

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUDITO MOLINA AND JOHN DOE, ACCUSED, JOSELITO TAGUDAR, ACCUSED-APPELLANT.

G.R. No. 184173. March 13, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] dated 16 January 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 02327, which affirmed the Decision[2] dated 24 May 2006 of the Regional Trial Court (RTC) of Ilocos Norte, Laoag City, Branch 16, in Criminal Case Nos. 2003-011-16 to 2003-028-16, finding herein appellant Joselito Tagudar guilty beyond reasonable doubt of four counts of murder (Criminal Cases No. 2003-011-16 to 2003-014-16) and 14 counts of attempted murder (Criminal Cases No. 2003-015-16 to 2003-028-16). The appellant was sentenced to suffer the penalty of reclusion perpetua with all its accessory penalties for each count of murder and was ordered to pay the heirs of each victim the amount of P50,000.00 as civil indemnity. He was also sentenced to suffer an indeterminate penalty of 2 years and 4 months of prision correccional, as minimum, to 8 years and 1 day of prision mayor, as maximum, for each count of attempted murder and was ordered to pay each victim the amount of P20,000.00 as civil indemnity.

Appellant Joselito Tagudar, together with Judito Molina and a certain John Doe, both of whom remain-at-large, was charged before the RTC of Bangued, Abra, in 4 separate Informations for murder committed against Jansen Bersamin, Eric Pacurza, Rogee Montorio and Algie Pacurza; and 14 separate Informations for attempted murder committed against Ronald Ta-a, Jomar Pilor, Romel Pacurza, Jerome Bayubay, Gilbert Baruela, Crisanto Baruela, Roger Bersamin, Robert Baruela, Sammy Abundo, Albert Batalla, Carmelo Daganato, Filomeno Blosan, Allan Montorio and Eugene Philip Baruela.

The four separate Informations for murder[3] were docketed as Criminal Cases No. 2003-011-16 to No. 2003-014-16. Except for the names of the victims, the Informations in these four cases identically read:

"That on or about 11:30 to 12:00 midnight of [4 October 2002] at Barbarsic, Ba-ug, San Juan, Abra, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there, in conspiracy with one another, with treachery, taking advantage of darkness and use of unlicensed firearms (unrecovered), unlawfully and feloniously shot [name], causing the latter's death, to the great damage and prejudice of the heirs of the victim."

The other 14 separate Informations for attempted murder[4] were docketed as Criminal Cases No. 2003-015-16 to No. 2003-028-16. Again, except for the names of the victims, the aforesaid Informations contained similar averments, to wit:

That on or about 11:30 to 12:00 midnight of [4 October 2002] at Barbarsic, Ba-ug, San Juan, Abra, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there, in conspiracy with one another, with treachery, taking advantage of darkness and use of unlicensed firearms (unrecovered), unlawfully

and feloniously shot [name], inflicting gunshot wounds thereby commencing the commission of murder by overt acts but do not perform all the acts of execution necessary to commit murder as a consequence for reasons other than their spontaneous desistance, to the damage and prejudice of the victim.

A Warrant of Arrest[5] dated 10 February 2003 was issued against the appellant and Judito Molina. However, only the appellant was arrested while Judito Molina remains-at-large.

Upon arraignment, the appellant, assisted by counsel de parte, pleaded NOT GUILTY to the crimes charged.

On 13 October 2003, this Court issued a Resolution,[6] which granted appellant's Petition for Transfer of Venue. Thereupon, the complete records of the aforesaid cases were forwarded by the RTC of Bangued, Abra, to the Executive Judge of RTC Laoag, Ilocos Norte, and were raffled to Branch 16 thereof.

During the pre-trial conference,[7] the prosecution and the defense entered into the following stipulation of facts:

