

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISMAEL DIAZ @ MAENG AND RODOLFO DIAZ @ NANDING, ACCUSED-APPELLANTS.

G.R. No. 185841. August 04, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01606 dated 5 June 2008 which affirmed in toto the Joint Decision[2] of the Regional Trial Court (RTC) of Dagupan City, Branch 42, in Criminal Cases No. 98-02261-D and No. 98-02262-D, finding appellants Ismael and Rodolfo Diaz guilty of two counts of Murder.

For the deaths of Elmer Quinto and Senior Police Officer (SPO) 1 Richard Dalioan, appellants Ismael, Rodolfo Diaz and one Domingo Doe were charged before the RTC of Dagupan with Murder and Assault Upon An Agent in Authority with Murder. The informations, which were filed on 17 July 1998, read:

Criminal Case No. 98-02261-D

That on or about the 15[th] day of April, 1998, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ISMAEL DIAZ @ Maeng, RODOLFO DIAZ @ Nanding and DOMINGO DOE, being then armed with a gun and Armalite rifle, with treachery, evident premeditation and with intent to kill one ELMER QUINTO, confederating together, acting jointly and helping one another, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by shooting him, hitting him on the head, thereby causing his death shortly thereafter due to "Hypovolemic Shock, Gunshot Wound" as per Autopsy Report issued by Dr. Benjamin Marcial Bautista, of the City Health Office, this City, to the damage and prejudice of the legal heirs of said deceased, ELMER QUINTO, in the amount of not less than FIFTY THOUSAND PESOS (P50,000.00) Philippine currency, and other consequential damages.[3]

Criminal Case No. 98-02262-D

That on or about the 15[th] day of April, 1998, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ISMAEL DIAZ @ Maeng, RODOLFO DIAZ @ Nanding and DOMINGO DOE, being then armed with a gun and Armalite rifle, with treachery, evident premeditation and with intent to kill one SPO1 RICHARD DALIOAN, a member of the Philippine National Police, qualified and appointed as such, confederating together, acting jointly and helping one another, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by shooting and hitting him several times on vital parts of his body, while said SPO1 RICHARD DALIOAN was then engaged in the performance of his official duties or on occasion thereof, thereby causing his death shortly thereafter due to "Hypovolemic Shock, Multiple Gunshot Wound" as per Autopsy Report issued by Dr. Benjamin Marcial Bautista, of the City Health Office, this City, to the damage and prejudice of the legal heirs of said deceased, SPO1 RICHARD DALIOAN, in the amount of not less than FIFTY THOUSAND PESOS (P50,000.00)

Philippine currency, and other consequential damages.[4]

In view of the arrest of the appellants, the trial court, on 5 June 2000, ordered the revival of the cases and the retrieval of the records of the cases from the archives.[5]

When arraigned on 9 June 2000, appellants, assisted by counsel de parte, pleaded not guilty to the crimes charged.[6]

The pre-trial conference was held on 14 June 2000 and the following admissions were made by the parties:

- That the two cases will be tried jointly since they happened during the same incident;
- The identity of the two accused in the sense that they were the accused who were charged and who were arraigned in these two cases;
- Both accused knew personally the late Elmer Quinto, both as private citizen and as a city councilor. As a matter of fact, he is addressed as a grandfather by the accused Ismael Diaz; likewise, co-accused knew personally Richard Dalioan, both as a private citizen and as a policeman of Dagupan City;
- That on the night of April 14, 1998 there was an occasion in Lucao, Dagupan City where trophies were awarded to winners of a basketball game until dawn of the next day, April 15, 1998; the affair was a Victory Ball and both accused, Ismael Diaz and Rodolfo Diaz, were in attendance.
- That deceased Elmer Quinto is married to one Teresita Quinto, the private complainant in CR-98-02261;
- That one Rosa Dalioan is also the wife of SPO1 Richard Dalioan, the victim in CR-98-02262.[7]

Thereafter, trial on the merits ensued.

The prosecution presented the following witnesses, namely: (1) SPO1 Salvino Junio;[8] (2) Dr. Benjamin Marcial O. Bautista;[9] (3) Ernesto Decano;[10] (4) Arnel Quinto;[11] (5) Consolacion Quinto;[12] (6) Pedro Urbano;[13] (7) Rosa Dalioan;[14] (8) Dr. Ronald Bandonill;[15] (9) SPO2 Ramon Valencerina;[16] (10) Police Officer (PO) 3 Marlon Decano;[17] and (11) SPO4 Onofre Madrid.[18] Their collective testimonies established the following:

On the evening of 14 April 1998, there was a "victory ball" in Sitio Nibaliw, Lucao District, Dagupan City involving the recently concluded sports tournament conducted in said barangay. Said event was part of the celebration of the barangay fiesta. The main event of the program was the awarding of trophies to the winners of the various ball games held. Aside from the awarding of prizes, there were political speeches and public dancing. Firecrackers were likewise exploded during the program. Present therein were politicians who donated the trophies to be awarded and who were invited to deliver campaign speeches for the upcoming May 1998 local elections. Among the politicians present were City Councilors Elmer Quinto, Hermenio Casilang and Rico Melendrez.

Councilor Quinto was seated in front of the stage facing the audience. He was seated at the left portion of the stage between Councilors Casilang and Melendez. Appellant Ismael Diaz was at the left side at the back of the stage. SPO1 Richard Dalioan, the security escort of Councilor Quinto, was also at the left side behind the stage, seated on a bench. Behind SPO1 Dalioan on the right was appellant Rodolfo Diaz. Ernesto Decano, a cousin of Councilor Quinto, was sitting on the left side of a fence about three meters from SPO1 Dalioan, while Arnel Quinto, the driver of Councilor Quinto, was about six meters away from the latter.

