

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GILBERTO VILLARICO, SR. @ “BERTING”; GILBERTO VILLARICO, JR., JERRY RAMENTOS, AND RICKY VILLARICO, ACCUSED-APPELLANTS.

G.R. No. 158362. April 04, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The identification of the accused as the person responsible for the imputed crime is the primary duty of the State in every criminal prosecution. Such identification, to be positive, need not always be by direct evidence from an eyewitness, for reliable circumstantial evidence can equally confirm it as to overcome the constitutionally presumed innocence of the accused.

On appeal by the accused is the decision of the Court of Appeals (CA) promulgated on June 6, 2003,[1] finding Gilberto Villarico, Sr., Gilberto Villarico, Jr., Jerry Ramentos,[2] and Ricky Villarico guilty of murder for the killing of Haide Cagatan, and imposing the penalty of reclusion perpetua on each of them, thereby modifying the decision of the Regional Trial Court (RTC), Branch 16, in Tangub City that had pronounced them guilty of homicide aggravated by dwelling.[3]

With treachery having attended the killing, we affirm the CA but correct the civil liability to accord with pertinent law and jurisprudence.

Antecedents

On October 7, 1999, an information for murder was filed in the Regional Trial Court in Misamis Occidental (RTC) against all the accused,[4] the accusatory portion of which reads:

That on or about August 8, 1999, at about 7:50 o'clock in the morning at Barangay Bolinsong, Municipality of Bonifacio, Province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, armed with a short firearms (sic), did then and there willfully, unlawfully, feloniously suddenly and treacherously shoot HAIDE CAGATAN at the back penetrating through the neck which cause(d) the instant death of said victim and that he had no chance to avoid or defend himself from the attack.

CONTRARY TO LAW.

All the accused pleaded not guilty at their December 15, 1999 arraignment.

Version of the Prosecution

At around 7:50 p.m. on August 8, 1999, Haide was busy preparing dinner in the kitchen of his family's residence in Bolinsong, Bonifacio, Misamis Occidental. The kitchen, located at the rear of the residence, had a wall whose upper portion was made of three-feet high bamboo slats (sa-sa) and whose lower portion was also made of

bamboo slats arranged like a chessboard with four-inch gaps in between. At that time, Haide's sister-in-law Remedios Cagatan was attending to her child who was answering the call of nature near the toilet. From where she was, Remedios saw all the accused as they stood at the rear of the kitchen aiming their firearms at the door - Ricky Villarico was at the left side, and Gilberto, Jr. stood behind him, while Gilberto, Sr. was at the right side, with Ramentos behind him. When Gilberto, Jr. noticed Remedios, he pointed his gun at her, prompting Remedios to drop to the ground and to shout to Lolita Cagatan, her mother-in-law and Haide's mother: Nay, Nay tawo Nay (Mother, mother, there are people outside, mother). At that instant, Remedios heard three gunshots.[5]

Francisco Cagatan, the father of Haide, also heard the gunshots just as he was coming out of the toilet, making him instinctively jump into a hole, from where he was able to see and recognize Gilberto, Sr., Gilberto, Jr. and Ricky who were then standing by the kitchen door. They were aiming their guns upward, and soon after left together with Ramentos.[6]

Lolita also heard the gunshots while she was in the sala. She recalled that Haide then came towards her from the kitchen, asking for help and saying: Tabang kay gipusil ko ni Berting (I was shot by Berting).[7] At that, she and Remedios brought the wounded Haide to Clinica Ozarraga, where he was treated for gunshot wounds on his left scapular region (back of left shoulder) and right elbow. He succumbed shortly thereafter due to hypovolemic shock or massive loss of blood.[8]

Version of the Defense

The accused denied the accusations and each proffered an alibi.

Gilberto, Sr. claimed that he was sleeping in his home with a fever when he heard a gunshot. He insisted that he learned that Haide had been shot only in the next morning.[9] His denial and alibi were corroborated by his wife Carmelita[10] and his daughter Jersel.[11]

Gilberto, Jr. testified that on the day of the incident, he went to Liloan, Bonifacio, Misamis Occidental at around 5:00 p.m. to visit his girlfriend together with Charlie Bacus and Randy Hernan. They stayed there until 9:00 p.m. Thereafter, they proceeded to Tiaman to attend the wake for one Helen Oligario Cuizon, and were there for an hour. They then returned to Bolinsong and spent the night in the house of Randy. It was only in the morning that Randy's father informed them that Haide had been shot. [12]

Ricky declared that he stayed throughout the whole evening of August 8, 1999 in the house of his aunt Flordeliza.[13] Myrna Hernan, a neighbor of Flordeliza, corroborated his testimony.[14]

Ramentos alleged that he was drinking tuba with others at the store owned by Cinderella Bacus at the time of the shooting; and that he went home at around 9:00 p.m. after his group was done drinking. He did not recall hearing any gunshots while drinking and came to know of the shooting only from a certain Anecito Duyag on the following morning.