- The identity of the [appellant] is admitted meaning that whenever the prosecution witnesses mention the name Joselito Tagudar they would be referring to the [appellant] Joselito Tagudar who was charged and arraigned under the information[s];
- That on [4 October 2002] there was a wake at the Daganato house at Brgy. Barbarsic, Ba-ug, San Juan, Abra where the deceased Carmen Daganato was lying in state;
- That many people adults and children were playing cards at the wake;
- That on that night 4 people died, namely: Rog[e] Montorio, Eric Pacur[z]a, Jansen [Bersamin] and Algie Pacur[z]a;
- The defense admit (sic) their respective certificates of death;
- That during the shooting incident 14 other people were injured, namely: Ronald Ta[-]ja, Crisanto Bar[u]jela, Robert Bar[u]jela, Carmelo Daganato, Jomar Pillor, Allan Montorio, Filomeno Bulosan, Jerome Bayubay, Philip Eugene Bar[u]jela, Gilbert Bar[u]jela, Rommel Pacur[z]a, Sammy Abundo and [Roger] Bersamin;
- That in the early morning of [5 October 2002] the [appellant] Joselito Tagudar went to visit some of the victims who were his relatives among them were Jomar Pillor and Allan Montorio;
- That on [4 October 2002] the [appellant] Joselito Tagudar was at Bangued, Abra;
- The existence of the following exhibits are admitted. Exhibit "1" which is a certification[8] issued by Police Inspector Lambert Alban Suerte regarding the holding of scout class at Camp Bado, Dangwa, La Trinidad, Benguet;
- Exhibit "2" is the joint affidavit[9] of Police [Senior] Inspector Reguel Sta. Maria, PO1 Robert Banatao, PO1 Gregorio Pari[ñ]as, PO2 Engel Perez, PO1 June Beleno, PO1 Joel Semanero and PO1 Rogelio Federico;
- Exhibit "3" is the joint affidavit[10] of Jerome Bersamin, Darwin Bersamin and Robinson Bersamin;
- Exhibit "4" the joint affidavit[11] of PO3 [Florante] S[o]berano and PO1 Norman Labanen.[12]

Upon termination of the pre-trial proceedings, trial ensued.

The prosecution presented the victims, Allan Montorio and Jomar Pillor, as witnesses.

Allan Montorio testified that on 4 October 2002, between 11:00 p.m. and 12:00 midnight, he was at the wake of Carmen Daganato at the latter's house located in Barangay Barbarsic, Ba-ug, San Juan, Abra. He was then in front of the said house playing "dado" (a game of dice) with some people. Among those present were Algie Pacurza,

Eric Pacurza, Jansen Bersamin, Rogee Montorio, Jomar Pillor, Crisanto Baruela, Carmelo Daganato, Jerome Bayubay and Roger Bersamin. While they were playing "dado," he heard a gunshot. He then crawled to a cemented bench to hide. After a gap of two to three seconds, the first gun report was followed by successive gun reports. He immediately stood up proceeding inside the house of Carmen Daganato. Allan Montorio then saw two persons shooting at their direction with an armalite and clad in black long-sleeves shirts, short pants and bonnets. However, despite the fact that the aforesaid persons were wearing bonnets, Allan Montorio still recognized them as the appellant and Judito Molina because the masks that they were wearing were like those of a ski-mask, which exposed their faces. Further, he was only three to four meters away from them. There was also a bright light coming from a 50-watt bulb positioned directly parallel above the gambling table.[13]

When the gunshots had stopped, he peeped from inside the house of Carmen Daganato and saw Eric Pacurza already sprawled, lying prostrate on the ground. Also, Algie Pacurza was not moving anymore. He too was not spared as he was also hit by shrapnel on his left arm. Thereafter, Allan ran towards their house, which was around 100 meters away from the house of the deceased, and there he saw Jansen Bersamin lying at their door. He helped carry Jansen Bersamin's body to a vehicle to be brought to the hospital. Unfortunately, Jansen Bersamin died.[14]

Allan Montorio was also treated at the Abra Provincial Hospital and was given a medical certificate, since he was injured as a result of the aforesaid shooting incident. Afterwards, he was investigated by the police authorities at the San Juan, Abra, Police Station. He never revealed to the police authorities what he witnessed on the late evening of 4 October 2002 out of fear, as the appellant was an incumbent policeman of Bangued, Abra; and Judito Molina was a bodyguard of the Mayor of San, Juan, Abra.[15] It was only after the lapse of almost two months from the time of the shooting incident that he disclosed to the National Bureau of Investigation (NBI) what happened on that fateful night of 4 October 2002 and who were the perpetrators thereof.[16]

Another prosecution witness, Jomar Pillor, who was also at the wake of Carmen Daganato in the evening of 4 October 2002 between 11:00 p.m. and 12:00 midnight, similarly testified that he saw thereat Filomino Blosan, Eric Pacurza, Algie Pacurza, Rogee Montorio, Allan Montorio, Jerome Bayubay, Jansen Bersamin, Ronald Ta-a, Chris Baruela, Carmelo Daganato, Albert Batalla, Gilbert Baruela, Eugene Baruela and many others. While he was watching those who were playing "dado," he suddenly heard a burst of gunfire. Thereafter, he heard successive gun reports. He was standing when he heard the gunshots. Then, he saw two men coming from the western part (ricefields) of Carmen Daganato's house. These two men went to the cemented pavement and kept shooting their firearms at their direction. As he was only five meters away from these two men and the light coming from the fluorescent lamp placed above the gambling table illuminated the place, he was able to recognize them as the appellant and Judito Molina. The appellant and Judito Molina were wearing black sweaters, short pants and black bonnets with the faces exposed. He stated that he knew the appellant as a policeman assigned at Bangued, Abra, because they were from the same barangay. He had known the appellant since the age of reason. Likewise, he knew Judito Molina; he used to see him whenever their Mayor went to their place, as he was a bodyguard of the Mayor.[17]