The program lasted until dawn of the following day, 15 April 1998. At around 3:00 a.m., the people were invited to dance. While the dancing was going on, firecrackers were exploded. Suddenly, appellant Ismael Diaz shot Councilor Quinto from behind with a .45 caliber pistol. Upon seeing that Councilor Quinto was shot, SPO2

Dalioan drew his gun and was about to fire. It was at this moment that appellant Rodolfo Diaz fired his M16 armalite rifle, hitting SPO1 Dalioan on different parts of his body. Thereafter, Ismael Diaz and Rodolfo Diaz fled towards Sitio Tococ.

Councilor Quinto died on the spot. Ernesto Decano and Arnel Quinto rushed SPO1 Dalioan to the Trauma Center Hospital, Lucao District, Dagupan City where he died an hour after. Ernesto Decano and Arnel Quinto informed Councilor Quinto's wife of what happened to her husband.

Dr. Benjamin Marcial O. Bautista, Rural Health Physician of the City Health Office, Dagupan City, conducted autopsy on the bodies of Councilor Quinto and SPO1 Dalioan. Councilor Quinto suffered a fatal gunshot wound above the left ear. The point of entry was 1 centimeter in diameter, left superior pinna, with lacerated wound and gunpowder tattooing, less dense through and through the temporal bone, at the level of the left superior pinna, gunpowder tattooing with abrasion collar, inverted edges, direction slightly upward, antero-lateral. The cause of his death was Hypovolemic Shock.[19] On the other hand, SPO1 Dalioan sustained multiple injuries and gunshot wounds on different parts of his body. The cause of his death was Hypovolemic Shock due to multiple gunshot wounds.[20]

Ernesto Decano testified that when the shooting happened, he saw Ismael Diaz at the back of the stage holding a .45 cal. pistol. He then saw SPO1 Dalioan, who was about to pull out a revolver, get shot many times by Rodolfo Diaz using an M16 armalite rifle.[21] Next, he saw the two flee towards Sitio Tococ.

Arnel Quinto disclosed that after seeing Ismael Diaz shoot Councilor Quinto, he then saw Rodolfo Diaz gun down SPO1 Dalioan with an armalite rifle. The two then took off to Sitio Tococ.

SPO1 Salvino Junio was the Desk Officer of the night shift at the Dagupan City Police Station when SPO2 Romeo Esquillo reported to him in the early morning of 15 April 1998 the shooting incident. He recorded the report in the Police Blotter as Entry No. 2075[22] under the date 15 April 1998. A team headed by Senior Police Inspector Nelson Vidal was dispatched to investigate the incident. SPO1 Junio recorded the result of the investigation in the Police Blotter under Entry No. 2076.[23]

SPO1 Pedro Urbano of the Dagupan City Police Station narrated, among others, how they surveyed the place where the incident happened and how the empty shells of a .45 cal pistol and M16 armalite rifle were recovered. He disclosed that he recovered five empty shells of a .45 caliber pistol, more or less, three and one-half (3½) meters away from the cadaver of Councilor Quinto. As to the empty shells of the armalite rifle, he found 15 of them beside Renato Cuison's house, which was situated six meters away from the back of the stage.

Rosa Dalioan, widow of SPO1 Dalioan, said her husband was 40 years old and was earning a monthly salary of P5,600.00.[24] Her husband's death was very painful, for he was the sole breadwinner of the family. Because of his death, their four children were farmed out to their relatives.

Consolacion Quinto, mother of Councilor Quinto, was at the crime scene when the incident happened. She was 2 to 2½ meters away from her son when the guns were fired. She tried to dive to the ground, but was not able to do so. She bent low towards the ground where she saw her son lying on the ground with plenty of blood on his head. She heard people shouting, "It was Maeng and Nanding who did it." She identified Maeng as Ismael Diaz and Nanding as Rodolfo Diaz, both of whom she personally knows.

Consolacion Quinto disclosed that his son, Elmer Quinto, was 47 years old when he died[25] and was a member of the City Council of Dagupan City, by virtue of his being the President of the Liga ng mga Barangay in Dagupan City, and was receiving a monthly salary of P18,749.00.[26] She added that Elmer had six children with his wife, and that his children were traumatized by the incident. Losing her son caused her sufferings. She said her

husband was likewise affected. As a result, he became very weak and sickly until he eventually died. Not only did she lose a son, she also lost her husband.

Dr. Ronald Bandonill, Medico Legal Officer, National Bureau of Investigation (NBI), testified that on 24 April 1998, he was directed by the officer-in-charge of the NBI, Dagupan City, to proceed to the NBI Dagupan District and to conduct an autopsy on the cadaver of Elmer Quinto. The autopsy was requested by Teresita Quinto, wife of Elmer Quinto.[27] He explained that Elmer Quinto suffered a fatal gunshot wound on the head, the point of entry of which was at the left side of the back of the head above the left ear, while the point of exit was at the right temple. He added that the trajectory of the bullet was from the back going forward and going upward. From the gunshot wound entrance, he estimated that the firearm used was either a .45 caliber or a 9 mm., and that the tip of the barrel of the gun was within six inches from the head of the victim. His findings were reduced into writing.[28]

SPO2 Ramon Valencerina, Warrant Officer of the Dagupan City Police Station, testified that he tried to serve warrants and alias warrants of arrest issued in the names of Ismael Diaz and Rodolfo Diaz, but the same were returned unserved, because the subjects thereof could not be found in their respective residences.[29]

PO3 Marlon Decano testified that his only participation in the arrest of Alfredo Diaz, the brother of the appellant Rodolfo Diaz, was to point to him because his co-police officers did not know him. Subsequently, Alfredo was invited for questioning.

