

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL T. ADALLOM, ACCUSED-APPELLANT.

G.R. No. 182522. March 07, 2012

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a review on appeal of the Decision[1] dated July 31, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00365, which affirmed in toto the Decision[2] dated December 15, 2003 by the Regional Trial Court (RTC), Branch 76, Quezon City, in Criminal Case Nos. Q-01-105875 and Q-01-105877, finding accused-appellant Noel T. Adallom guilty beyond reasonable doubt of the crimes of murder and attempted murder.

Accused-appellant was originally charged with two (2) counts of murder and one (1) count of attempted murder under the following Informations:

Criminal Case No. Q-01-105875

That on or about the 28th day of October 2001, in Quezon City, Philippines, the above-named accused, conspiring, confederating with two other persons whose true names and other personal circumstances have not as yet been ascertained and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified with evident premeditation and treachery, taking advantage of superior strength, assault, attack and employ personal violence upon the person of DANILO VILLAREAL y ESPIRAS by then and there shooting him with the use of a firearm hitting him on the different parts of his body, thereby inflicting upon him serious and mortal gunshot wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Danilo Villareal y Espiras.[3]

Criminal Case No. Q-01-105876

That on or about the 28th day of October 2001, in Quezon City, Philippines, the above-named accused, conspiring, confederating with two other persons whose true names and other personal circumstances have not as yet been ascertained and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified with evident premeditation and treachery, taking advantage of superior strength, assault, attack and employ personal violence upon the person of ROMMEL HINA by then and there shooting him with the use of a firearm hitting the latter on the head, thereby inflicting upon him serious and mortal gunshot wound which was the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Rommel Hina.[4]

Criminal Case No. Q-01-105877

That on or about the 28th day of October [2001], in Quezon City, Philippines, the above-named accused, conspiring, confederating with two other persons whose true names and identities have not as yet been ascertained and mutually helping one another, with intent to kill, qualified with evident premeditation, treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously commence the commission of the crime of murder directly by overt acts, by then and there shooting one BABELITO E. VILLAREAL with the use of a firearm but said accused were not able to perform all the acts of

execution which should produce the crime of murder by reason of some cause or accident other than their own spontaneous desistance, that is complainant was able to ran away, to the damage and prejudice of the said offended party.[5]

When arraigned on January 15, 2002, accused-appellant pleaded not guilty to the charges against him.[6]

At the pre-trial conference on January 29, 2002, the parties stipulated only as to the deaths of Danilo Villareal (Danilo) and Rommel Hina (Rommel).[7]

Thereafter, trial ensued.

The prosecution presented four witnesses, namely: Babelito Villareal (Babelito),[8] Danilo's brother who survived the shooting; Janita Villareal (Janita),[9] Danilo's wife; Dr. Joselito Rodrigo (Joselito),[10] the Chief Medico Legal of the Philippine National Police (PNP) Crime Laboratory who examined Danilo's cadaver; and Diorito Coronas, Jr. (Diorito),[11] who was present at the time and place of the shooting.

Below are the testimonies of Babelito and Diorito as summarized by the RTC:

Prosecution witness Babelito Villareal, a construction worker and residing at 120 Senatorial Road, Barangay Batasan Hills, Quezon City, testified that he was with his brother, Danilo, and Rommel Hina, a neighbor, towards midnight of October 27, 2001 in front of the store of his sister, Nanieta. His house was just across the street. They were drinking beer but ran out of it. Danilo asked Rommel Hina to buy cigarettes from a nearby store because their sister's store was already closed. When Hina returned, they stayed in the same place. Babelito had his back against the wall fronting the road while he was facing his brother's back. Hina was on his right side. Soon a tricycle with its lights out and its engine turned off, arrived. It was still moving because the road was on a downward slope. He saw Noel Adallom alight from the sidecar. Adallom was with Johnwayne Lindawan and a tricycle driver. After Adallom alighted, he fired his carbine. There was a successive burst of gunfire and Adallom was saying, "Ano? Ano?" His brother went down and Rommel Hina was moaning. The tricycle came from his left side. When Adallom fired his gun, Danilo turned his head and tried to run but he was hit at the back. He himself, when he saw the gunfire just closed his eyes and leaned against the wall and turned his head to the right and moved his leg downward just waiting for what would happen next. When his brother and Rommel fell, the firing stopped and when he turned his head, he noticed that Adallom upon seeing him alive, again fired successive shots and then he heard, "tak-tak." The gun must have jammed then he heard another burst of gunfire, "rat-tat-tat." He sought cover beside a vehicle and ran. He showed some pictures and pointed to the place he testified on (see Exhibit A). There were bullet marks shown in the pictures (Exhibit B). He ran to an alley and then he went back to Senatorial Road where the incident happened and saw people milling around. His brother was already dead while Rommel Hina was rushed to the hospital. Noel Adallom, a long time resident of their place is the cousin of the husband of his sister while Johnwayne Lindawan is the son of his brother-in-law. During the wake of his brother, he saw Johnwayne with a new haircut. Adallom also had a new haircut. They used to have long hair prior to the incident. Both of them were sporting army cut. He tried to watch Adallom's movements. He saw him fixing the gate of his house and when he could not take it anymore he told Jeanette, the wife of his brother Danilo Villareal, that what Adallom was doing was very insulting. He did not give any statement to the police because there was still the wake and he wanted to consult Jeanette who was very confused. He knows that it is hard to fight an Ifugao. After the funeral, he told his siblings about the incident. They decided to have Adallom arrested. His Ate Jeanette went to Station 6 but the police were not cooperative and he was losing heart. On November 19, 2001, he saw Adallom alight in front of his house. He asked his siblings to go to the barangay hall while he waited for Adallom because he might leave. When the barangay people came, they picked him up and informed him about the complaint against him. Adallom was detained at the barangay hall and taken at Station 6. Babelito executed a sinumpaang salaysay marked Exhibit C.