To discredit the testimony about Haide being able to identify his assailants, the Defense presented Peter Ponggos, who narrated that he had been on board a motorcycle (habal-habal) when Lolita and Remedios asked for his help; and that he then aided Lolita and Remedios in bringing Haide to the hospital. According to Peter, he asked Haide who had shot him, but Haide replied that there had been only one assailant whom he did not recognize.[15]

Ruling of the RTC

After trial, the RTC convicted the four accused of homicide aggravated by dwelling, disposing:[16]

WHEREFORE, premises considered, the Court finds all the accused guilty beyond reasonable doubt of the crime of Homicide, with one aggravating circumstance of dwelling, and applying the Indeterminate Sentence

Law, hereby sentences each one of them to a penalty of imprisonment ranging from 6 years and 1 day, as its minimum to 17 years, 4 months and 1 day, as its maximum, to suffer the accessory penalties provided for by law, to pay jointly and solidarily, the heirs of the victim P50,000.00, as civil liability and to pay the costs.

Let all the accused be credited of the time that they were placed in jail under preventive imprisonment, applying the provisions of Art. 29 of the Revised Penal Code, as amended.

SO ORDERED.

The RTC accorded faith to the positive identification of the accused by the Prosecution's witnesses, and disbelieved their denial and alibis due to their failure to show the physical improbability for them to be at the crime scene, for the distances between the crime scene and the places where the accused allegedly were at the time of the commission of the crime were shown to range from only 100 to 700 meters.[17] The RTC found, however, that the Prosecution was not able to prove treachery because:

xxx The medical report of "gunshot wound left scapular region" which the doctor interpreted to be at the back of the left shoulder is not sufficient to prove treachery, it being susceptible to 2 different interpretations: one: that victim had his back towards his assailants, and two: that he was actually facing them but he turned around for cover upon seeing the armed "group of Berting". The Court is inclined to believe the second interpretation because the victim was able to see and identify his assailants. Two prosecution witnesses testified that the victim identified to them who shot him.[18]

Ruling of the CA

On intermediate review, the CA modified the RTC's decision, holding instead that murder was established beyond reasonable doubt because the killing was attended by treachery, viz: [19]

WHEREFORE, the appealed Decision is hereby MODIFIED. Pursuant to Section 13, paragraph 2 of Rule 124 of the Rules of Criminal Procedure, We render JUDGMENT without entering it, as follows:

- We find all accused guilty beyond reasonable doubt of MURDER. Each accused is hereby SENTENCED TO SUFFER the penalty of reclusion perpetua.

- The Division Clerk of Court is hereby directed to CERTIFY and ELEVATE the entire records of this case to the Supreme Court for review.

SO ORDERED.[20]

Citing *People v. Valdez*,[21] the CA explained that the attendance of treachery did not depend on the position of the victim at the time of the attack, for the essence of treachery was in the element of surprise the assailants purposely adopted to ensure that the victim would not be able to defend himself. Considering that the accused had purposely positioned themselves at night outside the door to the kitchen from where they could see Haide, who was then busy preparing dinner, through the holes of the kitchen wall, the CA concluded that Haide was thus left unaware of the impending assault against him.

Issues

In this recourse, the accused raise the following errors:

I

THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS OF MURDER DESPITE FAILURE OF THE PROSECUTION TO PROVE THE IDENTITY OF THE ASSAILANT AS WELL AS ACCUSED-APPELLANTS' GUILT BEYOND REASONABLE DOUBT.

II

THE COURT OF APPEALS GRAVELY ERRED IN CONSIDERING THE QUALIFYING CIRCUMSTANCE OF TREACHERY, ON THE ASSUMPTION THAT INDEED ACCUSED-APPELLANTS ARE GUILTY.

The accused contend that the Prosecution witnesses failed to positively identify them as the persons who had actually shot Haide; that treachery was not attendant because there was no proof showing that they had consciously and deliberately adopted the mode of attacking the victim; and that assuming that they committed the killing, they could only be convicted of homicide.

The decisive queries are, therefore, the following:

- (a) Should an identification, to be positive, have to be made by a witness who actually saw the assailants?
- (b) Was treachery attendant in the killing of Haide as to qualify the crime as murder?

Ruling

We affirm the finding of guilt for the crime of murder, but modify the civil liability.

1.

