

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO TABACO, ACCUSED-APPELLANT.

G.R. Nos. 100382-85. March 19, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

In four related informations, Mario Tabaco was charged with four counts of Murder for shooting to death on March 22, 1987 Capt. Oscar Tabulog (Criminal Case No. 10-259), Ex-Mayor Jorge Arreola (Criminal Case No. 10-270), Felicito Rigunan (Criminal Case No. 10-284) and Pat. Romeo Regunton (Criminal Case No. 10-317). Except for the names of the victims, the informations in these four (4) cases identically read:

"That on or about March 22, 1987, in the Municipality of Aparri, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Mario Tabaco, armed with a gun, with intent to kill, with evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously assault, attack and shoot one [name], inflicting upon him several wounds which caused his death.

Contrary to Law."[1]

In Criminal Case No. 10-316, accused was charged in the following information with the complex crime of Homicide and Frustrated Homicide for shooting to death Jorge Siriban, Jr. and the wounding of Sgt. Benito Raquepo:

"That on or about March 22, 1987, in the municipality of Aparri, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Mario Tabaco, armed with a gun, with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and shoot Jorge Siriban, Jr., and S/Sgt. Benito Raquepo, inflicting upon them wounds on their bodies, which wounds sustained by Jorge Siriban, Jr., caused his death.

That the accused had performed all the acts of execution (with respect to the victim Sgt. Benito Raquepo; which would have produced the crime of Homicide as a consequence but which nevertheless, did not produce it by reason of causes independent of his own will."[2]

All cases were consolidated before Branch 10 of the Regional Trial Court of Aparri, Cagayan.

The mass of evidence for the prosecution, as found by the trial court, is as follows:

"In the evening of March 22, 1987, the 17th PC stationed at Aparri, Cagayan, under then Lt. James Andres Melad, sponsored a cock derby, under the name of Jose Ting, at the Octagon Cockpit Arena located at Aparri, Cagayan.

This being so, peace officers in uniform with long firearms were assigned as guards to maintain peace and order at the cockpit arena namely: (1) Sgt. Benito Raquepo; (2) CIS Roque P. Datugan, both from the 117th PC and (3) Pat. Andles Semana, INP, Aparri, Cagayan. Accused Mario Tabaco who was in civilian clothes claims to have been also assigned by his Commanding Officer of 117th PC, to verify the presence of NPAs and assist

in the protection of VIPs in the cockpit arena, bringing with him his M-14 issued firearm.

Other peace officers who came to participate were: (1) Policeman Mariano Retreta of INP, Buguey, Cagayan, who arrived with the deceased Jorge Siriban and Licerio Antiporda, Jr., Licerio Antiporda II; (2) Sgt. Rogelio Ferrer of 117th PC Company; (3) Policeman Romeo Regunton (deceased) who was also armed, arrived in company with the deceased Ex-Mayor Arreola; (4) Fireman Rogelio Guimmayen, INP Buguey; (5) Pat. Barba; and (6) CIC PC Paragas.

At about nine (9) o'clock in the evening of same date, the group of the late Mayor Jorge Arreola of Buguey, Cagayan, arrived at the cockpit arena. His companions were (1) Antonio Villasin; (2) Rosario Peneyra; (3) victim Lorclo Pita, Jr. and/or five (5) of them including the Mayor. They occupied and were (4th row) north western part cockpit-gate. Others seated with the Mayor were: (1) the late Capt. Oscar Tabulog; (2) the late Pat. Romeo Regunton, who was at the back of the mayor; (3) the late Felicito Rigunan. The accused CIC Tabaco was seated on the arm of the bench situated at the lower portion of the arena about more than three (3) meters away, (infront and a little bit in the west), from the place where the late Mayor and his group were seated (at the 4th row of seats upper portion). During the ocular inspection conducted, the Court noticed the distance to be more than three (3) meters, and/or probably 4-5 meters.

At about ten(10) o'clock 1987, while the accused Mario Tabaco was seated as described above, he suddenly without warning or provocation, shot the late mayor Jorge Arreola, with his M-14 rifle, followed by several successive burst of gunfire, resulting in the shooting to death of the late Mayor Arreola, Capt. Oscar Tabulog, Felicito Rigunan and Pat. Romeo Regunton, although the latter managed to run passing through the western gate near the gaffers cage but was chased by accused Tabaco. Regunton was later found dead inside the canteen of Mrs. Amparo Go inside the Octagon cockpit arena.

Pat. Mariano Retreta of INP Buguey, who was then at the Co's canteen, saw the accused going out rushing from the cockpit arena, at a distance of one meter. Pat. Retreta is a relative and neighbor of the accused Tabaco in Buguey, Cagayan. He tried to pacify Tabaco telling him 'what is that happened again Mario.' Meanwhile, Sgt. Benito Raquepo of 117th PC, and one of those assigned to maintain peace and order at the Octagon cockpit arena, who was at the canteen taking snacks, heard five (5) successive gun reports coming from inside the cockpit arena. In a little while, he saw the accused Tabaco coming from inside the cockpit arena. Raquepo advised Tabaco — 'Mario relax ka lang' — 'Mario keep calm.' They stood face to face holding their rifles and when Tabaco pointed his gun towards Sgt. Raquepo, Pat. Retreta grappled for the possession of the gun to disarm Tabaco, and in the process, the gun went off hitting Sgt. Raquepo and also the late Jorge Siriban who happened to be near Raquepo. Siriban died on the spot while Raquepo survived his wounds on his legs due to adequate medical treatment.

There were other persons injured that evening namely: (1) Antonio Chan — injured on his right foot; (2) Salvador Berbano — injured on his right forearm and on his right abdomen and (3) Rosario Peneyra on his face and right shoulder. But, the three, did not file their complaints."^[3]

Upon the other hand, the evidence for the defense as stated in the Brief for the Accused-appellant is as follows:

"Ordered by his commanding officer in the 117th PC Company to assist in the maintenance of peace and order at the Octagon Cockpit Arena located at Talungan, Aparri, Cagayan on March 22, 1987, accused Mario Tabaco with his officially issued M-14 rifle and with the basic load of ammunition went to the Octagon Cockpit arena on March 22, 1987 in compliance to the orders of a superior officer arriving thereat at about 12:00 o'clock noon, more or less. He directly went inside the cockpit arena to make some observations and found out that there were several persons inside the said cockpit who were in possession of firearms, some short and some long, and were seen in different places and/or corners of the cockpit. Accused did not bother to verify as to why the said persons were allowed to carry their firearms because of his impressions that if they did not have the authority, the guards of the main gate of the cockpit would surely have confiscated the same from them. It was his belief then that they may have come from other agencies of the government, assigned to help in the

maintenance of peace and order in the cockpit, Accused thus seated himself at the lowermost seat (first step) of the slanted bleachers of the Octagon Cockpit arena on March 22, 1987.