On cross examination, among others, he said that Adallom's house is just near the eskinita. The following day

when he saw Adallom sporting a new haircut, he tried to keep track of his movements. He did that for several days. He was shown a sketch marked as Exhibit D for the prosecution and said, the house of his sister was along Senatorial Road at the corner of an alley in Avocado Street. After Adallom alighted from the tricycle, he positioned himself before he fired the shots. When Babelito returned to the scene of the incident, he instructed some people to bring Rommel Hina to the hospital. He saw Agustin Adallom and Anderson Tuguinay that night. He saw Adallom's wife by the gate of their house. He did not see Noel Adallom after the incident. The police investigators came to the scene and he went with them to the Criminal Investigation Unit. The investigator was Lawa-Lawa. When he was about to give a statement at the Criminal Investigation Unit, Nathaniel Hina, the father of Rommel appeared and he was telling a different story. Nathaniel was a usual drinking companion of Noel Adallom. Immediately prior to the incident, Rommel's father was coming down from the tricycle with some companions, the barkada of Noel Adallom, he passed by the eskinita and took a look at them. That was before the tricycle with Adallom as passenger passed by. At the police precinct Rommel's father was saying that it was another Ifugao, a certain Hubert who was responsible for the shooting. Because of this incident with the father of Rommel, he did not give a statement. He reiterated that he saw his brother hit as he was slowly moving his head and then he closed his eyes. After the first burst of gunfire it stopped for a while. When the gunman saw him, he raised his gun again and pointed it at him then he heard, "pak." It did not fire then he heard successive shots. He saw Adallom with the carbine only that night but he knew that his family has a carbine. He was shown a photograph marked Exhibit 2 depicting the wall of his sister Nanette's store marked as Exhibits A and B. There were no chairs in front of the store even when they were drinking. He was there first before Danilo and Rommel arrived. There were also two women who came thirty (30) minutes prior to the incident Danilo and Rommel had been drinking in front of his house. When they arrived, they gave him a bottle of beer to drink. And then, Danilo asked Rommel to buy cigarettes at Anderson's store. The father of Rommel arrived and stared at them, just as Rommel arrived. He knows that Nathaniel gave a statement at the police station. Although in his affidavit he also mentioned Johnwayne Lindawan, the police have not arrested him. Lindawan also alighted from the back of the tricycle driver and he stood by the side of the road. He could not identify the tricycle driver.

Diorito Coronas, Jr., a billiard player by profession, usually played at the billiard hall near the house of Noel Adallom in Sarep Street on the right side going up the road. On October 28, 2001, about midnight, he was at the videoke bar, his usual hang out in Sitio 6 going towards Talanay. While there, he heard gunfire so he immediately went near a parked vehicle in front of the videoke bar. When he tried to investigate, he saw three persons fall to the ground (Bumulagta noong pinagbabaril). Two of them were already down and the third one stood up and ran even as the gunman continued firing. He identified the man who ran away as Babelito Villareal (Samboy). It was Noel Adallom whom he saw carrying the firearm which he described as a little less than 2 feet, shooting the three men. He saw Adallom's companion and a third one who was manning the tricycle. The place of the incident was well lighted but from where he was standing, the light came only from the videoke bar. Then he noticed a yellow tricycle without any plate number moving toward his direction while the two other guys went to the opposite direction going upward. When he saw that they left, he immediately approached the two men lying down. He identified one of them as Rommel who was still moaning. He became apprehensive that someone might see him and his family might be involved. He ran toward his house. He identified three sets of pictures marked Exhibits A and B. He pointed to the place where the three guys who were shot at were positioned.

On cross examination, Coronas identified the owner of the videoke bar as Anderson Tuguinay.[12]

Janita, when she took the witness stand, detailed the expenses incurred for the funeral and burial of her husband, Danilo.

Dr. Joselito reported that as a result of his autopsy examination of Danilo's body, he had determined that Danilo died from hemorrhagic shock due to multiple gunshot wounds. There were six gunshot wounds in Danilo's trunk and lower extremities. All points of entry were at Danilo's back. There were five exit wounds at the front portion

of Danilo's body while one slug was recovered in Danilo's liver. Dr. Joselito submitted the recovered slug for ballistic examination. Dr. Joselito further elaborated on his findings during his cross-examination:

On cross examination, among others, he stated that the autopsy was conducted on October 28, 2001 at around 11:30 a.m. The abrasion on the victim's right acromial region was caused by friction of the skin on a rough hard surface. Gunshot wound no. 1 was directed anteriorwards, upwards and lateralwards meaning it came from the back, traveled upwards from the center towards the sides. Its point of entry was 10 cm. from the posterior midline while the point of exit was 20 cm. from the posterior midline. The point of entry of gunshot wound No. 2 (depicted as POE No. 1 in Exhibit J) is 4 cm. from the posterior midline and exited 6 cm. from the anterior midline. The bullet traversed from the rear to the front going to the right side of the cadaver. The third gunshot wound's point of entry is at the right infrascapular region and exited also on the right side of the chest but more towards the outer portion. The fourth gunshot wound's point of entry is on the left side, back to front, lateralwards meaning from center or near the center towards the most outer part of the left side of the body. The entrance and exit wound were on the same level. It is superficial wound meaning it did not enter the peritoneal cavity. The fifth gunshot wound was directed anteriorwards, downwards and medialwards. Anteriorward means from the back, it is noted downwards towards the foot while medialwards is towards the center. The sixth and final gunshot wound was sustained at the right buttocks directed anteriorwards, upwards and lateralwards, meaning from the back upwards going to the head and lateralwards, meaning from the center to the outer side of the cadaver. Since the entrance wounds were at the back of the cadaver, assuming the victim was not moving, the assailant or muzzle of the gun was at the back of the victim. Except for the fourth gunshot wound which entered and exited at the same level and the fifth gunshot wound which was downwards, all the other gunshot wounds were directed upwards. If the victim was in a sitting position at the time he sustained the wounds with an upward trajectory, he would probably be in a ducking position, hence the upward trajectory. If the victim was stationary at the time he was shot, it is possible the assailant was moving but the most probable explanation for the differences in the level of the points of entry in relation to the points of exit of the wounds is that the victim moved as a result of the force of the bullet that entered his body. The slug that he extracted from the cadaver of the victim was from a .30 caliber firearm based on the report of the ballisticsian.[13]

The defense presented the testimonies of accused-appellant[14] himself; Mila Adallom (Mila),[15] accused-appellant's wife; Aida Marquez (Aida);[16] Sgt. Anderson Tuguinay (Anderson);[17] Sgt. Agustin Adallom (Agustin);[18] Editha Gutierrez (Editha);[19] and Elizabeth Buyayo (Elizabeth).[20]

Accused-appellant interposed the defenses of denial and alibi, to wit:

Noel Adallom, a machine operator, testified that on October 27, 2001, he arrived home from work at about 11:00 o'clock in the evening and he saw his wife working on the screen. He had coffee because he was not yet sleepy. He told his wife that he was going to the billiard hall at Retota. On his way, he saw the group of Boying Hina having a drinking spree. They gave him a shot of liquor but he refused because in that place, riots were rampant. He has known Boying Hina since he started residing in Batasan Hills in 1988. He went to the billiard hall owned by Ilustre. He is a new player and he played in with one Zaldy. After that, he transferred to the Retota billiard hall. He arrived there at about midnight. He played billiard with Danilo and Dominador Baldaba. They were playing when they heard gunshots. The sound of the gun fire was rat-tat-tat. They continued playing billiard until his wife arrived to fetch him. They stopped playing and he went with her. His wife asked him to pass by Senatorial Road where the sounds of gunshots came from. He saw Nanette Villareal Lindawan and asked her what was happening. Nanette was crying and she said, "Patay na si kuya," referring to Danilo Villareal. He has known Nanette from the time she got married. He talked to her in front of her house in the middle portion of Senatorial Road. He identified a picture marked Exhibit 3 showing the place where he talked to Nanette. When he was about to leave the place, he saw Sgt. Tuguinay holding a flashlight. When he asked Sgt. Tuguinay what happened, Tuguinay looked at him and did not say anything. He proceeded to talk with Sgt. Agustin when a police patrol arrived. The police were asking for someone who witnessed the

incident. Babelito Villareal came out shirtless and boarded a mobile. He and his wife proceeded home. The place as shown in Exhibit 3 was not lighted. It was illuminated by some lights from other houses about ten meters away and you would not be able to recognize faces. When shown a sketch, Exhibit 1, he pointed the billiard place of Retota (Exhibit 1-I). The Avocado Road alley was marked Exhibit 3-A. He was passing by that alley everyday in front of the house of Nanette. For the month of October 1 to 15, he was assigned to the first shift and went to work in the morning from 6:00 to 3:00 o'clock. From October 16 to the end of that month, he was on the second shift arriving home at 11:00 o'clock in the evening. There was no electric bulb in front of the house of Nanette. Across the house of Nanette is the house of Sgt. Agustin Adallom. There was no bulb in front of his house. In the morning of October 28, 2001, he was planting pechay at the house of Agustin Adallom at about 9:00 o'clock in the morning. On succeeding days after the incident, he usually left the house at noontime because his work started at 2:00 o'clock in the afternoon. He identified his time record from October 1 to 15 marked Exhibit 4; the time card for October 16-31 marked Exhibit 4-A; the time card for November 1-15 marked Exhibit 4-B; and the time card for November 16-30 marked as Exhibit 4-C. Exhibit number 7 has no signature because that was the time he was arrested on November 19. When he is not working he stayed at home. At the time he was arrested he was preparing coffee when he heard someone calling from outside and found out that they were barangay officials looking for him. He saw one BSDO jump over the fence with a gun so he became afraid. They told him that he was the one who killed Danilo Villareal. They were not accompanied by policemen. He was asking them why he was being apprehended without a warrant of arrest. They told him to give his explanation at the barangay office. He was handcuffed. They just placed him inside the cell for an hour. Policemen came and brought him to Station 6. On the 20th of November, he was brought to Camp Karingal and they asked for his name and occupation. They brought him to a vacant room and asked him, "bakit mo pinatay si Villareal." He said he did not commit the crime and they brought him back to the cell. On the 21st of November, he was brought to Quezon City Hall for inquest. He saw the name of Wilfredo Maynigo on top of his table. Upon investigation the prosecutor placed on top of the paper, "for further," (see Exhibit 8). He knows Danilo Villareal and his wife Janita because their wives were doing business of paluwagan. He met his wife in the house of Agustin Adallom and he did not know that she and Danilo had an affair.