Positive identification refers to proof of identity of the assailant

The first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for, even if the commission of the crime can be established, there can be no conviction without proof of the identity of the criminal beyond reasonable doubt.[22] In that regard, an identification that does not preclude a reasonable possibility of mistake cannot be accorded any evidentiary force.[23] The intervention of any mistake or the appearance of any weakness in the identification simply means that the accused's constitutional right of presumption of innocence until the contrary is proved is not overcome, thereby warranting an acquittal,[24] even if doubt may cloud his innocence.[25] Indeed, the presumption of innocence constitutionally guaranteed to every individual is forever of primary importance, and every conviction for crime must rest on the strength of the evidence of the State, not on the weakness of the defense.[26]

The accused contend that the Prosecution witnesses did not actually see who had shot Haide; hence, their identification as the malefactors was not positively and credibly made.

We cannot uphold the contention of the accused.

The established circumstances unerringly show that the four accused were the perpetrators of the fatal shooting of Haide. Their identification as his assailants by Remedios and Francisco was definitely positive and beyond reasonable doubt. Specifically, Remedios saw all the four accused near the door to the kitchen immediately before the shots were fired and recognized who they were. She even supplied the detail that Gilberto, Jr. had trained his firearm towards her once he had noticed her presence at the crime scene. On his part, Francisco attested to seeing the accused near the door to the kitchen holding their firearms right after he heard the gunshots, and also recognized them.

The collective recollections of both Remedios and Francisco about seeing the four accused standing near the door to the kitchen immediately before and after the shooting of Haide inside the kitchen were categorical enough, and warranted no other logical inference than that the four accused were the persons who had just shot Haide. Indeed, neither Remedios nor Francisco needed to have actually seen who of the accused had fired at Haide, for it was

enough that they testified that the four armed accused: (a) had strategically positioned themselves by the kitchen door prior to the shooting of Haide; (b) had still been in the same positions after the gunshots were fired; and (c) had continuously aimed their firearms at the kitchen door even as they were leaving the crime scene.

The close relationship of Remedios and Francisco with the victim as well as their familiarity with the accused who were their neighbors assured the certainty of their identification as Haide's assailants. In *Maturillas v. People*,^[27] the Court observed that the familiarity of the witness with the assailant erased any doubt that the witness could have erred; and noted that a witness related to the victim had a natural tendency to remember the faces of the person involved in the attack on the victim, because relatives, more than anybody else, would be concerned with seeking justice for the victim and bringing the malefactor before the law.^[28]

Moreover, the following portions of Lolita's testimony show that Haide himself recognized and identified his assailants, to wit:

Atty. Fernandez:

Q.

And where were you at that time when he was shot?

A.

In the sala.

Q.

Could you possibly tell the Honorable Court what actually took place when your son was shot?

A.

He came from the kitchen at that time when I heard gunreports, he said "Nay" help me because I was shot by Berting.^[29]

xxx

Atty. Anonat:

Q.

And that affidavit was executed by you at the Bonifacio Police Station?

A.

Yes.

xxx

Q.

And you affirm to the truth of what you have stated in this affidavit?

A.

Yes.

Q.

On question No. 7 you were asked in this manner - "Giunsa man nimo pagkasayod nga sila maoy responsible sa kamatayon sa imong anak? How do you know that they were responsible (for) the death of your son? And your answer is this "Tungod kay ang biktima nakasulti pa man sa wala pa siya namatay ug ang iyang pulong mao nga TABANG NAY KAY GIPUSIL KO NILA NI BERTING ug nasayod ako nga sila gumikan sa akong mga testigos." which translated into English - Because the victim was able to talk before he died and the words which he told me help me Nay I am shot by the group of Berting and I know this because of my witnesses. [30]

xxx

The statement of Haide to his mother that he had just been shot by the group of Berting - uttered in the immediate aftermath of the shooting where he was the victim - was a true part of the res gestae. The statement was admissible against the accused as an exception to the hearsay rule under Section 42, Rule 130 of the Rules of Court, which provides:

Section 42. Part of the res gestae. - Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the res gestae. (36 a)

The term res gestae refers to "those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act." [31] In a general way, res gestae includes the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and which are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication. [32] The rule on res gestae encompasses the exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or immediately after the commission of the crime when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement. [33]

The test of admissibility of evidence as a part of the res gestae is whether the act, declaration, or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded a part of the principal fact or event itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony. [34] A declaration or an utterance is thus deemed as part of the res gestae that is admissible in evidence as an exception to the hearsay rule when the following requisites concur: (a) the principal act, the res gestae, is a startling occurrence; (b) the statements were made before the declarant had time to contrive or devise; and (c) the statements must concern the occurrence in question and its immediately attending circumstances. [35]

We find that the requisites concurred herein. Firstly, the principal act - the shooting of Haide - was a startling occurrence. Secondly, his statement to his mother about being shot by the group of Berting was made before Haide had time to contrive or to devise considering that it was uttered immediately after the shooting. And, thirdly, the statement directly concerned the startling occurrence itself and its attending circumstance (that is, the identities of the assailants). Verily, the statement was reliable as part of the res gestae for being uttered in spontaneity and only in reaction to the startling occurrence.