At about 9:00 o'clock that very night of March 22, 1987, while accused was seated at the lowermost seat of the slanted bleachers of the Octagon Cockpit arena, he heard a gun report fired atop his head. Having been officially assigned to help in the maintenance of peace and order in the cockpit and that his presence must be known, his immediate reaction upon hearing the gun report was to fire a warning shot in the air and directed to the ceiling and/or roof of the Octagon cockpit arena. After firing a warning shot, his warning was answered by burst of gun fire coming from different directions inside the cockpit arena, for which reason, he forced to leave and rush outside, holding his M-14 rifle with the muzzle pointed downwards. As he (accused) rushed towards the main gate of the cockpit arena, Mariano Retreta and Sgt. Benito Raquepo saw him and who told him, (accused) to relax lang. Accused testified that when Mariano Retreta and Sgt. Benito Raquepo told him to relax lang, he all the time thought that the gun reports fired inside the cockpit arena was nothing to said persons. Accused however, insisted to go out, but in so doing, Mariano Retreta pressed the gun which he was holding downwards and grabbed said gun from accused. As the gun was pressed by Mariano Retreta, said gun went off, hitting Sgt. Benito Raquepo and the death of Jorge Siriban, Jr. That because of such incident, accused had to run away, out of fear to Sgt. Benito Raquepo and the family of Jorge Siriban who may lay the blame on him. The following morning, accused surrendered to the police authorities of Lallo, Cagayan, who happened to pass by, not on account of the death of Ex-Mayor Jorge Arreola, Capt. Oscar Tabulog, Felicito Rigunan and Oscar Regunton which he did not know at the time he surrendered, but on account of the death of Jorge Siriban, Jr. and the injury sustained by Sgt. Benito Raquepo."[4]

After trial, the court a quo, in a joint decision dated January 14, 1991, found accused-appellant guilty as charged on all counts. In giving credence to the version of the prosecution over that of accused-appellant, it found that:

"From the evidence adduced, it is easily discernible that the prosecution and defense cannot agree on what actually transpired that night of March 22, 1987, at the Octagon Cockpit Arena, Aparri, Cagayan leading to the shooting to death of subject victims. For, while the prosecution maintains that it was the accused Mario Tabaco who shot the victims, the defense insists that he is not the assailant, but somebody else or others, since the accused merely fired a warning shot upwards the roof of the cockpit arena.

In fine, the Court is called upon to resolve the issue of credibility versions. 'Where there are directly conflicting versions of the same incident, the Court, in its search for the truth, perforce has to look for some facts and circumstances which can be used as valuable tools in evaluating the probability or improbability of a testimony for after all, the element of probability is always involved in weighing testimonial evidence. (Carolina Industries, Inc. vs. CMS Stock Brokerage, Inc., et al., L-46908, May 17, 1980, 97 SCRA 734; Lacsan vs. Court of Appeals, et al., L-46485, November 21, 1979, 94 SCRA 461, both citing the case of People vs. Boholst Caballero, L-2349, November 25, 1974, 61 SCRA 180).

Towards this end, the prosecution presented three (3) eyewitnesses, namely: Antonio Villasin, Rosario Peneyra and Fireman Rogelio Guimmayen in the shooting to death of the deceased victims, Ex-Mayor Jorge Arreola, Capt. Oscar Tabulog, Romeo Regunton and Felicito Rigunan. Also, the prosecution presented Sgt. Benito Raquepo, Pat. Mariano Retreta and PC Sgt. Rogelio Ferrer, and three (3) eyewitnesses in the shooting to death of Jorge Siriban and the wounding of Sgt. Raquepo. So too, the prosecution presented PC Sgt. Antonio Domingo, Pat. Andres Semana, PC Sgt. Jose Algeria and Pat. Merlin Bautista, as corroborative witnesses in both situational cases/incidents. As well stated in the above findings of facts, prosecution witnesses Antonio Villasin and Rosario Peneyra actually saw the accused Mario Tabaco stood up from his seat at the lower front row and in port arm position directed his M-14 rifle towards the place of the late Mayor Arreola, and his group at the 4th row upper portion of the bleachers and fired three successive automatic gun shots that felled Mayor Jorge Arreola, Capt. Oscar Tabulog, Pat. Romeo Regunton and one Felicito Rigunan. This was corroborated by prosecution witness Fireman Rogelio Guimmayen who was then ten (10) meters away from the accused, which was not far, considering that the cockpit arena was well-lighted at that time.

Not only that, immediately after the gun burst of automatic fire, the accused was seen coming out rushing from inside the cockpit arena by INP Pat. Mariano Retreta and PC Sgt. Raquepo, the former being a relative and neighbor, pacified accused Tabaco, telling — 'what is that happened again Mario,' while the latter told him — 'Mario relax ka lang keep calm.' After which Mariano Retreta grappled for the possession of the gun assisted by PC Sgt. Rogelio Ferrer when Tabaco refused to stop. Sgt. Ferrer got the gun M-14 and surrendered it to his Commanding Officer, as corroborated by Sgt. Antonio Domingo, while in the process of disarming the accused Mario Tabaco, when the gun went off, hitting the deceased victim Jorge Siriban and Sgt. Raquepo."[5]

The accused admitted that the M-14 rifle which he brought with him to the cockpit arena was heavily loaded, but when the gun was taken from his possession by Pat. Retreta and PC Sgt. Ferrer, the gun's magazine was already empty.

The court a quo said further:

ATTY. VILLENA:

Q: When you took that M-14 from the accused, do you remember if it had a magazine that time?

A: Yes, sir with magazine.

Q: Do you have the magazine now?

A: It is with 117th PC Company, sir.

Q: After taking that M-14 from the accused, did you examine the rifle?

A: Yes, sir, I examined it.

Q: Did you examine the magazine of that rifle?

A: Yes, sir.

Q: Did you examine if there are live bullets?

A: No live bullets, sir. "(TSN, direct examination, Sgt. Ferrer, pp. 44-45, March 26, 1990 session, stenographer L. Tamayo).

Further, Sgt. Ferrer continued:

"PROSECUTOR ATAL:

Q: You likewise mentioned in your direct examination that when you surrendered this gun, M-14, and this magazine, there were no live ammunitions in the magazine?

