

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CLAUDIO TEEHANKEE, JR., ACCUSED-APPELLANT.

G.R. Nos. 111206-08. October 06, 1995

Ponente: PUNO, J.

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PUNO, J.:

Three (3) separate Informations were filed against accused Claudio Teehankee, Jr. for the shooting of Roland John Chapman, Jussi Olavi Leino and Maureen Hultman. Initially, he was charged with: MURDER for the killing of ROLAND CHAPMAN, and two (2) FRUSTRATED MURDER for the shooting and wounding of JUSSI LEINO and MAUREEN HULTMAN. When Hultman died on October 17, 1991, during the course of the trial, the Information for Frustrated Murder against accused was amended to MURDER.[1]

The Information for Murder in Criminal Case No. 91-4605 thus reads:

"That on or about the 13th day of July, 1991, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the said Claudio Teehankee, Jr. y Javier, armed with a handgun, with intent to kill and evident premeditation and by means of treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said handgun Ronald John Chapman who was hit in the chest, thereby inflicting mortal wounds which directly caused the death of said Ronald John Chapman.

"Contrary to law."[2]

The Amended Information for Murder in Criminal Case No. 91-4606 reads:

"That on or about the 13th day of July, 1991, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the said Claudio Teehankee, Jr. y Javier, armed with a handgun, with intent to kill and evident premeditation, and by means of treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said handgun Maureen Navarro Hultman who was hit in the head, thereby inflicting mortal wounds which directly caused the death of said Maureen Hultman.

"CONTRARY TO LAW."[3]

Finally, the Information for Frustrated Murder in Criminal Case No. 91-4607 reads:

"That on or about the 13th day of July, 1991, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a handgun, with intent to kill, treachery and evident premeditation did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Jussi Olavi Leino on the head, thereby inflicting gunshot wounds, which ordinarily would have caused the death of said Jussi Olavi Leino, thereby performing all the acts of execution which would have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of cause or causes independent of his will, that is, due to the timely and able medical assistance rendered to said Jussi Olavi Leino which prevented his death.

"Contrary to law."[4]

In the two (2) Informations for frustrated murder initially filed against accused, bail was set at twenty thousand pesos (P20,000.00) each. No bail was recommended for the murder of Roland John Chapman. A petition for bail was thus filed by accused. Hearing was set on August 9, 1991, while his arraignment was scheduled on August 14, 1991.

At the hearing of the petition for bail on August 9, 1991, the prosecution manifested that it would present the surviving victim, Jussi Leino, to testify on the killing of Chapman and on the circumstances resulting to the wounding of the witness himself and Hultman. Defense counsel Atty. Rodolfo Jimenez objected on the ground that the incident pending that day was hearing of the evidence on the petition for bail relative to the murder charge for the killing of Chapman only. He opined that Leino's testimony on the frustrated murder charges with respect to the wounding of Leino and Hultman would be irrelevant.[5]

Private prosecutor, Atty. Rogelio Vinluan, countered that time would be wasted if the testimony of Leino would be limited to the killing of Chapman considering that the crimes for which accused were charged involved only one continuing incident. He pleaded that Leino should be allowed to testify on all three (3) charges to obviate delay and the inconvenience of recalling him later to prove the two (2) frustrated murder charges.[6]

By way of accommodation, the defense suggested that if the prosecution wanted to present Leino to testify on all three (3) charges, it should wait until after the arraignment of accused on August 14, 1991. The defense pointed out that if accused did not file a petition for bail, the prosecution would still have to wait until after accused had been arraigned before it could present Leino.[7]

The private prosecutor agreed to defer the hearing on the petition for bail until after arraignment of accused on the condition that there shall be trial on the merits and, at the same time, hearing on the petition for bail. The defense counsel acceded.[8]

Upon arraignment, accused pleaded not guilty to the three (3) charges. The prosecution then started to adduce evidence relative to all three (3) cases. No objection was made by the defense.[9]

A replay of the facts will show that on July 12, 1991, Jussi Olavi Leino invited Roland Chapman, Maureen Hultman and other friends for a party at his house in Forbes Park, Makati. The party started at about 8:30 p.m. and ended at past midnight. They then proceeded to Roxy's, a pub where students of International School hang out.[10] After an hour, they transferred to Vintage, another pub in Makati, where they stayed until past 3:00 a.m. of July 13, 1991. Their group returned to Roxy's to pick up a friend of Maureen, then went back to Leino's house to eat.[11]

After a while, Maureen requested Leino to take her home at Campanilla Street, Dasmariñas Village, Makati. Chapman tagged along.[12] When they entered the village, Maureen asked Leino to stop along Mahogany Street, about a block away from her house in Campanilla Street. She wanted to walk the rest of the way for she did not like to create too much noise in going back to her house. She did not want her parents to know that she was going home that late. Leino offered to walk with her while Chapman stayed in the car and listened to the radio.[13]