On cross examination, Noel Adallom said that he works as a machine operator since 1988. He recalled that October 28, 2001 was a Sunday and it was his day-off. He was alone when he went to Retota billiard hall near Senatorial Road after telling his wife that he would go there. Riots frequently happen on the upper portion of Senatorial Road. When they heard gunshots they were playing billiard, and they stopped momentarily. He was married to Mila Adallom in the year 2000 at a mass wedding but he knew her since 1992. He did not have any knowledge that Danilo and his wife were having an affair. He does not know of any such relationship nor did he hear any gossip about that. He knew Babelito Villareal since 1988. There had been no quarrel between them and does not know why he would point to him as the assassin. Mila fetched him that early morning of October 28, 2001 at Retota. He would have still played billiard with Danilo and Dominador but Mila came and asked him to go home because there was a shooting at the upper portion of Senatorial Road. After the incident he talked with Nanette, sister of Danilo Villareal and Babelito Villareal, and asked her what happened. She told him that [her] kuya was dead. He has known Danilo since 1998 because Danilo's wife and his wife were engaged in a paluwagan business. He seldom talked with Danilo Villareal because both of them were working and they seldom saw each other. He does not know of any reason to be jealous of Danilo because he does not know anything about the alleged relationship between him and his wife.[21]

Mila confirmed on the witness stand that her husband, accused-appellant, went out to play billiards at around 11:30 p.m. on October 27, 2001. After midnight, she heard a burst of gunfire. Fearing that accused-appellant might get into trouble, Mila decided to fetch accused-appellant at Retota's billiard hall. When she reached the billiard hall, Mila asked accused-appellant, who was then still playing billiards, to go home with her. To get home, Mila and accused-appellant took the route from Avocado Street to Senatorial Road. There, at Senatorial Road, Mila saw Danilo and Rommel already sprawled on the ground. On cross-examination, Mila denied having

an affair with the deceased Danilo.

Aida, an ambulant vendor, testified that in the early morning of October 28, 2001, she was at a billiard hall watching accused-appellant, together with a certain Paeng and Zaldy, play a game, when she heard gunshots.

Sgt. Anderson, who resided within the vicinity of the shooting incident, recollected that at around past midnight of October 28, 2001, he was in a videoke bar with a certain Boying, when he heard two successive automatic gunshots. He went out of the bar and saw Nanette, Danilo's sister, who he asked about what happened. Nanette responded "binaril si manong." Sgt. Anderson went home and called the authorities. He went back to the scene of the shooting with a flashlight to look for empty shells. Sgt. Anderson also remembered that accused-appellant approached him and asked him about what happened.

Sgt. Agustin, who likewise resided within the vicinity of the shooting incident, narrated that he was awakened by a burst of gunfire in the early morning of October 28, 2001, at around 12:45 a.m. He then heard someone shouting "wag sarge, wag sarge!" Then he heard another burst of gunfire. He went out of his house and proceeded to Senatorial Road. There he saw blood in front of the window of the house of Nanette, Danilo's sister, and a lot of people already milling around. Among the people he saw were Nanette, accused-appellant, and Sgt. Anderson. Sgt. Agustin acknowledged that accused-appellant is his first-degree cousin and that he did not personally witness the shooting incident.

Editha is another ambulant vendor who recalled that at around 2:00 a.m. on October 28, 2001, she met a certain Boying (purportedly Rommel's father) on the road, who told her that his son was shot. Editha admitted, however, that she had no personal knowledge of the shooting incident.

The last witness for the defense was Elizabeth, accused-appellant's distant relative, and the neighbor and close friend of Janita, Danilo's wife. Elizabeth stated under oath before the RTC that on October 28, 2001, she opened her gate and saw people gathering at Senatorial Road. From listening to the stories of the bystanders, she learned that someone was shot at around 1:00 a.m. on October 28, 2001 by two persons wearing bonnets and riding a motorcycle. According to Elizabeth, Janita had never confided to her any marital problem with Danilo.

The prosecution presented on rebuttal Nanieta Lindawan (Nanieta), who gave the following account of the events that transpired in the early morning of October 28, 2001:

Testifying on rebuttal, Nanieta Lindawan denied having met, seen or talk[ed] with Adallom, a townmate of her husband, in the early morning of October 28, 2001. There was never a time after the killing of [her] brother Danilo that she saw the accused on Senatorial Road. She belied the testimony of Agustin Adallom that he talked to her in the morning of October 28, 2001. She knows that he is a soldier stationed in Camp Capinpin and that he comes home only once a month for a day, either Saturday or Sunday. She is also sure that witness Sgt. Anderson Tuguinay was not able to talk to her that morning because after the incident, she was alone in the middle of the road crying.

On cross-examination, among others, she stated that the incident happened right in front of her house. She was at home with her sisters and they were sleeping when she heard successive gunfire. She peeped out of the window and she saw two persons lying face down, Danilo and [Rommel]. She was able to recognize her brother because he was facing the window. She went out of the house minutes after the last gunshot. She called for her siblings. Except for the neighbor of her Ate [Janita], none of their neighbors came out because they were afraid. Her brother Babelito was also there and he told her that he was almost hit. Danilo was already brought to the hospital before the police arrived in unmarked vehicles. Although Sgt. Tuguinay owns a delivery van, they did not try to borrow it to bring Danilo to the hospital because Tuguinay does not lend his vehicle to anyone. She denied having borrowed facilities, like chairs and tables, from her best friend Elizabeth, who owns a school. Elizabeth told Nanieta's husband that she was afraid to go to the wake because it was her

gun which was used in the shooting. She admitted she saw Elizabeth at the wake once. She does not remember the last time when Sgt. Agustin Adallom came home from Camp Capinpin. Her husband is also stationed in Camp Capinpin and if Sgt. Agustin was really there at the time of the incident, he would have offered to inform her husband about the incident.[22]

The documentary exhibits for the prosecution – consisting of Babelito's sworn statement, in a question and answer form, executed before PO3 Leo Tabuena on November 21, 2001; sketch and photographs of the location of the shooting incident; Danilo's death certificate; the autopsy report on Danilo's body; receipts and list of funeral and burial expenses incurred by Danilo's heirs; and the ballistics report which stated that the bullet recovered at the scene came from a .30 caliber firearm – were all admitted by the RTC in its Order[23] dated September 2, 2002.

