CELESTINO MARTURILLAS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 163217. April 18, 2006

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PANGANIBAN, CJ:

Well-rooted is the principle that factual findings of trial courts, especially when affirmed by the appellate court, are generally binding on the Supreme Court. In convicting the accused in the present case, the Court not merely relied on this doctrine, but also meticulously reviewed the evidence on record. It has come to the inevitable conclusion that petitioner is indeed guilty beyond reasonable doubt of the crime charged.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to set aside the November 28, 2003 Decision[2] and the March 10, 2004 Resolution[3] of the Court of Appeals (CA) in CA-GR CR No. 25401. The CA affirmed, with modifications as to the award of damages, the Decision[4] of Branch 10 of the Regional Trial Court (RTC) of Davao City. The RTC had found Celestino Marturillas guilty of homicide in Criminal Case No. 42091-98. The assailed CA Decision disposed as follows:

> "WHEREFORE, subject to the modification thus indicated, the judgment appealed from must be, as it hereby is, AFFIRMED. With the costs of this instance to be assessed against the accused-appellant."[5]

The challenged CA Resolution denied petitioner's Motion for Reconsideration.[6]

Petitioner was charged with homicide in an Information[7] dated November 5, 1998, worded as follows:

> "[T]hat on or about November 4 1998, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with a gun, and with intent to kill, wilfully, unlawfully and feloniously shot one Artemio Pantinople, thereby inflicting fatal wound upon the latter which caused his death."[8]

The FactsVersion of the Prosecution

The Office of the Solicitor General (OSG) summarized the People's version of the facts:

> "4. The prosecution presented Lito Santos, Ernita Pantinople, PO2 Mariano Operario, Alicia Pantinople and Dr. Danilo Ledesma as its witnesses from whose testimonies, the following facts were established.
>
> "Lito Santos, a forty-three-year old farmer and resident of Barangay Gatungan, Bunawan District, Davao City, testified that about 6:00 o'clock in the afternoon of November 4, 1998, he saw his neighbor and "kumpare" Artemio Pantinople arrive on board a jeepney from Bunawan, Davao City. Artemio was carrying a truck battery, some corn bran and rice. They talked for a while concerning their livelihood afterwhich, Artemio proceeded to connect the battery to the fluorescent lamps in his store. Artemio's store was located about five (5) meters away from Lito's house.
>
> "After installing the battery to the fluorescent lamps, Artemio sat for a while on a bench located in front of his

store. Then, Cecilia Santos, Lito's wife, called him and Artemio for supper. Artemio obliged. Lito, opting to eat later, served Artemio and Cecilia the food. After eating, Artemio returned to the bench and sat on it again together with his tree (3) children, namely: Janice, Saysay and Pitpit.

"Lito was eating supper in their kitchen when he heard a gunshot. From a distance of about ten (10) meters, he also noticed smoke and fire coming from the muzzle of a big gun. Moments later, he saw Artemio clasping his chest and staggering backwards to the direction of his (Lito's) kitchen. Artemio shouted to him, "Tabangi ko Pre, gipusil ko ni kapitan," meaning "Help me, Pre, I was shot by the captain." However, Lito did not approach Artemio right after the shooting incident because Cecilia warned him that he might also be shot.

"Lito did not see the person who shot Artemio because his attention was then focused on Artemio.

"Shortly, Lito saw Ernita Pantinople, the wife of Artemio, coming from her house towards the direction where Artemio was sprawled on the ground. Ernita was hysterical, jumping and shouting, "Kapitan, bakit mo binaril and aking asawa." She also repeatedly cried for help.

"Lito then went out of their house and approached Artemio who was lying dead near a banana trunk more than five (5) meters from his house. Some of their neighbors, namely: Antenero, Loloy Libre and Lapis answered Ernita's call for help and approached them.

"When the shooting incident happened about 7:30 in the evening of November 4, 1998, Lito's house was illumined by a lamp. Their kitchen has no walls. It is an open-type kitchen giving him an unobstructed view of Artemio who was about five (5) meters away from where he was positioned at that time. Although there was a gemilina tree growing in the space in between his house and the store of Artemio, the same did not block his view of Artemio. Likewise, the coconut trees and young banana plants growing at the scene of the crime did not affect his view.

"At the same instance, Ernita was also in their kitchen preparing milk for her baby. Her baby was then lying on the floor of their kitchen. When she was about to put the bottle into the baby's mouth, she suddenly heard the sound of a gunburst followed by a shout, "Help me Pre, I was shot by the captain." She immediately pushed open the window of their kitchen and saw appellant wearing a black jacket and camouflage pants running towards the direction of the back portion of Lito's house. From there, appellant crossed the street and disappeared.

"Ernita saw appellant carrying with him a long firearm which looked like an M-14 rifle. Ernita also sensed that appellant had some companions with him because she heard the crackling sound of the dried leaves around the place. Ernita had a clear view of appellant at that time because their place was well-illumined by the full moon that night and by the two (2) fluorescent lamps in their store which were switched on at the time of the incident.

"Ernita immediately went out of their house and ran towards Artemio. Artemio tried to speak to her but he could not do so because his mouth was full of blood. Upon seeing the pitiful sight of her husband, Ernita shouted several times, "Kapitan, ngano nimo gipatay and akong bana." She also repeatedly called her neighbors for help but only Lito Santos, Eufemio Antenero, Norman Libre and some residents of Poblacion Gatungan responded to her calls and approached them. She noted that no member of the CFO and CAFGU came to help them. Also, no barangay tanod came to offer them to help.

"While waiting for the police, Ernita did not allow Artemio's body to be touched by anybody. After more than two (2) hours, the police arrived, together with a photographer by the name of Fe Mendez of Bunawan District, Davao City who took pictures of the crime scene.

"PO2 Mariano Operario, Investigation Officer of the Investigation Section of the Bunawan Police Station, Philippine National Police, Davao City, testified that about 9:05 in the evening of November 4, 1998, he received a report of an alleged shooting incident at Barangay Gatungan, Bunawan District in Davao City.

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Together with SPO1 Rodel C. Estrellan and a member of the mobile police patrol on board their mobile car, PO2 Operario proceeded immediately to the crime scene. They reached the crime scene about 10:00 o'clock in the evening of the same date. They found the lifeless body of Artemio sprawled on the ground. Ernita and Lito then approached PO2 Operario and informed him that appellant was the one responsible for the shooting.

"PO2 Operario stayed at the crime scene for about one (1) hour and waited for the funeral vehicle to pick up the body of Artemio. When the funeral hearse arrived, PO2 Operario told the crew to load Artemio's body into the vehicle. Thereafter, he then boarded again their mobile car together with Lito Santos.

"Armed with the information that appellant was the one responsible for the shooting of Artemio, PO2 Operario proceeded to the house of appellant and informed him that he was a suspect in the killing of Artemio. He then invited appellant to go with him to the police station and also to bring along with him his M-14 rifle. Appellant did not say anything. He just got his M-14 rifle and went with the police to the police station where he was detained the whole night of November 4, 1998. Appellant did not also give any statement to anybody about the incident. The following day, appellant was transferred by the police to Tibungco Police Station where he was detained.

"Alicia Pantinople, the 44-year old sister of Artemio, testified that on the night of November 4, 1998, she was at home watching television. She heard a gunshot but did not mind it because she was already used to hearing the sound of guns fired indiscriminately in their place.

"After a few minutes, Junjun, a child and resident of Sitio Centro, Barangay Gatungan, Bunawan District, Davao City came knocking at their door. Junjun informed them that: "Yoyo, Uncle Titing was shot," referring to Artemio.