Leino and Maureen started walking on the sidewalk along Mahogany Street. When they reached the corner of Caballero and Mahogany Streets, a light-colored Mitsubishi box-type Lancer car, driven by accused Claudio Teehankee, Jr., came up from behind them and stopped on the middle of the road. Accused alighted from his car, approached them, and asked: "Who are you? (Show me your) I.D." Leino thought accused only wanted to check their identities. He reached into his pocket, took out his plastic wallet, and handed to accused his Asian Development Bank (ADB) I.D.[14] Accused did not bother to look at his I.D. as he just grabbed Leino's wallet

and pocketed it.[15]

Chapman saw the incident. All of a sudden, he manifested from behind Leino and inquired what was going on. He stepped down on the sidewalk and asked accused: "Why are you bothering us?" Accused pushed Chapman, dug into his shirt, pulled out a gun and fired at him. Chapman felt his upper body, staggered for a moment, and asked: "Why did you shoot me?" Chapman crumpled on the sidewalk. Leino knelt beside Chapman to assist him but accused ordered him to get up and leave Chapman alone.[16]

Accused then turned his ire on Leino. He pointed the gun at him and asked: "Do you want trouble?" Leino said "no" and took a step backward. The shooting initially shocked Maureen. When she came to her senses, she became hysterical and started screaming for help. She repeatedly shouted: "Oh, my God, he's got a gun. He's gonna kill us. Will somebody help us?"

All the while, accused was pointing his gun to and from Leino to Maureen, warning the latter to shut up. Accused ordered Leino to sit down on the sidewalk. Leino obeyed and made no attempt to move away. Accused stood 2-3 meters away from him. He knew he could not run far without being shot by accused.

Maureen continued to be hysterical. She could not stay still. She strayed to the side of accused's car. Accused tried but failed to grab her. Maureen circled around accused's car, trying to put some distance between them. The short chase lasted for a minute or two. Eventually, accused caught Maureen and repeatedly enjoined her to shut up and sit down beside Leino.[17]

Maureen finally sat beside Leino on the sidewalk. Two (2) meters away and directly in front of them stood accused.[18] For a moment, accused turned his back from the two. He faced them again and shot Leino. Leino was hit on the upper jaw, fell backwards on the sidewalk, but did not lose consciousness. Leino heard another shot and saw Maureen fall beside him. He lifted his head to see what was happening and saw accused return to his car and drive away.[19]

Leino struggled to his knees and shouted for help. He noticed at least three (3) people looking on and standing outside their houses along Caballero Street.[20] The three were: DOMINGO FLORECE, a private security guard hired by Stephen Roxas to secure his residence at #1357 Caballero Street, Dasmariñas Village, Makati;[21] VICENTE MANGUBAT, a stay-in driver of Margarita Canto, residing at #1352 Caballero Street, corner Mahogany Street, Dasmariñas Village;[22] and AGRIPINO CADENAS, a private security guard assigned at the house of Rey Dempsey, located at #1351 Caballero Street, corner Mahogany Street, Dasmariñas Village.[23]

Security guards Florece and Cadenas were then on duty at the house of their employer, while driver Mangubat was in his quarters, preparing to return to his own house. These three (3) eyewitnesses heard the first gunshot while at their respective posts.

Upon hearing the first shot, Florece went out to Caballero Street to see what was happening, while Mangubat and Cadenas peeped over the fence of their employer's house and looked out to Caballero Street. Each saw a man (Chapman) sprawled on the ground, another man (Leino) sitting on the sidewalk, a third man standing up and holding a gun and a woman (Hultman). They saw the gunman shoot Leino and Hultman and flee aboard his Lancer car. However, because of Florece's distance from the scene of the crime,[24] he was not able to discern the face of the gunman. He saw the control numbers of the gunman's car as 566. He described the getaway car as a box-type Lancer, its color somewhat white ("medyo puti").[25] Cadenas noticed in full the plate number of the getaway car and gave it as PDW 566. He described the car as silver metallic gray.[26] Both Cadenas and Mangubat saw the gunman's face. They had a good look at him. Cadenas was then a mere four (4) meters away from the gunman's car,[27] while Mangubat was about twenty (20) meters away from the scene of the crime.[28]

The three confirmed that the corner of Caballero and Mahogany Streets where the shooting took place was adequately illuminated by a Meralco lamppost at the time of the incident.[29]