The defense submitted its own documentary exhibits, specifically, photographs of several bullet holes at the store where Danilo, Rommel, and Babelito were shot to show the trajectory of the bullets; sketch of the location of the shooting incident; accused-appellant's daily time records from his work for the months of October and November 2001; and Janita's letter-complaint dated November 19, 2001 against accused-appellant. All these exhibits were admitted by the RTC in its Order[24] dated June 23, 2003.

On December 15, 2003, the RTC rendered its Decision giving more credence to the positive testimonies of prosecution witnesses Babelito and Diorito and finding implausible accused-appellant's defenses of denial and alibi. The RTC pronounced accused-appellant guilty beyond reasonable doubt of the crimes of murder of Danilo in Criminal Case No. Q-01-105875 and attempted murder of Babelito in Criminal Case No. Q-01-105877; but dismissed the charge against accused-appellant for the murder of Rommel in Criminal Case No. Q-01-105876 because of insufficiency of evidence. The dispositive portion of the RTC judgment reads:

WHEREFORE, finding the accused NOEL ADALLOM guilty beyond reasonable doubt of the crime of murder described and penalized under Art. 249 of the Revised Penal Code, in relation to Article 63 thereof, and there being no other aggravating circumstance attending the commission of the crime, he is hereby sentenced to suffer imprisonment of reclusion perpetua and to indemnify the heirs of the victim, Danilo Villareal, as follows:

- P50,000.00 as civil indemnity;
- P50,000.00 as moral damages;
- P57,084.80 as actual damages; and
- To pay the costs.

With respect to Crim. Case No. Q-01-105817 for the attempted murder of Babelito Villareal after applying the indeterminate sentence law, the court hereby sentences accused to suffer imprisonment of six (6) years and one (1) day to eight (8) years of prision mayor.

For insufficiency of evidence, Criminal Case No. Q-01-105876 is hereby dismissed.[25]

Accused-appellant appealed the foregoing RTC judgment before the Court of Appeals. Accused-appellant filed his Brief[26] on January 13, 2006 while plaintiff-appellee, represented by the Office of the Solicitor General, filed its Brief[27] on May 29, 2006.

In its Decision dated July 31, 2007, the Court of Appeals agreed with the factual findings of the RTC and ruled thus:

Verily, we reiterate the jurisprudential doctrine that great weight is accorded to the factual findings of the trial

court particularly on the ascertainment of the credibility of witnesses; this can only be discarded or disturbed when it appears in the record that the trial court overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result. In the course of our review, the records disclose, that the trial court has considered all the evidences of both parties and, thus, has ruled correctly. Trial courts have the opportunity to see witnesses as they testify in court, an opportunity not readily available to appellate courts.

Thus, we find no reason to depart from the above ruling. We have examined the records and we confirm the trial court's findings that the testimonies of the witnesses are more trustworthy than the testimonies of the defense witnesses, particularly the appellant's.

With the application of prevailing laws and jurisprudence to the evidence presented, We cannot conclude otherwise but rule for the guilt of the accused-appellant beyond reasonable doubt.

WHEREFORE, in view of the foregoing, the decision of the trial court is AFFIRMED in toto.[28]

Hence, accused-appellant comes before us on appeal.

In our Resolution[29] dated July 23, 2008, we required the parties to file their respective supplemental briefs. Both plaintiff-appellee and accused-appellant manifested, however, that they had already exhausted their arguments before the Court of Appeals and would no longer file any supplemental brief.[30]

Accused-appellant assails his conviction for murder and attempted murder on these grounds:

- The trial court erred in finding the testimony of Babelito Villareal and Diorito Coronas, Jr. credible.[31]

1.) The trial court misapplied the doctrine that the relationship of the witness to the victim does not make the former a biased witness, but rather makes his testimony more credible.[32]

2.) The trial court's findings that Babelito and [Diorito] narrated as they saw the incident in a clear, simple and direct manner; and, that their testimonies jive on material points are seriously belied by the evidence extant on the record.[33]

3.) The trial court's finding that Babelito and [Diorito] could not have been mistaken with the identity of Noel Adallom because he had been a long time resident of the place is highly speculative.[34]

4.) The trial court's finding that the place where the incident occurred was lighted.[35]

5.) The trial court's finding that no motive was shown for the two witnesses to prevaricate and concoct the story to implicate Adallom with the killing is uncalled for.[36]

- The trial court erred in relying on the weakness of the defense rather on the strength of the prosecution's evidence.[37]

- The trial court erred in not finding that the evidence on record raise a reasonable doubt that the accused was the assailant.[38]

Plaintiff-appellee counter-argues that:

I

The testimony of Babelito Villareal, an eye witness and survivor of the assault, established with utmost certainty the identity of appellant as the assailant and gunman.

II

The prosecution established the guilt of appellant beyond reasonable doubt.

III

Appellant's defense of denial is weak and without factual basis.[39]

We sustain the conviction of accused-appellant for both crimes.