"Upon hearing the report, Alicia looked for some money thinking that it might be needed for Artemio's hospitalization because she expected Artemio to be still alive. Artemio's two (2) children, namely: Jonel and Genesis who were staying with her hurriedly left. She then ran to the place where her brother was shot and found Artemio's dead body on the ground surrounded by his four (4) children.

"At the Bunawan Police Station, Alicia was informed by the police that appellant was at Tibungco Police Station. She sent her male cousin to proceed to Tibungco Police Station to find out if appellant was indeed in the said place. However, her cousin immediately returned and informed her that appellant was not in Tibungco Police Station. She then went around the Bunawan Police Station and noticed a locked door. When she peeped through the hole of the said door, she saw appellant reclining on a bench about two and a half (2 ½) meters away from the door. Appellant's left leg was on top of the bench while his right leg was on the ground. Appellant was wearing a brown shirt, black jacket and a pair of camouflage pants. He was also wearing brown shoes but he had no socks on his feet.

"At the police station, Alicia confronted appellant: "Nong Listing I know that you can recognize my voice. It is me. Why did you kill my brother? What has he done wrong to you?"

"Appellant did not answer her. Nevertheless, she was sure that appellant was awake because he was tapping the floor with his right foot.

"Dr. Danilo Ledesma, a medico-legal officer of the Davao City Health Department, conducted an autopsy on Artemio's cadaver about 9:30 in the morning of November 5, 1998 at the Rivera Funeral Homes located at Licanan, Lasang. His findings are summarized in his Necropsy Report No. 76:

'POSTMORTEM FINDINGS

'Pallor, marked generalized.

'Body in rigor mortis.

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'Wound, gunshot, ENTRANCE, 0.9 x 0.8 cm. Ovaloid located at the anterior chestwall, rightside, 1.0 cm; from the anterior median line, at the level of the third (3rd) intercoastal space and 131.0 cms. above the right heel, directed backwards, upwards, medially crossing the midline from the right to left, involving the soft tissues, perforating the body of the sternum, into the pericardial cavity, perforating the heart into the left thoracic cavity, perforating the heart into the left thoracic cavity, perforating the upper lobe of the left lung, forming an irregular EXIT, 1.5 x 1.1 cms. at the posterior chest wall left side, 13.0 cms. from the posterior median line and 139.0 cms. above the left heel.

'Hemopericadium, 300 ml.

'Hemothorax, left, 1,000 ml.

'Stomach, filled with partially digested food particles.

'Other visceral organs, pale.

'CAUSE OF DEATH: Gunshot wound of the chest.

Signed by: DANILO P. LEDESMA

Medico-Legal Officer IV'

"During the trial, Dr. Ledesma explained that Artemio died of a gunshot wound, 0.9 x 0.8 centimeters in size located about one (1) inch away from the centerline of Artemio's Adam's apple down to his navel and about 1:00 o'clock from his right nipple.

"The trajectory of the bullet passing through Artemio's body indicates that his assailant was in a lower position than Artemio when the gun was fired. Dr. Ledesma also found the wound of Artemio negative of powder burns indicating that the assailant was at a distance of more than twenty-four (24) inches when he fired his gun at Artemio. He did not also find any bullet slug inside the body of Artemio indicating that the bullet went through Artemio's body. Artemio's heart and lungs were lacerated and his stomach contained partially digested food particles indicating that he had just eaten his meal when he was shot.

"In the certificate of death of Artemio, Dr. Ledesma indicated that the cause of his death was a gunshot wound on the chest.

"5. After the defense presented its evidence, the case was submitted for decision."[9]

Version of the Defense

On the other hand, petitioner presented the following statement of facts:

"9. This is a criminal case for Homicide originally lodged before the Regional Trial Court, Branch 10 of Davao City against herein Petitioner Celestino Marturillas, former Barangay Captain of Gatungan, Bunawan District[,] Davao City and docketed as Criminal Case No. 42,091-98. The criminal charge against Petitioner was the result of a shooting incident in Barangay Gatungan, Bunawan District, Davao City which resulted in the slaying of Artemio Pantinople while the latter was on his way home in the evening of November 4, 1998.

"10. On that same evening at around 8:30 p.m. herein Petitioner former Barangay Captain Celestino Marturillas was roused from his sleep at his house in Barangay Gatungan, Bunawan District, Davao City by his wife since Kagawads Jimmy Balugo and Norman Libre (Barangay Kagawads of Gatungan, Bunawan District, Davao City) wanted to see him. Dazed after just having risen from bed, Petitioner was rubbing his eyes when he met the two Kagawads inside his house. He was informed that a resident of his barangay, Artemio Pantinople, had just been shot. Petitioner at once ordered his Kagawads to assemble the members of the SCAA (Special Civilian Armed [Auxiliary]) so that they could be escorted to the crime scene some 250 meters away.

> As soon as the SCAA's were contacted, they (Petitioner, Kagawads Libre and Balugo including Wiliam Gabas, Eddie Loyahan and Junior Marturillas - the last three being SCAA members) then proceeded to the crime scene to determine what assistance they could render.
>
> "11. While approaching the store owned by the Pantinople's and not very far from where the deceased lay sprawled, Petitioner was met by Ernita Pantinople (wife of the deceased-Artemio Pantinople) who was very mad and belligerent. She immediately accused Petitioner of having shot her husband instead of Lito Santos who was his enemy. Petitioner was taken aback by the instant accusation against him. He explained that he just came from his house where he was roused by his Kagawads from his sleep. Not being able to talk sense with Ernita Pantinople, Petitioner and his companions backed off to avoid a heated confrontation. Petitioner instead decided to go back to his house along with his companions.
>
> "12. Upon reaching his house, Petitioner instructed Kagawad Jimmy Balugo to contact the Bunawan Police Station and inform them what transpired. Not knowing the radio frequency of the local police, Kagawad Balugo instead radioed officials of nearby Barangay San Isidro requesting them to contact the Bunawan PNP for police assistance since someone was shot in their locality.
>
> "13. Moments later, PO2 Mariano Operario and another police officer arrived at the house of Petitioner and when confronted by the latter, he was informed by PO2 Operario that he was the principal suspect in the slaying of Artemio Pantinople. Upon their invitation, Petitioner immediately went with the said police officers for questioning at the Bunawan Police Station. He also took with him his government-issued M-14 Rifle and one magazine of live M-14 ammunition which Petitioner turned over for safe keeping with the Bunawan PNP. The police blotter showed that Petitioner surrendered his M-14 rifle with live ammunition to SPO1 Estrellan and PO3 Sendrijas of the Bunawan PNP at around 10:45 p.m. of November 4, 1998.
>
> "14. When the shooting incident was first recorded in the Daily Record of Events of the Bunawan PNP it was indicated therein that deceased may have been shot by unidentified armed men viz:
> 'Entry No. Date Time Incident/Events
>
> 2289 110498 2105H SHOOTING INCIDENT-
>
> 'One Dominador Lopez 43 years old, married, farmer and a resident of Puro[k] 5, Barangay Gatungan, Davao City appeared at this Precinct and reported that shortly before this writing, one ARTEMIO PANTINOPLE, former barangay kagawad of Barangay Gatungan was allegedly shot to death by an unidentified armed men at the aforementioned Barangay. x x x.'

"15. The extract from the police blotter prepared by SPO2 Dario B. Undo dated November 9, 1998 already had a little modification indicating therein that deceased was shot by an unidentified armed man and the following entry was made.

> '2105H: Shooting Incident: One Dominador Lopez, 43 years old, married, farmer and a resident of Purok 5, Barangay Gatungan Bunawan District, Davao City appeared at this Police Precinct and reported that prior to these writing, one Artemio Pantinople, former Barangay Kagawad of Barangay Gatungan was allegedly shot to death by unidentified armed man at the aforementioned barangay. x x x.'