A: There were two remaining bullets, sir.

Q: How many bullets in all?

A: Twenty, sir.

Q: You said you heard first seven gun reports?

A: Yes, sir I heard seven gun reports. (TSN, continuation of direct examination, Sgt. Ferrer, May 14, 1990 session, Stenographer L. Tamayo).

MORE, there is evidence that empty/spent shells of bullets were found inside the cockpit arena (Exh. 'R' & 'R-1', pp. 157-158, record).

ATTY. ARIOLA:

Q: Showing to you Exh. 'R', do you know whose picture is this?

A: Picture of spent shells.

Q: How about Exh. 'R-1', do you know what is this?

A: The same, sir spent shells. (TSN, PC/CIS Sgt. Investigator Jose Algeria, p. 29, Oct. 1, 1990 session, Stenographer L. Tamayo).

Finally, another circumstance which maybe considered as adverse against the accused, is the fact that he was really arrested and not that he voluntarily surrendered as appearing in the INP Lallo Police Blotter, as testified to by Pat. Melin Bautista (Exh. 'S', p. 188, record).

Furthermore, it appears that the same accused Mario Tabaco, has still a pending case for murder before Branch 6, of this Court. (Exh. 'T', p. 187, record).

The Court is impressed with the testimonies of the three prosecution eyewitnesses namely: Antonio Villasin, Rosario Peneyra and INP Fireman Rogelio Guimmayen who narrated their versions of the incident with ring of truth, which are both clear and convincing, in regard to the shooting to death by accused Mario Tabaco of the deceased victims Ex-Mayor Jorge Arreola (Crim. Case No. 10-270), Capt. Oscar Tabulog (Crim. Case No. 1259), Pat Romeo Regunton (Crim. Case No. 10-317) and the late Felicito Rigunan (Crim. Case No. 10-284).

Such positive testimonies were corroborated by the testimonies of PC Sgt. Raquepo, PC Sgt. Ferrer and Pat. Mariano Retreta, who saw the accused rushing outside the cockpit arena holding his M-14 rifle, immediately after the burst of successive and automatic gunfire inside the cockpit arena. Although they have not seen the accused shoot the four victims (Arreola, Tabulog, Rigunan and Regunton), yet their corroborative testimonies constitute sufficient combination of all circumstances, so as to produce a conviction of guilt beyond reasonable doubt. (People vs. Pimentel, 147 SCRA 251; People vs. Trinidad, 162 SCRA 714), even as such circumstances proved reasonable leads to the conclusion pointing to the accused Tabaco, to the exclusion of all others, as the author of the crime. (People vs. Magallanes, 147 SCRA 92; People vs. Macatana, 161 SCRA 235). And, in the face of all these circumstances, the burden of proof to establish his innocence LIES on the accused, as the ONUS PROBANDI from that moment is now shifted to the accused. (Dulpo vs. Sandiganbayan, 150 SCRA 138). A resort to circumstantial evidence is in the very nature of things, a necessity, and as crimes are usually committed in secret and under conditions where concealment is highly probable, and to require direct testimony would in many cases result in freeing criminals and would deny the proper protection of society. (People vs. ROA, 167 SCRA 116).

As to the death of Jorge Siriban (Crim. Case No. 10-316) and the wounding of Sgt. Raquepo, there is no adventure of doubt, that accused Mario Tabaco was the author of the crime charged and thus be held responsible for the same. The evidence adduced in this case is overwhelming, coming no less from accused's brothers PC personnel, who, aside from their direct testimonies, are entitled to the settled rule that they have regularly performed their official duty. (Section 5[M], Rule 131, Revised Rules of Court).

Accordingly, the Court is not impressed with the defense put up by the accused, even as it does not inspire confidence, hence, the same deserves no credence.

The accused contends that he merely fired his gun up towards the roof, and that he could have not shot the four (4) deceased victims with the group of Ex-Mayor Arreola considering the elevation of the 4th step or row in the upper bleachers of the cockpit arena, in relation to where the accused was, the front row, in much lower elevation. The accused further contends that he could not have shot afore-said victims, as maybe gleaned from the testimony of Dr. Rivera, especially to wound No. 2, inflicted upon the body of the late Mayor Arreola.

The Court believes otherwise. In the first place, the three (3) eyewitnesses Antonio Villasin, Rosario Peneyra and INP Fireman Rogelio Guimmayen, testified that they saw the accused stood up from his seat and directed his gun M-14 towards the group of Ex-Mayor Arreola who were then at the upper 4th row of cemented seats at the bleachers. They could have been inaccurate of the distance of meters, as it could have been around 5 meters from

where the accused stood up, which is a little bit west of the group of Ex-Mayor Arreola, who were then facing south, face to face with the accused. This is true and the same will jibe with the findings of Dr. Rivera, where the gun shot wounds inflicted upon the body of the late Capt. Tabulog, were on the left portion of his forehead front to back (Wound No. 1); Wound No. 2, in his left temple; Wound No. 3, below his right clavicle of his right shoulder and Wound No. 4, on his left thigh downward.

In the case of the late Mayor Arreola his wounds are: Wound No. 1, is on the left side of his head above the hairline; Wound No. 2, right base of his neck and exited at the upper shoulder base through and through. Wound No. 3, was on his left lower abdomen and his lower back as exit for wound Nos. 1 and 2, the relative position of the assailant and the victim is face to face, so with Wound No. 3. For wound No. 2, the point of entry is higher than the point of exit, but there is a possibility that the victim Arreola, probably bent forward and the bullet ricocheted.

It must be noted that the seats in the upper bleachers where the group of the late Mayor stayed were all cemented including their back rests and the bullets fired from the gun of the accused must have rebounded or deflected from surface to surface, on the cemented back rests and seats hitting wound No. 2, on the body of the Mayor and the bodies of Romeo Regunton and Felicito Rigunan. The bullets RICOCHETED, at the place where the group of the Mayor stayed. Anent the cemented railguard dividing the lower and upper bleachers, the same is not too high so as to obviate the possibility of hitting the group of the late Mayor Arreola, especially as in this case, when the accused stood up from his seat and fired at his victims. Witness Rosario Peneyra testified that his wound on his face and right abdomen must have been caused by the debris of the said cemented railguard which was hit by the bullets.

In the case of the death of Jorge Siriban, there is not much dispute as the evidence adduced is overwhelming and even the defense admits that Siriban died due to gunshot wounds — inflicted upon him during the grappling of the subject gun (Exh. 'K').