When he saw the appellant and Judito Molina coming up to the cemented pavement while continuously firing their firearms at them, he immediately went inside Carmen Daganato's house to seek refuge, but he was hit on his thigh and shoulder. When the gunshots had stopped, he saw Algie Pacurza and Eric Pacurza dead. He also saw that those who were playing "dado" were injured. They were all brought to the provincial hospital where he stayed for a week. He heard that Rogee Montorio and Jansen Bersamin likewise died as a result of that shooting incident.[18]

He admitted before the court a quo that he was also investigated by the police authorities from the San Juan, Abra, Police Station while he was still at the hospital. But he refused to give them any information as regards the

shooting incident because he was afraid, as the perpetrators were a policeman and a bodyguard of the Mayor. On 28 November 2002, when it was already the National Bureau of Investigation (NBI) who handled the investigation, he finally revealed what he witnessed on the night of the shooting incident. He also disclosed to the NBI the identities of the assailants.[19]

For its part, the defense presented the appellant, who interposed the defense of alibi; Julieta Pacurza, one of the daughters of Carmen Daganato; Ricky Lopera, a media practitioner; Police Inspector 3 (PO3) Dante Cardona, an Assistant Investigator at the San Juan, Abra, Police Station; and Robert Banatao, appellant's companion in going back from Camp Dangwa, La Trinidad, Benguet to Bangued, Abra.

The appellant narrated before the court a quo that on 4 October 2002, he and his fellow policemen were at Camp Dangwa, La Trinidad, Benguet, for their Annual General Inspection. On the same day, at around 5:00 o'clock in the afternoon, they all started to board an owner type jeep owned by PO1 Robert Banatao, as they would already go home to Bangued, Abra. It was already 11:45 p.m. of 4 October 2002 when they arrived in Bangued, Abra. Upon his arrival thereat, he received a text message from his brother that there was a massacre that transpired in Barbarsic, San Juan, Abra. Accordingly, he waited along the highway at Zone 7, Bangued, Abra, for the ambulance in which the victims were, as he expected that they would be transported by an ambulance to the hospital. His neighbors, however, told him that the ambulance had already passed by; thus, he proceeded to the hospital.[20]

When he arrived at the hospital, the other victims were already there so he helped in carrying them in. There he saw Allan Montorio and Jomar Pillor, who were also victims of the shooting incident. He was able to talk to them. He asked them if they were able to recognize those persons who were responsible for the shooting incident. Both Allan Montorio and Jomar Pillor replied in the negative and stated that it was dark and the assassins wore bonnets. The following day, he came to know that those who were killed in the shooting incident were Jansen Bersamin, Rogee Montorio, Algie Pacurza and another Pacurza whose first name he could not remember. He admitted that he knew his co-accused, Judito Molina, because the latter was employed with the Municipal Government of San Juan, Abra as a utility worker.[21]

Julieta Pacurza claimed that she was outside her mother's house serving coffee when the shooting incident happened. She stated that the moment she heard the gun reports, she witnessed those who were playing "dado" in the gambling table hide themselves. While the gun reports were being heard, she looked at the western part of her mother's house and did not see anything, as it was dark. She saw Allan Montorio hide himself at the cemented bench, while Jomar Pillor went upstairs to hide. After the shooting incident, she assisted those who were injured including her son, Carmelo Daganato, and brought them to the hospital. While she was at the hospital, she saw the appellant talking to Allan Montorio and Jomar Pillor.[22]

Ricky Lopera confirmed that he came to know of the massacre that happened in Barbarsic, San Juan, Abra, only in the early morning of 5 October 2002. Subsequently, he went to the Abra Provincial Hospital where the victims were brought and treated. He stated that he was able to interview one of the victims whose surname was Montorio. When he asked Montorio about the identities of the assailants, Montorio replied that he was not able to identify them as it was dark. He was also able to interview a parent of one of the victims, but the same answer was given to him.[23] On cross-examination, he professed that he was a friend of the wife of the appellant. It was the appellant's wife who requested him to go to Laoag to help her with her problem regarding her husband's involvement in the shooting incident in Barbarsic, San Juan, Abra.[24]

PO3 Dante Cardona testified that he was on tour of duty on 4 October 2002 as an Assistant Investigator in the San Juan, Abra, Police Station. While he was on duty, he heard gunshots coming from Sitio Barbarsic, San Juan,