"16. On November 5, 1998 at around 7:15 a.m. PO2 Mariano Operario indorsed with the Bunawan PNP an empty shell fired from a carbine rifle which was recovered by the said police officer from the crime scene in the night of the incident. Owing to his pre-occupation in organizing and preparing the affidavits of the Complainant and her witnesses the previous evening, he was only able to indorse the same the following morning. At the same time, P/Chief Insp. Julito M. Diray, Station Commander of the Bunawan PNP made a written request addressed to the District Commander of the PNP Crime Laboratory requesting that a paraffin test be conducted on Petitioner and that a ballistics examination be made on the M-14 rifle which he surrendered to Bunawan PNP.

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"17. At around 9:30 a.m. of November 5, 1998, Dr. Danilo P. Ledesma, M.D., Medico-Legal Officer for Davao City conducted an autopsy on the cadaver of deceased and made the following Post-Mortem Findings contained in Necropsy Report No. 76 dated November 6, 1998, viz:

> 'Pallor, marked, generalized
>
> 'Body in rigor mortis
>
> 'Wound, gunshot, ENTRANCE, 0.9-0.8 cm. ovaloid located at the anterior chest wall, right side, .0 cm. from the anterior median line, at the level of the third (3rd) intercostal space and 131.0 cms. above the right neck, directed backwards, upwards, medially, crossing the midline from the right to left, involving the soft tissues, perforating the body of the sternum into the pericardial cavity, perforating the heart into the left thoracic cavity, perforating the upper lobe of the left lung forming an irregular EXIT, 1.5x1.1 cms. at the posterior chest wall, left side, 13.0 cms. from the posterior median line and 139.0 cms. above the left neck.
>
> 'Hemopericadium, 300 ml.
>
> 'Hemothorax, left 1,000 ml.
>
> 'Stomach filled with partially digested food particles.
>
> 'Other visceral organs, pale
>
> 'CAUSE OF DEATH: Gunshot wound of the chest.'

"18. After the fatal shooting of deceased, Celestino Marturillas was subjected to paraffin testing by the PNP Crime Laboratory in Davao City at 10:30 a.m. November 5, 1998. The next day, November 6, 1998, the PNP Crime Laboratory released Physical Sciences Report No. C-074-98 regarding the paraffin test results which found Petitioner NEGATIVE for gunpowder nitrates based on the following findings of the PNP Crime Laboratory:

'**FINDINGS:**

> 'Qualitative examination conducted on the above-mentioned specimen gave NEGATIVE result to the test for the presence of gunpowder nitrates. x x x
>
> 'CONCLUSION:
>
> 'Both hands of Celestino Marturillas do not contain gunpowder nitrates[.]'

"19. After preparing all the affidavits of Ernita Pantinople and her witnesses PO2 Mariano R. Operario Jr., the police officer as[s]igned to investigate the shooting of the deceased, prepared and transmitted, on November 5, 1998, a Complaint to the City Prosecution Office recommending that Petitioner be indicted for Murder, attaching therewith the Sworn Affidavits of Ernita O. Pantinople (Complainant), Lito D. Santos (witness) and the Sworn Joint Affidavit of SPO1 Rodel Estrellan and PO2 Mariano R. Operario Jr. of the PNP.

"20. The following is the Affidavit-Complaint of Ernita Pantinople as well as the supporting affidavits of her witnesses all of which are quoted in full hereunder:

> 'Ernita Pantinople's Affidavit-Complaint dated November 5, 1998:'That last November 4, 1998 at about 7:30 in the evening, I was attending and caring my baby boy at that time to let him sleep and that moment I heard first one gun shot burst after then somebody shouting seeking for help in Visayan words 'tabangi ko Pre gipusil ko ni Kapitan' I estimated a distance to more or less ten (10) meters away from my house;
>
> 'That I immediately peep at the windows, wherein I very saw a person of Brgy. Capt. Celestino Marturillas of Brgy. Gatungan, Bunawan District, Davao City, wearing black jacket and camouflage pants carrying his M-14

rifle running to the direction to the left side portion of the house of Lito Santos who was my neighbor respectively;

'That I hurriedly go down from my house and proceeded to the victims body, wherein when I came nearer I got surprised for the victim was my beloved husband;

'That I was always shouting in visayan words 'kapitan nganong imo mang gipatay and akong bana';

'That I let my husband body still at that placed until the police officers will arrived and investigate the incident;

'That I know personally Brgy. Capt. Celestino Marturillas for he is my nearby neighbor at that placed;

'That I am executing this affidavit to apprise the authorities concern of the truthfulness of the foregoing and my desire to file necessary charges against Celestino Marturillas.'

'Witness-Affidavit of Lito Santos dated November 5, 1998 reads:

'I, LITO D. SANTOS, 43 yrs. old, married, farmer, a resident of Purok 5, Brgy. Gatungan, Bunawan District, Davao City after having been duly sworn to in accordance with law do hereby depose and say:

'That last November 4, 1998 at about 7:30 in the evening I was taking my dinner at the kitchen of my house and after finished eating I stood up then got a glass of water and at that time I heard one gun shot burst estimated to more or less ten (10) meters from my possession then followed somebody shouting seeking for help in Visayan words 'tabangi ko pre gipusil ko ni Kapitan';

'That I really saw the victim moving backward to more or less five (5) meters away from where he was shot then and there the victim slumped at the grassy area;

'That I immediately go out from my house and proceeded to the victims body, wherein, when I came nearer I found and identified the victim one Artemio Pantinople who was my nearby neighbor sprawled on his own blood at the grassy area;

'That no other person named by the victim other than Brgy. Capt. Celestino Marturillas of Brgy. Gatungan, Bunawan District, Davao City;

'That I am executing this affidavit to apprised the authorities concern of the true facts and circumstances that surrounds the incident.'

"21. Based on the Affidavits executed by Ernita Pantinople and Lito Santos, then 2nd Asst. City Prosecutor Raul B. Bendigo issued a Resolution on November 5, 1998 finding sufficient evidence to indict Appellant for the crime of Homicide and not Murder as alleged in Private Complainant's Affidavit Complaint. The Information states:

'Above-mentioned Accused, armed with a gun, and with intent to kill, willfully, unlawfully and feloniously shot one Artemio Pantinople, thereby inflicting fatal wound upon the latter which caused his death.

'CONTRARY TO LAW.'

x x x x x x x x x

"23. The theory of the Defense was anchored on the testimony of the following individuals:

'23.1 Jimmy Balugo, was one of the Barangay Kagawads who went to the house of Petitioner after receiving a radio message from Brgy. Kagawad Glenda Lascuña that a shooting incident took place in their barangay. He also testified that together with Kagawad Norberto Libre, he proceeded to the house of Petitioner to inform him of the shooting incident involving a certain Artemio 'Titing' Pantinople. After informing Petitioner about what happened, the latter instructed him and Norberto Libre to gather the SCAA's and to accompany them to the

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crime scene. He also narrated to the court that Petitioner and their group were not able to render any assistance at the crime scene since the widow and the relatives of deceased were already belligerent. As a result of which, the group of Petitioner including himself, went back to the former's house where he asked Petitioner if it would be alright to contact the police and request for assistance. He claimed that he was able to contact the Bunawan PNP with the help of the Barangay Police of Barangay San Isidro.

'23.2) Norberto Libre testified that in the evening of November 4, 1998, he heard a gunburst which resembled a firecracker and after a few minutes Barangay Kagawad Jimmy Balugo went to his house and informed him that their neighbor Titing Pantinople was shot. Kagawad Balugo requested him to accompany the former to go to the house of then Barangay Captain Celestino Marturillas; that he and Kagawad Balugo proceeded to the house of Petitioner and shouted to awaken the latter; that Barangay Captain Marturillas went out rubbing his eyes awakened from his sleep and was informed of the killing of Artemio Pantinople; that Petitioner immediately instructed them to fetch the SCAA and thereafter their group went to the crime scene.