The Court believes in the reliability and intrinsic credibility of the prosecution witnesses, there being no competent evidence presented for them to falsely testify against the accused. There is no issue of motive, as the accused was clearly and positively identified.

All told, the Court believes and so holds that herein accused Mario Tabaco is the author/culprit in the shooting to death of the deceased victims, Jorge Arreola, Oscar Tabulog, Felicito Rigunan and Romeo Regunton, as well as the deceased Jorge Siriban and the wounding of Benito Raquepo."[6]

The dispositive part of the decision reads:

"WHEREFORE, prescinding from the foregoing, and fortified by the balm of clear judicial conscience, the Court finds the accused Mario Tabaco guilty beyond reasonable doubt of all the crimes charged against him:

1. In Criminal Cases Nos. (a) 10-259 (Oscar Tabulog); (b) No. 10-270 (Jorge Arreola); (c) 10-284 (Felicito Rigunan); and (d) 10-317 (Romeo Regunton), involving four (4) murder victims, but declared to have been prosecuted in one Information; the same being a complex crime under Art. 248, Revised Penal Code, the accused Mario Tabaco is sentenced to a single penalty of RECLUSION PERPETUA, in its maximum period, with all the accessory penalties provided for by law, and to pay the heirs of the deceased victims — Oscar Tabulog, Felicito Rigunan and Romeo Regunton, the amount of P50,000.00 each for a total of P150,00.00 subject to the lien herein imposed for payment of the appropriate docket fees if collected, without subsidiary imprisonment in case of insolvency. However, in Criminal Case No. 10-270, the accused Mario Tabaco is further ordered to pay the heirs of the late Mayor Jorge Arreola, the grand total amount of P633,500.00, by way of total civil liability, subject to

the lien herein imposed for payment of the appropriate docket fees, in case of successful collection, both without subsidiary imprisonment in case insolvency.

2. In Criminal Case No. 10-316 for Homicide with Frustrated Homicide, the accused Mario Tabaco is sentenced to suffer an indeterminate penalty ranging from, ten (10) years and one(1) day Prison Mayor as MINIMUM, to Seventeen (17) years, Four(4) months, one (1) day of RECLUSION TEMPORAL as MAXIMUM, and to pay the heirs of the deceased Jorge Siriban, the amount of P50,000.00, by way of death indemnity, plus P30,000.00 to Sgt. Benito Raquepo, by way of medical expenses incurred, subject to the lien herein imposed for payment of the appropriate docket fees in case of successful collection; both without subsidiary imprisonment in case of insolvency.

3. The M-14 rifle (Exh. 'K' and 'K-2') the corpus delicti, presently deposited with 117th PC Company, Aparri, Cagayan, is hereby ordered forfeited in favor of the government; Perforce, the Commanding Officer of the 117th PC, Aparri, Cagayan, is peremptorily ordered to deposit to the Acting Branch Clerk of Court of this court, the said M-14 rifle with magazines, for proper disposition in accordance with law and the rules.

4. The accused to pay the costs.

5. In the service hereof, the accused shall be entitled to the full length of time, he underwent preventive imprisonment (March 23, 1987), provided he voluntarily agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he shall be credited to only four-fifth (4/5) thereof. (Art. 29, NCC; as amended by RA 6127, June 17, 1970; U.S. vs. Ortencio, 38 Phil. 341; People vs. Chavez, 126 SCRA 1).

SO ORDERED."[7] (Underscoring ours)

Notwithstanding the single penalty imposed by the trial court, accused still interposed the present appeal on the following grounds:

(1) The trial court erred in convicting Mario Tabaco of the crime of murder in connection with the deaths of Oscar Tibulog, Jorge Arreola, Felicito Rigunan, and Romeo Regunton.

(2) The trial court erred in holding Mario Tabaco liable for homicide on the death of Jorge Siriban and the injury sustained by Benito Raquepo.

(3) The trial court erred in not giving credence to the testimony of accused-appellant Tabaco.

The pivotal issue presented in this case is one of credibility. Time and again, we have ruled that when the issue hinges on the credibility of witnesses vis-a-vis the accused's denials, the trial court's findings with respect thereto are generally not disturbed on appeal,[8] unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.[9] The reason for the rule is eloquently stated in the case of People vs. de Guzman,[10] thus:

"In the resolution of factual issues, the court relies heavily on the trial court for its evaluation of the witnesses and their credibility. Having the opportunity to observe them on the stand, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the

case can see all these and on the basis of his observations arrive at an informed and reasoned verdict." [11]

After a careful examination of the records, we find no ground or reason to set aside or disturb the trial court's assessment of credibility of the eyewitnesses when they testified pointing to accused-appellant as the assailant in the shooting of the group of Ex-Mayor Arreola and his companions.

1. Eyewitnesses Antonio Villasin and Rosario Peneyra, who were with the group of Ex-Mayor Arreola on that fateful night of March 22, 1989, categorically testified that it was accused-appellant, whom they positively identified in court, who fired his M-14 Rifle at their direction hitting the ex-mayor and his companions.

Villasin's testimony on this point is as follows:

COURT:

Q: You heard gun report, what can you say?

A: I saw that he was the one who made the gun report, sir.

ATTY ARRIOLA:

Q: Who was that 'he' you are referring to?

A: Mario Tabaco, sir. (p. 19, tsn, March 19, 1990)

Q: Why do you say that Mario Tabaco was the one from whom those gun reports come from?

A: Because he was the only person from whom I saw a gun, sir.

Q: What did you do also upon hearing those gun reports?

A: I had to seek shelter, sir.

Q: What happened to Ex-Mayor Arreola?

A: He was hit, sir.

PROSECUTOR MIGUEL:

Q: You said that the accused shot Ex-Mayor Arreola, what kind of weapon did he use if you know?

A: M-14, sir.

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Q: After the incident (precedent) have you come to learn what happened to Regunton?

A: I came to know that he was dead, sir.

Q: Was that all you gathered?

A: Also Capt. Tabulog, sir.

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Q: How many shots did you hear?

A: Three (3) shots, sir.

Q: All those three (3) shots were directed to Ex-Mayor?

A: Yes, sir.

Q: You heard three shots according to you, was that successive or automatic?

A: Successive, sir.

Q: You were seated at the left side of Ex-Mayor Arreola, who was seated on his right side?

A: None, sir.

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Q: Mr. witness, you said that you saw the deceased holding a gun when you first heard gun shot, will you please describe the stands (position) of the accused?