SPO4 Onofre Madrid testified that on 2 June 2000, he was assigned as Chief Investigator at the Philippine National Police (PNP) Criminal Investigation and Detection Group (CIDG), Lingayen, Pangasinan. On said date, he was told by an informant that Ismael Diaz and Rodolfo Diaz were sighted at Barangay Barangobong, Villasis, Pangasinan. He relayed the information to Major Franklin Mabanag, his provincial officer. He then informed his companions via text messaging that they would conduct an operation to arrest Ismael Diaz and Rodolfo Diaz on the strength of the warrants of arrest issued by the trial court. Upon being informed that the group of Ismael Diaz was already leaving the barangay, he, together with one agent and the owner of a borrowed car, proceeded to the highway in Barangay Bacag in Villasis, Pangasinan where he met his other companions. Upon seeing the car bearing the accused, they gave chase. Upon reaching the intersection at Urdaneta Proper, SPO4 Madrid got down from the car and positioned himself at the back of the accused's car. The accused tried to escape, but their vehicle was stopped by the Urdaneta Police, which SPO4 Madrid had already alerted. Ismael Diaz and Rodolfo Diaz surrendered peacefully and were brought to the Urdaneta Police Station where they were fingerprinted, interviewed and photographed. Major Mabanag arrived and talked to the Police Chief of Urdaneta. Thereafter, the accused were brought to the Sacred Heart Hospital for medical check-up before being brought to the CIDG office in Lingayen, Pangasinan. He added that the accused were never manhandled and were not about to be salvaged. He had no knowledge of the accused's allegation that they (the police officers) had accused the Diazes of being carnappers. The medical certificates[30] issued by one Dr. Norberto Felix, Medical Director of the Sacred Heart Hospital, stated: "Injuries sustained - no physical injuries noted."

For the defense, the following took the witness stand: (1) Imelda Quinto,[31] (2) Josue de Vera,[32] (3) Ricardo Avelino,[33] (4) Rhodora Jose,[34] (5) Lolita Velasco,[35] (6) Ismael Diaz,[36] (7) Rodolfo Diaz,[37] (8) Santiago Marcella, Jr.,[38] and (9) Alfredo Diaz.[39] Their testimonies disclosed the defense's version of the incident.

Appellants Ismael Diaz and Rodolfo Diaz denied shooting Councilor Elmer Quinto and SPO1 Dalioan. They, however, admitted that they were present in the dance hall where the shooting happened. They were there as players of a softball team, which was to receive the runner-up trophy. They said their table was 20 to 25 meters

away from the table, where the guests who included Councilor Quinto sat. They alleged that when the shooting occurred, they saw the people in the dance hall stoop. They likewise crouched to prevent being hit. When the people began to run, they (appellants) stood up and heard the people say that somebody was shot. Appellants Ismael Diaz and Rodolfo Diaz then ran together with Imelda Quinto, Jayho Villanueva, Ricky Velasco and some others.

Ismael Diaz and Rodolfo Diaz did not return to the dance hall to know what really happened. They remained in their respective houses until armed men began to look for them on 17 or 18 April 1998. Ismael Diaz was brought to Project 6, Quezon City by his mother. On the other hand, Rodolfo Diaz, after being shot at and chased by four armed men, went to Bongabong, Nueva Ecija, the place of Guillermo Lictaoa, his brother-in-law, and stayed there for one month. They left because they were afraid that they might be killed by the armed men who were looking for them.

Ismael Diaz said he returned to Sitio Nibaliw, Lucao District, Dagupan City after a month to look after his fishpond. When armed men looked for him anew for the death of one Leopoldo Calulut, and his house was raided on 9 January 1999, he went to Baguio City to hide. After a few weeks, he returned again to take care of his fishpond. He even became the manager of a basketball team, which took part in a school sportsfest at Sitio Eskuelahan. This, he claimed, was known to Consolacion Quinto. Aside from these, he even became a sponsor in a wedding and in a baptism. He wanted to surrender to the police, but was afraid he might be killed because the policemen were the ones accusing him.

On the day he and Rodolfo Diaz were arrested at Urdaneta City, they were attending a baptismal and birthday party of one of their relatives. They were badly beaten by the police officers who arrested them, and they were even tagged as carnappers. They were forced to admit all the accusations being imputed to them.

Rodolfo Diaz, despite knowing that he was being held responsible for the deaths of Councilor Quinto and SPO1 Richard Dalioan, did not surrender to the authorities because he feared that he might be killed.

Imelda Quinto, a resident of Lucao District, Dagupan City testified that she was at the victory ball and was seated behind the table of the appellants. She was watching the people dance to the tune of "Dayang- Dayang" when she suddenly heard gunshots. She stooped because she did not want to be hit. She saw the appellants, who were on their seats, bend down to hide. When the people started to run, the appellants also ran and so did she. She said appellants could not have done the shooting because she did not notice them carrying any firearm, and they were still seated when she heard the gunshots.

Josue de Vera was a resident of Lucao District, Dagupan City and relative of both the appellants and Councilor Quinto. When the incident happened, he alleged that he was on the same table as that of the appellants. When the tune of "Dayang-Dayang" was played, he heard a firecracker-like sound and saw the people running and stooping. He and the appellants also stooped to avoid being hit. He denied the accusation against the appellants, explaining that they were still seated with him when the shooting happened.