Jurisprudence dictates that "when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court." [40]

We find no cogent reason to deviate from the cited case doctrine.

As aptly appreciated by the RTC, prosecution witnesses Babelito and Diorito both positively identified accused-appellant as the person who treacherously shot Danilo and Babelito, and ultimately succeeded in killing Danilo. Said witnesses gave a forthright and consistent narration of what they had actually witnessed the early morning of October 28, 2001 at Senatorial Road.

Babelito had to relive before the RTC the traumatic experience of seeing his brother Danilo killed and barely escaping with his own life:

Q

And can you tell us where were the three of you during that time?

A

I was in front of my house which is also in front of the store of my sister Nanieta.

x x x x

Q

And what were the three of you doing at that time?

A

We were seated in front of the store of my sister drinking beer, sir.

x x x x

Q

And you said that you ran out of beer, what happened after you ran out of beer?

A

We stopped drinking and then a tricycle arrived with its lights out and its engine turned off. It was still moving because the road was on a downward slope, sir.

x x x x

Q

At the time that you noticed the said tricycle, can you tell us what time was that?

A

12:45 in the morning of October 28, 2001, sir.

Q

When you noticed the said tricycle moving downwards because of the sloping road, what happened next?

A

Noel Adallom alighted from the tricycle. He got out of the sidecar.

Q

By the way, were you able to count how many persons were inside the tricycle?

A

There were three of them: the tricycle driver, Noel Adallom and John Win Lindawan.

Q

You said Noel Adallom was inside the tricycle, at the time, where was he seated in the tricycle?

A

Inside the tricycle, sir.

Q

Now, what happened next when Noel Adallom alighted?

A

He fired his gun, sir.

Q

From the place wherein Noel Adallom alighted immediately thereafter fired his gun, how far was your group from him?

A

About 4 meters, sir.

Q

Now, you said Mr. Adallom alighted and fired his gun, can you remember what kind of firearm he used at the time?

A

Carbine.

Q

Was it a long or short firearm?

A

Long firearm, sir.

Q

And when he alighted and fired his gun, what happened to your group, if any?

A

There were successive shots and I just saw gunbursts and he was saying, “Ano? Ano?” while he was firing successively at my brother and Rommel Hina who was already moaning.

Q

Can you tell us your relative positions at the time Mr. Adallom fired his gun?

A

I was at the back by the wall fronting the road and my brother’s back was fronting the street facing me.

Q

How about Mr. Hina, where was he positioned?

A

On my right side, sir.

Q

Can you tell us from what direction the said tricycle came from?

A

From my left side, sir.

Q

So, you are telling us that the tricycle which had no lights and with engines not running just came by the road and 4 meters from you, Mr. Adallom alighted and fired his gun?

A

Yes, sir.

Q

And what was the relative position of your brother when Noel Adallom fired his gun?

A

While the tricycle was coming down the road, my brother turned his head and tried to run but he was already hit all at the back by the volley of fire.

Q

What about Rommel Hina, what happened to him?

A

He was also hit.

Q

How about you?

A

When I saw gunfire, I just closed my eyes and leaned against the wall and turned my head to the right and slowly, I moved my leg downwards and just waited for what would happen next.

Q

And can you tell us what happened to you after you just left your fate to God?

A

When my brother and Rommel fell, the firing stopped. I turned my head and I noticed that Noel Adallom looked surprised.

Q

When Noel Adallom looked surprised upon seeing you still alive, what happened next?

A

He again fired a succession of shots and then I heard “tak-tak.”

Q

And would you know what that sound was that you heard?

A

I surmised that the gun must have jammed, sir.

Q

What did you do, if any, when you realized that the gun must have jammed?

A

I thought of standing up and running and I again heard a burst of gunfire, “rat-tat-tat.”

Q

What happened when you heard another round of gunfire?

A

I sought cover behind a vehicle and I ran towards the corner to escape.[41] (Emphases supplied.)

Diorito corroborated Babelito’s testimony when he recounted before the RTC the following:

Q

Now, you said that you were at the said videoke bar at around 11:30 to 12:00 o’clock; while you were there at the said videoke, what happened if any?

A

When I heard a gunfire, I immediately proceeded near the vehicle to look on what is happening.

Q

Now, you said that you heard a gunfire; when you heard that gunfire, who were with you during that time?

A

I was alone.

Q

And you said that after hearing a gunfire you went out near a vehicle that was parked; can you tell us where is that vehicle that was parked where you went for cover?

A

The vehicle is right in front of the videoke bar where we usually hang out and it so happened that the vehicle is also owned by the owner of that videoke bar.

x x x x

Q

You said you went to that vehicle which was parked, what else did you do after going near the vehicle?

A

I was looking who shot who.

Q

And what did you see if any?

A

I saw three persons who fell (bumulagta noong pinagbabaril).

Q

Now, you said that you saw three men who just fell when shots were fired upon, [is] any of those three men present in today's courtroom whom you said that fell down, can you identify them?

A

The two persons are already dead but the other, I got surprised when he immediately ran.

Q

That person that stood up, can you identify him?

A

Yes, sir.

Q

Can you kindly tell us his name if you know it?

A

Samboy, sir.

Q

Is he present in today's courtroom? Can you kindly stand up and point to us that person? Kindly tap the shoulder of that person.

A

(Witness tapping the shoulder of a man who when asked answered that his name is Babelito Villareal.)

Q

Aside from seeing those three men whom you said fell down, what else did you see if any?

A

I saw one person firing shots and the other one is facing in front of the house of Samboy and the other person was manning the tricycle.

Q

So, all in all, there were three persons that you saw other than those three other persons whom you said fell down, is that correct?