Abra. Their Chief of Police then ordered him, together with three other policemen, to proceed to the area to verify the same. Right in the place of the crime, they conducted an investigation and made a sketch of the crime scene. There they asked questions from the people as to the identities of the assailants and they all replied in the negative. He admitted, however, that he was not able to interview Allan Montorio and Jomar Pillor.[25]

Robert Banatao stated that he was with the appellant when they arrived in Bangued, Abra, at around 11:45 p.m. of 4 October 2002. However, after dropping the appellant at Zone 7, Bangued, Abra, he did not see him anymore.[26]

On rebuttal, the prosecution presented Irene Pacurza, Julieta Pacurza's sister. Irene Pacurza testified that at the exact moment that the shooting incident was taking place, Julieta Pacurza was with her, together with their brother, inside the kitchen of the house of Carmen Daganato, as they were preparing coffee to be served to the people present at the wake of their mother. They just stayed there until the gun reports stopped. Thereafter, they went outside and saw the bodies of the victims lying prostrate on the ground.[27]

On sur-rebuttal, the defense presented the testimony of Primitivo Pillor. He stated that he was, indeed, at the wake of Carmen Daganato on 4 October 2002. He said that while he was there, he saw Julieta Pacurza as they were all sitting outside the house of the deceased. However, he only stayed there until 11:00 p.m. Thus, he was not there anymore when the shooting incident happened.[28]

After trial, a Decision was rendered by the court a quo on 24 May 2006 finding the appellant guilty beyond reasonable doubt of four counts of murder and 14 counts of attempted murder. Its dispositive portion reads:

WHEREFORE, PREMISES CONSIDERED, the Court finds the [appellant] Joselito Tagudar GUILTY BEYOND REASONABLE DOUBT of four (4) separate crimes of Murder qualified by treachery. He is hereby sentenced to Reclusion Perpetua with all its accessory penalties for each crime of Murder committed and to pay the heirs of each victim Fifty Thousand Pesos (P50,000.00) as civil indemnity.

Likewise, the Court finds him GUILTY of Fourteen (14) separate crimes of Attempted Murder for which he is sentenced, applying the Indeterminate Sentence Law, to Two (2) years and Four (4) months of Prison Correccional minimum as minimum to Eight (8) years and One (1) day of Prison Mayor medium as maximum for each crime of Attempted Murder committed and to pay each victim Twenty Thousand Pesos (P20,000.00) as civil indemnity.[29]

The appellant appealed the aforesaid Decision to the Court of Appeals. In his brief, the appellant made the following assignment of errors:

- The trial court erred in giving full credence to prosecution witnesses Allan Montorio and Jomar Pillor and their long delayed, uncorroborated and uniform testimony they allegedly saw the [appellant] Joselito Tagudar on the night in question, standing 3, 4 or 5 meters away from them, clad in black attire, wearing black mask (bonnet), or ski mask but with face exposed, and firing at them continuously with a long firearm and at the others attending the wake that night of the late Carmen Daganato in Sitio Barbarsic, Ba-ug, San Juan, Abra.
- The trial court erred in finding that there was positive identification by these 2 prosecution witnesses [Allan] Montorio and [Jomar] Pillor of the [appellant] Joselito Tagudar as one of the perpetrators of the crimes charged in these cases.
- The trial court erred in not finding these 2 prosecution witnesses and their said testimony of identification to be unworthy of belief, for being doubtful, unreliable, incredible, and contrary to the common experience and observation of mankind.
- The trial court erred in discrediting arbitrarily and entirely the [appellant] Joselito Tagudar, his witnesses, and his defense of alibi, despite the clear, corroborative and substantial evidentiary support thereof in the records of

these cases.

- The trial court erred in not acquitting the [appellant] Joselito Tagudar of the crimes charged in all these cases, on ground of reasonable doubt.

- Independently of the appellant's defense of alibi as discussed above under the five (5) assigned errors in this appeal, the appellant submits the trial court erred in awarding the victims in fourteen (14) cases of attempted murder, damages as civil indemnity in the unwarranted, arbitrary and excessive fixed sum, or flat rate of P20,000.00 for each of the victims involved, regardless of the nature, extent, and required treatment of the injury suffered, and despite the lack of legal basis, or sufficient evidentiary support in the records of these cases, insofar as the figure P20,000.00 is concerned.[30]