In the face of the positive identification of all the four accused, it did not matter whether only one or two of them had actually fired the fatal shots. Their actions indicated that a conspiracy existed among them. Indeed, a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[36] Direct proof of a previous agreement among the accused to commit the crime is not necessary,[37] for conspiracy may be inferred from the conduct of the accused at the time of their commission of the crime that evinces a common understanding among them on perpetrating the crime.[38] Thus, the concerted acts of the four manifested their agreement to kill Haide, resulting in each of them being guilty of the crime regardless of whether he actually fired at the victim or not. It is axiomatic that once conspiracy is established, the act of one is the act of all;[39] and that all the conspirators are then liable as co-principals.[40]

But did not the fact that the name Berting without any surname being too generic open the identification of the accused as the assailants to disquieting doubt about their complicity?

We hold that there was no need for a surname to be attached to the nickname Berting in order to insulate the identification by Haide from challenge. The victim's *res gestae* statement was only one of the competent and reliable pieces of identification evidence. As already shown, the accused were competently incriminated also by Remedios and Francisco in a manner that warranted the logical inference that they, and no others, were the assailants. Also, that Berting was the natural nickname for a person whose given name was Gilberto, like herein accused Gilberto, Sr. and Gilberto, Jr., was a matter of common knowledge in the Philippines. In fine, the pieces of identification evidence, including Haide's *res gestae* statement, collaborated to render their identification unassailable.

Relevantly, the Court has distinguished two types of positive identification in *People v. Gallarde*,[41] namely: (a) that by direct evidence, through an eyewitness to the very commission of the act; and (b) that by circumstantial evidence, such as where the accused is last seen with the victim immediately before or after the crime. The Court said:

xxx Positive identification pertains essentially to proof of identity and not per se to that of being an eyewitness to the very act of commission of the crime. There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance 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. This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. If the actual eyewitnesses are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. If resort to circumstantial evidence would not be allowed to prove identity of the accused on the absence of direct evidence, then felons would go free and the community would be denied proper protection.[42]

To conclude, the identification of a malefactor, to be positive and sufficient for conviction, does not always require direct evidence from an eyewitness; otherwise, no conviction will be possible in crimes where there are no eyewitnesses. Indeed, trustworthy circumstantial evidence can equally confirm the identification and overcome the constitutionally presumed innocence of the accused.

Faced with their positive identification, the four accused had to establish convincing defenses. They opted to rely on denial and their respective alibis, however, but both the RTC and the CA rightly rejected such defenses.

The rejection was warranted. Long judicial experience instructs that their denial and alibis, being too easy to invent, could not overcome their positive identification by credible Prosecution witnesses whose motives for the identification were not shown to be ill or vile. Truly, a positive identification that is categorical, consistent, and devoid of any showing of ill or vile motive on the part of the Prosecution witnesses always prevails over alibi and denial that are in the nature of negative and self-serving evidence.[43] To be accepted, the denial and alibi must be substantiated by clear and convincing evidence establishing not only that the accused did not take part in the commission of the imputed criminal act but also that it was physically impossible for the accused to be at or near the place of the commission of the act at or about the time of its commission. In addition, their proffered alibis were really unworthy of credit because only the accused themselves and their relatives and other intimates substantiated them.[44]

2.

The essence of treachery is in the mode of attack,
not in the relative position of the victim and the assailant

The RTC ruled out the attendance of treachery due to its persuasion that the victim must have been facing his assailants at the time of the assault and was thus not taken by surprise. The CA differed from the RTC, however, and stressed that regardless of the position of the victim, the essence of treachery was the element of surprise that the assailants purposely adopted to ensure that the victim was not able to defend himself.[45]

We uphold the ruling of the CA.

There is treachery when: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[46] The essence of treachery lies in the suddenness of the attack that leaves the victim unable to defend himself, thereby ensuring the commission of the offense.[47] It is the suddenness of the attack coupled with the inability of the victim to defend himself or to retaliate that brings about treachery; consequently, treachery may still be appreciated even if the victim was facing the assailant.[48]

Here, the elements of treachery were present. His assailants gunned Haide down while he was preoccupied in the kitchen of his own abode with getting dinner ready for the household. He was absolutely unaware of the imminent deadly assault from outside the kitchen, and was for that reason in no position to defend himself or to repel his assailants.