Ricardo Avelino declared that he was at the victory ball when the killings took place. Upon his arrival there, Ismael Diaz escorted him to the presidential table, he being a candidate for city councilor. He revealed that he did not see the actual shooting of the victims, because he was sleeping on one of the tables. When he heard the gunshots, he stood up and looked for his wife and son. He saw Ismael Diaz who was 2½ meters away from him. He said Ismael Diaz did not shoot Councilor Quinto because Diaz was not holding a gun when he saw him, and that they were 15-20 meters from the place where Councilor Quinto was shot.

Lolita Velasco disclosed that she was the aunt of Ismael Diaz and cousin of Rodolfo Diaz. She testified that at

around midnight of 17 April 1998, four armed men went to her house looking for the appellants. The men searched her house and even poked a gun at her sleeping son. Not finding the appellants, the armed men left. She immediately left and informed Ismael Diaz of what happened. She advised her nephew to hide.

Rhodora Jose, a neighbor of Lolita Velasco, testified that at around midnight of 17 April 1998, four men armed with long firearms came to her house looking for appellants. One of the armed men searched her house. Since the appellants were not there, these men left, saying that they would kill the appellants if they saw them. She told her husband what happened and the latter told her to inform Florita Diaz, mother of Ismael Diaz, about what happened, which she did.

Santiago Marcella, 3[rd] Assistant City Prosecutor of Dagupan City, testified that he handled two cases for attempted homicide filed by Salvador Alabasco and Lanecita Arenas against appellants. The said cases were dismissed on account of the affidavits of desistance filed by said complainants.

Alfredo Diaz, a brother of Rodolfo Diaz, testified that he was at the victory ball when the shooting happened. He was at the gate watching when he heard a loud sound which he thought was a triangulo exploding. When he saw people running and heard someone shouting that somebody got shot, he also ran. Thereafter, he was arrested by the police officers, one of whom was Marlon Decano. Several hours later, he was released.

On 18 April 2001, the trial court promulgated its Joint Decision finding appellants guilty beyond reasonable doubt of two counts of Murder committed in conspiracy with one another. The dispositive portion of the decision states:

WHEREFORE, premises considered, both the accused ISMAEL DIAZ and RODOLFO DIAZ are hereby found guilty beyond reasonable doubt for having committed in conspiracy with one another two (2) counts of MURDER as defined by Article 248 of the Revised Penal Code and as penalized by RA 7659, and since neither aggravating nor mitigating circumstance was attendant to the commission of the offense, each accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA in each of the herein cases. Also in each of the two cases, both should jointly and severally indemnify the death of ELMER QUINTO and RICHARD DALIOAN each in the amount of P50,000.00. They should likewise pay jointly and severally the heirs of Elmer Quinto the amount of P2,474,736.00 as lost earnings which would have been received by his heirs as support had he been alive, P30,000.00 as moderate or temperate damages, and P25,000.00 as moral damages, as well as to the heirs of SPO1 Richard Dalioan the amount of P874,380.00 as lost earnings which would have been received by his heirs as support had the said victim been alive, P20,000.00 as moderate or temperate damages, and P25,000.00 as moral damages, and to pay the costs.[40]

The trial court gave credence to the testimonies of Ernesto Decano and Arnel Quinto, who pointed to the appellants as the assailants. It ruled that Ismael Diaz had a strong motive to kill Councilor Quinto, because the latter was the principal suspect in the killing of the former's father (Pablo Diaz) who was the political opponent of Consolacion Quinto. It likewise found the shooting of SPO1 Richard Dalioan connected with the shooting of Councilor Quinto. The almost simultaneous shooting of the two, the trial court said, was enough proof that the appellants conspired with each other.

On the other hand, the trial court was not convinced by the denial offered by the appellants. Not only did appellants admit they were present in the place where the incident took place, they were positively identified by eyewitnesses. The trial court did not find credible the defense witnesses (Josue de Vera, Imelda Quinto and Ricardo Avelino) who alleged that appellants were with them and were not holding any firearm when the victims were gunned down. It found that appellants had a motive to kill Councilor Quinto and considered their flight in arriving at its decision.

On 2 May 2001, appellants filed a Notice of Appeal informing the trial court that they were appealing the Joint

Decision to the Supreme Court.[41]

In its Order dated 3 May 2001, the trial court, finding the notice of appeal to have been filed in time, directed the records of the cases to be forwarded to the Supreme Court.[42] However, pursuant to our ruling in *People v. Mateo*,[43] the case was transferred to the Court of Appeals for appropriate action and disposition.[44]

On 5 June 2008, the Court of Appeals affirmed in toto the Joint Decision of the RTC.

On 19 June 2008, the appellants filed their notice of appeal.[45]

In a Resolution dated 19 June 2008, the Court of Appeals elevated the records of the case to the Supreme Court.[46] Thereafter, in our resolution dated 18 February 2009, this Court noted the elevation of the records of the case, accepted the appeal and required the parties to submit supplemental briefs, if they so desired, within 30 days from notice.[47] The parties opted not to file supplemental briefs on the ground that they had fully argued their positions in their respective briefs.[48]

Appellants make the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT, WHEN THEIR GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION'S EYEWITNESSES.

III

THE TRIAL COURT GRAVELY ERRED WHEN IT RULED THAT CONSPIRACY AND TREACHERY ATTENDED THE COMMISSION OF THE CRIME.[49]

It is appellants' contention that there was no proof that the prosecution witnesses saw the actual shooting. They argue that this is supported by the trial court's finding that Ernesto Decano could have seen Ismael Diaz when the latter was retreating backward. They add that Decano's testimony that he heard the gunshots and saw how Councilor Quinto was shot is doubtful considering that music was being played and firecrackers were being exploded and that he took cover behind the fence to hide. As to Arnel Quinto, appellants tried to discredit him by asking how he could have seen the actual shooting of the victims when he admittedly hid or took cover. Moreover, they maintain that it was unnatural for Arnel Quinto not to have warned Councilor Quinto when he saw appellants approaching and holding guns. With all these major inconsistencies, appellants assert that the conviction of the appellants was not justified.