On 16 January 2008, the Court of Appeals rendered a Decision affirming the trial court's Decision dated 24 May 2006. The appellate court held that, indeed, the prosecution was able to discharge the burden of proving the guilt of the appellant beyond reasonable doubt for the crimes of murder and attempted murder.[31] The prosecution witnesses Allan Montorio and Jomar Pillor were able to positively identify the appellant and his co-accused Judito Molina (still at-large) as the assailants through the bright light from a bulb attached to the roof directly above the gambling table.[32] The light coming from the bulb just above the table, where the people were playing or watching the ongoing game of dice at the time of the shooting, was sufficient to illuminate the place where the appellant was and to enable Allan Montorio and Jomar Pillor to identify the appellant as the person present at the crime scene.[33] The appellate court ruled that in light of the positive identification by the prosecution witnesses that the appellant was one of the perpetrators of the crimes, the latter's defenses of denial and alibi must necessarily fail.[34] The appellate court thus decreed:

WHEREFORE, premises considered, the Decision dated 24 May 2006 of the [RTC] of Ilocos Norte, Laoag City, Branch 16 finding [appellant] Joselito Tagudar guilty beyond reasonable doubt for the four (4) crimes of murder in Crim. Case Nos. 2003-011-16 to 2003-014-16 and sentencing him to reclusion perpetua with all its accessory penalties for each crime of murder and to pay the heirs of each victim Php50,000.00 as civil indemnity, and for the fourteen (14) crimes of attempted murder in Crim. Case Nos. 2003-015-16 to 2003-028-16 and sentencing him to an indeterminate penalty of 2 years and 4 months of prision correccional, as minimum, to 8 years and 1 day of prision mayor, as maximum, for each crime of attempted murder and to pay each victim Php20,000.00 as civil indemnity, is AFFIRMED.[35]

The appellant filed a Notice of Appeal.[36] Thereupon, the Court of Appeals forwarded the records of this case to this Court.

This Court notified the parties that they may submit their respective supplemental briefs. In compliance therewith, the appellant submitted his Supplemental Brief[37] dated 28 November 2008. The Office of the Solicitor General, on the other hand, made a Manifestation[38] that it would no longer file a Supplemental Brief since all the issues raised by the appellant in his appeal had already been extensively discussed and refuted in its Appellee's Brief dated 19 June 2007 filed before the appellate court.

In essence, the issue boils down to the credibility of the prosecution witnesses to convict the appellant beyond reasonable doubt.

The appellant argues that the testimonies of Allan Montorio and Jomar Pillor - that they saw the appellant on the night of the shooting, together with one or two other assailants, just 3, 4 or 5 meters away from them continuously firing long firearms at their direction - are unworthy of belief, for it is an unnatural and uncommon reaction to a sudden, startling and shocking massacre for the prosecution witnesses to remain standing and to note the details of what the perpetrators were wearing, including the firearms they used, instead of immediately protecting themselves to avoid being hit upon hearing the sudden burst of gunfire.

The appellant underscores that almost two months had passed from the time of the shooting before the prosecution witnesses disclosed to the NBI their knowledge about the incident and who the perpetrators were. Their failure to immediately report to the police authorities that they saw the appellant on the night of the shooting as one of the assailants therein militates against their credibility. The same raises grave doubts as to its veracity, and it weakens the prosecution's evidence of positive identification of the appellant. Thus, the defense firmly believes that there was no positive identification of the appellant by the prosecution witnesses.

Finally, the appellant holds that although alibi is a weak defense, the same assumes importance where the identification of the accused is weakened and rendered unreliable. He avers that none of those investigated by the Philippine National Police (PNP)-San Juan, Abra, and the NBI could recognize the culprits, except Allan Montorio and Jomar Pillor, who corroborated each other's testimony as regards the details of the shooting incident and the identities of the assailants. Similarly, his alibi finds substantial evidentiary support in the records of these cases. The shooting incident happened at around 11:35 p.m. of 4 October 2002 or long before his arrival at Zone 7, Bangued, Abra, which was allegedly 27 kilometers away from Barbarsic, San Juan, Abra. There was no showing what means of transportation he used in going to and getting away from the scene of the crime. Also, the facts showed that he was seen at the hospital attending to the victims and talking to Allan Montorio and Jomar Pillor. For these reasons, the courts should examine his defense of alibi with care.

The appellant's contentions are bereft of merit.

As oft repeated by this Court, the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies.[39] Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the said findings,[40] and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case.[41]

There is nothing in the records that would impel this Court to deviate from the findings and conclusion of the trial court, which findings were also affirmed by the Court of Appeals. Indeed, this Court finds the testimonies of the prosecution witnesses credible and worthy of belief.