'23.3) Ronito Bedero testified that he was in his house on the night Artemio Pantinop[l]e was shot. The material point raised by this witness in his testimony was the fact that he saw an unidentified armed man flee from the crime scene who later joined two other armed men near a nangka tree not far from where deceased was shot. All three later fled on foot towards the direction of the Purok Center in Barangay Gatungan. This witness noticed that one of the three men was armed with a rifle but could not make out their identities since the area where the three men converged was a very dark place. After the three men disappeared, he saw from the opposite direction Petitioner, Barangay Kagawad Jimmy Balugo and three (3) SCAA members going to the scene of the crime but they did not reach the crime scene. A little later, he saw the group of Petitioner return to where they came from.

'23.4) Police C/Insp. Noemi Austero, Forensic Chemist of the PNP Crime Laboratory, testified that she conducted a paraffin test on both hands of Petitioner on November 5, 1999 at around 10:30 a.m. She also testified that Petitioner tested NEGATIVE for gunpowder nitrates indicating that he never fired a weapon at any time between 7:30 p.m. of November 4, 1999 until the next day, November 5, 1999. She also testified that as a matter of procedure at the PNP Crime Laboratory, they do not conduct paraffin testing on a crime suspect seventy two (72) hours after an alleged shooting incident. She also testified that based on her experience she is not aware of any chemical that could extract gunpowder nitrates from the hands of a person who had just fired his weapon.

'23.5) Dominador Lapiz testified that he lived on the land of the victim, Artemio Pantinople for ten (10) years. He was one of the first persons who went to the crime scene where he personally saw the body of deceased lying at a very dark portion some distance from the victim's house and that those with him at that time even had to light the place with a lamp so that they could clearly see the deceased. He also testified that there were many coconut and other trees and bananas in the crime scene. He also testified that the house of Lito Santos was only about four (4) meters from the crime scene, while the house of victim-Artemio Pantinople was about FIFTY (50) meters away. He testified that there was no lighted fluorescent at the store of deceased at the time of the shooting. He was also the one who informed Kagawad Glenda Lascuna about the shooting of Artemio Pantinople. His testimony also revealed that when the responding policemen arrived, Lito Santos immediately approached the policemen, volunteered himself as a witness and even declared that he would testify that it was Petitioner who shot Artemio Pantinople.

'On cross-examination, this witness declared that the crime scene was very dark and one cannot see the body of the victim without light. On cross-examination, this witness also testified that Lito Santos approached the service vehicle of the responding policemen and volunteered to be a witness that Petitioner was the assailant of the victim, Artemio Pantinople. This witness further testified that immediately after he went to the crime scene, the widow of the victim and the children were merely shouting and crying and it was only after the policemen arrived that the widow uttered in a loud voice, 'Kapitan nganong gipatay mo and akong bana?'

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> '23.6) Celestino Marturillas, former Barangay Captain of Barangay Gatungan, Bunawan District, Davao City testified that he learned of Pantinople's killing two hours later through information personally relayed to him by Kagawads Jimmy Balugo and Norberto Libre. He intimated to the Court that he did try to extend some assistance to the family of the deceased but was prevented from so doing since the wife of deceased herself and her relatives were already hostile with him when he was about to approach the crime scene. He also testified that he voluntarily went with the police officers who arrested him at his residence on the same evening after the victim was shot. He also turned over to police custody the M-14 rifle issued to him and voluntarily submitted himself to paraffin testing a few hours after he was taken in for questioning by the Bunawan PNP. Petitioner, during the trial consistently maintained that he is innocent of the charge against him.'"[10]

Ruling of the Court of Appeals

The CA affirmed the findings of the RTC that the guilt of petitioner had been established beyond reasonable doubt. According to the appellate court, he was positively identified as the one running away from the crime scene immediately after the gunshot. This fact, together with the declaration of the victim himself that he had been shot by the captain, clearly established the latter's complicity in the crime.

No ill motive could be ascribed by the CA to the prosecution witnesses. Thus, their positive, credible and unequivocal testimonies were accepted as sufficient to establish the guilt of petitioner beyond reasonable doubt.

On the other hand, the CA also rejected his defenses of denial and alibi. It held that they were necessarily suspect, especially when established by friends or relatives, and should thus be subjected to the strictest scrutiny. At any rate, his alibi and denial cannot prevail over the positive testimonies of the prosecution witnesses found to be more credible.

The appellate court upheld petitioner's conviction, as well as the award of damages. In addition, it awarded actual damages representing unearned income.

Hence, this Petition.[11]

The Issues

In his Memorandum, petitioner submits the following issues for the Court's consideration:

> "I
>
> The Court of Appeals committed a reversible error when it gave credence to the claim of the solicitor general that the prosecution's witnesses positively identified petitioner as the alleged triggerman
>
> "II
>
> The Court of Appeals was in serious error when it affirmed the trial court's blunder in literally passing the blame on petitioner for the lapses in the investigation conducted by the police thereby shifting on him the burden of proving his innocence
>
> "III
>
> The Court of Appeals committed a serious and palpable error when it failed to consider that the deceased was cut off by death before he could convey a complete or sensible communication to whoever heard such declaration assuming there was any
>
> "IV
>
> Petit[i]oner's alibi assumed significance considering that evidence and testimonies of the prosecution's witnesses arrayed against petitioner failed to prove that he was responsible for the commission of the

crime."[12]

In sum, petitioner raises two main issues: 1) whether the prosecution's evidence is credible; and 2) whether it is sufficient to convict him of homicide. Under the first main issue, he questions the positive identification made by the prosecution witnesses; the alleged inconsistencies between their Affidavits and court testimonies; and the plausibility of the allegation that the victim had uttered, "Tabangi ko p're, gipusil ko ni kapitan" ("Help me p're, I was shot by the captain"), which was considered by the two lower courts either as his dying declaration or as part of res gestae.

Under the second main issue, petitioner contends that the burden of proof was erroneously shifted to him; that there should have been no finding of guilt because of the negative results of the paraffin test; and that the prosecution miserably failed to establish the type of gun used in the commission of the crime.

The Court's Ruling

The Petition is unmeritorious.

First Main Issue:
Credibility of the Prosecution Evidence

According to petitioner, the charge of homicide should be dismissed, because the inherent weakness of the prosecution's case against him was revealed by the evidence presented. He submits that any doubt as to who really perpetrated the crime should be resolved in his favor.

We do not agree. This Court has judiciously reviewed the findings and records of this case and finds no reversible error in the CA's ruling affirming petitioner's conviction for homicide.

Basic is the rule that this Court accords great weight and a high degree of respect to factual findings of the trial court, especially when affirmed by the CA, as in the present case.[13] Here, the RTC was unequivocally upheld by the CA, which was clothed with the power to review whether the trial court's conclusions were in accord with the facts and the relevant laws.[14] Indeed, the findings of the trial court are not to be disturbed on appeal, unless it has overlooked or misinterpreted some facts or circumstances of weight and substance.[15] Although there are recognized exceptions[16] to the conclusiveness of the findings of fact of the trial and the appellate courts, petitioner has not convinced this Court of the existence of any.

