

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BARANGAY CAPTAIN TONY TOMAS, SR., BENEDICTO DOCTOR, AND NESTOR GATCHALIAN, ACCUSED-APPELLANTS.

G.R. No. 192251. February 16, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

Before Us is an appeal from the Decision[1] dated August 12, 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03405, which affirmed with modification the Decision[2] dated May 27, 2008 in Criminal Case No. 06-92 of the Regional Trial Court (RTC), Branch 68 in Camiling, Tarlac. The RTC found accused Tony Tomas, Sr. (Tomas, Sr.), Benedicto Doctor (Doctor), and Nestor Gatchalian (Gatchalian) guilty beyond reasonable doubt of Murder.

The Facts

In an Information[3] filed on July 21, 2006, the three accused were indicted for the crime of murder under Article 248 of the Revised Penal Code (RPC), allegedly committed as follows:

That on or about July 19, 2006, at around 10:00 o'clock in the evening, Municipality of Mayantoc, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with treachery and evident premeditation, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and shot several times one Estrella Doctor Casco which [caused] her instantaneous death.

Upon arraignment on September 14, 2006, the three accused pleaded not guilty to the above charge.[4] Trial[5] on the merits ensued after the pre-trial conference.

Version of the Prosecution

Estrella Doctor Casco (Estrella) was based in the United States, working there as a procurement specialist with Safeway, Inc. and as a planner. She arrived in the Philippines on July 9, 2006 or about 10 days before her untimely demise.

At around 9:45 in the evening on July 19, 2006, the victim (Estrella), with her mother Damiana Doctor (Damiana) and caretakers Liezl Toledo (Liezl) and Angelita Duque (Angelita), were traversing the road towards her house in Barangay Baybayaos, Mayantoc, Tarlac after she had parked her rented car at the house of Liezl's mother-in-law, Erlinda Toledo. They had just come from the clinic of Dr. Salvador for a medical check-up of Damiana.

Estrella was walking slightly ahead of her mother and Angelita when appellants Tomas, Sr., Doctor and Gatchalian suddenly came out from the side of the road. Tomas, Sr. and Doctor are cousins of Estrella. Thereupon, without saying anything, Tomas, Sr. drew a gun and shot Estrella twice at a distance of about 1.5

meters away. Gatchalian, without a gun, allegedly supported Tomas, Sr. by standing in a blocking position along the road, while Doctor positioned himself at the back of Damiana and Angelita and poked a handgun at them, telling them to lie face down on the ground, though they did not totally drop on the road but were in a kneeling position.

When Tomas, Sr. fired the first two shots at Estrella, the latter fell down but the former still followed it with three more shots when she was already prone on the ground. After the five shots, the three accused fled towards the house of Tomas, Sr. Liezl, who was standing about four meters away from Estrella, shouted, "Saklulu, tulungan ninyo kami (Help, help us)," then ran to her house. Meanwhile, Angelita came to the aid of 80-year-old Damiana, who suffered a hypertensive attack after seeing what happened to her daughter. Angelita waved her hand to seek assistance from Barangay Kagawad Yolanda Pablo (Kagawad Pablo) who came out on the road.

Both Liezl and Angelita recognized the three accused from the light coming from the lamppost. The road was well lit. Doctor's house was barely seven (7) meters from the scene of the crime, that of Tomas, Sr. about 15 meters away, while Gatchalian was staying in a hut in the fields.

The people in the neighborhood heard the gunshots, and most of them came out of their houses to see what happened. Kagawad Pablo was watching TV in her house when she heard the gunshots and immediately went out to investigate. She saw three persons on the road: Damiana who was seated, Angelita who was squatting and holding a fan, and a person lying on the ground who was Estrella, already shot. She responded to Angelita's call for help to take Estrella to the district hospital. Rosalinda Areniego (Rosalinda), first cousin of Estrella, was with her child, Ryan, in her house watching the TV program "Sa Piling Mo" with actress Judy Ann Santos between 9:30 to 10:00 p.m. when she heard the gunshots. Her house was 10 to 15 meters away from the road.

Liezl contacted Estrella's cousin, Captain Joel Candelario (Capt. Candelario), the Chief of Police of the Philippine National Police (PNP) detachment at Sta. Ignacia, Tarlac, who, in turn, contacted the police in Mayantoc, Tarlac. A half-hour later, Capt. Candelario arrived at the scene and, using a rented car, brought Estrella to the Malacampa District Hospital in Camiling, Tarlac accompanied by Liezl, Domingo Toledo (Liezl's husband), Neri Corpuz (Liezl's first cousin) and Kagawad Pablo. Estrella was declared dead on arrival by the attending doctors. Estrella was 56 years old when she died.

Thereafter, Police Inspector Eleno Mangrobang (P/Insp. Mangrobang), the Chief of Police of Mayantoc, Tarlac arrived in the district hospital and asked questions from Liezl and Angelita. They were then brought to the police station for investigation where Liezl executed her Sinumpaang Salaysay (Sworn Statement).[6] Angelita likewise accomplished her Sinumpaang Salaysay.[7] Both Liezl and Angelita categorically identified the three accused as the ones who perpetrated the crime.

