

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO C. MAGUIKAY (ALIAS LINO), ACCUSED-APPELLANT.**

G.R. Nos. 103226-28. October 14, 1994

Ponente: PUNO, J.

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PUNO, J.:

Three (3) criminal cases were filed before the Regional Trial Court of Pasig, Metro Manila (Branch CLVI)[1] against MARCELINO C. MAGUIKAY, charging him with MURDER and ATTEMPTED MURDER, allegedly committed as follows:

1. CRIM. CASE NO. 81459

"That on or about the 21st day of December 1989, in the municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with two (2) other male persons whose true names, identities and present whereabouts are still unknown, and mutually helping and aiding one another, armed with guns, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously shoot one Carlos Bulilan on the vital parts of his body, thereby inflicting upon him multiple gunshot wounds which directly caused his death.

"Contrary to law."

2. CRIM. CASE NO. 81460

"That on or about the 21st day of December 1989, in the municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with two (2) other male persons whose true names, identities and present whereabouts are still unknown, and mutually helping and aiding one another, armed with guns, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously shoot one Roberto Bulilan on his head, thereby inflicting upon him gunshot wounds which directly caused his death.

"Contrary to law."

3. CRIM. CASE NO. 81461

"That on or about the 21st day of December 1989, in the municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with two (2) other male persons whose true names, identities and present whereabouts are still unknown, and mutually helping and aiding one another, armed with guns, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously shoot one Danilo V. Bulilan, thus commencing the commission of the crime of Murder directly by overt acts, but nevertheless did not perform all the acts of execution which would produce the felony by reason of causes other than their own spontaneous desistance that is, Danilo V. Bulilan sustained serious physical injuries only.

"Contrary to law."

Accused pleaded not guilty upon his arraignment on April 3, 1990.[2] Trial ensued thereafter.

The essential facts based on the evidence adduced by the prosecution are as follows:

On December 21, 1989, at about 5:00 P.M., Carlos Bulilan and his sons Roberto and Danilo, together with one Nazario Cunelas, were on board a gray Galant car, with license plate NBR 248, owned by the Bulilans. They were on their way home from G-Liner[3] where all of them work. The car was then driven by Carlos. Seated beside him was Roberto. Danilo and Nazario Cunelas, on the other hand, were at the back seat.

Upon reaching Rosario, in Pasig, Nazario Cunelas said: "Dito na lang ako." He thanked the Bulilans for the ride and alighted. The car then headed towards Ortigas Avenue Extension. Somewhere near De Castro Subdivision and St. Joseph Subdivision, also along Ortigas Avenue Extension, in Pasig, the traffic slowed down and stopped. It was then 5:45 P.M. Shortly thereafter, the "go" signal flashed. Carlos stepped on the accelerator (umarangkada) when, suddenly, three (3) men, one of them identified as accused Marcelino Maguikay, approached the car. Holding a gun with both hands, accused stood in front of the car near its right headlight. He was in a shooting position, with both his knees slightly bent. Without much ado, accused fired at the Bulilans. Danilo, who was then seated behind the driver's seat, immediately ducked. A volley of shots followed. Carlos and Roberto were hit on the different parts of their body. Danilo was luckier. Though wounded on the abdomen, he remained conscious during the ambush. He played dead and survived the assault.

Thinking that the Bulilans were all dead, the assailants tried to open the doors of the car. Danilo heard them open the door beside the driver's seat. Carlos' body was then dragged out of the car. Accused uttered: "Kunin ninyo ang gamit niya, may dala yan." Moments later, accused and his cohorts fled.

Danilo immediately got out of the car and saw his father's bloodied body sprawled on the pavement. He shouted for help. Luckily, a G-Liner bus passed by. With the bus driver's help, Danilo brought his father's body back into the car and rushed him to Cardinal Santos Memorial Hospital in San Juan. His efforts were in vain. His father and brother died.

The postmortem examination conducted by DR. DARIO GAJARDO revealed that Carlos Bulilan sustained six (6) gunshot wounds on different parts of his body, while Roberto Bulilan had three (3) gunshot wounds on his head.[4]

That evening, RENATO MACAPAGAL, Chairman of the Board of G-Liner, received a telephone call informing him that the Bulilans were ambushed. He arrived at the hospital between 6:30 P.M. and 6:45 P.M. He saw Danilo still in a state of shock. He asked Danilo if he recognized the assailants. Danilo was able to point to Marcelino Maguikay. At about 9:00 P.M., Macapagal and the President of G-Liner, Romeo de Guia, went to the residence of the Bulilans in Taytay and brought the bad news to Isidra Bulilan.