A: Like this. (The witness demonstrated that the accused was standing on a forth (port) arm position).

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Q: What did he do with the gun when you saw him?

A: He fired the gun, sir.

Q: To what the gun was directed when he fired the gun?

A: To Ex-Mayor Arreola, sir.

ATTY. VILLENA:

Q: You said earlier that after the incident you left the cockpit and returned, when you returned, what did you see?

A: I saw two dead persons, sir.

Q: Whose cadavers were these that you saw?

A: The cadavers of Ex-Mayor Arreola and Capt. Tabulog, sir.

Q: How far was the cadaver of Tabulog to Arreola?

A: Less than a meter, sir.

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Q: When you saw the corpse of Capt. Tabulog, can you identify the person passing as you mentioned?

A: They have similarity, sir.

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Q: When you heard first gun shot, can you tell the position of Arreola, you and your companions?

A: We were sitting at the backrest of the 4th seat, sir.

Q: Where were you facing?

A: We were facing south the arena.

Q: Where did the first gun shot came from?

A: It came from Mario Tabaco, sir.

Q: From what direction?

A: Infront of us, sir.

Q: Where was he, was he in your front?

A: He was in the first row of seats.

Q: After the first gun shot, what happened?

A: Somebody was killed, sir.

Q: Who was that?

A: Ex-Mayor Arreola, sir.

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COURT:

Q: How many gun shot reports did you hear?

A: Many, sir.

ATTY. VILLENA:

Q: You said that you heard more gun shots, can you tell the nature, was there in succession or automatic?

A: Automatic, sir.

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Q: Can you tell us your previous occupation?

A: An army man, sir.

Q: How long have you been employed with the army?

A: Five (5) years, sir.

Q: As an army before, have you ever been handled an M-14?

A: Yes, sir.

Q: Can you tell us if you are familiar with M-14 being fired?

A: Yes, sir.

Q: Now, you said earlier that you heard many more shots after you run, would you say that these gun shots you heard were fired from M-14 rifle?

A: Those are that came from M-14, sir.

Q: Where were you at the time when you heard the automatic gun shot?

A: I was outside the cockpit, sir."^[12]

On cross-examination by the defense counsel, witness Villasin testified, thus:

"ATTY. CONSIGNA:

Q: You said that after the first gun shot or gun report, Mr. Tabaco was on the first seat downward, is it not?

A: Mr. Tabaco placed his left foot on the first seat aiming his gun, sir.

Q: Directly toward the first seat, is that what you mean?

A: It was directed to Ex-Mayor Arreola.

xxx xxx xxx

Q: I want to make it clear, Mr. witness, it was the first gun that you went to hide yourself at the gate of the cockpit, is that correct?

A: After the 3rd gun shot, sir.

Q: And these three (3) gun reports, they were in a single successive shot, is it not Mr. witness?

A: Yes, sir.

xxx xxx xxx

Q: That person who allegedly passed by you or in front of you prior to the first gun report, did you notice if he had a gun with him?

A: He passed by our back, sir.

xxx xxx xxx

Q: And that person according to you was still there when the late Mayor Arreola was shot?

A: He was directly behind him when the gun reports were made, sir.

Q: You mean to say the first gun report?

A: Yes, sir.

Q: And that first gun report was hit Ex-Mayor Arreola?

A: The three gun reports hit the Mayor, sir."[13]

For his part, Peneyra testified as follows:

"ATTY. ARRIOLA

Q: Do you remember what particular place of the cockpit when you go with Mayor Arreola?

A: Yes, sir.

Q: What part of the cockpit?

A: We went up to the bleacher, sir.

Q: Do you remember how the bleachers were arranged inside the cockpit?

A: Yes, sir.

Q: How were they arranged?

A: In rows, step by step, sir.

COURT:

Q: How many rows?

A: Four rows, sir.

ATTY. ARRIOLA:

Q: And what row did you stay together with the late Mayor Arreola?

A: The late Mayor Arreola and Antonio Villasin took the 4th step, sir.

Q: And how about you?

A: We stood at their back west of them, sir.

Q: By the way, can you tell to the court what were your respective position of the place where you stayed?

A: The late Mayor Arreola and Antonio Villasin sat at the backrest of the fourth step, sir.

Q: And how about you, where did you stay also?

A: I stood at the right back of Mayor Arreola, sir.

Q: And how about Romeo Regunton?

A: He also stayed at the back of Mayor Arreola, sir.

xxx xxx xxx

Q: While you were in that position together with your companions, do you remember if there was untoward incident that happened?

A: Yes, sir.

Q: What was that untoward incident that happened?

A: That was the time when Mario Tabaco shot the late Mayor Arreola, sir.

Q: Do you know what did Mario Tabaco use in shooting the late Arreola?

A: Yes, sir.

Q: What kind of firearm?

A: M-14, sir.

Q: And do you know if Mayor Arreola was hit when Mario Tabaco shot him?

A: Yes, sir.

Q: How do you know that Mayor Arreola was hit?

A: Because I saw it, sir.

Q: What did you do also?

A: When Mayor Arreola was already dead, I sought cover because I was also wounded.

Q: Do you know what happened also to Romeo Regunton?

A: Yes, sir.

Q: What happened to him?

A: When I was wounded he also said, 'uncle I was also wounded.'

Q: What did you tell when he told you that?

A: I told him, 'you seek cover also my son'.

Q: How did Romeo Regunton took cover?

A: He moved slowly by dragging his body along the ground, sir.

xxx xxx xxx

Q: By the way, how far were you from Mario Tabaco who fired upon the person of Mayor Arreola?

A: Probably more than 3 meters, sir."[14]

On cross-examination, this witness testified as follows:

"ATTY. CONSIGNA:

Q: When for the first time when you were already in the cockpit arena did you see the accused Mario Tabaco?

A: Before the shooting, sir.

Q: And approximately how many minutes or seconds did you see Mario Tabaco for the first time prior to the shooting incident?

A: Probably 5 minutes before, sir.

Q: And in that place of the cockpit arena have you seen the accused herein Mario Tabaco?

A: He sat on the first row of the seats.

Q: And sitting on the first row of the bleachers, on what part of the cockpit arena did Mario Tabaco, the accused sit?

A: He sat a little bit west of us, sir.

COURT:

Q: How far?

A: Probably more than 3 meters, sir.

Q: A little bit to the west, do I get from you that he was seated on the western part of the cockpit?

A: A little to the west, sir.

Q: And you together with the late Mayor Arreola were also on the western part of the cockpit?

A: We were on the northwest.