The autopsy conducted by Dr. Saturnino Ferrer (Dr. Ferrer) a day after the shooting, or on July 20, 2006, showed four (4) gunshot wounds, one of them perforating the heart of Estrella. Dr. Ferrer issued the death certificate, citing the cause of death as "MULTIPLE GUNSHOT WOUNDS, LACERATIONS OF THE UPPER PORTION OF THE HEART, MULTIPLE RIB FRACTURES, HEMOPERICARDIUM, LEFT HEMOTHORAX; SEVERE EXTERNAL AND INTERNAL HEMORRHAGE." [8]

On the same day, July 20, 2006, Tomas, Sr. and Doctor were arrested in their respective homes, while Gatchalian was arrested in the woodland (kahuyan). The three were subjected to paraffin tests shortly after the policemen took them in custody and were found negative for gunpowder burns.

Liezl opined that what probably prompted the three accused to murder Estrella were the facts that: (1) Tomas, Sr. was removed as administrator of Estrella's properties in Barangay Baybayaos, Mayantoc, Tarlac; (2) Tomas, Sr.

lost several cases against Estrella's father, Cecilio Doctor (Cecilio); (3) Tomas, Sr. accused Estrella of instigating and financing several cases filed against him; and (4) Cecilio filed a case against Alejandro Doctor, the father of accused Doctor, involving an easement of a property. These apparent motives were corroborated by Angelita.

Version of the Defense

The accused denied involvement in the incident.

Tomas, Sr. averred that he was at home sleeping when the incident happened. Since he suffered a cardiac arrest in December 1988, he had regular attacks and, on that day, feeling bad, he slept early at around 7:00 p.m. in a bed in the living room in front of the television and woke up at 4:00 a.m. the next day. He was not awakened by the gunshots the previous night and it was his wife who told him about Estrella's death from the shooting. In the morning of July 20, 2006, as barangay captain, he confirmed Estrella's death in front of Doctor's house from his neighbors. His investigation did not identify the persons responsible for the crime.

On the other hand, Doctor, the brother-in-law of Tomas, Sr. and a cousin of Estrella, likewise denied any involvement in the incident. He asserted that after working in the field the whole day of July 19, 2006, he went home at 4:00 p.m. At around 9:00 p.m. he went to sleep. At 10:00 p.m. he awoke to urinate and was told by his wife that his cousin Estrella met an accident. He was prevailed upon by his wife not to go out of the house. He then went back to sleep and woke up at 5:00 a.m. the next day.

Gatchalian admitted that he was a farm helper of Tomas, Sr. and worked in the latter's rice field. On the night of the incident, he claimed he was at home asleep with his 10-year-old son Jayson. He woke up the next day at 5:00 a.m. and proceeded to work in the farm of Tomas, Sr.

On July 20, 2006, P/Insp. Mangrobang invited the accused to the Mayantoc police station for investigation but instead immediately brought them inside the municipal jail. An hour later, policemen brought them to Camp Macabulos for paraffin tests. Thereafter, they were returned to jail.

The Ruling of the RTC

On May 27, 2008, the RTC rendered its Decision finding the accused guilty beyond reasonable doubt of murder and sentencing them to reclusion perpetua. The dispositive portion reads:

WHEREFORE, premises considered, this Court finds accused Tony Tomas, Sr., Benedicto Doctor and Nestor Gatchalian guilty beyond reasonable doubt of the offense of Murder and hereby sentences each of them to suffer the penalty of Reclusion Perpetua.

Likewise, all of the said accused are hereby ordered to pay jointly the heirs of the victim, the following:

- 1]. The amount of Php50,000.00 as civil indemnity;
- 2]. The amount of Php50,000.00 as moral damages;
- 3]. The amount of Php30,000.00 as exemplary damages;
- 4]. The amount of Php285,416.33 and another amount of \$2,182.78 US dollars or its equivalent in Philippine pesos at the time of its payment as actual damages; and
5. The amount of \$368,000.00 US dollars or its equivalent in Philippine pesos at the time of its payment for loss of income of the victim.

SO ORDERED.

The RTC appreciated the testimonies of prosecution witnesses Liezl and Angelita (caretakers of Estrella), Avelino Casco (husband of Estrella), Dr. Ferrer (the doctor who conducted the autopsy), and P/Insp. Mangrobang. It gave credence to the positive identification by Liezl and Angelita of the accused as the perpetrators. The RTC held as

sufficient the positive identification, coupled with sufficient motive, on the part of Tomas, Sr. and Doctor and other circumstantial evidence proving the accused as the perpetrators of the murder of Estrella. The RTC appreciated treachery in the swiftness and unexpectedness of the attack upon the unarmed Estrella without the slightest provocation, and the attendance of conspiracy through the accused's contributory acts to successfully carry out the crime. Thus, the trial court's finding beyond reasonable doubt of the accused's guilt to the offense of murder and the corresponding sentence of reclusion perpetua without eligibility of parole in lieu of the death penalty.

The RTC found the accused's similar defenses of denial and alibi bereft of merit. It ratiocinated that these defenses were but mere denial and self-serving statements of the accused without any shred of supporting evidence. The additional defense testimonies of Milagros Reguine (Milagros), Rosalinda, Kagawad Pablo, Police Superintendent Daisy P. Babor (P/Supt. Babor), Rosendo Toledo (Rosendo), Police Officer 3 (PO3) Luciano Captan, and PO1 Celso Isidro did not disprove the evidence of the prosecution, much less proved the accused's innocence. The trial court found incredulous the defense testimonies of Rosalinda, Milagros and Rosendo to the effect that the assailants were two young men, with the gunman sporting a flat-top haircut while his companion had long hair. The RTC ratiocinated that it would not have been easy for defense witnesses to identify the assailants due to the speed of the incident, their distance from the crime scene, and the fact that, at the start of the shooting, Rosalinda and Milagros were watching television in their respective homes while Rosendo was busy drinking with his buddies. Thus, between the testimonies of Liezl and Angelita who were with the victim and those of Rosalinda, Milagros and Rosendo, the RTC found the testimonies of the former more credible.