A

Yes, sir.

Q

You said that you saw one of those three persons firing a gun, can you kindly describe to us that gun that was used by the said person?

A

The size of the gun that he was using was like this (witness demonstrating), less than two feet. But I don't know what kind.

Q

That person whom you saw carrying a firearm and was shooting that men, if that person is present in today's courtroom, can you identify him?

A

Yes, sir.

Q

Can you kindly step down again and tap the shoulder of that person whom you saw?

A

(Witness tapping the shoulder of a person who gave his name as Noel Adallom)

Q

Now, when this shooting incident took place, can you kindly tell us how far were this group of men whom you said were shot from the place where you were hiding or covering near the vehicle?

A

Same distance more or less eight meters.

Q

How about the gunman who was shooting these three men, how far were you from him?

A

It is farther by half meter.

Q

You said that you saw this incident that took place, can you kindly tell us what was the lighting condition during that time that this incident happened?

A

The place where the incident happened, it was well-lighted, however, from where I stand, the place was not lighted. The light came only from the videoke bar.

x x x x

Q

You said that after you saw Mr. Adallom shot these three men, what else did you see if any?

A

When he started firing at these three men, right after, I saw one person immediately stood up and ran away and right after that, Noel Adallom kept on firing at the guy who was running.

Q

When you said that guy stood up you were referring to Babelito Villareal, that one that you just pointed prior to the accused?

A

Yes, sir.

Q

And what happened next after Mr. Adallom was not able to hit Mr. Babelito Villareal?

A

I noticed a yellow tricycle without plate number which immediately started its engine and moved downward towards my direction and the other two guys went on the other direction going upward.

Q

How about you, what did you do next after seeing that incident?

A

I immediately approached the two guys who were lying down.

Q

And what did you see if any after that?

A

I still heard one guy in the person of Rommel who was still moaning.

Q

After hearing Rommel still moaning, what did you do, if any?

A

I was a bit apprehensive because maybe somebody will see me and my family will be involved so I immediately ran away from the scene.

Q

Where did you go after running away?

A

I immediately went to my house.[42] (Emphases supplied.)

Accused-appellant's attacks on the credibility of Babelito and Diorito are unconvincing, each having already been soundly rejected by the Court of Appeals, thus:

The accused-appellant is not successful in proving the incredibility and improbability of the testimonies of the [prosecution's] two eye witnesses, hence, his arguments on the slight difference in the location and nature of gunshot wounds as opposed to the position of the assailant as testified by the witness are not sufficient to overturn the eyewitness accounts of Diorito and Babelito. The positive identification of the witnesses is more than enough to prove the accused-appellant's guilt beyond reasonable doubt.

Accused-appellant argues that the delay in charging him raises serious doubts on Babelito's testimony. Well settled is the rule that "Delay in making criminal accusations will not necessarily impair the credibility of a witness if such delay is satisfactorily explained." It has been established that the delay in filing a criminal complaint is attributed to his confusion and desire to consult his sister-in-law who is the wife of deceased Danilo. He also testified that he did not file a complaint immediately, because he did not want to disturb the wake of his brother. Such explanation is acceptable. True enough, he filed a complaint with the barangay officials and asked for their assistance in bringing accused-appellant to Station 6 after the funeral of his brother.

Accused-appellant tried to attack the reliability of Babelito's testimony by insisting that the story told by Babelito does not jive with the story told by the physical evidence consisting of the wounds sustained by the body of Danilo. We are not convinced. Accused-appellant is capitalizing on the fact that the location and nature of the gunshot wounds sustained by deceased Danilo is anteriorwards, lateralwards and going to the right. Simply stated, the direction of the wounds are slightly going upwards to the right, which according to the accused-appellant is impossible to be sustained by the deceased, because (as told by Babelito) he is standing up when he shot deceased Danilo, who is seated on the street. Such argument lacks merit. As explained by Dr. Rodrigo in his testimony, the body of Danilo could have moved and slumped forward when he was being hit by bullets in rapid succession and the position of his body has changed. When the bullets hit the body of the deceased, the body was already on the ground face down and the natural trajectory of bullets is upward, toward the head of the deceased. It is established that accused-appellant Noel was shooting while he was standing and the deceased was already on the ground. So when you try to examine the body and let it stand up, it would naturally create an impression that the bullets' direction is upward. The explanation is so simple, the body received the bullets while it is slumped, with face forward on the ground, and accused-appellant Noel was shooting while he was standing up. Such explanation is corroborated by Babelito's account that Danilo tried to turn his shoulders to face his left side, before he fell furthermore, such testimony is also corroborated by the testimony of Nanette which claimed that Danilo fell at the spot marked as Exhibit 2-C as told by Babelito.[43] (Emphasis supplied and citations omitted.)

In contrast, accused-appellant proffered the defenses of denial and alibi, which are the weakest of defenses in criminal cases. The well-established rule is that denial and alibi are self-serving negative evidence; they cannot prevail over the spontaneous, positive, and credible testimonies of the prosecution witnesses who pointed to and identified the accused-appellant as the malefactor. "Indeed, alibi is easy to concoct and difficult to disprove." [44]

Although accused-appellant presented other witnesses to supposedly corroborate his alibi, we could not ascribe much probative weight to said witnesses' testimonies. None of said witnesses actually saw the shooting, most only heard the gunshots and arrived at the scene after the shooting took place and, thus, had no personal knowledge of the said incident. Except for Aida, no other witness for the defense was physically with accused-appellant at the exact time of the shooting. And even Aida's testimony is unreliable given the observation of the RTC that it is in conflict with that of accused-appellant. Accused-appellant claimed that he first went to the billiard hall owned by Ilustre where he played with a certain Zaldy and then he transferred to Retota's billiard hall where he was playing with Danilo and Dominador Baldaba when he heard the gunshots. Yet, Aida attested that she was watching accused-appellant playing billiards with a certain Zaldy when she heard the gunshots.