Q: Mario Tabaco, therefore, the accused in these cases was not directly in front of you?

A: A little bit west of us, sir.

Q: It was on that position of the accused Mario Tabaco and your position with the late Arreola on the northwest when you according to you saw Mario Tabaco fired his gun, is that what you mean?

A: Yes, sir.

Q: That the accused Mario Tabaco was on the first row when he allegedly shot on Mayor Arreola who was on 4th row, is that what you mean?

A: Mario Tabaco stood up and faced us, sir.

Q: So while Mario Tabaco stood up and faced towards the direction where you were together with the late Mayor Arreola still Mario Tabaco was on the floor of the cockpit arena?

A: Yes, sir, on the cemented floor.

Q: And immediately after you heard the first shot coming from the accused Mario Tabaco considering that you were right behind the late Mayor Arreola, as you have stated in your direct examination you immediately sought cover?

A: I only lay flat to the floor of the cockpit when Mario Tabaco fired three (3) shots.

xxx xxx xxx

Q: At the time you laid flat facing down and you did not come to know that Mayor Arreola was dead already?

A: Why not, the first and second shots, I know him that he was already dead.

Q: And the three (3) shots that you heard were all directed towards Mayor Arreola?

A: Yes, sir, in our place.

xxx xxx xxx

COURT:

Q: To whom the 3rd shot directed?

A: In our place, sir.

Q: No person was involved on the 3rd shot?

A: That was also the time when Romeo Regunton came toward me and told me that he was also hit.

xxx xxx xxx

COURT:

Q: You don't know the person who shot him?

A: It was Mario Tabaco because he was still firing then, sir.

Q: You do not know the person who shot him?

A: It was Mario Tabaco because he was still firing then, sir."[15]

The above testimonies of Villasin and Peneyra pointing to accused-appellant as the assailant in the shooting of the ex-mayor and his companions were corroborated further by the testimony of another eyewitness in the person of Rogelio Guimmayen. His account of the incident is as follows:

"PROSECUTOR ABAD:

xxx xxx xxx

Q: How far were you from Tabaco when you saw him holding that gun?

A: More or less ten (10) meters, sir.

Q: Where was he at that specific time and place?

A: Inside the cockpit, sir.

Q: Where were you also?

A: I was at the stairs, sir.

Q: When you saw him what happened if any?

A: When he entered he stopped and then the gun fired and that was the time when I got down, sir.

Q: Did you see to whom he was directing the gun?

A: It was directed to the Mayor's place, sir.

Q: How far was the Mayor from the accused Mario Tabaco?

A: More or less three (3) meters only. There was only one bench between them, sir.

Q: Did you see the accused firing his gun towards the Mayor?

A: With his first shot which was directed to the Mayor that was the time I got down to hide myself, sir."[16]

On cross-examination, this witness testified as follows:

"ATTY. CONSIGNA:

Q: So, it was at the time you were inside the cockpit arena that you heard gunfire?

A: Yes, sir.

Q: And you did not see who fired that gunfire while you were inside the cockpit arena?

A: When I was inside, I saw Mario Tabaco pointing a gun to the Mayor and the gun went off and that's the time I took cover, sir.

xxx xxx xxx

Q: And that was the last time you heard burst of gunfire inside the cockpit arena?

A: When I went outside, I heard shots inside and outside."[17]

Set over against the foregoing positive and categorical testimonial declaration of the abovenamed eyewitnesses for the prosecution is the accused-appellant's bare denial of the charges against him. As between the positive identification of the accused by the prosecution witnesses and the bare denial of accused, the choice is not difficult to make. For, it is a settled rule that positive identification by the prosecution witnesses of the accused as perpetrator of the crime is entitled to greater weight than his bare denial and explanation.[18]

Likewise, there is no evidence from the record, as none was adduced by accused-appellant, of any ill-motive on the part of the prosecution witnesses as to why would they testify adversely against accused-appellant in the way that they did. Well-settled is the rule that where there is no evidence and nothing to indicate, that the principal witnesses for the prosecution were actuated by improper motive, the presumption was that they were not so actuated and their testimonies are entitled to full faith and credit.[19]

2. Accused-appellant contends that eyewitnesses Villasin and Peneyra were not telling the truth when they testified that it was accused-appellant who was the assailant in the shooting of Ex-Mayor Arreola and his companions considering that Dr. Rivera, who examined the cadaver of Ex-Mayor Arreola, testified that the trajectory of the bullets that hit the Ex-Mayor shows that the assailant was on the same level as the Ex-Mayor, and the trajectory of the third bullet shows that the assailant was at a higher level as the point of entry was higher than the point of exit. Appellant states that he was seated at the first row which was the lowest while the Ex-Mayor and his companions were seated at the fourth row which was the highest. This contention, however, is untenable.

Eyewitnesses Villasin and Peneyra testified that accused-appellant was at the first row of seats of the slanted

bleachers of the cockpit arena, when he stood up, stepped on one of the seats, aimed his rifle at Ex-Mayor Arreola and his companions and fired at them.[20]

The abovequoted testimonies explain very well why two gunshot wounds found on the cadaver of Ex-mayor Arreola appear to have been inflicted while he and his assailant were face to face and at the same level.

Upon the other hand, according to Dr. Rivera, one of the gunshot wounds of Ex-Mayor Arreola had a point of entry higher than the point of exit because he must have already been lying down when his wound was inflicted.[21]

Well-established, too, from the evidence on record is accused-appellant's liability for the death of Jorge Siriban, Jr. and the near-fatal wounding of Sgt. Benito Raquepo.

Not seriously disputed by accused-appellant are the testimonies of Sgt. Benito Raquepo and policeman Mario Retreta. Sgt. Benito Raquepo testified that at about 9:00 o'clock in the evening of March 22, 1987 while he was taking his snacks at the canteen of Co located at the left side of the gate of the cockpit arena, he heard five successive gun reports coming from inside the cockpit arena. While he was on his way inside the cockpit arena, he saw the accused-appellant coming from inside the cockpit arena. He told the accused "Mario relax ka lang", after which the accused pointed his gun at him. At that point in time, Mario Retreta who was among the persons near Mario Tabaco, grabbed the gun from the latter. It was at that point when the gun went off hitting him on the right thigh and the bullet exiting on his left thigh. He also saw that Jorge Siriban, who was then about three meters away from his left side, was hit at his testicles.