The police was informed of the ambush. PAT. DONATO GEDA and a certain Pat. Esguerra, both of the Pasig Police Station, rushed to the hospital at about 7:20 that evening. Pat. Geda immediately talked to the lone survivor, Danilo, who was still in the emergency room. Danilo recounted to him the incident. He also identified one of the assailants as Marcelino Maguikay, a former driver of G-Liner and president of the labor union thereat. Danilo, however, failed to recognize the two (2) other assailants.

Follow-up investigations were conducted that evening. The authorities recovered a slug from one of the deceased (Exh. K). An empty shell, apparently from a .45 cal. pistol, was also found at the locus criminis. Later in the evening, Danilo was taken to the Pasig Police Station where his sworn statement was taken by Pat. Geda.

SALVADOR VALISA, then a reporter of the tabloid "Evening Bagong Pinoy," was at the police headquarters in Pasig when he learned of the ambush incident. He proceeded to the hospital at 7:30 P.M. After taking pictures of the victims and the car, he interviewed Danilo. In the presence of police officers Geda and Esguerra, and the nurses and doctors, Danilo identified the assailant as Lino Maguikay.[5]

ATTY. CARLOS GALARITA was in his house in Alabang when, at about 6:30 P.M., he received a telephone call from G-Liner about the ambush incident. He also rushed to the hospital and arrived thereat between 7:30 P.M. and 8:00 P.M. He learned that Carlos and Roberto had died. At the morgue, he talked to Danilo who informed him that Marcelino Maguikay was one of the gunmen.[6] He then accompanied Danilo to the police station and assisted him during the investigation.

On January 15, 1990, with the assistance of a relative reporter from radio station DZRH, accused submitted himself for investigation at the Rizal PC/INP Command[7] where his sworn statement was taken by PC Maj. Luisito L. Maralit.[8] The requisite preliminary investigation was conducted and accused was placed under preventive imprisonment.

On February 5, 1990, Danilo Bulilan was invited to the police station to identify the malefactors. A police line-up, composed of eight (8) men, was formed. Without hesitation, Danilo Bulilan pointed to Marcelino Maguikay as one of the culprits. Three (3) separate informations were then filed on February 21, 1989 against accused Maguikay. On even date, the "Order of Arrest" was issued against accused for two (2) counts of Murder, with "no bail recommended,"[9] and for Attempted Murder, with bail fixed at P10,000.00.

The defense was anchored on alibi. It appears that accused Marcelino Maguikay was an apprentice driver of Inland Trailways, Inc., (Inland) at the time of the incident. On December 19, 1989, he and co-drivers Eduardo Maceda and Edwin Jimenez were dispatched to Catbalogan, Samar, on board Bus No. 1919. The bus left the Pasay City Terminal at about 5:00 P.M.[10] Enroute to Catbalogan, Samar, the bus made several stop-overs, viz: Masapan, Quezon; Daet, Camarines Norte; Naga City; Sorsogon, Matnog; and Calbayog City. On December 21, 1989, at around 12:30 A.M., the bus reached Catbalogan, Samar, its final destination.

At about 9:00 A.M., on December 21, 1989, Bus No. 1919 left the Catbalogan Terminal for its return trip to Pasay City. At midnight, however, in San Felipe, Basud, Camarines Norte, the bus was stranded due to a defective hi-beam. Upon Maceda's instruction, accused boarded another bus and proceeded to Inland's terminal in Daet, for assistance. An hour later, accused returned on board Bus No. 9952. The stranded passengers of Bus No. 1919 were then transferred to Bus 9952. Again, following Maceda's order, accused boarded Bus No. 9952 for its return trip to Pasay City, leaving behind Maceda and Jimenez who looked after the stranded bus.[11]

According to accused, when he arrived in Pasay City on December 22, 1989, his second wife told him of a newspaper report implicating him in the slaying of Carlos Bulilan. He was told that policemen were also looking for him. Mrs. Castro, his employer, however, did not believe the report. Thus, he was made to take another trip to Maasim (in Visayas) that same day. He obeyed.