The argument of the accused that the Prosecution did not show that they had consciously and deliberately adopted the manner of killing Haide had no substance, for the testimonies of Remedios and Francisco disclose the contrary.

Remedios' testimony about seeing the four accused taking positions near the door to the kitchen immediately preceding the shooting of Haide was as follows:

Atty. Fernandez:

xxx

Q.

Were you present when the late Haide Cagatan was shot?

A.

Yes, I was present.

Q.

Could you possibly tell the Court in what particular place you were when the alleged incident took place?

A.

I was in the ground floor.

Q.

What were you doing there?

A.

I attended my child (to) answer(ing) the call of his (sic) nature.

Q.

Now, could you possibly describe before this Honorable Court, Mrs. Cagatan, the exact event that took place when the alleged shooting incident took place in your presence?

A.

At that time, I attended my child (to) answer(ing) the call of (his) nature and after doing that when I was about to stand up to go up I saw the Villarico's was (sic) at the back of the kitchen.

Q.

At the time you saw them was (sic) any one of them saw you likewise?

A.

There was.

Q.

Who was he?

A.

Gilberto Villarico, Jr.

Q.

At that precise time when you saw them and one of them saw you, what did Villarico, Jr. do?

A.

He aimed his gun to me.

Q.

Could you possibly demonstrate that to the Court?

A.

(Witness demonstrated by squatting position)

Q.

Now at that precise moment when you saw Villarico, Jr. on a squatting position pointing his gun at you, what was the exact action that you did?

A.

When he aimed his gun to me I immediately dropped to the ground.

xxx

Q.

Since you were personally present could you still remember Mrs. Cagatan how many gun burst you head at that precise moment when you dropped to the ground because Villarico Jr. was aiming his gun at you. How many gun burst did you hear?

A.

Three gunbursts.

Q.

Let us go back to the time when Villarico, Jr. pointed his gun to you. Do you still remember what were the other accused doing or where were they at that time?

A.

I can remember.

Q.

Please tell the Honorable Court.

A.

Gilberto Villarico, Sr. was on the right side; Ricky Villarico was on the left side and behind Gilberto Villarico, Sr. was Jerry Ramientos and behind Ricky Villarico is (sic) Gilberto Villarico Jr.

Q.

What were Ricky and Gilberto Villarico, Jr. doing at the time?

A.

They were also dropping themselves on the ground and aimed their guns.

Q.

To what particular object that they were aiming their guns?

A.

To the door of our kitchen.

Q.

How about Ramientos, where was he at that time when you saw the accused pointing their guns towards the door of your kitchen?

A.

Ramientos was standing behind Gilberto Villarico Sr.[49]

Likewise, Francisco saw the four accused in the same positions that Remedios had seen them moments prior to the shooting. He claimed that they were aiming their firearms at the kitchen and continued aiming their firearms even as they were leaving the crime scene, viz:

Atty. Fernandez:

xxx

Q.

Now you said that you saw all of the accused at the time when your late son Haide Cagatan was murdered in the evening of August 8. Could you possibly explain to this Honorable Court at the very first time what did you see?

A.

After I came from the toilet I was proceeding to the kitchen because Haide was preparing food and he was calling for dinner. When Haide Cagatan was calling for dinner and at the time I was proceeding to the door of the kitchen, when I was near the door I heard the gun shots.

Q.

At the time when you heard gunshots, what did you do?

A.

I laid down flat on the ground while my head is (sic) looking up and there I saw the 3 Villaricos bringing a revolver. They came from aiming their guns towards upstairs and they are about to withdraw from that place together with Jerry Ramientos.

xxx

Q.

Now, since you said that you saw the accused Villaricos, could you possibly tell the Court, what were their responsible position(s) in relation to the door of the kitchen?

A.

They were in shooting position as they aimed upward and they were bringing revolver aiming upstairs.

Q.

In relation to the door of the kitchen, could you possibly tell the Court what were their responsible position at that time when you saw them?

A.

The four of them were situated in front of the kitchen door. Villarico Jr. and Villarico Sr. were facing each other while Ricky Villarico and Jerry Ramientos were also facing each other.[50]

The testimonies of Remedios and Francisco on how and where the four accused had deliberately and strategically positioned themselves could not but reveal their deliberate design to thereby ensure the accomplishment of their design to kill Haide without any possibility of his escape or of any retaliation from him. Aptly did the CA

observe:

A perusal of the information shows that treachery was properly alleged to qualify the killing of Heide [sic] Cagatan to murder. The prosecution was likewise able to prove treachery through the element of surprise rendering the victim unable to defend himself. In this case, the evidence shows that the victim, who was in the kitchen preparing dinner, could be seen from the outside through the holes of the wall. The witnesses consistently described the kitchen's wall as three feet high bamboo splits (sa-sa), accented with bamboo splits woven to look like a chessboard with 4-inch holes in between. The accused-appellants, likewise, positioned themselves outside the kitchen door at night where the victim could not see them. When the accused-appellants shot him, he was caught unaware.[51]

3.