After meticulously going over the testimonies of both Ernesto Decano and Arnel Quinto, we are convinced that appellant Ismael Diaz shot Councilor Elmer Quinto, while appellant Rodolfo Diaz shot SPO1 Richard Dalioan.

The testimony of Arnel Quinto, the driver of Councilor Quinto, clearly points to the appellants as the assailants. His testimony as to the actual shooting of the victims goes this way:

Q. Did anything unusual happen in the early morning of April 15, 1998 at Sitio Nibaliw, Lucao, Dagupan City?

A. Yes sir, there was.

Q. What was that unusual event that happened?

A. There was a shooting incident that took place, sir.

Q. Who was shot on that incident?

A. Councilor Quinto and SPO1 Dalioan, sir.

Q. Did you personally see who shot Kgd. Elmer Quinto and SPO1 Richard Dalioan?

A. Yes, sir.

Q. Who shot Kgd. Elmer Quinto?

A. A certain Maeng Diaz, sir.

x x x x

Q. Who shot SPO1 Dalioan?

A. It was Nanding Diaz, sir.

x x x x

Q. Please narrate to the Court the sequence of events that occurred during this shooting incident?

A. There was an announcement for the public for dance for all, sir.

Q. And after that announcement, what happened, Mr. Witness?

A. Firecrackers burst out, sir.

Q. And while the firecrackers were being burst, what happened, if any?

A. I heard gun burst shots, sir.

Q. What happened after you heard gun burst shots?

A. I saw Kgd. Elmer Quinto fell down, sir.

Q. Was Kgd. Elmer Quinto shot?

A. Yes, sir.

Q. Where was Councilor Quinto when he was shot?

A. He was in front of the stage a little left side, sir.

Q. Who shot Councilor Quinto?

A. It was Maeng Diaz, sir.

Q. Where was Maeng Diaz when he shot Councilor Elmer Quinto?

A. He was on the left side of the stage behind, sir.

x x x x

Q. After Councilor Elmer Quinto was shot, what happened, if any?

A. I saw SPO1 Dalioan who was also shot down, sir.

Q. Who shot SPO1 Dalioan?

A. It was Nanding Diaz, sir.

Q. What did Nanding Diaz use to shoot SPO1 Dalioan?

A. An armalite, sir.

Q. After Nanding Diaz shot SPO1 Dalioan, what happened next, if any?

A. Maeng and Nanding ran away towards Tocok, sir.[50]

Arnel Quinto's account of the incident was substantially corroborated by Ernesto Decano in this wise:

Q. Was there anything unusual happen in the early morning of April 15, 1998 at Sitio Nibaliw, Lucao, Dagupan City?

A. Yes, sir.

Q. What was this unusual event that happened?

A. Councilor Quinto and SPO1 Dalioan were shot and killed, sir.

x x x x

Q. Who shot Elmer Quinto?

A. Maeng Diaz, sir.

x x x x

Q. And who shot SPO1 Dalioan?

A. Nanding Diaz, sir.

x x x x

Q. Please relate to the Court the unusual event that occurred during the shooting incident?

A. Councilor Quinto was sitting in front of the makeshift stage, sir.

Q. And then what happened, Mr. Witness?

A. The public was told to dance and they play the song Dayang-Dayang, sir.

Q. While the song Dayang-Dayang was played what happened?

A. While the song Dayang-Dayang was played some firecrackers were being burst, sir.

Q. What happened when a firecracker was being burst, if any, Mr. Witness?

A. Then suddenly I heard some gunshots, sir.

Q. What happened after the firing of the gunshots?

A. I saw Maeng Diaz at the back of the stage holding a .45 caliber pistol, sir.

Q. What happened after that, if any?

A. SPO1 Dalioan was about to pull out the .22 revolver but he was shot many times by Nanding Diaz with M16 Armalite Rifle, sir.[51]

From the foregoing declarations, it is clear that after the people in the dance hall were invited to dance, the song

Dayang-Dayang was played and some firecrackers were exploded. It was at this moment that Ismael Diaz, using a .45 caliber pistol, shot Councilor Quinto from the back hitting him on the head. When SPO1 Dalioan was about to draw his weapon, Rodolfo Diaz shot him with an armalite rifle inflicting on him multiple gunshot wounds. As explained by the trial court, though the tables of appellants and Councilor Quinto were situated 20-25 meters away, it was not impossible for the appellants to have gone to the place where the victims were located by slipping under the bamboo strand of the fence surrounding the dance hall, and going to the stage from behind, towards the place where Councilor Quinto's table was located.

The statement of the trial court that "Ernesto Decano could not have seen him (Ismael Diaz) go near Elmer Quinto since everybody's attention was focused on the audience and he (Ernesto Decano) could have only seen him (Ismael Diaz) as the said accused was retreating backward from his target" does not mean that appellant Ismael Diaz was not the one who shot Councilor Quinto. The fact that Ernesto Decano saw Ismael Diaz holding a .45 caliber pistol, whether retreating or not, bolsters the declaration of Arnel Quinto that it was Ismael Diaz whom he saw shoot Councilor Quinto with a .45 caliber pistol.