To bolster his alibi, accused offered in evidence the testimonies of his co-drivers, Maceda and Jimenez, and Inland's logbooks where the arrival and departure of Inland buses, including Bus No. 1919, were recorded.

On rebuttal, TEODORO MARTINEZ, one of G-Liner's bus drivers, claimed that in the morning of December 21, 1989, accused boarded the bus he (Martinez) was then driving. From the rear mirror, he allegedly saw accused talking to the bus conductor. After accused had alighted, the conductor told him that accused had asked for money to buy newspaper.

On surrebuttal, LUIS FRANCISCO, a cellmate of accused at the Pasig municipal jail, testified that Teodoro

Martinez was detained at the municipal jail for reckless imprudence. While thus incarcerated, he allegedly overheard Teodoro Martinez asking for forgiveness from accused because he (Teodoro) executed an affidavit against the accused in connection with the ambush. Teodoro likewise admitted to accused that he was paid P10,000.00 in consideration for said affidavit, in addition to G-Liner's promise that he would not be dismissed from his job.

After trial, the court a quo found accused guilty as charged. The dispositive portion of the trial court Decision,[12] dated November 27, 1991, reads:

"WHEREFORE, premises considered, the Court finds the accused MARCELINO alias LINO C. MAGUIKAY guilty beyond reasonable doubt of the crime of MURDER (on two counts), qualified by treachery defined and penalized under Article 248 of the Revised Penal Code, with the attending generic circumstance of evident premeditation and hereby sentences said accused to suffer the penalty of reclusion perpetua in EACH of Criminal Case No. 81459 and Criminal Case No. 81460, both entitled "People of the Philippines versus Marcelino @ Lino C. Maguikay, to indemnify EACH of the heirs of victims Carlos Bulilan and Roberto Bulilan, in the amount of FIFTY THOUSAND PESOS (P50,000.00) in accordance with the new policy of the High Court on the matter xxx and the further sum of FIFTY THOUSAND PESOS (P50,000.00) by way of moral and exemplary damages, all without subsidiary imprisonment in case of insolvency and to pay the costs.

"The Court likewise finds the accused MARCELINO @ LINO C. MAGUIKAY guilty beyond reasonable doubt of the crime of ATTEMPTED MURDER charged in Criminal Case No. 81461 and hereby sentences said accused to suffer an indeterminate prison term of One (1) year, seven (7) months and Eleven (11) days of prision correccional to Six (6) years, One (1) month and Eleven (11) days of prision mayor and to pay the costs.

"In the successive service of his sentence, the accused shall be credited in full with the period of his preventive imprisonment.

"SO ORDERED."

Hence, this appeal. Accused-appellant raises these issues:

I

THE LOWER COURT ERRED IN HOLDING THAT THE ACCUSED-APPELLANT WAS POSITIVELY IDENTIFIED AS ONE OF THE ASSAILANTS;

II

THE COURT ERRED IN ADMITTING THE TESTIMONIES OF (GEDA), MACAPAGAL AND VALISA AS PART OF RES GESTAE;

III

THE COURT ERRED IN HOLDING THAT THE ACCUSED HAD SUFFICIENT MOTIVE TO KILL THE VICTIMS;

IV

THE LOWER COURT ERRED IN HOLDING THAT THE ENTRIES IN THE (SUBJECT) LOGBOOKS HAVE NO PROBATIVE VALUE;

V

THE LOWER COURT ERRED WHEN IT FAILED TO CONSIDER THE TESTIMONIES OF THE CO-DRIVERS OF MAGUIKAY;

VI

THE COURT ERRED IN HOLDING THAT SINCE THE ACCUSED WAS POSITIVELY IDENTIFIED, HIS DEFENSE OF ALIBI MUST NECESSARILY FALL;

VII

THE LOWER COURT ERRED IN HOLDING THAT THE CRIME WAS ATTENDED BY THE AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION;

VIII

THE LOWER COURT ERRED IN DISREGARDING THE ATTENDANT CIRCUMSTANCE OF VOLUNTARY SURRENDER.

The issues are interrelated, hence, they shall be resolved jointly.