Anent the negative paraffin tests on appellants, the RTC relied on *Maturillas v. People*,^[9] where the Court reiterated its consistent ruling that a negative paraffin test conducted on an accused does not ipso facto prove said accused is innocent, for a negative paraffin test result is not conclusive proof that a person has not fired a gun.

Aggrieved, the accused appealed^[10] their conviction to the CA.

The Ruling of the CA

On August 12, 2009, the appellate court rendered its Decision, affirming the findings of the RTC and the conviction of the accused but modifying the award of actual damages to PhP 385,416.33 from PhP 285,416.33 to correctly reflect what was proved during trial. The fallo reads:

WHEREFORE, premises considered, the Decision of the RTC of Camiling, Tarlac, Branch 68, dated May 27, 2008 in Criminal Case No. 06-92 is hereby AFFIRMED with MODIFICATION, awarding the total of P385,416.33 as and by way of actual damages in addition to the US\$2,182.78 or its equivalent in Philippine pesos previously awarded. The rest of the Decision stands.

SO ORDERED.

The CA found that the testimony of the prosecution witnesses and their positive identification of the accused as perpetrators of the killing of Estrella were more credible than the denial and self-serving averments by the defense witnesses, which were unsubstantiated. Reiterating the RTC's ruling that a negative paraffin test result is not conclusive of the accused's innocence, the appellate court also found the presence of treachery and conspiracy in the manner the accused carried out the nefarious deed.

The Issues

Thus, the instant appeal, where both accused-appellants and the Office of the Solicitor General, representing the People of the Philippines, opted not to file any supplemental brief, since no new issues are raised nor any supervening events transpired, and correspondingly filed their respective Manifestations^[11] to the effect that the

Brief for the Accused-Appellants,[12] accused-appellants' Motion for Reconsideration,[13] and the Brief for the Appellee[14] filed in CA-G.R. CR-H.C. No. 03405 be used in resolving the instant appeal.

Thus, accused-appellants raise the same assignments of errors earlier passed over and resolved by the CA, to wit: first, that the testimonies of prosecution witnesses Liezl and Angelita were incredible and repugnant to human experience and behavior; second, the RTC erred in disregarding their negative paraffin test results and their defense of denial and alibi; third, there was no conspiracy; and fourth, there was no treachery. Elsewise put, accused-appellants question the credibility of the prosecution witnesses and raise the issue of insufficiency of evidence to convict them, much less the presence of treachery and conspiracy.

The Court's Ruling

The appeal is partly meritorious.

First Issue: Credibility of Prosecution Witnesses

Accused-appellants assert that prosecution witnesses Liezl and Angelita are not credible witnesses on the grounds of their partiality since they rely on the family of Estrella for their livelihood. They argue that the testimonies of Liezl and Angelita are too perfect since appellants could not have committed the crime in such a well-lit place where they could easily be identified, coupled with the fact that Liezl, Angelita and Damiana were spared from harm. They infer that the testimonies of Liezl and Angelita were fabricated. They also point to the reason that the adverse testimony of Liezl is on account of her ill feelings towards Doctor who previously subjected her to shame when he slapped her in public, and also to ingratiate herself to her employer, Cecilio, Estrella's father, who was charged by Tomas, Sr. in a case.

To cast more doubt on their testimonies, accused-appellants point to the incongruity of both Liezl and Angelita not identifying them as the perpetrators of Estrella's killing immediately after the incident when they had ample opportunity to do so. In the case of Angelita, she only mentioned Tomas, Sr. to Cecilio and did not include Doctor and Gatchalian. And much worse in the case of Liezl, who rushed home looking for her cellular phone, and did not even bother to reveal accused-appellants' identities to the responding policemen.

We disagree.

At the outset, We reiterate the consistent principle the Court applies when the issue of credibility of witnesses is raised in the backdrop of the findings of the trial court which are wholly affirmed by the appellate court. An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect.[15] Indeed, it is settled that when credibility is in issue, the Court generally defers to the findings of the trial court considering that it was in a better position to decide the question, having heard the witnesses themselves, and observed their deportment during trial.[16]

Evidence to be believed must not only proceed from the mouth of a credible witness but must be credible in itself.[17] The trial court found more credible the testimony of prosecution witnesses Liezl and Angelita, who narrated in a straightforward and candid manner what transpired that fateful night of July 19, 2006. One with the appellate court, We find no reason to set aside their testimonies.

The grounds of partiality and ill motive raised by accused-appellants cannot discredit the testimonies of the prosecution witnesses. For one, as the appellate court aptly noted, close relationship to the victim does not make a witness biased per se.[18] It has to be amply shown that the witness is truly biased and has fabricated the testimony on account of such bias. Accused-appellants have not sufficiently shown such a bias. The fact that Liezl and Angelita depend on the victim's family for their job as caretakers does not make them biased witnesses.

Besides, their testimonies have not been shown to be fabricated. The trial court that had scrutinized their deportment, facial expression, and body language during the trial has found them more credible. For another, the ill motive raised by accused-appellants has not been shown to affect the testimony of Liezl to suit her alleged personal ill feelings against Doctor. If it were so and the content of her testimony was fabricated, why did Liezl not make Doctor as the gunman who shot Estrella? And why include Gatchalian and Tomas, Sr.?