In the present case, the trial court gave full faith and credit to the testimonies of the prosecution witnesses, Allan Montorio and Jomar Pillor. The court a quo characterized their testimonies as vivid and straightforward. Both prosecution witnesses narrated before the court a quo the details of the shooting incident that happened in Barbarsic, Ba-ug, San Juan, Abra, in the late evening of 4 October 2002. Likewise, they positively identified the perpetrators as the appellant and Judito Molina.

Truly, the appellant and his co-accused were wearing bonnets at the time of the commission of the crimes; however, their bonnets were akin to ski masks, which exposed their faces. It also bears stressing that the place where the shooting incident happened was properly illuminated by a light coming from a 50-watt bulb, which was attached to the roof directly above the gambling table where the people were playing "dado." Further, the prosecution witnesses were only three to five meters away from the assailants. The prosecution witnesses were familiar with the appearance of the appellant, as they all came from the same barangay. In fact, Jomar Pillor even stated in his testimony before the trial court that he had known the appellant since the age of reason. With respect to accused Judito Molina, the prosecution witnesses were also familiar with his appearance, as they always saw him whenever the mayor of San Juan, Abra, came to visit their place, as he was the bodyguard of the mayor.

Given the foregoing circumstances, it was not impossible for the prosecution witnesses to positively identify the appellant and Judito Molina as the authors of the shooting incident in Barbarsic, Ba-ug, San Juan, Abra, which resulted in the deaths of Jansen Bersamin, Rogee Montorio, Algie Pacurza and Eric Pacurza; and injuries to 14 other individuals.

Contrary to the claim of the appellant, it can be gleaned from the testimonies of the prosecution witnesses that they did not remain standing while the shooting incident was going on. In fact, Allan Montorio and Jomar Pillor sought refuge inside the house of Carmen Daganato. It was at this point that they saw two persons shooting at their direction with an armalite and clad in a black long-sleeved shirt, short pants and bonnets. They recognized them as the appellant and Judito Molina. Experience shows that precisely because of the unusual acts of bestiality committed before their eyes, eyewitnesses, especially the victims to a crime, can remember with a high degree of reliability the identities of criminals. This Court has ruled that the natural reaction of victims of criminal violence is to strive to see the appearance of their assailant and observe the manner in which the crime was committed. Most often, the face and body movements of the assailant create an impression which cannot easily be erased from their memories.[42]

Neither can the appellant cast suspicion on the prosecution witnesses' failure to immediately report the crimes and the identities of their assailants. This Court has previously ruled that delay in revealing the author of the crime does not impair the credibility of witnesses, more so if such delay is satisfactorily explained.[43] In this case, the delay in reporting the shooting incident and the identities of those responsible for the same were satisfactorily explained by the prosecution witnesses. As the Court of Appeals stated in its Decision, the delay and hesitation of Allan Montorio and Jomar Pillor to reveal the identities of the assailants to those people who interviewed them, i.e., the police authorities of San Juan, Abra, a media practitioner, and the appellant himself, were attributable to fear for their lives and those of their families; more so, if the one asking about the identities of the assailants is the assailant himself. It must be remembered that the appellant in this case is a policeman, while his co-accused Judito Molina is a bodyguard of the Mayor. Considering their standing in the community, it is quite natural for the eyewitnesses to be scared and to keep the information to themselves until they found enough courage to disclose the same.[44] Such fear was quite obvious on the part of the prosecution witnesses, as they were placed under the Witness Protection Program of the Department of Justice the moment they revealed what they knew about the shooting incident and who were responsible for the same.

In light of the positive identification of appellant by the prosecution witnesses and since no ill motive on their part or on that of their families was shown that could have made either of them institute the case against the appellant and falsely implicate him in a serious crime he did not commit, appellant's defense of alibi must necessarily fail. It is settled in this jurisdiction that the defense of alibi, being inherently weak, cannot prevail over the clear and positive identification of the accused as the perpetrator of the crime.[45] Moreover, in order to justify an acquittal based on this defense, the accused must establish by clear and convincing evidence that (a) he was in another place at the time of the commission of the offense; and (b) it was physically impossible for him to be at the scene of the crime at the time it was committed.[46] These, appellant miserably failed to show.

As the Court of Appeals has observed, the appellant failed to substantiate the element of physical impossibility. Records reveal that the distance and negligible time negate appellant's claim of alibi and destroy any attempt to prove that it was not possible for him to have been physically present at the locus criminis or its immediate vicinity at the time of the commission of the crime. It was even admitted by the defense during the pre-trial that appellant was at Bangued, Abra, on 4 October 2002.[47] Emphasis must be given to the fact that Bangued, Abra, is a municipality not far from San Juan, Abra, where the shooting incident happened. Therefore, it was not physically impossible for the appellant to have been at the locus criminis at the time the crime was committed.