The judgment of conviction is affirmed.

Accused-appellant was positively identified by a credible eyewitness, Danilo Bulilan. We are convinced of the truthfulness of Danilo's testimony against accused-appellant. He testified:

"COURT:

Q: Where were you seated?

(DANILO BULILAN)

A: At the back of the driver, Your Honor.

Q: Where did you see the accused in relation to the car?

A: At the front side, near the headlight, right front, Your Honor. He suddenly appeared.

Q: His feet on the ground?

A: Slightly bent, Your Honor.

Q: No vehicle?

A: I do not know where he came from, Your Honor.

Q: What was he wearing?

A: White T-shirt and pants, Your Honor.

Q: Was it (the gun) a revolver or a pistol?

A: I do not know, sir.

x x x

(ATTY. PEKAS)

Q: When you saw Marcelino Maguikay in the (sic) front of the car, was the car where you were riding on still moving?

A: Umaarangkada po because there was traffic.

Q: You saw him in the right front portion of the car?

A: Yes, sir.

Q: When did you hear Maguikay talk?

A: After the shooting incident and when my father was slumped on the street and he uttered and I quote, "Kunin mo ang gamit niyan, may dala iyan."

Q: At that point, were the alleged companions of Marcelino Maguikay still shooting?

A: They were not, sir.

Q: What was your position in the car at that time?

A I was lying flat on the floor of the car, sir.

"Q: You did not see the person who was talking at that time.

A: Yes, sir.

Q: And you were suffering at that time from a gunshot wound?

A: Yes, sir.

Q: Of course, you were also shocked by the ambush?

A: Yes, sir.

x x x

Q: You said awhile ago that Marcelino Maguikay had two companions. Did you see their faces?

A: No, sir.

Q: You did not see them appear before the shooting?

A: I just saw their shadow but I did not look directly because they were already shooting, sir.

COURT:

Q: The car is tinted?

A: Yes, Your Honor.

Q: The air-conditioning is running?

A: No, Your Honor.

Q: What time was it?

A: 5:45 (P.M.), Your Honor.

(ATTY. PEKAS)

Q: And Marcelino Maguikay was at that time not wearing anything over his face?

A: None, sir.

x x x

COURT:

Q: How many shots more or less did you hear?

A: The first is one or two shots, then I lie (sic) down.

Q: With the same sound?

A: The first. The other I was already lying (down), Your Honor."

x x x.

(TSN, May 21, 1990, pp. 12-14)

It is crystal clear from the foregoing that Danilo Bulilan had a clear view of accused-appellant before he hid himself for safety. He could not have committed a mistake as he knew accused-appellant even before the incident. The records show that accused-appellant was a former driver of G-Liner. Moreover, Danilo's testimony is replete with minutiae of the ambush incident, evincing his sincerity, not to mention that, as correctly found by the trial court, his testimony is categorical and straightforward. Notably, the eyewitness did not falter during his cross-examination.

More importantly, about an hour after the ambush, Danilo Bulilan tagged accused-appellant as one of the assailants. Renato Macapagal testified that as soon as he arrived at the hospital, between 6:30 P.M. and 6:45 P.M., he talked to Danilo. Renato testified:

(PRIVATE PROSECUTOR)

"Q: Now, you said that Danilo Bulilan revealed to you the incident of the ambush as well as the identity of the gunman Marcelino Maguikay, what was the physical condition of Danilo Bulilan when he reveal(ed) to you the incident?

A: When I approached Mr. Danilo Bulilan, he was in a state of shock and he was very nervous and stunnering (sic) and for quite sometime, I could feel that ... I could also understand that position considering that his father and his brother were inside the emergency room.

Q: Have you also noticed whether or not Danilo Bulilan was wounded in the ambush?

A: Danilo was hit somewhere in the stomach which he mentioned also to me."

(TSN, September 14, 1990, p. 8).