But more telling of the veracity of the testimony of these prosecution witnesses are the following facts: (1) Angelita has not been shown to have any ill motive against accused-appellants; (2) during the time immediately after the shooting incident when Liezl ran to her house and Angelita brought Damiana home, Angelita was queried by Cecilio about who shot Estrella, and Angelita replied without hesitation that it was Tomas, Sr. who shot Estrella;^[19] (3) when Angelita mentioned Tomas, Sr. to Cecilio as the gunman, she had not conferred with Liezl; thus, they could not have made it up that Tomas, Sr. was the gunman; (4) while it is true that Angelita did not mention the names of Doctor and Gatchalian, such does not denigrate from the fact that it was indeed Tomas, Sr. whom Angelita saw shooting Estrella with a handgun; (5) Angelita sufficiently showed by her testimony that she was busy attending to Damiana who had a hypertensive attack and the house was in chaos because of the incident and, thus, was not able to enlighten Cecilio more about the incident; and (6) the fact that both Liezl and Angelita made their official statements (*sinumpaang salaysay*) a few hours after the incident during the investigation conducted by P/Insp. Mangrobang initially at the district hospital and later at the police station shows that their account of what happened was not fabricated and they positively identified accused-appellants as the perpetrators.

Consequently, the testimonies of Angelita and Liezl were neither fabricated nor prompted by any ill motive but were truly eyewitness accounts of what transpired that fateful night of July 19, 2006.

Second Issue: Negative Paraffin Test and Defenses of Denial and Alibi

Accused-appellants also allege error by the trial court in disregarding their negative paraffin test results coupled with their defenses of denial and alibi which, they strongly asserted, were corroborated by credible witnesses Rosalinda and Rosendo who do not appear to harbor any ill motive against the victim and her family. The testimonies of Rosalinda and Rosendo, according to accused-appellants, attest to the fact that the assailants were two young men. Moreover, they contend that their act of not fleeing is a circumstance that should favorably be considered.

We are likewise not persuaded.

Negative paraffin test not conclusive

Accused-appellants were subjected to paraffin tests on July 20, 2006 at 11:05 a.m. or the very next day and a little over 14 hours after the shooting incident. Since gunpowder nitrates stay for 72 hours in the hands of a person who fired a handgun, a timely paraffin test, if positive, will definitely prove that a person had fired a handgun within that time frame. A negative result, however, does not merit conclusive proof that a person had not fired a handgun. Thus, the negative paraffin test results of accused-appellants cannot exculpate them, particularly Tomas, Sr., from the crime.

Time and again this Court had reiterated that "even negative findings of the paraffin test do not conclusively show that a person did not fire a gun,"^[20] and that "a paraffin test has been held to be highly unreliable."^[21] This is so since there are many ways, either deliberately or accidentally, that the residue of gunpowder nitrates in the hands of a person who fired a handgun can be removed. This point was aptly explained and clarified by defense witness

P/Supt. Babor, a Forensic Chemist and the Regional Chief of the PNP Crime Laboratory at Camp Olivas in San Fernando, Pampanga. She explained in open court the various factors affecting the non-adhesion, disappearance or removal of the residue of gunpowder nitrates on the hands of a person who fires a gun, like the wind direction and velocity when the handgun was fired, the type of firearm used, the humidity or moisture present in the ammunition, and when the person wears gloves to preclude adhesion of the gunpowder nitrates.[22] Also, she explained that opening the pores of the skin will make the nitrates slough off or disappear and this could be done by subjecting the hands to heat, like steam from boiling water, or sufficiently washing the hands with warm water. Finally, gunpowder nitrates are also dissolved by diphenylamine.[23]

Positive Identification

As adverted to above, the credibility of prosecution witnesses Liezl and Angelita has not been successfully assailed by accused-appellants. Besides, in Our assiduous review of the records of the instant case, We cannot weigh and view the evidence in the same light as accused-appellants. It is axiomatic that positive identification by the prosecution witnesses of the accused as perpetrators of the crime is entitled to greater weight than their alibis and denials.[24]

Thus, Angelita testified as to what happened and positively identified accused-appellants and their specific actions:

ATTY. DE GUZMAN:

While walking towards the house of Mrs. Casco at about past 9 o'clock of July 19, 2006, do you recall of any unusual incident that transpired?

ANGELITA DUQUE:

Yes, sir.

Q:

What was that?

A:

Brgy. Captain Tony Tomas, Benedicto Doctor, and Nestor Gatchalian suddenly emerged and accosted us while we were going to the house of Mrs. Casco, sir.

Q:

In particular, what did Brgy. Captain Tomas do?

A:

He suddenly hold a gun and shot Mrs. Casco, sir.

Q:

How many times did Brgy. Captain Tony Tomas shoot Mrs. Casco?

A:

First, he fired two (2) gunshots to Mrs. Casco and Mrs. Casco fell on the ground and it was followed by another three (3) shots, sir.

Q:

While Brgy. Captain Tony Tomas was shooting at Mrs. Casco, what was Benedicto Doctor doing?

A:

Before Brgy. Captain Tony Tomas fired shots, Benedicto Doctor was already positioned at our back poking the gun to us, sir.

Q:

How about Nestor Gatchalian, what was he doing at the time Brgy. Captain Tony Tomas was shooting Mrs. Casco?