Mario Retreta, a policeman and relative of accused-appellant, on the other hand corroborated in part the testimony of Sgt. Raquepo. He testified that at about 10:00 o'clock in the evening of March 22, 1987, he was at the canteen of Mrs. Co. While thereat, he saw accused-appellant rushing out from the cockpit arena. Before he saw accused-appellant, he heard a gun report from inside the cockpit arena. He was then about one meter away from accused-appellant when he noticed Sgt. Raquepo whom he is acquainted with, and Jorge Siriban who was then standing at the gate of the cockpit arena. Sgt. Raquepo was facing accused-appellant and at that distance and position, he heard Sgt. Raquepo said: "Mario keep calm". He also told accused-appellant: "What is that happened again, Mario." When he saw accused-appellant change his gun position from port arm to horizontal position, he got near accused-appellant and pressed down the muzzle of the gun when accused appellant squeezed the trigger hitting Sgt. Raquepo on both thighs and also Jorge Siriban. A certain Sgt. Ferrer joined in the grapple and was able to take away the gun from accused-appellant.

Sgt. Raquepo survived the gunshot wounds due to adequate medical assistance but Siriban was not as lucky.

Accused-appellant claims that he did not have the criminal intent to kill Siriban or wound Sgt. Raquepo, and that the gun would not have been fired in the first place had Mario Retreta, for no apparent reason, not tried to grab the gun from him, are without merit.

Retreta testified that he grabbed the gun from accused-appellant because the latter changed his gun from port arm position to horizontal position, and at that instance he thought accused-appellant might harm Sgt. Raquepo.[22]

Furthermore, even assuming that he lacked criminal intent in the killing of Sgt. Raquepo and the near-fatal wounding of Siriban, his claim of innocence cannot be sustained. His undisputed act of firing the gun, which is by itself felonious in total disregard of the consequences it might produce, is equivalent to criminal intent.

Accused-appellant cannot evade responsibility for his felonious acts, even if he did not intend the consequences thereof for, in accordance with Art. 4 of the Revised Penal Code, criminal liability is incurred by any person

committing a felony although the wrongful act done be different from that which he intended.

We note that while the accused was found guilty in all four (4) murder charges and the penalty of reclusion perpetua should have been imposed on him in all four (4) murder charges, the trial court imposed the penalty of reclusion perpetua for all four murder charges. The trial court explained the single sentence for four murder charges in this wise:

"Whether or not the criminal cases Nos. 259, 270, 284 and 317, involving the killings of Oscar Tabulog, Jorge Arreola, Felicito Rigunan and Romeo Regunton, respectively, should have been prosecuted under only one Information.

The law provides:

Art. 48. Penalty for complex crimes.

'When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (as amended by Art. No. 400). (Art. 48, Revised Penal Code).'

Read as it should be, this article provides for two classes of crimes where a single penalty is to be imposed; first, where the single act constitutes two or more grave or less grave felonies (*delito compuesto*); and second, when the offense is a necessarily means for committing the other (*delito complejo*) and/or complex proper (*People vs. Pineda*, 20 SCRA 748).

In the cases at bar, the Provincial Prosecutor filed four (4) separate Informations of murder, which should have been otherwise, as the shooting to death of the four (4) victims should have been prosecuted under one information, involving four (4) murder victims.

The evidence shows that the four (4) victims were FELLIED by one single shot/burst of fire and/or successive automatic gun fires, meaning continuous. Hence, it is a complex crime involving four murdered victims, under the first category, where a single act of shooting constituted two or more grave or less grave felonies (*delito compuesto*), as decided in the cases of *People vs. Dama*, CA 44 O.G. 3339; *People vs. Lawas*, 97 Phil. 975; *People vs. Pineda*, L-26222, July 21, 1967, 20 SCRA 748.

Paraphrasing a more recent decision of the Supreme Court, we say -- as the deaths of Oscar Tahulog, Jorge Arreola, Felicito Rigunan and Romeo Regunton, in Criminal Cases Nos. 259, 270, 284 and 317 respectively, were the result of one single act of the accused Mario Tabaco, (*People vs. Guillen*, 85 Phil. 307) the penalty --- is the penalty imposed for the more serious offense. The more serious offense is murder, the killing have been attended by TREACHERY because the victims were completely taken by surprise and had no means of defending themselves against Mario Tabaco's sudden attack. The penalty is imposable in its maximum degree (*People vs. Fernandez*, 99 Phil. 515), but as the death penalty is no longer permitted the same is hereby reduced to a single penalty of RECLUSION PERPETUA for the four (4) murders. (*People vs. Herson Maghanoy*, GR Nos. 67170-72, December 15, 1989).

Accordingly, in Criminal Case No. 10-316, for homicide with Frustrated Homicide and it appearing also that the death of Jorge Siriban and the wounding of Benito Raquepo, was the result of one single act of the accused Tabaco, the applicable penalty is the penalty imposed for the more serious offense. The more serious offense is HOMICIDE, to be imposed in its maximum degree of reclusion temporal, which is 17 years, 4 months, 1 day to 20 years. There being no modifying circumstances and applying the Indeterminate Sentence Law, the penalty that should be imposed, and which is hereby imposed, upon the accused Mario Tabaco is 10 years and 1 day of Prison

Mayor as the minimum, to 17 years, 4 months, 1 day of Reclusion Temporal, as maximum, plus P30,000.00 actual damages for medical expenses of Benito Raquepo.

It was duly proved beyond doubt that the gun (Exhs. 'K', SN No. 1492932, 'K-2' — magazine of M-14 and Exh. 'L' — Memo Receipt of M-14 issued to Tabaco), used by the accused, is admittedly an automatic powerful weapon, more powerful than an M-16 armalite rifle. It is so powerful that the bullets can penetrate even more than five (5) persons resulting to their deaths. And, this was proven when, according to witness Rosario Peneyra, the bullets even destroyed the cemented rail guard separating the lower and upper bleachers of the cockpit arena, and causing wounds on his face and on his right shoulder. Additionally, we have the used/spent empty shells (Exh. 'R' and 'R-1')."[23]

We hold that the trial court was in error in imposing only a single penalty of reclusion perpetua for all four murder cases. The trial court holding that a complex crime was committed since "the evidence shows that the four (4) victims were FELLEDED by one single shot/burst of fire and/or successive automatic gun fires, meaning continuous (emphasis ours)"[24] does not hold water.