Danilo's statement pertaining to the participation of accused-appellant in the ambush incident can be taken as part of *res gestae*.^[13] The statement was made within an hour after a startling occurrence, respecting the circumstances thereof, when the victim did not have time to contrive or devise a falsehood.^[14] The test for the admissibility of a declaration is the unreflecting character of the statements made during the startling occurrence, or immediately before or after said occurrence. A suspicion of afterthought would suffice to prevent its reception as part of *res gestae*. In this case, the ambush took place at about 5:45 P.M. Danilo himself was wounded. Both his father and brother were in critical condition. Albeit wounded, Danilo had managed to bring his father and brother to the hospital, and an hour later, while they were still in the emergency room, he disclosed to Renato Macapagal the identity of accused-appellant as one of the gunmen. These circumstances negate the opportunity for Danilo to

contrive or concoct a falsehood. We find it unbelievable that Danilo, would falsely accuse anybody for the death of his father and brother. His natural instinct, at that time, was to see the real culprits pay for their crime.

It ought to be mentioned that accused-appellant himself denied any knowledge why Danilo Bulilan took an active role in prosecuting him. The absence of motive on the part of Danilo to make a phony accusation against accused-appellant enhances his credibility as a witness. In addition, at least two (2) disinterested witnesses, Patrolman Donato Geda and reporter Salvador Valisa, confirmed accused-appellant's identification by the eyewitness.

Nonetheless, accused-appellant insists that his alibi should not be dismissed as weak, vis-a-vis his positive identification by the eyewitness, since Inland's logbooks and the testimonies of his co-drivers Eduardo Maceda and Edwin Jimenez, had sufficiently established his whereabouts on the material date and time. In rejecting his argument, the trial court ruled as follows:

"The Court cannot lend credence to the entries in the several logbooks presented by the accused as not one of the authors thereof was presented in Court to substantiate said entries. xxx. The Court moreover cannot but notice the intercalations and insertions in the said logbooks as evidenced by the different colors of ink used therein notwithstanding that the recordings therein were of the same nature. In the eyes of the Court, they have no probative value whatsoever." (emphasis ours)

(Decision, dated November 27, 1991, p. 10)

On the other hand, accused-appellant posits as follows:

"It is precisely these intercalations and insertions which are found in all the logbooks which fortify their authenticity and genuineness. Any person fraudulently inserting an entry therein would have taken the pains at least to look for a similar ballpen. Besides, it is impossible to ask that the same ballpen be used for all the entries considering that each person making the entry may have his own pen. Moreover, the intercalations and insertions happen(ed) not only on the entries regarding Maguikay but (also) randomly on all entries." (emphasis ours)

(Brief for the Accused-Appellant, May 30, 1992, p. 18)

We have examined the subject logbooks and we agree with the observation made by the trial court. The logbooks presented by accused-appellant to prove his defense of alibi will not exculpate him.

To begin with, the entries in the subject logbooks were written by several individuals as evidenced by their different penmanships. Different types of pen, i.e., fountain pens, ballpens, and signpens, with different inks, were used. There were also insertions and intercalations found on the different entries in all the logbooks presented. The entries pertaining to Bus No. 1919 were no exception.

There was no explanation for the insertions and intercalations found on the entries material to the defense of accused-appellant so as to cast away any suspicion on their truthfulness. Such omission is fatal to accused-appellant's defense of alibi for, without the testimony of the author thereof, it would be difficult to ascertain which of the entries were genuine and which were spurious. Worse, under the circumstances in field, the integrity of those material entries is not beyond suspicion. Contrary to the argument of accused-appellant, precisely because of the various insertions and intercalations found in the subject logbooks, it was easier for accused-appellant to pass on as genuine the entries pertaining to his trip to Samar. The trial court was, therefore, correct in refusing to give them any probative value.

Accused-appellant avers that his alibi was sufficiently corroborated by credible and disinterested witnesses, namely, Edwin Jimenez and Eduardo Maceda. In spite of their unimpeached testimonies, he laments that the trial

court did not consider them.

The argument lacks merit. The issue boils down to the credibility of witnesses. We find no cogent reason to disturb the settled rule that findings of a trial court on credibility of witnesses deserve respect, if not finality. Trial courts are in a better position to resolve issues of credibility since they have observed the demeanor of the witness in open court.

It is also asserted that the assailed decision did not consider all his asseverations and arguments. Accused-appellant misconstrues Section 14, Article VIII of the Constitution which provides:

"No decision shall be rendered by the trial court without expressing therein clearly and distinctly the facts and the law on which it is based."