Penalty and Damages

There is no question that the CA justly pronounced all the four accused guilty beyond reasonable doubt of murder, and punished them with reclusion perpetua pursuant to Article 248[52] of the Revised Penal Code, in relation to Article 63, paragraph 2, of the Revised Penal Code, considering the absence of any generic aggravating circumstance.

However, the CA did not explain why it did not review and revise the grant by the RTC of civil liability in the amount of only P50,000.00. Thereby, the CA committed a plainly reversible error for ignoring existing laws, like Article 2206 of the Civil Code,[53] which prescribes a death indemnity separately from moral damages, and Article 2230 of the Civil Code,[54] which requires exemplary damages in case of death due to crime when there is at least one aggravating circumstance; and applicable jurisprudence, specifically, *People v. Gutierrez*,[55] where we held that moral damages should be awarded to the heirs without need of proof or pleading in view of the violent death of the victim, and *People v. Catubig*,[56] where we ruled that exemplary damages were warranted whenever the crime was attended by an aggravating circumstance, whether qualifying or ordinary. Here, the aggravating circumstance of treachery, albeit attendant or qualifying in its effect, justified the grant of exemplary damages.

Plain oversight might have caused both the RTC and the CA to lapse into the serious omissions. Nonetheless, a rectification should now be made, for, indeed, gross omissions, intended or not, should be eschewed. It is timely, therefore, to remind and to exhort all the trial and appellate courts to be always mindful of and to apply the pertinent laws and jurisprudence on the kinds and amounts of indemnities and damages appropriate in criminal cases lest oversight and omission will unduly add to the sufferings of the victims or their heirs. Nor should the absence of specific assignment of error thereon inhibit the sua sponte rectification of the omissions, for the grant of all the proper kinds and amounts of civil liability to the victim or his heirs is a matter of law and judicial policy not dependent upon or controlled by an assignment of error. An appellate tribunal has a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned,[57] for technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. Indeed, the trend in modern day procedure is to accord broad discretionary power such that the appellate court may consider matters bearing on the issues submitted for resolution that the parties failed to raise or that the lower court ignored.[58]

Consistent with prevailing jurisprudence, we grant to the heirs of Haide P75,000.00 as death indemnity;[59] P75,000.00 as moral damages;[60] and P30,000.00 as exemplary damages.[61] As clarified in *People v. Arbalate*,[62] damages in such amounts are to be granted whenever the accused are adjudged guilty of a crime covered by Republic Act No. 7659, like the murder charged and proved herein. Indeed, the Court, observing in *People v. Sarcia*,[63] citing *People v. Salome*[64] and *People v. Quiachon*,[65] that the "principal consideration

for the award of damages xxx is the penalty provided by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender," announced that:

The litmus test[,] therefore, in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually imposed is reduced to reclusion perpetua.

WHEREFORE, we affirm the decision promulgated on June 6, 2003 in CA-G.R. CR No. 24711, finding GILBERTO VILLARICO, SR., GILBERTO VILLARICO, JR., JERRY RAMENTOS, and RICKY VILLARICO guilty of murder and sentencing each of them to suffer reclusion perpetua, subject to the modification that they are held jointly and solidarily liable to pay to the heirs of the late Haide Cagatan death indemnity of P75,000.00, moral damages of P75,000.00, and exemplary damages of P30,000.00.

The accused shall pay the costs of suit.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Villarama, Jr., and Sereno, JJ., concur.

[1] CA Rollo, pp. 173-184; penned by Associate Justice Hakim S. Abdulwahid, and concurred by Associate Justice Bennie Adefuin-Dela Cruz (retired) and Jose I. Sabio, Jr. (retired).

[2] At times spelled as Ramientos in the records and in the RTC decision.

[3] Rollo, pp. 45-69; penned by Judge Resurrection T. Inting.

[4] Records, pp. 1-2.

[5] TSN, March 29, 2000, pp. 5-6.

[6] TSN, March 10, 2000, pp. 6-7.

[7] TSN, February 24, 2000, pp. 19 and 24.

[8] See Exhibits A and B for the Prosecution (Records, pp. 53-54).

[9] TSN, May 31, 2000, pp. 4-5.

[10] TSN, July 21, 2000, pp. 3-17.

[11] TSN, April 11, 2000, pp. 43-58.

[12] TSN, May 31, 2000, p. 14-15.