Having laid that basic premise, the Court disposes seriatim the arguments proffered by petitioner under the first main issue.
Positive Identification

Petitioner contends that it was inconceivable for Prosecution Witness Ernita Pantinople -- the victim's wife --to have identified him as the assassin. According to him, her house was "a good fifty (50) meters away from the crime scene,"[17] which was "enveloped in pitch darkness."[18] Because of the alleged improbability, he insists that her testimony materially contradicted her Affidavit. The Affidavit supposedly proved that she had not recognized her husband from where she was standing during the shooting. If she had failed to identify the victim, petitioner asks, "how was it possible for her to conclude that it was [p]etitioner whom she claims she saw fleeing from the scene?"[19]

All these doubts raised by petitioner are sufficiently addressed by the clear, direct and convincing testimony of the witness. She positively identified him as the one "running away" immediately after the sound of a gunshot. Certain that she had seen him, she even described what he was wearing, the firearm he was carrying, and the direction towards which he was running. She also clarified that she had heard the statement, "Help me p're, I was

shot by the captain," uttered after the shooting incident. Accepting her testimony, the CA ruled thus:

> "Ernita's testimony that she saw [petitioner] at the crime scene is credible because the spot where Artemio was shot was only 30 meters away from her house. Undoubtedly, Ernita is familiar with [petitioner], who is her neighbor, and a long-time barangay captain of Barangay Gatungan, Bunawan District, Davao City when the incident took place. Ernita was also able to see his face while he was running away from the crime scene. The identification of a person can be established through familiarity with one's physical features. Once a person has gained familiarity with one another, identification becomes quite an easy task even from a considerable distance. Judicial notice can also be taken of the fact that people in rural communities generally know each other both by face and name, and can be expected to know each other's distinct and particular features and characteristics."[20]

This holding confirms the findings of fact of the RTC. Settled is the rule that on questions of the credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest degree of respect.[21] It was the trial court that had the opportunity to observe the manner in which the witnesses had testified; as well as their furtive glances, calmness, sighs, and scant or full realization of their oaths.[22] It had the better opportunity to observe them firsthand; and to note their demeanor, conduct and attitude under grueling examination.[23]

Petitioner doubts whether Ernita could have accurately identified him at the scene of the crime, considering that it was dark at that time; that there were trees obstructing her view; and that her house was fifty (50) meters away from where the crime was committed.

These assertions are easily belied by the findings of the courts below, as borne by the records. Ernita testified on the crime scene conditions that had enabled her to make a positive identification of petitioner. Her testimony was even corroborated by other prosecution witnesses, who bolstered the truth and veracity of those declarations. Consequently, the CA ruled as follows:

> "x x x Ernita's recognition of the assailant was made possible by the lighted two fluorescent lamps in their store and by the full moon. x x x. In corroboration, Lito testified that the place where the shooting occurred was bright.
>
> "The trees and plants growing in between Ernita's house and the place where Artemio was shot to death did not impede her view of the assailant. To be sure, the prosecution presented photographs of the scene of the crime and its immediate vicinities. These photographs gave a clear picture of the place where Artemio was shot. Admittedly, there are some trees and plants growing in between the place where the house of Ernita was located and the spot where Artemio was shot. Notably, however, there is only one gemilina tree, some coconut trees and young banana plants growing in the place where Artemio was shot. The trees and banana plants have slender trunks which could not have posed an obstacle to Ernita's view of the crime scene from the kitchen window of her house especially so that she was in an elevated position."[24]

This Court has consistently held that --given the proper conditions -- the illumination produced by a kerosene lamp, a flashlight, a wick lamp, moonlight, or starlight is considered sufficient to allow the identification of persons.[25] In this case, the full moon and the light coming from two fluorescent lamps of a nearby store were sufficient to illumine the place where petitioner was; and to enable the eyewitness to identify him as the person who was present at the crime scene. Settled is the rule that when conditions of visibility are favorable and the witnesses do not appear to be biased, their assertion as to the identity of the malefactor should normally be accepted.[26]

But even where the circumstances were less favorable, the familiarity of Ernita with the face of petitioner considerably reduced any error in her identification of him.[27] Since the circumstances in this case were

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reasonably sufficient for the identification of persons, this fact of her familiarity with him erases any doubt that she could have erred in identifying him. Those related to the victim of a crime have a natural tendency to remember the faces of those involved in it. These relatives, more than anybody else, would be concerned with seeking justice for the victim and bringing the malefactor before the law.[28]

Neither was there any indication that Ernita was impelled by ill motives in positively identifying petitioner. The CA was correct in observing that it would be "unnatural for a relative who is interested in vindicating the crime to accuse somebody else other than the real culprit. For her to do so is to let the guilty go free."[29] Where there is nothing to indicate that witnesses were actuated by improper motives on the witness stand, their positive declarations made under solemn oath deserve full faith and credence.[30]

Inconsistency BetweenAffidavit and Testimony

Petitioner contends that the testimony of Ernita materially contradicted her Affidavit. According to him, she said in her testimony that she had immediately recognized her husband as the victim of the shooting; but in her Affidavit she stated that it was only when she had approached the body that she came to know that he was the victim.

We find no inconsistency. Although Ernita stated in her testimony that she had recognized the victim as her husband through his voice, it cannot necessarily be inferred that she did not see him. Although she recognized him as the victim, she was still hoping that it was not really he. Thus, the statement in her Affidavit that she was surprised to see that her husband was the victim of the shooting.

To be sure, ex parte affidavits are usually incomplete, as these are frequently prepared by administering officers and cast in their language and understanding of what affiants have said.[31] Almost always, the latter would simply sign the documents after being read to them. Basic is the rule that, taken ex parte, affidavits are considered incomplete and often inaccurate. They are products sometimes of partial suggestions and at other times of want of suggestions and inquiries, without the aid of which witnesses may be unable to recall the connected circumstances necessary for accurate recollection.[32]

Nevertheless, the alleged inconsistency is inconsequential to the ascertainment of the presence of petitioner at the crime scene. Ruled the CA:

> "x x x. They referred only to that point wherein Ernita x x x ascertained the identity of Artemio as the victim. They did not relate to Ernita's identification of [petitioner] as the person running away from the crime scene immediately after she heard a gunshot."[33]

Statements Uttered
Contemporaneous with the Crime

Ernita positively testified that immediately after the shooting, she had heard her husband say, "Help me p're, I was shot by the captain." This statement was corroborated by another witness, Lito Santos, who testified on the events immediately preceding and subsequent to the shooting.

It should be clear that Santos never testified that petitioner was the one who had actually shot the victim. Still, the testimony of this witness is valuable, because it validates the statements made by Ernita. He confirms that after hearing the gunshot, he saw the victim and heard the latter cry out those same words.

Petitioner insinuates that it was incredible for Santos to have seen the victim, but not the assailant. The CA dismissed this argument thus:

> "x x x. The natural reaction of a person who hears a loud or startling command is to turn towards the speaker.

> Moreover, witnessing a crime is an unusual experience that elicits different reactions from witnesses, for which no clear-cut standard of behavior can be prescribed. Lito's reaction is not unnatural. He was more concerned about Artemio's condition than the need to ascertain the identity of Artemio's assailant."[34]

It was to be expected that, after seeing the victim stagger and hearing the cry for help, Santos would shift his attention to the person who had uttered the plea quoted earlier. A shift in his focus of attention would sufficiently explain why Santos was not able to see the assailant. Petitioner then accuses this witness of harboring "a deep-seated grudge,"[35] which would explain why the latter allegedly fabricated a serious accusation.

This contention obviously has no basis. No serious accusation against petitioner was ever made by Santos. What the latter did was merely to recount what he heard the victim utter immediately after the shooting. Santos never pointed to petitioner as the perpetrator of the crime. The statements of the former corroborated those of Ernita and therefore simply added credence to the prosecution's version of the facts. If it were true that he had an ulterior motive, it would have been very easy for him to say that he had seen petitioner shoot the victim.