A:

Nestor Gatchalian was standing at the middle of the road supporting Brgy. Captain Tomas, sir.[25]

On the other hand, Liezl likewise testified as to how the shooting transpired:

ATTY. DE GUZMAN:

While you were walking, do you recall of any unusual or extra ordinary occurrence that took place at that time?

LIEZL TODLEDO:

Yes, sir.

Q:

What was that?

A:

Tony [Tomas, Sr.], Benedicto Doctor and Nestor Gatchalian suddenly came out, sir.

Q:

What did Tony [Tomas, Sr.] do if any?

A:

He suddenly drew a handgun and shot Mrs. Casco, sir.

Q:

How many times did Tony [Tomas, Sr.] shoot Estrella Casco?

A:

At first, he fired two (2) shots sir, and followed it with three (3) more shots.

Q:

What happened to Mrs. Casco after the first two (2) shots?

A:

She fell down, sir.

Q:

What did you do, if any?

A:

I was standing, sir. And I heard another three (3) shots.

Q:

At the time you heard the three (3) shots, what did you do if any?

A:

When I saw the body of Mrs. Casco jerked, I shouted and ran away, sir.

Q:

You said, you shouted. What were the words you shouted?

A:

"Saklulu, tulungan ninyo kami", while running, sir.

Q:

Where did you run?

A:

Going to our house, sir.[26]

It must be pointed out that prosecution witnesses Liezl and Angelita knew accused-appellants well since they were neighbors. Thus, they have attained a high level of familiarity with each other.

Once a person gains familiarity with another, identification becomes an easy task even from a considerable distance. Most often, the face and body movements of the assailants create a lasting impression on the victim and eyewitness' minds which cannot be easily erased from their memory.[27] Their positive identification of accused-appellants as the perpetrators of the crime charged was categorical and consistent; hence, We cannot cast any doubt on their credibility as prosecution witnesses.[28] As aptly pointed out by the CA:

With regard to the purported identification made by defense witnesses ROSALINDA ARENIEGO and ROSENDO TEODORO of the alleged culprits different from the accused-appellants, the Court notes with approval the RTC's observation that between the testimonies of eyewitnesses LIEZL and ANGELITA, and that of defense witnesses ROSALINDA and ROSENDO, the former's declarations were more credible, as they were in fact walking together with the victim when she was shot, while ROSALINDA and ROSENDO were supposedly about fifteen (15) meters away from the crime scene.[29]

Besides, denial and alibi are inherently weak defenses and constitute self-serving negative evidence that cannot be accorded greater evidentiary weight than the positive declaration of credible witnesses.[30]

Third and Fourth Issues: Appreciation of Treachery and Presence of Conspiracy

We tackle the last two issues together for being related and intertwined, dealing as they were on how the crime of murder was perpetrated.

Accused-appellants strongly maintain the absence of the qualifying circumstance of treachery--qualifying the killing of Estrella to murder; and the lack of conspiracy--penalizing them equally for the crime of murder. They

strongly assert the lack of treachery since their simultaneous and sudden appearance could not amount to it, for Tomas, Sr. still had to draw his gun before shooting Estrella, and Doctor still had to position himself behind Damiana and Angelita before ordering them to drop or lie face down on the ground. Evidently, the victim Estrella had ample opportunity to dodge or defend herself.

And finally, accused-appellants point to the dearth of evidence showing their concerted acts in pursuing a common design to kill Estrella. Prosecution witnesses Liezl and Angelita point to Tomas, Sr. as the one who fired a handgun; Doctor was purportedly carrying one but did not use it, while Gatchalian did not carry one. They aver that the prosecution failed to show evidence of their intentional participation in the crime with a common design and purpose since Doctor's act of holding a gun was never shown to be in furtherance of the killing of Estrella. And much less can Gatchalian's act of merely standing on the road in the path of the four ladies ever constitute furtherance of the common purpose of killing Estrella.

Accused-appellants' arguments are partly meritorious.

After a judicious study of the records at hand, We are compelled to affirm the presence of the qualifying circumstance of treachery and of conspiracy. However, the evidence adduced and the records do not support a finding of conspiracy against appellant Gatchalian.

Treachery duly proven

A qualifying circumstance like treachery changes the nature of the crime and increases the imposable penalties for the offense.[31] Murder is defined and penalized under Art. 248 of the RPC, as amended, which provides:

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 circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis supplied.)

Thus, for the charge of murder to prosper, the prosecution must prove that: (1) the offender killed the victim, (2) through treachery, or by any of the other five qualifying circumstances, duly alleged in the Information. Generally, the elements of murder are:

- That a person was killed.
- That the accused killed him.
- That the killing was attended by any of the qualifying circumstances mentioned in Art. 248.

- The killing is not parricide or infanticide.[32]

In the instant case, there is no dispute that Estrella was shot to death--she succumbed to four gunshot wounds, one of which perforated her heart--and it is neither parricide nor infanticide. That Tomas, Sr. killed the victim in a treacherous manner was established by the prosecution during the trial.

There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make.[33] Mere suddenness of the attack does not amount to treachery.[34] The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[35] Thus, frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed.[36]

For alevosia to qualify the crime to murder, it must be shown that: (1) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (2) the said means, method and manner of execution were deliberately adopted.[37] Moreover, for treachery to be appreciated, it must be present and seen by the witness right at the inception of the attack.[38]

Consequently, the issue of the presence of treachery hinges on the account of eyewitnesses Liezl and Angelita, who witnessed everything from the inception of the attack until accused-appellants fled from the crime scene. Both were not only certain and unwavering in their positive identification of accused-appellants, but their testimony, as aptly noted by the courts a quo, were also factual, straightforward and convincing on how the murder transpired.