Finally, as regards the presence of treachery as a qualifying circumstance, this Court holds that the attack was undoubtedly treacherous. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus, insuring its commission without risk to the aggressor and without any provocation on the part of the victim.[48]

As the appellate court enunciated in its Decision, the prosecution was able to show that the assault made upon the victims at the time of the shooting incident was so sudden and unexpected as to have caught them unprepared to meet the assault. At the time of the shooting incident, the victims were merely playing or watching the on going game of dice just outside the house of Carmen Daganato, who was lying in state. They had no foreboding of any danger, threat or harm upon their lives at the said time, place and occasion. Likewise, it was clearly established that the sudden and unexpected attack adopted by the appellant and his co-accused, who peppered the unsuspecting victims with bullets, deprived the latter of any chance to defend themselves, thereby, ensuring the commission of the crime without risk or any possible retaliatory attack on the aggressors.[49]

The presence of treachery qualifies the killings of the four victims to murder. With respect to the 14 injured victims, the crime committed by the appellant is attempted murder, as the appellant already commenced the criminal acts by overt acts but failed to perform all the acts of execution as to produce the felony by reason of some cause other than his own spontaneous desistance. Similarly, treachery qualifies the attempted killings.

As to penalty. All told, the appellant is guilty of four counts of murder qualified by treachery. Under Article 248[50] of the Revised Penal Code, as amended, the penalty imposed for the crime of murder is reclusion perpetua to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is reclusion perpetua for each count, pursuant to Article 63, paragraph 2[51] of the Revised Penal Code.

The appellant is likewise guilty of 14 counts of attempted murder. The penalty prescribed by law for murder, which is reclusion perpetua to death, should be reduced by two degrees, conformably to Article 51[52] of the Revised Penal Code. Under paragraph 2 of Article 61, in relation to Article 71 of the Revised Penal Code, such a penalty is prision mayor. There being no mitigating or aggravating circumstance, the same should be imposed in its medium period pursuant to Article 64, paragraph 1[53] of the Revised Penal Code. Applying the Indeterminate Sentence Law in the case of attempted murder, the maximum shall be taken from the medium period of prision mayor, which is 8 years and 1 day to 10 years, while the minimum shall be taken from the penalty next lower in degree, i.e., prision correccional, in any of its periods, the range of which is 6 months and 1 day to 6 years. Thus, this Court finds the indeterminate penalty of 2 years and 4 months of prision correccional, as minimum, to 8 years and 1 day of prision mayor, as maximum, imposed by the lower courts on the appellant for each count of attempted murder, proper.

As to damages. When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[54]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[55] We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under the prevailing jurisprudence,[56] the award of P50,000.00 as civil indemnity for each count of murder, to be paid to the heirs of the victims, is proper.

As to actual damages, the heirs of the victims of murder are not entitled thereto because said damages were not duly proved with a reasonable degree of certainty.[57]

Asent moral damages, the same are mandatory in cases of murder and homicide, without need of allegation and

proof other than the death of the victim.[58] The award of P50,000.00 as moral damages for each count of murder, to be given to the heirs of the four victims, is likewise in order.

The award of P25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[59] Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved.[60] Thus, this Court similarly award P25,000.00 as temperate damages for each count of murder.

The heirs of the four victims of murder are also entitled to exemplary damages in the amount of P25,000.00 each, since the qualifying circumstance of treachery was firmly established.[61]

The award of P20,000.00, as civil indemnity to each victim of attempted murder, is neither arbitrary nor excessive because such award is in line with this Court's ruling in *People v. Gutierrez*,[62] citing *People v. Almazan*. [63] The lower courts did not award moral and exemplary damages. To conform to this Court's current ruling in *People v. Domingo*,[64] awards of moral and exemplary damages in the amounts of P10,000.00 and P25,000.00, respectively,[65] to each victim, are in order.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02327 - finding herein appellant guilty beyond reasonable doubt of four counts of murder and sentencing him to suffer the penalty of reclusion perpetua for each count and to pay P50,000.00 as civil indemnity for each count; and of 14 counts of attempted murder and sentencing him to suffer the indeterminate penalty of 2 years and 4 months of prision correccional, as minimum, to 8 years and 1 day of prision mayor, as maximum, for each count, and to pay P20,000.00 as civil indemnity for each count - is hereby AFFIRMED with the modifications that (1) moral damages in the amount of P50,000.00, temperate damages in the amount of P25,000.00 and exemplary damages in the amount of P25,000.00, should also be awarded for each count of murder; and (2) moral damages of P10,000 and exemplary damages of P25,000.00 for each count of attempted murder should also be given to each victim. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Brion, JJ., concur.

[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr., concurring; rollo, pp. 3-48.

