victim or injures another, or whether the crime committed is graver than that intended is immaterial, as long as it is shown that the attack is attended by treachery, the qualifying circumstance may still be considered.

We can not agree with the accused or the view of the Solicitor General that the shooting was not attended by treachery. Noel Andres, who had his pregnant wife and child with him in his Tamaraw FX could have provoked the situation but was not an aggressor. Initially he touted the accused for his failure to observe traffic rules.

However, after the altercation, complainant Andres walked toward his vehicle because the altercation was over. On his way to the Tamaraw FX, he met another man, who was the accused's son. It appears that Andres had another shouting match with accused's son. Without ado, accused got his already pre-loaded pistol, alighted from his car and fired a single shot at complainant Noel Andres. He was a poor shot. The single bullet hit instead Feliber Andres on the forehead near the temporal region above the left eye and the splitting metallic shrapnels hit two innocent children on their faces, one on the cheek and the other below the left eye. The intent to kill Noel Andres was evident when accused fired away at him. Accused knew that his son was not physically threatened. Whether Noel Andres was seated at the driver's seat inside his vehicle when accused Gonzales fired, as the prosecution contends or was standing by the door of the driver's seat outside his vehicle, as the defense submits, there is no question that the shot was directed at complainant Noel Andres. However, as heretofore stated, the accused was a poor shot. He made up by arming himself with a semi-automatic pistol loaded with multi-missile bullet that splintered like a shotgun bullet. His son was not in danger. He knew that complainant could easily be pacified without resorting to shooting. Whether accused over-reacted or he shot at Andres out of rage, one thing appears clear to us: the accused deliberately shot complainant Noel Andres treacherously in cold blood. However, it was his wife who was fatally hit in the head (*aberratio ictus*) and shrapnels hit two young innocent children. By an act of God, she delivered a baby girl alive but gave her life to Him. The shooting was a deliberate act of the accused. We are convinced that the shooting was attended by treachery that qualified the crime of murder aggravated by the use of a semi-automatic pistol specifically fitted with murderous missile. The crime committed for the killing of Feliber Andres was murder, qualified by treachery and aggravated by the use of firearm.

As regards the injuries suffered by the two children, we agree with the Solicitor General that the crime committed was two counts of frustrated homicide. The intent to kill was evident with the use of deadly weapon specially loaded with multi-missile bullets and such intent was clearly made manifest by the acts of the accused undoubtedly intended to kill the victims.

An examination of the testimonies of the attending physicians showed that the wounds sustained by the two children from the metallic fragments may cause death if left untreated. One of the attending physicians testified that the fragments themselves will not cause complications; however, it is the entry of the fragments or the open wound that is susceptible to infection. Two small fragments were no longer extracted from the face of Kevin Valdez as the doctors deemed it to be without danger of complication, but this could still be life threatening.

None of the mitigating circumstances pleaded by the accused was convincingly proved to be attendant and none may be considered in the imposition of the penalties.

IN VIEW WHEREOF, I vote to affirm the decision of the trial Court finding accused guilty of MURDER,

qualified by treachery and aggravated by the use of firearm for the killing of Feliber Andres and sentencing him to reclusion perpetua, with the accessory penalties of the law.

For each count of frustrated homicide committed against Kenneth Andres and Kevin Valdez, the accused must be sentenced to the indeterminate penalty of ten (10) years and one (1) day of prison mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum; to indemnify the offended parties Kenneth Andres and Kevin Valdez in the amount of P20,000.00 each.

[1] Rolito Go v. Court of Appeals, 206 SCRA 138 [1992]. [2] TSN, March 16, 1999, pp. 14-18; TSN, *ibid.*, pp. 20-23.

[3] *Ibid.*, p. 26.

[4] Named Ma. Clarisse.

[5] Exhibit "B", Autopsy Report, Folder of Exhibits, p. 2. [6] *People v. Basco*, 318 SCRA 615 [1999]; *People v. Mangahas*, 311 SCRA 384 [1999]; *People v. Mallari*, 310 SCRA 621 [1999]; *People v. Sumalpon*, 284 SCRA 464 [1998].

[7] *People v. Cabodoc*, 263 SCRA 187 [1999]; *People v. Malabago*, 265 SCRA 198 [1990]; *People v. Villablanca*, 316 SCRA 13 [1999]; *People v. Marcelino*, 316 SCRA 104 [1999]; *People v. Bernas*, 309 SCRA 741 [1999]; *People v. Penaflorida*, 313 SCRA 563 [1999]; *People v. Bautista*, 312 SCRA 475 [1999]; *People v. Molina*, 312 SCRA 130 [1999]; *People v. Bumer*, 319 SCRA 539 [1999]. [8] Regalado, *Criminal Law Conspectus*, 2000 ed., p. 96; Aquino, *Revised Penal Code*, Vol. II, 1997 ed. p. 573.

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.