After the gunman sped away, Mangubat ran outside his employer's house and went near the scene of the crime. He noticed security guard Florece along Caballero Street. A man on a bike passed by and Mangubat requested him to report the shooting incident to the security officers of Dasmariñas Village.[30] Meanwhile, Florece returned to his post and narrated to his employer, Mrs. Helen Roxas, what he saw. Mrs. Roxas repaired to the crime scene while Florece noted the incident in his logbook (Exhibit "B"). He also jotted down the license plate control number of the gunman's car as 566.[31]

The security guards of Dasmariñas Village came after a few minutes. They rushed Leino and Maureen to the Makati Medical Center for treatment.[32]

The Makati police and agents of the NBI also came. Patrolman JAMES BALDADO of the Makati police, together with SPO3 ALBERTO FERNANDEZ, investigated the incident.[33] Their initial investigation disclosed that the gunman's car was a box-type Mitsubishi Lancer with plate control number 566. They checked the list of vehicles registered with the village Homeowners' Association and were able to track down two (2) Lancer cars bearing plate control number 566. One was registered in the name of JOSE MONTAÑO of 1823 Santan Street, Dasmariñas Village, with plate number PKX 566, and another was traced to accused CLAUDIO TEEHANKEE, JR., of 1339 Caballero Street, Dasmariñas Village, with plate number PDW 566.

SALVADOR RANIN, Chief of the Special Operations Group (SOG) of the NBI, was also tasked by then NBI Director Alfredo Lim[34] to head a team to investigate the shooting. Ranin's team immediately proceeded to the house of Jose Montaña[35] where they found ahead of them the Makati police and operatives of the Constabulary Highway Patrol. Ranin tried to verify from Mrs. Montaña whether the white Lancer car registered in the name of Mr. Montaña and bearing plate number 566 was the gunman's car. Mrs. Montaña denied and declared they had already sold the car to Saldaña Enterprises. She averred the car was being used by one Ben Conti, a comptroller in said company, who resides in Cubao, Quezon City. Mrs. Montaña called up her husband and informed him about the investigation. She also called up Conti and asked him to bring the car to the house.[36]

Jose Montaña came around noon. Conti followed with the white Lancer car. Ranin brought them to the NBI office for investigation, together with the Lancer car. At the NBI, Ranin inquired from Montaña the whereabouts of his car on July 12 and 13, 1991. Montaña informed him that the car was at the residence of his employee, Ben Conti, at E. Rodriguez Street, Cubao, Quezon City, the night of July 12, 1991. In the morning of July 13, 1991, Conti drove the car to their office at Saldaña Enterprises. Conti confirmed this information. Ranin received the same confirmation from two (2) NBI agents who made a countercheck of the allegation. Upon Ranin's request, Montaña left his car at the NBI parking lot pending identification by possible witnesses.[37]

On July 14, 1991, a team of NBI agents conducted an on-the-spot investigation and neighborhood inquiry of the shooting incident. They interviewed Domingo Florece and asked him to report to their office the next day for further investigation.[38] They also interviewed Agripino Cadenas who was reluctant to divulge any information and even denied having witnessed the incident. Sensing his reluctance, they returned to Cadenas' post at Dasmariñas Village that night and served him a subpoena, inviting him to appear at the NBI office for investigation the next day.[39] The NBI agents also talked with Armenia Asliami, an Egyptian national residing at #1350 Caballero Street, Dasmariñas Village, near the scene of the crime. Asliami informed the agents that the gunman's car was not white but light gray. A foreign national, Asliami was afraid and refused to give a statement about the incident. The agents exerted every effort to convince Asliami to cooperate, assuring her of their protection. Ranin even asked a representative of the Egyptian embassy to coax Asliami to cooperate. They

failed.[40]

On July 15, 1991, Florece and Cadenas appeared at the NBI office as summoned. Florece readily executed a sworn statement.[41] Cadenas, however, continued to feign ignorance and bridled his knowledge of the incident. He was lengthily interviewed. At around 2:00 p.m., the NBI agents informed SOG Chief Ranin that Cadenas was still withholding information from them. Ranin talked to Cadenas in his office. Cadenas confided to Ranin his fear to get involved in the case. He was apprehensive that the gunman would harass or harm him or his family. After Ranin assured him of NBI protection, Cadenas relented.[42]

The next day, July 16, 1991, Cadenas gave a full disclosure to Ranin. He described the gunman's car as a box-type Lancer with plate number PDW 566. He was brought to the NBI parking lot where Montaño's white Lancer car was parked to identify the gunman's car. Ranin asked Cadenas if Montaño's was the gunman's car. Cadenas replied that its color was different. Ranin directed him to look around the cars in the parking lot and to point the color that most resembled the color of the gunman's car. He pointed to a light gray car. Ranin told him that the color of the car he pointed to was not white but light gray.[43]