To reiterate, as quoted above, while the party of Estrella was walking, accused-appellants suddenly appeared from the side of the road. Without uttering any word, Tomas, Sr. drew his gun and shot Estrella twice, while Doctor simultaneously poked a gun at Angelita and Damiana. And when Estrella already fell down, Tomas, Sr. shot her thrice more--perhaps to ensure her death. Then accused-appellants fled. It is, thus, clear that the shooting of Estrella by Tomas, Sr. was done with treachery. The nefarious act was done in a few moments, it was unexpected as it was sudden. The act of Doctor in immobilizing Angelita and Damiana in those brief moments afforded and ensured accused-appellants' impunity from the unarmed Estrella and her three similarly unarmed companions.

Conspiracy duly proven

While We likewise affirm the presence of conspiracy, as adverted above, We cannot agree to the finding of the trial court as affirmed by the appellate court that Gatchalian is equally guilty on account of conspiracy to merit the same criminal liability as accused-appellants Tomas, Sr. and Doctor.

Findings of facts are matters best left to the trial court. However, where the "trial court overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result,"[39] then this Court will not shirk from its duty of ascertaining the proper outcome of such reversible error committed by the trial court.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. It may be proved by direct or circumstantial evidence consisting of acts, words or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose.[40] Conspiracy requires the same degree of proof required to establish the crime--proof beyond reasonable doubt;[41] as mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy.[42]

In the instant case, the ascertained facts of the shooting to death of Estrella with treachery established beyond

reasonable doubt the commission of the crime of murder. Tomas, Sr.'s guilt has been proved beyond reasonable doubt. To be equally guilty for murder, it must be shown that Doctor and Gatchalian conspired with Tomas, Sr., for in a conspiracy, every act of one of the conspirators in furtherance of a common design or purpose of such a conspiracy is the act of all.[43] From the clear testimony of Angelita and Liezl, it has been duly established that Doctor's contemporaneous act was made in furtherance of the common purpose of killing Estrella and ensuring impunity from the act. Indeed, Doctor's cooperation in the shooting of Estrella ensured its accomplishment and their successful escape from the crime scene. Doctor is, thus, equally guilty and liable for the murder of Estrella on account of conspiracy.

Gatchalian guilty as an accomplice

Gatchalian, however, is differently situated as Doctor. We note that the evidence adduced and the records would show that Gatchalian did not do overt acts for the furtherance of the shooting of Estrella. As mentioned above, mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy.[44]

It appears that Gatchalian is a party to the conspiracy as found by the courts a quo. Gatchalian appeared in the company of Tomas, Sr. and Doctor. He also fled together with them. However, Gatchalian was unarmed and did not say anything or commit any overt act to externally manifest his cooperation with the shooting of Estrella. On the other hand, Gatchalian never attempted to stop the shooting, which tends to show that he was aware of the plan and intent to kill Estrella or, at the very least, that he acquiesced to the shooting of Estrella.

The trial court viewed Gatchalian as supporting Tomas, Sr. by taking a "blocking position" in the road. We, however, cannot subscribe to such a view considering that his presence is merely extraneous to the accomplishment of the crime. Besides, Angelita and Damiana were covered by Doctor who poked a gun at them, while Liezl was so far back that it would be incongruous, to say the least, that Gatchalian was blocking the road. Who would he be blocking then when the road is wide and Liezl was far back?

Thus, with his lack of overt acts manifestly contributing to the accomplishment of the common design to shoot Estrella, there is some doubt if he indeed conspired with Tomas, Sr. and Doctor. This, however, does not exculpate him from criminal liability absent proof that he merely tagged along or just happened to meet his employer (Tomas, Sr.) shortly before the incident or was merely taken along without being told about the other accused-appellants' plan. The fact that Gatchalian appeared together with the other accused-appellants and fled with them, while not constitutive of proof beyond reasonable doubt of conspiracy, still proves a certain degree of participation and cooperation in the execution of the crime. Consequently, in line with the principle that whatever is favorable to an accused must be accorded him, Gatchalian is guilty as an accomplice only. As We aptly explained in *People v. Ballesta*:

Mere presence at the scene of the incident, knowledge of the plan and acquiescence thereto are not sufficient grounds to hold a person as a conspirator. x x x Lacking sufficient evidence of conspiracy and there being doubt as to whether appellant acted as a principal or just a mere accomplice, the doubt should be resolved in his favor and is thus held liable only as an accomplice.

x x x Where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether the appellant acted as principal or as accomplice will always be resolved in favor of the milder form of criminal liability--that of a mere accomplice.[45]

Proper Penalties

We agree with the courts a quo that Tomas, Sr. and Doctor merit to suffer the penalty of reclusion perpetua for the

murder of Estrella.

As an accomplice to the murder, Gatchalian is liable to a penalty of reclusion temporal or one degree lower than the imposable penalty for murder. Considering that there are no other aggravating or mitigating circumstances applicable, the penalty of reclusion temporal in its medium period is proper. Considering further the applicability of the Indeterminate Sentence Law since Gatchalian is not disqualified under Section 2 of said law, the proper penalty imposable is prision mayor in its medium period, as minimum, to reclusion temporal in its medium period, as maximum.