Of course, to justify the penalty imposed, the trial court relied on the doctrines enunciated in *People vs. Pama*[25] (not *People vs. Dama*, as cited by the trial court), *People vs. Lawas*,[26] and *People vs. Pineda*. [27]

The trial court misappreciated the facts in *People vs. Pama*. In said case, there was only one bullet which killed two persons. Hence, there was only a single act which produced two crimes, resulting in a specie of complex crime known as a compound crime, wherein a single act produces two or more grave or less grave felonies. In the case at bench, there was more than one bullet expended by the accused-appellant in killing the four victims. The evidence adduced by the prosecution show that Tabaco entered the cockpit with a fully loaded M-14 sub-machine gun.[28] He fired the weapon, which contained 20 rounds of bullets in its magazine, continuously. When the rifle was recovered from Tabaco, the magazine was already empty. Moreover, several spent shells were recovered from the scene of the crime. Hence, the ruling enunciated in *People vs. Pama* cannot be applied. On the contrary, what is on all fours with the case at bench is the ruling laid down in *People vs. Desierto*[29]. The accused in that case killed five persons with a Thompson sub-machine gun, an automatic firearm which, like the M-14, is capable of firing continuously. As stated therein:

"In the case at bar, Article 48 of the Revised Penal Code is not applicable because the death of each of the five persons who were killed by appellant and the physical injuries inflicted upon each of the two other persons injured were not caused by the performance by the accused of one simple act as provided for by said article. Although it is true that several successive shots were fired by the accused in a short space of time, yet the factor which must be taken into consideration is that, to each death caused or physical injuries inflicted upon the victims, corresponds a distinct and separate shot fired by the accused, who thus made himself criminally liable for as many offenses as those resulting from every single act that produced the same. Although apparently he perpetrated a series of offenses successively in a matter of seconds, yet each person killed and each person injured by him became the victim, respectively, of a separate crime of homicide or frustrated homicide. Except for the fact that five crimes of homicide and two cases of frustrated homicide were committed successively during the tragic incident, legally speaking there is nothing that would connect one of them with its companion offenses." (emphasis ours)

In *Desierto*, although the burst of shots was caused by one single act of pressing the trigger of the Thompson sub-machine gun, in view of its special mechanism, the person firing it has only to keep pressing the trigger with his finger and it would fire continually. Hence, it is not the act of pressing the trigger which should produce the several felonies, but the number of bullets which actually produced them.[30]

The trial court also misread *People vs. Pineda*. [31] True, the case of *Pineda* provided us with a definition of what a complex crime is. But that is not the point. What is relevant is that Art. 48 was not applied in the said case

because the Supreme Court found that there were actually several homicides committed by the perpetrators. Had the trial court read further, it would have seen that the Supreme Court in fact recognized the "deeply rooted x x x doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes." [32] Clarifying the applicability of Art. 48 of the Revised Penal Code, the Supreme Court further stated in Pineda that "to apply the first half of Article 48, x x x there must be singularity of criminal act; singularity of criminal impulse is not written into the law." [33] (emphasis supplied) The firing of several bullets by Tabaco, although resulting from one continuous burst of gunfire, constitutes several acts. Each person, felled by different shots, is a victim of a separate crime of murder. There is no showing that only a single missile passed through the bodies of all four victims. The killing of each victim is thus separate and distinct from the other. In *People vs. Pardo* [34] we held that:

"Where the death of two persons does not result from a single act but from two different shots, two separate murders, and not a complex crime, are committed."

Furthermore, the trial court's reliance on the case of *People vs. Lawas* [35] is misplaced. The doctrine enunciated in said case only applies when it is impossible to ascertain the individual deaths caused by numerous killers. In the case at bench, all of the deaths are attributed, beyond a shadow of a doubt, to the accused-appellant.

Consequently, the four murders which resulted from a burst of gunfire cannot be considered a complex crime. They are separate crimes. The accused-appellant must therefore be held liable for each and every death he has caused, and sentenced accordingly to four sentences of reclusion perpetua.

WHEREFORE, no reversible error having been committed by the trial court in finding accused-appellant guilty of four (4) counts of Murder and one (1) count of Homicide with frustrated homicide, the judgment appealed from should be, as it is, hereby AFFIRMED, with the MODIFICATION that four sentences of reclusion perpetua be hereby imposed.

Costs against accused-appellant.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Information in Criminal Case No. 10-284; Rollo, p. 11.

[2] Decision of the RTC dated January 14, 1991, p. 3; Rollo, p. 40.

[3] Decision, *supra*, pp. 29-31; Rollo pp. 66-68.

[4] Brief for Accused-Appellant, pp. 16-18; Rollo, pp. 125-127.

[5] Decision dated January 14, 1991, pp. 44-45; Rollo pp. 81-82.

[6] Decision, pp. 44-50; Rollo, pp. 81-87.

[7] Decision, pp. 59-60; Rollo, pp. 96-97.

[8] *People vs. Sabal*, 247 SCRA 263.

[9] *People vs. Malunes*, 247 SCRA 317.

[10] *People vs. de Guzman*, 188 SCRA 407.

[11] *Id.*, pp. 410-411.

[12] TSN dated March 19, 1990, pp. 20, 27-28, 33-39.

[13] Id., pp. 44-51.

[14] TSN dated March 26, 1990, pp. 9-15.

[15] Id., pp. 16-25.

[16] TSN dated May 15, 1990, pp. 13-14.

[17] TSN dated August 7, 1990, pp. 4-5.

[18] People vs. de Mesa, 188 SCRA 48.

[19] People vs. Simon, 209 SCRA 148.

[20] TSN dated March 19, 1990, pp. 44-45; TSN dated March 26, 1990, pp. 20-21.

[21] TSN dated March 30, 1990, p. 33.

[22] Decision, p. 9; Rollo, p. 46.

[23] Decision, pp. 51-53; Rollo, pp. 88-90.

[24] Ibid.

[25] C.A. 44 O.G. 3339 [1947].

[26] 97 PHIL 975 (Unrep.) [1955].

[27] 20 SCRA 748 [1967].

[28] The M-14 is an automatic firearm capable of firing 750 rounds per minute. By actual timing, it takes just 1.6 seconds to empty an M-14 20-round magazine on full automatic fire. (THE BOOK OF RIFLES, Smith, W.H.B. and Smith, Joseph E., Castle Books, New York, 1977; pp. 4746-4747)

[29] C.A. 45 O.G. 4542 [1948].

[30] REYES, 1 THE REVISED PENAL CODE 655 [1993]

[31] 20 SCRA 748 [1967].

[32] People vs. Pineda, Ibid. at 754.

[33] Ibid.

[34] 79 PHIL 568 [1971].

[35] 97 PHIL 975 (Unrep.) [1955].

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