In sum, the prosecution has proven beyond reasonable doubt the guilt of accused-appellant for the murder of Danilo in Criminal Case No. Q-01-105875 and attempted murder of Babelito in Criminal Case No. Q-01-105877.

The penalty prescribed by law for the crime of murder is reclusion perpetua to death.[45] With the repeal of the death penalty law, the only penalty prescribed by law for the crime of murder is reclusion perpetua. The Indeterminate Sentence Law does not apply, inter alia, to persons convicted of offenses punished with death penalty or life imprisonment, including reclusion perpetua. Hence, accused-appellant has been properly sentenced to suffer the penalty of reclusion perpetua for the murder of Danilo in Criminal Case No. Q-01-105875.

However, we find it necessary to modify the award of damages to Danilo's heirs in Criminal Case No. Q-01-105875. Consistent with prevailing case law,[46] accused-appellant must pay Danilo's heirs the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages, in addition to the sum of P57,084.80 as actual damages.

For the crime of attempted murder, the penalty shall be prision mayor, since Article 51 of the Revised Penal Code states that a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony. Under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code. Absent any mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of prision mayor in its medium term, which has a duration of eight (8) years and one (1) day to ten (10) years; and that the minimum should be within the range of prision correccional, which has a duration of six (6) months and one (1) day to six (6) years. Hence, we sentence accused-appellant to suffer imprisonment from six (6) years of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, for the attempted murder of Babelito in Criminal Case No. Q-01-105877.

We further order accused-appellant to pay Babelito the amounts of P25,000.00 as civil indemnity, P10,000.00 as moral damages, and P25,000.00 as exemplary damages in Criminal Case No. Q-01-105877.

WHEREFORE, the instant appeal of accused-appellant Noel T. Adallom is DENIED for lack of merit. The Decision dated July 31, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00365, which affirmed the Decision dated December 15, 2003 of the Regional Trial Court, Branch 76, Quezon City, in Criminal Case Nos. Q-01-105875 and Q-01-105877, finding Noel T. Adallom guilty beyond reasonable doubt of the crimes of murder

and attempted murder, respectively, is hereby AFFIRMED with the following MODIFICATIONS as to the penalties and awards imposed:

1) For the murder of Danilo Villareal in Criminal Case No. Q-01-105875, Noel T. Adallom is SENTENCED to suffer the penalty of reclusion perpetua and ORDERED to pay the heirs of Danilo Villareal the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, P30,000.00 as exemplary damages, and P57,084.80 as actual damages; and

2) For the attempted murder of Babelito Villareal in Criminal Case No. Q-01-105877, Noel T. Adallom is SENTENCED to suffer imprisonment from six (6) years of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, and ORDERED to pay Babelito Villareal the amounts of P25,000.00 as civil indemnity, P10,000.00 as moral damages, and P25,000.00 as exemplary damages.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Villarama, Jr., and Perlas-Bernabe,[*] JJ., concur.

[*] Per Special Order No. 1207 dated February 23, 2012.

[1] Rollo, pp. 2-13; penned by Associate Justice Enrico A. Lanzas with Associate Justices Remedios Salazar-Fernando and Rosalinda Asuncion-Vicente, concurring.

[2] Records, pp. 198-228; penned by Judge Monina A. Zenarosa.

[3] Id. at 2.

[4] Id. at 8.

[5] Id. at 14.

[6] Id. at 42.

[7] Id. at 47.

[8] TSN, February 18, 2002 and March 4, 2002.

[9] TSN, April 15, 2002 and April 22, 2002.

[10] TSN, April 22, 2002 and June 10, 2002.

[11] TSN, July 29, 2002 and September 2, 2002.

[12] Records, pp. 200-204.

[13] Id. at 206-207.

[14] TSN, February 10, 2003, March 3, 2003, March 10, 2003 and April 14, 2003.

[15] TSN, October 7, 2002.

[16] TSN, October 21, 2002.

[17] TSN, December 2, 2002.

[18] TSN, December 9, 2002 and January 6, 2003.

- [19] TSN, January 20, 2003.
- [20] TSN, April 21, 2003.
- [21] Records, pp. 213-217.
- [22] Id. at 217-218.
- [23] Id. at 92.
- [24] Id. at 166.
- [25] Id. at 227-228.
- [26] CA rollo, pp. 112-147.
- [27] Id. at 198-217.
- [28] Rollo, pp. 11-12.
- [29] Id. at 19-20.
- [30] Id. at 29-31 and 32-36.
- [31] CA rollo, p. 125.
- [32] Id. at 127.
- [33] Id.
- [34] Id. at 139.
- [35] Id.
- [36] Id. at 140.
- [37] Id. at 141.
- [38] Id. at 143.
- [39] Id. at 205.
- [40] Decasa v. Court of Appeals, G.R. No. 172184, July 10, 2007, 527 SCRA 267, 287.
- [41] TSN, February 18, 2002, pp. 6-12.
- [42] TSN, July 29, 2002, pp. 5-13.
- [43] Rollo, pp. 9-11.
- [44] People v. Bulan, 498 Phil. 586, 612 (2005).
- [45] Revised Penal Code, Article 248.
- [46] People v. Orias and Elarcosa, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 438.

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