Award of Damages

Finally, on the damages awarded, the CA correctly modified the actual damages to PhP 385,416.33[46] and USD 2,182.78,[47] the amounts duly proven during trial with supporting official receipts and corresponding documents related to actual expenses for the casket, funeral services and the airfreight of Estrella's remains back to the United States.

Anent the grant of damages for loss of income or earning capacity in the amount of USD 368,000, We find it proper and duly proven. As a rule, documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity.[48] The prosecution duly proved Estrella's loss of earning capacity by presenting the statement from her employer, Safeway Inc., which showed her earning an hourly rate of USD 25.233.[49] Likewise, Estrella's 2006 Wage and Tax Statement from her Employee's Records in the Department of the Treasury - Internal Revenue Service[50] shows her earnings for 2006 at USD 29,828.72. Evidently, as shown by her husband Avelino Casco's testimony, Estrella was averaging gross earnings of USD 48,000 annually. In applying the formula[51] used in the American Expectancy Table of Mortality, the RTC arrived at the figure of USD 368,000 as compensation for Estrella's heir for loss of income or earning capacity. We find no reason to disturb this finding of the trial court as affirmed by the appellate court.

Moreover, civil indemnity ex delicto is mandatory and is granted to the heirs of the victim without need of any evidence or proof of damages other than the commission of the crime.[52] Based on current jurisprudence, the award of civil indemnity ex delicto of PhP 50,000 in favor of the heirs of Estrella is in order.[53] Likewise, the CA correctly awarded moral damages in the amount of PhP 50,000 in view of the violent death of the victim and the resultant grief to her family.[54] With the presence of the qualifying circumstance of treachery, the award of PhP 30,000 as exemplary damages is justified under Art. 2230 of the Civil Code.[55] Besides, the entitlement to moral damages having been established, the award of exemplary damages is proper.[56]

WHEREFORE, the instant appeal is hereby PARTLY GRANTED as to appellant NESTOR GATCHALIAN. Accordingly, the CA Decision dated August 12, 2009 in CA-G.R. CR-H.C. No. 03405 is hereby MODIFIED in that NESTOR GATCHALIAN is declared guilty beyond reasonable doubt as an accomplice in the offense of Murder under Art. 248 of the RPC. Applying the Indeterminate Sentence Law, Gatchalian is hereby sentenced to suffer the penalty of eight (8) years and one (1) day of prision mayor, as minimum, to 17 years and four (4) months of reclusion temporal, as maximum. The rest of the appealed decision stands.

The May 27, 2008 RTC Decision should be modified to read, as follows:

WHEREFORE, premises considered, this Court finds accused Tony Tomas, Sr. and Benedicto Doctor guilty beyond reasonable doubt of the offense of Murder and hereby sentences each of them to suffer the penalty of Reclusion Perpetua. This Court also finds accused Nestor Gatchalian guilty beyond reasonable doubt as an accomplice to the offense of Murder and with the application of the Indeterminate Sentence Law hereby sentences him to suffer the penalty of eight (8) years and one (1) day of Prision Mayor, as minimum, to 17 years and four (4) months of Reclusion Temporal, as maximum.

Likewise, all of the said accused are hereby ordered to pay jointly the heirs of the victim, the following:

- 1.) The amount of PhP 50,000.00 as civil indemnity;
- 2.) The amount of PhP 50,000.00 as moral damages;
- 3.) The amount of PhP 30,000.00 as exemplary damages;
- 4.) The amount of PhP 385,416.33 and another amount of USD 2,182.78 or its equivalent in Philippine pesos at the time of its payment as actual damages; and,
- 5.) The amount of USD 368,000 or its equivalent in Philippine pesos at the time of its payment for loss of income of the victim.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 2-13. Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Mario L. Guariña III and Normandie B. Pizarro.

[2] CA rollo, pp. 15-40. Penned by Presiding Judge Jose S. Vallo.

[3] Records, p. 1.

[4] Id. at 35-36.

[5] During the trial, the prosecution presented as its witnesses Liezl Toledo, Angelita Duque, Avelino Casco, Dr. Saturnino Ferrer and P/Insp. Eleno Mangrobang. On the other hand, the defense presented as its witnesses accused-appellants, Milagros Reguine, Rosalinda Areniego, Yolanda Pablo, P/Supt. Daisy P. Babor, Rosendo Toledo, PO3 Luciano Captan and PO1 Celso Isidro.

[6] Records, pp. 5-6, dated July 20, 2006.

[7] Id. at 2-3, dated July 20, 2006.

[8] Rollo, p. 4.

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

[10] CA rollo, pp. 42-43, Notice of Appeal dated June 2, 2008.

[11] Rollo, pp. 34-37, Manifestation and Motion of the Office of the Solicitor General dated August 20, 2010; id. at 41-43, Manifestation of Accused-Appellants dated September 17, 2010.

[12] CA rollo, pp. 55-111, dated October 31, 2008.

[13] Id. at 199-215, dated September 1, 2009.

[14] Id. at 155-173, dated February 2, 2009.

[15] *People v. Casta*, G.R. No. 172871, September 16, 2008, 565 SCRA 341, 351.

[16] *People v. Veluz*, G.R. No. 167755, November 28, 2008, 572 SCRA 500, 511; citing *People v. Navida*, G.R. Nos. 312239-40, December 4, 2000, 346 SCRA 821, 830.