All that the provision requires is that the decision should state the "essential ultimate facts" upon which the court's conclusion is drawn.[15] Courts need not discuss in their decision every evidence adduced by the parties for many of them are not relevant to the decisive issues of fact and law involved in the case. Indeed, a trial judge enjoys a wider latitude of determining the material facts based on the conflicting asseverations of both parties which would be the basis of his decision.[16] In congruence, it is presumed that official duty has been regularly performed, and that all the matters within an issue raised in a case were laid before the court and passed upon by it.[17]

We agree that the assault was characterized by treachery which qualified the killing to Murder. There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might take. The prosecution had met the requisites for alevosia to be appreciated, viz: (1) at the time of the attack the victim was not in a position to defend himself; and (2) that the offender consciously adopted the particular means, method, or form of the attack employed by him.[18] The records reveal that the Bulilans were on their way home and completely unaware of the impending danger. They were totally defenseless as their car were riddled with bullets by accused-appellant and his cohorts.

The defense alleges that crime was not attended by evident premeditation. It appears that prior to the ambush, accused-appellant was separated from his employment at G-Liner. At that time, Carlos Bulilan was the Operations Manager of G-Liner. He had a hand in the separation of the employees from the company. Between the months of January and June 1988, Carlos received death threats from unidentified persons, saying: "Mag-iingat ka Mr. Bulilan, ng dahil sa iyo natanggal kami sa aming trabaho, kapag nagutom ang aming pamilya, papatayin ka namin o isa sa miembro ng pamilya mo, Tuta ka ng mga De Guia." [19] In view of these circumstances, the trial court concluded that accused-appellant had resolved to kill the Bulilans from the time he lost his job, sometime in 1988, and he clung to his determination to commit the crime until the ambush on December 21, 1989. We hold otherwise.

The evidence adduced by the prosecution failed to prove that the crime was committed with evident premeditation. The circumstance of evident premeditation can be appreciated when these requisites have been established: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) the lapse of an interval of time between the determination to commit the crime and the execution thereof, sufficient to allow the offender to reflect upon the consequences of his act.[20] We have ruled that when there is no showing as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered to exist.[21] In this case, there was no direct evidence on when and how the plot to kill the Bulilans was made. We cannot attribute the death threats received by Carlos Bulilan solely to accused-appellant since, admittedly, there were other employees dismissed from G-Liner besides him.

On the other hand, the lower court should have appreciated the mitigating circumstance of voluntary surrender in favor of accused-appellant. It is evident from the records that accused-appellant had voluntarily submitted himself to the authorities for investigation as early as January 15, 1990, even before the "Order of Arrest" against him was issued on February 21, 1990. We hold that all the requisites for voluntary surrender to be appreciated were met, viz: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority; (3) the surrender must be voluntary.[22]

We now come to the proper penalties in this case. The trial court had correctly held accused-appellant guilty of MURDER for the treacherous killing of Carlos Bulilan and Roberto Bulilan in Criminal Case Nos. 81459--60. Under Article 248 of the Revised Penal Code, the penalty for Murder is reclusion temporal maximum to death. Taking into consideration the mitigating circumstance of voluntary surrender, and there being no aggravating circumstance to offset the same, the penalty should be imposed in its minimum period, that is, reclusion temporal maximum.[23]

Section 1 of the Indeterminate Sentence Law provides that in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the laws of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by law for the offense.

Applying the said law, accused-appellant is entitled to a minimum penalty of prision mayor maximum to reclusion temporal medium, the range of the penalty next lower to that prescribed by Article 248 of the Revised Penal Code.[24]

Accused-appellant is also guilty for the ATTEMPTED MURDER of Danilo Bulilan. In this case, albeit the intent to kill was proved, Danilo's wound was not fatal. The rule is, where the wound inflicted on the victim is not sufficient to cause his death, the accused not having performed all the acts of execution that would have brought it about, the crime is only attempted murder.[25]

Under Article 51 of the same code, the penalty for an attempted felony shall be imposed two degrees lower than that prescribed by law for the consummated felony. Hence, the penalty for attempted murder is prision correccional maximum to prision mayor medium.[26]

Again, taking into consideration the presence of one mitigating circumstance, with no aggravating circumstance, the minimum period of the penalty for attempted murder, i.e., prision correccional maximum, should be imposed.