[13] TSN, June 29, 2000, pp. 4-5.

[14] TSN, April 4, 2000, pp. 45-57.

[15] TSN, April 4, 2000, pp. 3-17.

[16] Records, p. 138.

[17] The distance between the house of Gilberto, Sr. and Haide's house was only 100 meters (TSN, May 31, 2000, p. 21). Gilbert, Jr. testified that his girlfriend's house was only 500 meters away from Bolinsong (TSN, May 31, 2000, pp. 19-21). Ricky claimed that the house of his aunt was only 700 meters from Haide's house (TSN, June

29, 2000, p. 9).

[18] Records, p. 137.

[19] CA Rollo, p. 173-184.

[20] Id., p. 183.

[21] G.R. No. 127663, March 11, 1999, 304 SCRA 611, where the Court pointed out:

Under paragraph 16, Article 14 of the Revised Penal Code, the qualifying circumstance of treachery is present when the offender employs means, methods, or forms in the execution of the crime which tend directly and especially to ensure its execution without risk to himself arising from any defensive or retaliatory act which the victim might make (*People vs. Santos*, 270 SCRA 650 [1997]). The settled rule is that treachery can exist even if the attack is frontal if it is sudden and unexpected, giving the victim no opportunity to repel it or defend himself against such attack. What is decisive is that the execution of the attack, without slightest provocation from the victim who is unarmed, made it impossible for the victim to defend himself or to retaliate (*People vs. Javier*, 269 SCRA 181 [1997]).

[22] *People v. Pineda*, G.R. No. 141644, May 27, 2004, 429 SCRA 478; *People v. Esmale*, G.R. Nos. 102981-82, April 21, 1995, 243 SCRA 578.

[23] *People v. Fronda*, G.R. No. 130602, March 15, 2000, 328 SCRA 185; *Natividad v. Court of Appeals*, G.R. No. L-40233, June 25, 1980, 98 SCRA 335, 346; *People v. Beltran*, L-31860, November 29, 1974, 61 SCRA 246, 250; *People v. Manambit*, G.R. Nos. 72744-45, April 18, 1997, 271 SCRA 344, 377; *People v. Maongco*, G.R. Nos. 108963-65, March 1, 1994, 230 SCRA 562, 575.

[24] *People v. Raquel*, G.R. No. 119005, December 2, 1996, 265 SCRA 248, 259; *People v. Salguero*, G.R. No. 89117, June 19, 1991, 198 SCRA 357; *Natividad v. Court of Appeals*, G.R. L-40233, June 25, 1980, 98 SCRA 335, 346.

[25] *Pecho v. People*, G.R. No. 111399, September 27, 1996, 262 SCRA 518, 533; *Perez v. Sandiganbayan*, G.R. Nos. 76203-04, December 6, 1989, 180 SCRA 9; *People v. Sadie*, No. L-66907, April 14, 1987, 149 SCRA 240; *U.S. v. Gutierrez*, 4 Phil. 493 (1905).

[26] *People v. Pidia*, G.R. No. 112264, November 10, 1995, 249 SCRA 687, 702.

[27] G.R. No. 163217, April 18, 2006, 487 SCRA 273.

[28] Id., p. 301; see also *People v. Evangelista*, G.R. No. 84332-33, May 8, 1996, 256 SCRA 611 (holding that where the identification made by the wife of the victim was held to be reliable because she had known the accused for a long time and was familiar with him, considering her being positive that it was the accused who had shot her husband although she saw only the back part and the body contour of the assailant. At the time she saw him, the accused was only four meters away, and there was sufficient illumination from a lamp post six meters away from the house of the victim and his wife); *People v. Jacolo*, G.R. No. 94470, December 16, 1992, 216 SCRA 631 (holding that where the conditions of visibility were favorable and the witness did not appear to be biased against the man on the dock, his or her assertions as to the identity of the malefactor should normally be accepted, more so where the witnesses were the victims, or near-relatives of the victims, because these people usually strove to remember the faces of the assailants).

[29] TSN, February 24, 2000, p. 19; bold emphasis supplied.

[30] Id., p. 24; bold emphasis supplied.