Appellants' argument that both Ernesto Decano and Arnel Quinto could not have witnessed the shooting because they admitted that they hid or took cover during the shooting incident does not have a leg to stand on. Both witnesses emphatically stated that the shooting happened so fast that they were able to hide or take cover when the shooting had almost ended.

Arnel Quinto explained:

Q. Were you standing near the sound system during the shooting incident?

A. No, sir.

Q. What did you do?

A. I hid because I might be hit by the bullets, sir.

Q. Could you still see what happened from your position?

ATTY. CABRERA:

We would object to that, Your Honor, please, how could he see that? He has already hidden himself.

ATTY. JAVELLANA:

That is why we were asking him, your Honor.

COURT:

Q. How did you hide yourself?

A. Because before I hid, the shooting incident has almost ended, because as what I have said, the incident happened so fast, sir.

x x x x

COURT:

Q. You said that when the dance was going on you were looking from place to place watching Kgd. Elmer Quinto, is that correct?

A. Yes, sir.

Q. Why do you need to watch Kgd. Quinto?

A. Because I was then his driver, your Honor.

Q. But your duty as a driver was to drive him and not to watch him, is that correct?

A. I was watching over him, Your Honor, because of instances that he might be asking me to do something for him so that he can easily tell me through signal.

Q. So the court understands that you are watching him because there was possible harm that may occur to him, is that correct?

A. Yes, sir.

Q. Now, of course, when you go from one place to another within the premises of the dancing hall, you noticed the presence of Rodolfo Diaz and Maeng Diaz behind the stage?

A. Not yet, sir.

Q. What moment did you notice the presence of Ismael Diaz and Rodolfo Diaz in relation to the gun report?

A. During the gun burst, Your Honor.

Q. But you did not tell that you went somewhere else to hide yourself?

A. Your Honor, it was when the gun burst was about to end when I hid myself.[52]

Ernesto Decano made it clear that he saw what happened, thus:

Q. Now, from your position when you took cover, Mr. Witness, could you still see what was happening?

A. Yes, sir.

Q. Why?

A. The sight is almost finish[ed] when I was able to take cover because it is very fast, sir.[53]

Appellant further tries to discredit Arnel Quinto by claiming that it is highly unnatural for the latter not to have warned either Councilor Quinto or SPO1 Dalioan when he saw Ismael Diaz and Rodolfo Diaz holding firearms.

Arnel Quinto testified on how he acted under the situation in this manner:

Q. Will you tell us the reason why you did not call the attention of either Kgd. Elmer Quinto or SPO1 Dalioan despite the fact that you have seen these two accused already holding a firearm before the firing took place?

A. Because I was not aware of their intention, Your Honor.

Q. Did you not know that SPO1 Dalioan was there to secure the safety of Kgd. Elmer Quinto because of previous grudge with people?

A. I do not know, Your Honor.

REDIRECT EXAMINATION

BY ATTY.JAVELLANA

Q. You said that you saw Maeng Diaz and Nanding Diaz before the shooting incident, could you tell us how long before the shooting incident that you saw Maeng Diaz and Nanding Diaz?

A. About a minute, sir.

Q. Is that the reason why you were not able to inform SPO1 Dalioan and Councilor Quinto?

ATTY. CABRERA

Misleading, we object, Your Honor, please.

COURT

Q. Did you know that the family of Diazes and the family of Quintos were not exactly in good terms because of previous incident that happened between them?

A. I know, your Honor.

Q. And yet, you know that very well but you did not call the attention of either Police Officer Dalioan and your boss Elmer Quinto about the presence of Ismael Diaz and Rodolfo Diaz holding their respective firearms?

A. I was far from them, your Honor.

Q. You claim to be 6 meters away from them, you consider that too far?

A. Of course, I did not tell them anymore or get near them because if I have done it, I might be even one of those who were hit, Your Honor.[54]

We agree with the Court of Appeals when it said that the credibility of said witnesses was not affected because it is well-settled that different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response when one is confronted with a strange or startling or frightful experience. Witnessing a crime is an unusual experience which elicits different reactions from the witnesses and for which no clear-cut standard form of behavior can be drawn.[55] As Arnel Quinto explained, he failed to call the attention of Councilor Quinto or SPO1 Dalioan because he did not know the intention of the appellants, and the incident happened very quickly, giving him no opportunity to give any warning to the councilor and to his security escort. Moreover, he was scared that he might get hit if he called the victims' attention.

Having been positively identified by prosecution witnesses as the assailants, all that appellants can offer for their exoneration is the defense of denial. Appellants admitted that they were present in the dance hall where the victims were gunned down, but claimed that they were not the assailants.

To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit.[56] Greater weight is given to the categorical identification of the accused by the prosecution witnesses than to the accused's plain denial of participation in the commission of the crime.[57] In the instant case, appellants failed to adduce strong and credible evidence to overcome the testimonies of the prosecution's eyewitnesses. The testimonies of the defense witnesses (Josue de Vera, Imelda Quinto and Ricardo Avelino), who alleged that appellants were with them and were not holding firearms when the victims were gunned down, were not given credence by both the trial court and the Court of Appeals. These witnesses were not credible witnesses. Thus, denial, unsubstantiated by any credible evidence, deserves no weight in law.

When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[58]

It is to be noted that the Court of Appeals affirmed the findings of the RTC. In this regard, the settled rule is that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive

and binding upon this Court.[59] We find no compelling reason to deviate from their findings.