The two witnesses unequivocally declared and corroborated each other on the fact that the plea, "Help me p're, I was shot by the captain," had been uttered by the victim. Nevertheless, petitioner contends that it was highly probable that the deceased died instantly and was consequently unable to shout for help. We do not discount this possibility, which petitioner himself admits to be a probability. In the face of the positive declaration of two witnesses that the words were actually uttered, we need not concern ourselves with speculations, probabilities or possibilities. Said the CA:

> "x x x. Thus, as between the positive and categorical declarations of the prosecution witnesses and the mere opinion of the medical doctor, the former must necessarily prevail.
>
> "Moreover, it must be stressed that the post-mortem examination of the cadaver of Artemio was conducted by Dr. Ledesma only about 9:30 in the morning of November 5, 1998 or the day following the fatal shooting of Artemio. Evidently, several hours had elapsed prior to the examination. Thus, Dr. Ledesma could not have determined Artemio's physical condition a few seconds after the man was shot."[36]

Dying Declaration

Having established that the victim indeed uttered those words, the question to be resolved is whether they can be considered as part of the dying declaration of the victim.

Rule 130, Section 37 of the Rules of Court, provides:

> "The declaration of a dying person, made under the consciousness of impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death."

Generally, witnesses can testify only to those facts derived from their own perception. A recognized exception, though, is a report in open court of a dying person's declaration made under the consciousness of an impending death that is the subject of inquiry in the case.[37]

Statements identifying the assailant, if uttered by a victim on the verge of death, are entitled to the highest degree of credence and respect.[38] Persons aware of an impending death have been known to be genuinely truthful in their words and extremely scrupulous in their accusations.[39] The dying declaration is given credence, on the premise that no one who knows of one's impending death will make a careless and false accusation.[40] Hence, not infrequently, pronouncements of guilt have been allowed to rest solely on the dying declaration of the deceased victim.[41]

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To be admissible, a dying declaration must 1) refer to the cause and circumstances surrounding the declarant's death; 2) be made under the consciousness of an impending death; 3) be made freely and voluntarily without coercion or suggestions of improper influence; 4) be offered in a criminal case, in which the death of the declarant is the subject of inquiry; and 5) have been made by a declarant competent to testify as a witness, had that person been called upon to testify.[42]

The statement of the deceased certainly concerned the cause and circumstances surrounding his death. He pointed to the person who had shot him. As established by the prosecution, petitioner was the only person referred to as kapitan in their place.[43] It was also established that the declarant, at the time he had given the dying declaration, was under a consciousness of his impending death.

True, he made no express statement showing that he was conscious of his impending death. The law, however, does not require the declarant to state explicitly a perception of the inevitability of death.[44] The perception may be established from surrounding circumstances, such as the nature of the declarant's injury and conduct that would justify a conclusion that there was a consciousness of impending death.[45] Even if the declarant did not make an explicit statement of that realization, the degree and seriousness of the words and the fact that death occurred shortly afterwards may be considered as sufficient evidence that the declaration was made by the victim with full consciousness of being in a dying condition.[46]

Also, the statement was made freely and voluntarily, without coercion or suggestion, and was offered as evidence in a criminal case for homicide. In this case, the declarant was the victim who, at the time he uttered the dying declaration, was competent as a witness.

As found by the CA, the dying declaration of the victim was complete, as it was "a full expression of all that he intended to say as conveying his meaning. It [was] complete and [was] not merely fragmentary."[47] Testified to by his wife and neighbor, his dying declaration was not only admissible in evidence as an exception to the hearsay rule, but was also a weighty and telling piece of evidence.

Res Gestae

The fact that the victim's statement constituted a dying declaration does not preclude it from being admitted as part of the res gestae, if the elements of both are present.[48]

Section 42 of Rule 130 of the Rules of Court provides:

> "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."

Res gestae refers to statements made by the participants or the victims of, or the spectators to, a crime immediately before, during, or after its commission.[49] These statements are a spontaneous reaction or utterance inspired by the excitement of the occasion, without any opportunity for the declarant to fabricate a false statement.[50] An important consideration is whether there intervened, between the occurrence and the statement, any circumstance calculated to divert the mind and thus restore the mental balance of the declarant; and afford an opportunity for deliberation.[51]

A declaration is deemed part of the res gestae and admissible in evidence as an exception to the hearsay rule, when the following requisites concur: 1) the principal act, the res gestae, is a startling occurrence; 2) the statements were made before the declarant had time to contrive or devise; and 3) the statements concerned the occurrence in question and its immediately attending circumstances.[52]

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All these requisites are present in this case. The principal act, the shooting, was a startling occurrence. Immediately after, while he was still under the exciting influence of the startling occurrence, the victim made the declaration without any prior opportunity to contrive a story implicating petitioner. Also, the declaration concerned the one who shot the victim. Thus, the latter's statement was correctly appreciated as part of the res gestae.

Aside from the victim's statement, which is part of the res gestae, that of Ernita -- "Kapitan, ngano nimo gipatay ang akong bana?" ("Captain, why did you shoot my husband?") -- may be considered to be in the same category. Her statement was about the same startling occurrence; it was uttered spontaneously, right after the shooting, while she had no opportunity to concoct a story against petitioner; and it related to the circumstances of the shooting.

Second Main Issue:Sufficiency of Evidence

Having established the evidence for the prosecution, we now address the argument of petitioner that the appellate court had effectively shifted the burden of proof to him. He asserts that the prosecution should never rely on the weakness of the defense, but on the strength of its evidence, implying that there was no sufficient evidence to convict him.

We disagree. The totality of the evidence presented by the prosecution is sufficient to sustain the conviction of petitioner. The dying declaration made by the victim immediately prior to his death constitutes evidence of the highest order as to the cause of his death and of the identity of the assailant.[53] This damning evidence, coupled with the proven facts presented by the prosecution, leads to the logical conclusion that petitioner is guilty of the crime charged.

The following circumstances proven by the prosecution produce a conviction beyond reasonable doubt:

First. Santos testified that he had heard a gunshot; and seen smoke coming from the muzzle of a gun, as well as the victim staggering backwards while shouting, "Help me p're, I was shot by the captain." This statement was duly established, and the testimony of Santos confirmed the events that had occurred. It should be understandable that "p're" referred to Santos, considering that he and the victim were conversing just before the shooting took place. It was also established that the two called each other "p're," because Santos was the godfather of the victim's child.[54]

Second. Ernita testified that she had heard a gunshot and her husband's utterance, "Help me p're, I was shot by the captain," then saw petitioner in a black jacket and camouflage pants running away from the crime scene while carrying a firearm.

Third. Ernita's statement, "Captain, why did you shoot my husband?" was established as part of the res gestae.

Fourth. The version of the events given by petitioner is simply implausible. As the incumbent barangay captain, it should have been his responsibility to go immediately to the crime scene and investigate the shooting. Instead, he avers that when he went to the situs of the crime, the wife of the victim was already shouting and accusing him of being the assailant, so he just left. This reaction was very unlikely of an innocent barangay captain, who would simply want to investigate a crime. Often have we ruled that the first impulse of innocent persons when accused of wrongdoing is to express their innocence at the first opportune time.[55]

Fifth. The prosecution was able to establish motive on the part of petitioner. The victim's wife positively testified that prior to the shooting, her husband was trying to close a real estate transaction which petitioner tried to block. This showed petitioner's antagonism towards the victim.[56]

These pieces of evidence indubitably lead to the conclusion that it was petitioner who shot and killed the victim. This Court has consistently held that, where an eyewitness saw the accused with a gun seconds after the gunshot and the victim's fall, the reasonable conclusion is that the accused had killed the victim.[57] Further establishing petitioner's guilt was the definitive statement of the victim that he had been shot by the barangay captain.