- [31] Alhambra Bldg. & Loan Ass'n v. DeCelle, 118 P. 2d 19, 47 C.A. 2d 409; Reilly Tar & Chemical Corp. v. Lewis, 61 N.E. 2d 297, 326 Ill. App. 117.
- [32] Kaiko v. Dolinger, 440 A. 2d 198, 184 Conn. 509; Southern Surety Co. v. Weaver, Com. App. 273 S.W. 838.
- [33] People v. Sanchez, G.R. No. 74740, August 28, 1992, 213 SCRA 70.
- [34] Molloy v. Chicago Rapid Transit Co., 166 N.E. 530, 335 Ill. 164; Campbell v. Gladden, 118 A. 2d 133, 383 Pa. 144, 53 A.L.R. 2d 1222.
- [35] People v. Guillermo, G.R. No. 147786, January 20, 2004, 420 SCRA 326; People v. Dela Cruz, G.R. No. 152176, October 1, 2003, 412 SCRA 503; People v. Ignas, G.R. Nos. 140514-15, September 30, 2003, 412 SCRA 311; People v. Lobrigas, G.R. No. 147649, December 17, 2002, 394 SCRA 170; People v. Peralta, G.R. No. 94570, September 28, 1994, 237 SCRA 218; People v. Maguikay, G.R. Nos. 103226-28, October 14, 1994, 237 SCRA 587, 600.
- [36] Article 8, Revised Penal Code.
- [37] People v. Ronquillo, G.R. No. 126136, April 5, 2002, 380 SCRA 266; People v. Geguirra, G.R. No. 130769, March 13, 2000, 328 SCRA 11, 32-33.
- [38] People v. Geguirra, *supra*.
- [39] People v. Sotes, G.R. No. 101337, August 7, 1996, 260 SCRA 353, 365; People v. Pablo, G.R. Nos. 120394-97, January 16, 2001, 349 SCRA 79.
- [40] People v. Peralta, G.R. No. L-19069, October 29, 1968, 25 SCRA 759, 776-777; People v. Pablo, *supra*.
- [41] G.R. No. 133025, February 17, 2000, 325 SCRA 835.
- [42] *Id.*, at pp. 849-850; bold emphasis supplied.
- [43] People v. Gonzales, G.R. No. 140676, July 31, 2002, 385 SCRA 573, 580; People v. Ocampo, G.R. No. 80262, September 1, 1993, 226 SCRA 1; People v. Herico, G.R. Nos. 89682-83, December 21, 1990, 192 SCRA 655; People v. Fulinara, G.R. No. 88326, August 3, 1995, 247 SCRA 28; People v. Cardesan, G.R. No. L-29090, April 29, 1974, 56 SCRA 631.
- [44] People v. Abendan, G.R. No. 132026-27, June 28, 2001, 360 SCRA 106, 121-122.
- [45] CA Rollo, p. 182.
- [46] People v. Escote, Jr., G.R. No. 140756, April 4, 2003, 400 SCRA 603, 632; People v. Ave, G.R. Nos. 137274-75, October 18, 2002, 391 SCRA 225, 246.
- [47] People v. Sanchez, G.R. No. 188610, June 29, 2010; People v. Dela Cruz, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747; People v. Escote, Jr., *supra*, pp. 632-633.
- [48] People v. Aguilar, 88 Phil 693 (1951).
- [49] TSN, March 29, 2000, pp. 5-6.
- [50] TSN, March 10, 2000, pp. 5-7.
- [51] CA Rollo, pp. 182-183.
- [52] Article 248. Murder. -- Any person who, not falling within the provisions of Article 246 shall kill another,

shall be guilty of murder and shall be punished by reclusion perpetua to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (As amended by Section 6, Republic Act No. 7659, approved on December 13, 1993).

[53] Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

- (1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;
- (2) If the deceased was obliged to give support according to the provisions of article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;
- (3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

[54] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[55] G.R. No. 188602, February 4, 2010, 611 SCRA 633.

[56] G.R. No. 137842, August 23, 2001, 363 SCRA 621, where the Court explained:

The term "aggravating circumstances" used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance

is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.

[57] Bersamin, *Appeal and Review in the Philippines*, 2[nd] Edition, Central Professional Books, Quezon City, p. 180; citing *Hydro Resources Contractors Corporation v. Court of Appeals*, G.R. No. 85714, November 29, 1991, 204 SCRA 309, 315; and *Ortigas, Jr. v. Lufthansa German Airlines*, G.R. No. L-28773, June 30, 1975, 64 SCRA 610.

[58] *Ibid.*, citing *Casa Filipina Realty Corporation v. Office of the President*, G.R. No. 99346, February 7, 1995, 241 SCRA 165.

[59] *People v. Satonero*, G.R. No. 186233, October 2, 2009, 602 SCRA 769, 782; *People v. Arbalate*, G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255.

[60] *People v. Martinez*, G.R. No. 182687, July 23, 2009, 593 SCRA 732.

[61] *People v. Satonero*, *supra*.

[62] *Supra*, note 59.

[63] G.R. No. 169641, September 10, 2009, 599 SCRA 20.

[64] G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676.

[65] G.R. No. 170236, August 31, 2006, 500 SCRA 704, 720.

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