The Indeterminate Sentence Law entitles accused-appellant to the minimum penalty of arresto mayor maximum to prision correccional medium, the range of penalty next lower to the penalty prescribed for attempted murder.

With respect to the moral damages granted in favor of the legal heirs of the victims, we find that there was no proof to justify the award thereof. On the other hand, exemplary damages may be awarded in criminal cases where the crime was committed with one or more aggravating circumstance. In this case, there was none. Hence, the trial court erred in awarding the same.[27]

WHEREFORE, premises considered, the impugned decision is AFFIRMED with MODIFICATIONS. Accordingly, in Criminal Case Nos. 81459-60, accused-appellant Marcelino Maguikay is meted the indeterminate sentence of ten (10) years and one (1) day of prision mayor maximum as the minimum penalty, to twenty (20) years of reclusion temporal maximum as the maximum penalty, together with all the accessory penalties provided by law.[28] In Criminal Case No. 81461, accused-appellant is sentenced to four (4) months and one (1) day of arresto mayor as minimum penalty, to six (6) years of prision correccional as maximum penalty.

In Criminal Case Nos. 81459-60, we affirm the indemnification of fifty thousand pesos (P50,000.00) each in favor of the legal heirs of Carlos Bulilan and Roberto Bulilan, or a total of one hundred thousand pesos (P100,000.00). The awards for moral and exemplary damages, however, are DELETED. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Mendoza, JJ., concur.

[1] Docketed as Criminal Case Nos. 81459, 81460 and 81461.

[2] Original Records, p. 13.

[3] Also known as De Guia Enterprises, Inc.

[4] Exhibit "V".

[5] TSN, July 6, 1990, pp. 6-7.

[6] TSN, January 7, 1991, p. 3.

[7] Exhibit "17"; Original Records, pp. 301 and 304.

[8] Exhibit "14"; Original Records, p. 301.

[9] Criminal Case Nos. 81459-60; Original Records, p. 3.

[10] Exhibits "2" and "2-A."

[11] Exhibit "13"; See also Pasay Terminal Logbook, p. 198.

[12] Penned by Judge Martin S. Villarama; Rollo, pp. 29- 40.

[13] Section 42, Rule 130 of the Revised Rules of Court reads:

"Sec. 42. Part of the res gestae. - Statement made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. xxx."

The elements of res gestae are: (1) there must be a startling occurrence (enough to produce nervous excitement and to keep the will dormant so far as any deliberation in concocting matters for speech or selecting words is concerned); (2) the statement must relate to the circumstances of the startling occurrence; and (3) the statement must be made before the declarant had time to contrive or devise.

[14] People vs. Masangkay, G.R. No. 73461, January 25, 1988, 157 SCRA 320.

[15] Air France vs. Carrascoso, G.R. No. L-21438, September 28, 1966, 18 SCRA 155.

[16] See also People vs. Bravo, G.R. No. 101191, October 18, 1993, 227 SCRA 285.

[17] Section 3 (m) and (o), Rule 131 of the Revised Rules of Court.

[18] People vs. Genial, G.R. No. 105692, December 7, 1993, 228 SCRA 283.

[19] Exhibit "I".

[20] Article 16, par. 13 of the Revised Penal Code; People vs. Antonio Danque, G.R. No. 107978, November 19,

1993, 228 SCRA 83; *People vs. Lug-aw*, G.R. No. 85735, January 18, 1994, 229 SCRA 308.

[21] *People vs. Buela*, G.R. No. 92536, November 8, 1993, 227 SCRA 534; See also *People vs. Salvador*, G.R. No. 101215, July 30, 1993, 224 SCRA 819.

[22] *People vs. Amaguin*, G.R. No. 54344-45, January 10, 1994, 229 SCRA 166.

[23] Article 63, par. 3, Revised Penal Code.

[24] *People vs. Ocaña*, G.R. No. 63009, January 19, 1994, 229 SCRA 341.

[25] *People vs. Tui*, G.R. No. 75032-33, December 1, 1992, 216 SCRA 140.

[26] *People vs. Tui*, *supra*.

[27] Article 2230 of the Civil Code; See also *People vs. Rabanes*, G.R. No. 93709, May 8, 1992, 208 SCRA 768.

[28] *People vs. Ocaña*, G.R. No. 63009, January 19, 1994, 229 SCRA 341.

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