Clearly, petitioner's guilt was established beyond reasonable doubt. To be sure, conviction in a criminal case does not require a degree of proof that, excluding the possibility of error, produces absolute certainty.[58] Only moral certainty is required or that degree of proof that produces conviction in an unprejudiced mind.[59]

That some pieces of the above-mentioned evidence are circumstantial does not diminish the fact that they are of a nature that would lead the mind intuitively, or by a conscious process of reasoning, toward the conviction of petitioner.[60] Circumstantial, vis-á-vis direct, evidence is not necessarily weaker.[61] Moreover, the circumstantial evidence described above satisfies the requirements of the Rules of Court, which we quote:

> "SEC. 4. Circumstantial evidence, when sufficient. --Circumstantial evidence is sufficient for conviction if:
>
> (a) There is more than one circumstance;
>
> (b) The facts from which the inferences are derived are proven; and
>
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt."[62]

Paraffin Test

Petitioner takes issue with the negative results of the paraffin test done on him. While they were negative, that fact alone did not ipso facto prove that he was innocent. Time and time again, this Court has held that a negative paraffin test result is not a conclusive proof that a person has not fired a gun.[63] In other words, it is possible to fire a gun and yet be negative for nitrates, as when culprits wear gloves, wash their hands afterwards, or are bathed in perspiration.[64] Besides, the prosecution was able to establish the events during the shooting, including the presence of petitioner at the scene of the crime. Hence, all other matters, such as the negative paraffin test result, are of lesser probative value.

Corpus Delicti

Petitioner then argues that the prosecution miserably failed to establish the type of gun used in the shooting. Suffice it to say that this contention hardly dents the latter's case. As correctly found by the appellate court, the prosecution was able to give sufficient proof of the corpus delicti -- the fact that a crime had actually been committed. Ruled this Court in another case:

> "[Corpus delicti] is the fact of the commission of the crime that may be proved by the testimony of eyewitnesses. In its legal sense, corpus delicti does not necessarily refer to the body of the person murdered, to the firearms in the crime of homicide with the use of unlicensed firearms, to the ransom money in the crime of kidnapping for ransom, or x x x to the seized contraband cigarettes."[65]

To undermine the case of the prosecution against him, petitioner depends heavily on its failure to present the gun used in the shooting and on the negative paraffin test result. These pieces of evidence alone, according to him, should exculpate him from the crime. His reliance on them is definitely misplaced, however. In a similar case, this Court has ruled as follows:

> "Petitioner likewise harps on the prosecution's failure to present the records from the Firearms and Explosives Department of the Philippine National Police at Camp Crame of the .45 caliber Remington pistol owned by petitioner for comparison with the specimen found at the crime scene with the hope that it would exculpate him from the trouble he is in. Unfortunately for petitioner, we have previously held that "the choice of what

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> evidence to present, or who should testify as a witness is within the discretionary power of the prosecutor and definitely not of the courts to dictate."
>
> "Anent the failure of the investigators to conduct a paraffin test on petitioner, this Court has time and again held that such failure is not fatal to the case of the prosecution as scientific experts agree that the paraffin test is extremely unreliable and it is not conclusive as to an accused's complicity in the crime committed."[66]

Finally, as regards petitioner's alibi, we need not belabor the point. It was easily, and correctly, dismissed by the CA thus:

> "[Petitioner's] alibi is utterly untenable. For alibi to prosper, it must be shown that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission. Here, the locus criminis was only several meters away from [petitioner's] home. In any event, this defense cannot be given credence in the face of the credible and positive identification made by Ernita."[67]

Third Issue:

Damages

An appeal in a criminal proceeding throws the whole case open for review. It then becomes the duty of this Court to correct any error in the appealed judgment, whether or not included in the assignment of error.[68] The CA upheld the RTC in the latter's award of damages, with the modification that unearned income be added.

We uphold the award of P50,000 indemnity ex delicto[69] to the heirs of the victim. When death occurs as a result of a crime, the heirs of the deceased are entitled to this amount as indemnity for the death, without need of any evidence or proof of damages.[70] As to actual damages, we note that the prosecution was able to establish sufficiently only P22,200 for funeral and burial costs. The rest of the expenses, although presented, were not duly receipted. We cannot simply accept them as credible evidence. This Court has already ruled, though, that when actual damages proven by receipts during the trial amount to less than P25,000, the award of P25,000 for temperate damages is justified, in lieu of the actual damages of a lesser amount.[71] In effect, the award granted by the lower court is upheld.

As to the award of moral damages, the P500,000 given by the RTC and upheld by the CA should be reduced to P50,000, consistent with prevailing jurisprudence.[72] We also affirm the award of loss of earning capacity[73] in the amount of P312,000; attorney's fees of P20,000; and payment of the costs.

WHEREFORE, the Petition is DENIED and the assailed Decision and Resolution are AFFIRMED, subject to the modification in the award of damages set forth here. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 10-38.

[2] Id. at 39-71. First Division. Penned by Justice Renato C. Dacudao and concurred in by Justices Cancio C. Garcia (then presiding justice and Division chair, now a member of this Court) and Danilo B. Pine (member).

[3] Id. at 85-86.

[4] Written by Judge Augusto Breva.

[5] Assailed CA Decision, p. 32; rollo, p. 70.

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[6] Rollo, pp. 72-84.

[7] CA rollo, p. 8. Signed by 2nd Assistant City Prosecutor Raul B. Bendigo and approved by City Prosecutor Calixto A. Esparagoza.

[8] Id.

[9] Respondent's Memorandum, pp. 3-13; rollo, unnumbered.

[10] Petitioner's Memorandum, pp. 6-21; id. at 173-188.

[11] This case was deemed submitted for decision on May 30, 2005, upon this Court's receipt of respondent's Memorandum, signed by Solicitor General Alfredo L. Benipayo, Assistant Solicitor General Amparo M. Cabotaje-Tang, and Solicitor Edilberto R. Rebato, Jr. Petitioner's Memorandum, signed by Atty. Israelito P. Torreon of Torreon De Vera-Torreon Law Firm, was filed on May 6, 2005.

[12] Petitioner's Memorandum, pp. 22-23; rollo, pp. 189-190. Original in uppercase.

[13] People v. Delmo, 439 Phil. 212, October 4, 2002; People v. Jalon, 215 SCRA 680, November 13, 1992; People v. Timtiman, 215 SCRA 364, November 4, 1992; People v. Pletado, 210 SCRA 634, July 1, 1992.

[14] Mariano v. People, 216 SCRA 541, December 14, 1992; Caubang v. People, 210 SCRA 377, June 26, 1992.

[15] Sullon v. People, 461 SCRA 248, June 27, 2005, People v. Norrudin, 425 Phil. 453, January 25, 2002; People v. Francisco, 389 Phil. 243, June 19, 2000.

[16] These are some of the recognized exceptions:

> "1) when the factual findings of the Court of Appeals and the trial court are contradictory;
> 2) when the findings are grounded entirely on speculation, surmises, or conjectures;
> 3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
> 4) when there is grave abuse of discretion in the appreciation of facts;
> 5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
> 6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;
> 7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;
> 8) when the findings of fact are themselves conflicting;
> 9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and
> 10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record." (Fuentes v. CA, 268 SCRA 703, February 26, 1997; Geronimo v. CA, 224 SCRA 494, July 5, 1993; Angelo v. CA, 210 SCRA 402, June 26, 1992).

[17] Petitioner's Memorandum, p. 25; rollo, p. 192.

[18] Id. at 23; id. at 190.

[19] Id. at 25; id. at 192.

[20] Assailed CA Decision, p. 17; rollo, p. 55.