- [17] *People v. Mamantak*, G.R. No. 174659, July 28, 2008, 560 SCRA 298, 309; citing *People v. Alba*, G.R. No. 107715, April 25, 1996, 256 SCRA 505.
- [18] *People v. Mendoza*, G.R. Nos. 109279-80, January 18, 1999, 301 SCRA 66, 79.
- [19] TSN, May 31, 2007, pp. 25-29.
- [20] *Revita v. People*, G.R. No. 177564, October 31, 2008, 570 SCRA 356, 370.
- [21] *Id.*
- [22] TSN, December 18, 2007, p. 10.
- [23] *Id.* at 13-14.
- [24] *People v. Balais*, G.R. No. 173242, September 17, 2008, 565 SCRA 555, 566; citing *People v. Manegdeg*, G.R. No. 115470, October 13, 1999, 316 SCRA 689, 704.
- [25] TSN, April 24, 2007, pp. 12-13.
- [26] TSN, January 9, 2007, pp. 12-13.
- [27] *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 471-472.
- [28] *Id.* at 470.
- [29] Rollo, p. 11.
- [30] *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280, 297.
- [31] *People v. Eling*, G.R. No. 178546, April 30, 2008, 553 SCRA 724, 737; citing *People v. Guillermo*, G.R. No. 147786, January 20, 2004, 420 SCRA 326, 343.
- [32] 2 L.B. Reyes, *The Revised Penal Code, Criminal Law* 469 (16th ed., 2006).
- [33] *People v. Garcia*, G.R. No. 174479, June 17, 2008, 554 SCRA 616, 635-636; citing *People v. Batin*, G.R. No. 177223, November 28, 2007, 539 SCRA 272, 288; *People v. Ballesteros*, G.R. No. 172693, August 11, 2008, 561 SCRA 657, 670.
- [34] *People v. Tabuelog*, G.R. No. 178059, January 22, 2008, 542 SCRA 301, 316.
- [35] *People v. Rosas*, G.R. No. 177805, October 24, 2008, 570 SCRA 117, 133; citing *People v. Lab-eo*, G.R. No. 133438, January 16, 2002, 373 SCRA 461, 475.
- [36] *Olalia, Jr. v. People*, G.R. No. 177276, August 20, 2008, 562 SCRA 723, 737; citing *People v. Belaro*, G.R. No. 99869, May 26, 1999, 307 SCRA 591, 607.
- [37] *People v. Balais*, *supra* note 24, at 568.
- [38] *People v. Barriga*, G.R. No. 178545, September 29, 2008, 567 SCRA 65, 80-81; citing *People v. Leal*, G.R. No. 139313, June 19, 2001, 358 SCRA 794, 807.
- [39] *People v. Eling*, *supra* note 31, at 735-736; citing *People v. Ferrer*, G.R. No. 143487, February 22, 2006, 483 SCRA 31, 50.
- [40] *People v. Tan*, G.R. No. 177566, March 26, 2008, 549 SCRA 489, 502; citing *People v. Baldogo*, G.R. Nos. 128106-07, January 24, 2003, 396 SCRA 31; *People v. Pajaro*, G.R. Nos. 167860-65, June 17, 2008, 554 SCRA

572, 586.

[41] *People v. Malolot*, G.R. No. 174063, March 14, 2008, 548 SCRA 676, 689; citing *People v. Lacao, Sr.*, G.R. No. 95320, September 14, 1991, 201 SCRA 317, 329.

[42] *Id.*; citing *People v. Gonzales*, G.R. No. 128282, April 30, 2001, 357 SCRA 460, 474.

[43] *People v. Liquiran*, G.R. No. 105693, November 19, 1993, 228 SCRA 62, 74; *People v. Rostata*, G.R. No. 91482, February 9, 1993, 218 SCRA 657, 678; *People v. Pama*, G.R. Nos. 90297-98, December 11, 1992, 216 SCRA 385, 401.

[44] *People v. Malolot*, *supra* note 41.

[45] G.R. No. 181632, September 25, 2008, 566 SCRA 400, 420-421 (citations omitted).

[46] Records, pp. 35-38; Rizal Funeral Homes, Inc. OR No. 478 dated July 26, 2006, PhP 50,000, for sealing and crating of casket; Funeraria Francisco OR No. 1446 dated July 22, 2006, PhP 150,000, for bronze casket; Funeraria Francisco OR No. 0414, dated July 26, 2006, PhP 29,000, for funeral services; and Shulman Air Freight Internation Phils., Inc. OR No. 32270 dated July 27, 2006, PhP 156,416.33, for airfreight charges for the remains of Estrella.

[47] Additional freight charges thru Philippine Airlines Air Waybill 079-3046 5960, records, p. 201.

[48] *People v. Casta*, *supra* note 15, at 361.

[49] Records, p. 194.

[50] *Id.* at 195.

[51] Compensation of heirs for loss of income = [2 (80 - age of the victim) x (net annual income, i.e., annual income less reasonable expenses which is 50% of gross annual income)] / 3. Thus, [2 (80 - 57) x (USD 24,000 or USD 48,000 - USD 24,000)] / 3. The resulting product is USD 368,000.

[52] *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 751; citing *People v. Ausa*, G.R. No. 174194, March 20, 2007, 518 SCRA 602, 617.

[53] *Id.* at 751-752; citing *Española v. People*, G.R. No. 163354, June 21, 2005, 460 SCRA 547, 555-556.

[54] *Id.*; citing *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 743.

[55] *Id.* (citations omitted)

[56] *Id.*; citing *Frias v. San Diego-Sison*, G.R. No. 155223, April 3, 2007, 520 SCRA 244, 258.

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