The Court has consistently adhered to the principle that proof of motive is not indispensable for a conviction, particularly where the accused is positively identified by an eyewitness, and his participation is adequately established. Motive assumes true significance only when there is no showing of who the perpetrator of a crime might have been.[60] In this case, not only were the appellants positively identified as the killers, it was shown that they had a motive to kill the victims. As shown by the evidence, appellants Ismael Diaz and Rodolfo Diaz are the son and cousin, respectively, of the late Pablo Diaz, the political opponent of Consolacion Quinto, who is the mother of Councilor Quinto. Councilor Quinto is suspected of having masterminded the killing of Pablo Diaz.

Appellants' flight is further evidence of their guilt. It is well-established that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn.[61] In the case before us, appellants were apprehended only on 2 June 2000, or almost two years after the informations were filed in court on 17 July 1998. We find their claim, that they did not resort to flight because they were not aware that warrants for their arrest were issued, to be untenable. As testified to by SPO2 Ramon Valencerina, he went to the respective residences of the appellants to serve the warrants[62] for their arrest, but they were not there. SPO1 Pepito Ventura, another Warrant Officer of the Dagupan City Police Station, tried to serve the duplicate copy of the warrants to no avail. We are likewise not persuaded by appellants' claim that they had remained in their barangay or had returned thereto for a considerable length of time. Such claim was belied by the declaration of Consolacion Quinto, mother of Councilor Quinto, that her people had been looking for the appellants in their barangay, and that it was impossible for her people not to find the appellants if they were indeed staying there.

Appellants assert that neither conspiracy nor treachery attended the killings.

We disagree. Both conspiracy and treachery were present in the commission of the killings.

We agree with the Court of Appeals when it said:

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

Although there is no direct proof of conspiracy, the same may still be deduced from the mode, method and manner by which the offense was perpetrated or it can be inferred from the acts of the appellants themselves when such acts point to a joint purpose and design, concerted action and community of interest.

In the present case, appellant Ismael Diaz was behind Councilor Quinto while appellant Rodolfo Diaz positioned himself behind SPO1 Dalioan, the security aide of Councilor Quinto. When Ismael Diaz shot Councilor Quinto, SPO1 Dalioan tried to pull out his gun but appellant Rodolfo Diaz shot him. Thereafter, the two escaped going to Sitio Tococ. Both appellants were apprehended only on June 2, 2000 inside a car on the road going to Dagupan in Urdaneta City.

The possession of arms by both appellants, their strategic positions before the incident and their simultaneous firing of guns ineluctably show their concerted action to kill Councilor Quinto, including the latter's aide. Their actions were so closely connected showing that they mutually aided one another in bringing about their criminal design.[63]

Both the trial court and the Court of Appeals correctly found the appellants guilty of two counts of murder in view of the presence of treachery. There is treachery when the means, methods, and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and such means, methods, and forms of execution were deliberately and consciously adopted by the accused without danger to his person.[64]

In the case under consideration, the attack was unexpected and swift. Appellants attacked from behind, catching both victims defenseless. Both victims had no opportunity to defend themselves, and the appellants were not exposed to any danger in view of the unexpected attack. It is likewise apparent that appellants consciously and deliberately adopted their mode of attack - the use of high-powered weapons like a .45 caliber pistol and an armalite rifle -- making sure that the victims would have no chance to defend themselves by reason of the surprise attack.

We now go to the penalties to be imposed on appellants.

Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659,[65] murder is punishable by reclusion perpetua to death. There being neither mitigating nor aggravating circumstance in the commission of the felony, appellants should, in each case, be sentenced to reclusion perpetua, conformably to Article 63(2) of the Revised Penal Code.

We now go to the award of 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.[66]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[67] The trial court properly awarded the amount of P50,000.00 to each of the heirs of the victims as civil indemnity. The amount of P75,000.00 as civil indemnity is awarded only if the crime is qualified by circumstances that warrant the imposition of the death penalty.[68]

As to actual damages, the heirs of the victims are not entitled thereto, because said damages were not duly proved with a reasonable degree of certainty.[69] However, the award of P25,000.00 in temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[70] 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.[71] Thus, the award of temperate damages to the heirs of Councilor Quinto is reduced to P25,000.00, while that granted to the heirs of SPO1 Dalioan is retained.

Anent moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[72] The trial court awarded P25,000.00 as moral damages in each case. The same must be increased to P50,000.00 to conform with current jurisprudence. [73]

Both lower courts did not award exemplary damages. The heirs of the victims are entitled to exemplary damages since the qualifying circumstance of treachery was firmly established.[74] Under Article 2230 of the Civil Code, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. The term aggravating circumstances as used therein is to be understood in its broad or generic sense, since the law does not specify otherwise.[75] Consistent with prevailing jurisprudence, we award the amount of P25,000.00 as exemplary damages to each of the heirs of the victims.[76]

The trial court awarded the amounts of P2,474,736.00 and P874,380.00 as lost earnings to the heirs of Councilor Quinto and SPO1 Dalioan, respectively.

The monthly income of Councilor Quinto was P18,749.00 or a gross annual income of P224,988.00. He was 47 years old at the time of his death. On the other hand, SPO1 Dalioan was 40 years old when he was killed and was earning P5,600.00 a month or a total of P67,200.00 gross annual income. The formula[77] for unearned income is as follows:

Life expectancy x [Gross Annual Income (G.A.I.) less Living expenses (50% G.A.I.)]

where life expectancy = $\frac{2}{3} \times (80 - \text{age of the deceased})$

The unearned income of Councilor Quinto is computed as follows:

$$\begin{aligned}\text{Unearned Income} &= \frac{2}{3} (80-47)(P224,988.00-P112,494.00) \\ &= \frac{2}{3} (33)(P112,494.00) \\ &= P2,474,868.00\end{aligned}$$

The unearned income of SPO1 Dalioan is computed as follows:

$$\begin{aligned}\text{Unearned Income} &= \frac{2}{3} (80-40)(P67,200.00-P33,600.00) \\ &= \frac{2}{3} (40)(P33,600.00) \\ &= P896,000.00\end{aligned}$$

The unearned income or lost income awarded to the heirs of Councilor Quinto and SPO1 Dalioan must respectively be increased to P2,474,868.00 and P896,000.00.