[2] Penned by Judge Conrado A. Ragucos; CA rollo, pp. 123-146.

[3] Records, Vol. 1, pp. 1-2; Records, Vol. II, pp. 1-2; Records, Vol. III, pp. 1-2; and Records, Vol. IV, pp. 1-2.

[4] Records, Vol. V, pp. 1-2; Records, Vol. VI, pp. 1-2; Records, Vol. VII, pp. 1-2; Records, Vol. VIII, pp. 1-2; Records, Vol. IX, pp. 1-2; Records, Vol. X, pp. 1-2; Records, Vol. XI, pp. 1-2; Records, Vol. XII, pp. 1-2; Records, Vol. XIII, pp. 1-2; Records, Vol. XIV, pp. 1-2; Records, Vol. XV, pp. 1-2; Records, Vol. XVI, pp. 1-2; Records, Vol. XVII, pp. 1-2; and Records, Vol. XVIII, pp. 1-2.

[5] Records, Vol. I, p. 35.

[6] Id. at 79-80.

[7] As evidenced by a Pre-trial Order dated 24 February 2004 issued by Judge Conrado A. Ragucos, id. at 89-91.

- [8] Id. at 181.
- [9] Id. at 182.
- [10] Id. at 183.
- [11] Id. at 184.
- [12] Id. at 89-90.
- [13] TSN, 24 February 2004, pp. 2-12, 16.
- [14] Id. at 11-14.
- [15] Id. at 21-22, 31-32.
- [16] Id. at 26, 30.
- [17] TSN, 20 August 2004, pp. 3-4, 7-12.
- [18] Id. at 12-14.
- [19] Id. at 15-17.
- [20] TSN, 26 October 2005, pp. 5-12.
- [21] Id. at 12-19, 21.
- [22] TSN, 23 February 2005, pp. 5-15.
- [23] TSN, 29 April 2005, pp. 3-8.
- [24] Id. at 15-16.
- [25] TSN, 8 July 2002, pp. 5-11, 21.
- [26] TSN, 7 September 2005, pp. 5-14.
- [27] TSN, 4 January 2006, pp. 4-7.
- [28] TSN, 2 February 2002, pp. 2-6.
- [29] CA rollo, p. 146.
- [30] Id. at 104-115.
- [31] Rollo, p. 27.
- [32] Id. at 29.
- [33] Id. at 36-37
- [34] Id. at 38.
- [35] Id. at 45.
- [36] Id. at 49-50.
- [37] Id. at 55-75.
- [38] Id. at 77-78.

[39] *People v. Castillon III*, 419 Phil. 92, 102-103 (2001).

[40] *Perez v. People*, G.R. No. 150443, 20 January 2006, 479 SCRA 209, 219-220.

[41] *Yulo v. People*, G.R. No. 142762, 4 March 2005, 452 SCRA 705, 713.

[42] *People v. SPO3 Mendoza*, 401 Phil. 496, 510-511 (2000).

[43] *People v. Albacin*, 394 Phil. 565, 581 (2000).

[44] *Rollo*, pp. 39-40.

[45] *People v. Cañete*, 350 Phil. 933, 946 (1998).

[46] *People v. Diopita*, 400 Phil. 653, 664 (2000).

[47] *Rollo*, pp. 38-39.

[48] *People v. Gutierrez*, 426 Phil. 752, 767 (2002).

[49] *Rollo*, pp. 43.

[50] ART. 248. Murder.- Any person who, not falling within the provisions of article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstance:

1. With treachery, x x x.

x x x x.

[51] ART. 63. Rules for the application of indivisible penalties. - x x x.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof;

x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[52] ART. 51. Penalty to be imposed upon principals of attempted crime. - The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principal in an attempt to commit a felony.

[53] ART. 64. Rules for the application of penalties which contain three periods. - x x x.

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

[54] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 740.

[55] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.

[56] *People v. Pascual*, G.R. No. 173309, 23 January 2007, 512 SCRA 385; *People v. Cabinan*, G.R. No. 176158, 27 March 2007, 519 SCRA 133.

[57] *People v. Tubongbanua*, supra note 55 at 742.

[58] *People v. Bajar*, 460 Phil. 683, 700 (2003).

[59] *People v. Dacillo*, G.R. No. 149368, 14 April 2004, 427 SCRA 528, 538.

[60] *People v. Surongon*, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.

[61] *People v. Beltran, Jr.*, *supra* note 54 at 741.

[62] *Supra* note 48.

[63] 417 Phil. 697 (2001).

[64] G.R. No. 184343, 2 March 2009.

[65] *People v. Beltran, Jr.*, *supra* note 54 at 740.

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