[21] Siccuan v. People, 457 SCRA 458, April 28, 2005; People v. Sevilleno, 425 SCRA 247, March 10, 2004; People v. Guihama, 452 Phil. 824, June 25, 2003.

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[22] Siccuan v. People, supra, April 28, 2005; Reyes, Jr. v. CA, 424 Phil. 829, January 18, 2002; People v. Tropa, 424 Phil. 783, January 17, 2002; People v. Cledoro, Jr., 412 Phil. 772, June 29, 2001.

[23] Rivera v. People, 462 SCRA 350, June 30, 2005; People v. Corral, 446 Phil. 652, February 28, 2003; People v. Wad-as, 440 Phil. 924, November 21, 2002.

[24] Assailed CA Decision, pp. 16-17; rollo, pp. 54-55.

[25] People v. Escote, 431 SCRA 345, June 8, 2004; People v. Caraang, 418 SCRA 321, December 11, 2003; People v. Coca, Jr., 432 Phil. 264, May 29, 2002.

[26] People v. Escote, supra; People v. Torrecampo, 423 SCRA 433, February 23, 2004; People v. Caraang, supra.

[27] People v. Abes, 420 SCRA 259, January 20, 2004. See also People v. Colonia, 451 Phil. 856, June 12, 2003.

[28] People v. De la Cruz, 446 Phil. 549, February 28, 2003; People v. Gallego, 392 Phil. 552, August 15, 2000.

[29] Assailed CA Decision, pp. 17-18; rollo, pp. 55-56. See People v. Tulop, 352 Phil. 130, April 21, 1998.

[30] People v. Abes, supra note 27; People v. Surio, 435 Phil. 586, August 7, 2002; People v. Ebrada, 357 Phil. 345, September 25, 1998.

[31] People v. Caraang, supra note 25; People v. Cueto, 443 Phil. 425, January 16, 2003.

[32] People v. Delmindo, 429 SCRA 546, May 27, 2004; People v. Caraang, supra note 25; People v. Sara, 417 SCRA 431, December 10, 2003.

[33] Assailed CA Decision, p. 18; rollo, p. 56. Italics supplied.

[34] Id. at 19; id at 57.

[35] Id.

[36] Id. at 27; id. at 65.

[37] People v. Medina, 435 SCRA 610, July 30, 2004; People v. Leonor, 364 Phil. 766, March 25, 1999.

[38] People v. Manguera, 446 Phil. 808, March 5, 2003.

[39] People v. Manguera, supra.

[40] People v. Latayada, 423 SCRA 237, February 18, 2004; People v. Cortezano, 425 Phil. 696, January 29, 2002; People v. Bautista, 344 Phil. 158, September 5, 1997.

[41] People v. Manguera, supra note 38 citing People v. Sagario, 121 Phil. 1257, June 29, 1965.

[42] People v. Medina, supra note 37; People v. Comiling, 424 SCRA 698, March 4, 2004; People v. Latayada, supra note 40; People v. Dungca, 428 Phil. 682, March 7, 2002; People v. Maramara, 375 Phil. 641, October 22, 1999; People v. Umadhay, 355 Phil. 289, August 3, 1998.

[43] See RTC Decision dated January 16, 2001, pp. 1-2; CA rollo, pp. 16-17.

[44] People v. Latayada, supra note 40; People v. Gonzales, 210 SCRA 44, June 16, 1992.

[45] People v. Latayada, supra note 40; People v. Calago, 431 Phil. 168, April 22, 2002; People v. Marollano, 342 Phil. 38, July 24, 1997.

[46] People v. Montañez, 425 SCRA 675, March 17, 2004; People v. Tanaman, 152 SCRA 385, July 28, 1987.

[47] Assailed CA Decision, p. 29; rollo, p. 67.

[48] F. REGALADO, REMEDIAL LAW COMPENDIUM, VOL. II, 649-650 (2001); citing People v. Balbas, 207 Phil. 734, June 24, 1983.

[49] People v. Fegidero, 392 Phil. 36, August 4, 2000; People v. Mansueto, 391 Phil. 611, July 31, 2000; People v. Palmones, 390 Phil. 1208, July 18, 2000; People v. Cleopas, 384 Phil. 286, March 9, 2000; People v. Sanchez, 213 SCRA 70, August 28, 1992.

[50] People v. Jorolan, 452 Phil. 698, June 23, 2003; People v. Sanchez, supra.

[51] People v. Jorolan, supra; People v. Manhuyod, Jr., 352 Phil. 866, May 20, 1998.

[52] Regalado, supra note 48. See also People v. Guillermo, 420 SCRA 326, January 20, 2004; People v. Dela Cruz, 412 SCRA 503, October 1, 2003; People v. Ignas, 412 SCRA 311, September 30, 2003; People v. Lobrigas, 442 SCRA 503, December 17, 2002.

[53] People v. De las Eras, 418 Phil. 509, September 28, 2001.

[54] Assailed CA Decision, p. 3; rollo, p. 41.

[55] People v. Mamarion, 412 SCRA 438, October 1, 2003; People v. Gallo, 419 Phil. 937, October 19, 2001.

[56] Assailed CA Decision, p. 4; rollo, p. 42.

[57] People v. Ignas, supra note 52; People v. Sesbreño, 372 Phil. 762, September 9, 1999; People v. Salveron, 228 SCRA 92, November 22, 1993.

[58] Rules of Court, Rule 133, Sec. 2.

[59] Id.

[60] People v. Bernal, 437 Phil. 11, September 2, 2002; People v. Oliva, 349 SCRA 435, January 18, 2001; People v. Acuram, 387 Phil. 142, April 27, 2000.

[61] People v. Matito, 423 SCRA 617, February 24, 2004; People v. Asis, 439 Phil. 707, October 15, 2002; People v. Felixminia, 429 Phil. 309, March 20, 2002.

[62] Rules of Court, Rule 133, Sec. 4.

[63] People v. Brecinio, 425 SCRA 616, March 17, 2004; People v. Pascual, 387 Phil. 266, April 28, 2000; Abalos v. CA, 378 Phil. 1059, December 22, 1999.

[64] People v. Brecinio, supra; People v. Pascual, supra; Abalos v. CA, supra.

[65] Rieta v. People, 436 SCRA 273, 282-283, August 12, 2004, per Panganiban, J. (now CJ). Italics supplied.

[66] Ungsod v. People, G.R. No. 158904, December 16, 2005, per Chico-Nazario, J. Italics supplied. Citations omitted.

[67] Assailed CA Decision, p. 26; rollo, p. 64.

[68] Ungsod v. People, supra note 66; Cabuslay v. People, G.R. No. 129875, September 30, 2005; People v. Pansensoy, 437 Phil. 499, September 12, 2002; People v. Lab-eo, 424 Phil. 482, January 16, 2002.

[69] Guiyab v. People, G.R. No. 152527, October 20, 2005; Senoja v. People, 440 SCRA 695, October 19, 2004; People v. Magbanua, 428 SCRA 617, May 20, 2004

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[70] Cabuslay v. People, supra note 68; People v. Bernabe, 448 Phil. 269, April 1, 2003; People v. Calabroso, 394 Phil. 658, September 14, 2000.

[71] People v. Garin, 432 SCRA 394, June 17, 2004; People v. Werba, 431 SCRA 482, June 9, 2004; People v. Villanueva, 408 SCRA 571, August 11, 2003.

[72] People v. Vasquez, 430 SCRA 52, May 28, 2004; People v. Magbanua, supra note 69; People v. Ramos, 427 SCRA 299, April 14, 2004.

[73] See Tuburan v. People, 436 SCRA 327, August 12, 2004; People v. Caratao, 451 Phil. 588, June 10, 2003; People v. Visperas, Jr., 443 Phil. 164, January 13, 2003.

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