WHEREFORE, premises considered, the decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01606 dated 5 June 2008 is hereby **AFFIRMED** with the **MODIFICATION** that the award of temperate damages to the heirs of Councilor Quinto is reduced to P25,000.00; the award of moral damages to each of the heirs of the victims is increased to P50,000.00; the award of unearned income to the heirs of Councilor Quinto and SPO1 Dalioan is increased to P2,474,868.00 and P896,000.00, respectively. Exemplary damages in the amount of P25,000.00 are awarded to the heirs of each of the victims. Cost against the appellants.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Penned by Associate Justice Agustin S. Dizon with Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo, concurring; CA rollo, pp. 231-246.

[2] CA rollo, pp. 38-62.

[3] Id. at 11.

[4] Id. at 13.

[5] Records, Vol. 1, p. 56.

[6] Id. at 61.

[7] Id. at 65.

[8] TSN, 3 July 2000.

[9] TSN, 17 July 2000.

[10] TSN, 19 July 2000.

[11] TSN, 20 July 2000.

[12] TSN, 27 July 2000, 7 February 2001 (Rebuttal).

[13] TSN, 3 August 2000.

- [14] TSN, 8 August 2000.
- [15] TSN, 6 September 2000.
- [16] TSN, 11 October 2000.
- [17] TSN, 1 February 2001 (Rebuttal).
- [18] TSN, 7 February 2001 (Rebuttal).
- [19] Exh. F, Folder of Exhibits, p. 4.
- [20] Exh. G, id. at 6.
- [21] TSN, 19 July 2000, pp. 3-4.
- [22] Exh. A, Folder of Exhibits, p. 1.
- [23] Exh. B, id.
- [24] PNP Certification, Exh. U, id. at 29.
- [25] Birth Certificate, Exh. L, id. at 14.
- [26] Certificate issued by City Council Secretary, Exh. M, id. at 15.
- [27] Certificate of Identification and Consent for Autopsy, Exh. W, id. at 31.
- [28] Autopsy Report No. 98-08-P, Exh. Y, id. At 32.
- [29] The testimony of Police Inspector (P/Insp.) Franklin Moises Mabanag was dispensed with when the defense admitted that the trial court had been informed, per return of a subpoena, that the arrest of Ismael Diaz and Rodolfo Diaz had been effected. (TSN, 11 October 2000, pp. 8-9.)
- [30] Exhs. II and JJ, Folder of Exhibits, pp. 50-51.
- [31] TSN, 18 October 2000.
- [32] TSN, 25 October 2000.
- [33] TSN, 30 October 2000.
- [34] TSN, 7 November 2000.
- [35] Id.
- [36] TSN, 14-15 November 2000 and 6 December 2000.
- [37] TSN, 11 and 20 December 2000.
- [38] TSN, 12 January 2001.
- [39] TSN, 31 January 2001.
- [40] CA rollo, pp. 61-62.
- [41] Records, Vol. 1, p. 313.
- [42] Id. at 314.

- [43] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [44] CA rollo, p. 123.
- [45] Id. at 247.
- [46] Id. at 254.
- [47] Rollo, p. 24.
- [48] Id. at 26-32.
- [49] CA rollo, p. 138.
- [50] TSN, 20 July 2000, pp. 4-7.
- [51] TSN, 19 July 2000, pp. 3-4.
- [52] TSN, 20 July 2000, pp. 9-21.
- [53] TSN, 19 July 2000, p. 8.
- [54] TSN, 20 July 2000, pp. 22-24.
- [55] *People v. Baniega*, 427 Phil. 405, 415 (2002).
- [56] *Belonghilot v. Hon. Angeles*, 450 Phil. 265, 293 (2003).
- [57] *People v. Baccay*, 348 Phil. 322, 327-328 (1998).
- [58] *People v. Escutor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.
- [59] *People v. Tolentino*, G.R. No. 176385, 26 February 2008, 546 SCRA 671, 689.
- [60] *People v. Lozada*, 390 Phil. 93, 114 (2000).
- [61] *People v. Castillo*, G.R. No. 172695, 29 June 2007, 526 SCRA 215, 224.
- [62] Exh. BB-1, Folder of Exhibits, p. 39.
- [63] Rollo, pp. 16-17.
- [64] *People v. Ave*, 439 Phil. 829, 853 (2002).
- [65] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for That Purpose the Revised Penal Code, as amended, Other Special Laws, and for Other Purposes. Took effect on 31 December 1993.
- [66] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 740.
- [67] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.
- [68] *People v. Barcena*, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 561.
- [69] *People v. Tubongbanua*, supra note 67.
- [70] *People v. Dacillo*, 471 Phil. 497, 510 (2004).
- [71] *People v. Surongon*, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.
- [72] *People v. Bajar*, 460 Phil. 683, 700 (2003).

[73] People v. Dela Cruz, G.R. No. 171272, 7 June 2007, 523 SCRA 433, 453.

[74] People v. Beltran, Jr., supra note 66.

[75] People v. Abolidor, 467 Phil. 709, 721 (2004).

[76] People v. Daleba, Jr., G.R. No. 168100, 20 November 2007, 537 SCRA 708, 713.

[77] People v. Jabiniao, Jr., G.R. No. 179499, 30 April 2008, 553 SCRA 769, 787.

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