Ranin then asked Cadenas if he could identify the gunman. Cadenas replied in the affirmative. Ranin led Cadenas to his office and showed him ten (10) pictures of different men (Exhibits "CC-1" to "CC-10") taken from the NBI files. One of the pictures belonged to accused Claudio Teehankee, Jr. Cadenas studied the pictures, picked accused's picture (Exhibit "CC-7"), and identified him as the gunman. Cadenas wrote his name and the date at the back of said picture. Atty. Alex Tenerife of the NBI then took down Cadenas' statement.[44]

Ranin sent his agents and the witnesses to the Makati Regional Trial Court to apply for a search warrant. After a searching examination of the witnesses, Judge Rebecca Salvador issued a search warrant (Exhibit "RR"), authorizing the NBI to search and seize the silver metallic gray, 1983 Mitsubishi Lancer car owned by accused, bearing plate number PDW 566. Ranin and his agents drove to accused's house at #1339 Caballero Street, Dasmariñas Village, to implement the warrant.[45]

At accused's house, Ranin informed Mrs. Pilar Teehankee, mother of accused, of their search warrant. Ranin also told Mrs. Teehankee that they had orders from Director Lim to invite accused to the NBI office for investigation. Mrs. Teehankee informed them that accused was not in the house at that time. She excused herself, went to the kitchen and called up someone on the phone.[46]

In the meantime, Ranin and his men slipped to the Teehankee garage and secured accused's car. After a while, Mrs. Teehankee joined them. Ranin asked her for the car keys but she told him that the keys were with accused. Upon Ranin's request, Mrs. Teehankee got in touch with accused on the phone. Ranin conversed with accused and invited him to the NBI for investigation. Accused assured Ranin that he would report to the NBI later that day. The agents then towed the car of accused to the NBI office.[47]

At around 9:00 p.m., accused's brother, Raul Teehankee, arrived at the NBI office and waited for accused. Accused came, escorted by three (3) Makati policemen, after an hour. He informed them that he just came from the Makati police station where he was also investigated. He told Lim that he has given a statement to the Makati police and was brought to the PC Crime Laboratory for paraffin test.[48]

Accused's NBI investigation started. Lim asked accused of the whereabouts of his Lancer car at the time of the shooting. Accused claimed that his car was involved in an accident a few weeks back and was no longer functioning. The car had been parked in his mother's house at Dasmariñas Village since then. Due to the lateness of the evening, the group decided to continue the investigation the following day.[49]

The next day, July 17, 1991, after breakfast at the Manila Hotel, Lim pressed accused on what really happened at

Dasmariñas Village. Accused said he did not see anything. Lim apprised accused that he would be confronted with some eyewitnesses. Accused sank into silence.[50]

Lim directed Ranin to prepare a lineup at his office. Accused was requested to join the lineup composed of seven (7) men and he acceded. Cadenas was called from an adjoining room[51] and Ranin asked him to identify the gunman from the lineup. Forthwith, Cadenas pointed to accused.[52] Accused merely stared at Cadenas.[53]

On the same day, then Asst. Director Epimaco Velasco, Ranin and two (2) other agents brought accused to Forbes Park for further identification by the surviving victim, Jussi Leino. Leino has just been discharged from the hospital the day before. Since Leino's parents were worried about his safety, they requested the NBI to conduct the identification of the gunman in Forbes Park where the Leinos also reside. The NBI agreed.[54]

House security agents from the U.S. embassy fetched Leino at his house and escorted him and his father to a vacant house in Forbes Park, along Narra Avenue. After a couple of minutes, Leino was brought out of the house and placed in a car with slightly tinted windows. The car was parked about five (5) meters away from the house. Inside the car with Leino was his father, NBI-SOG Chief Salvador Ranin and a driver. Leino was instructed to look at the men who would be coming out of the house and identify the gunman from the lineup.[55]

A group of five to six men (including accused) then came out of the unoccupied house, into the street, in a line-up. Leino noticed that one of them was wearing sunglasses. Since Leino could not yet speak at that time due to the extensive injury on his tongue, he wrote down on a piece of paper a request for one of the men in the lineup to remove his sunglasses. Leino handed this written request to his father. The men in the lineup were herded back inside the house. After a couple of minutes, they again stepped out and none was wearing sunglasses. From the lineup, Leino identified accused as the gunman.[56]

The agents brought back accused to the NBI. They prepared and referred the cases of murder and double frustrated murder against accused to the Department of Justice for appropriate action. At the inquest, Fiscal Dennis Villa-Ignacio did not recommend bail insofar as the murder charge was concerned. Hence, accused was detained at the NBI.[57]

The shooting incident was also investigated by the Makati Police. Pat. Baldado went to see security guard Vicente Mangubat at his post, at the residence of his employer in Dasmariñas Village. Baldado interviewed Mangubat and invited him to the Makati police station where his statement (Exhibit "D") was taken.[58]

The next day, July 16, 1991, at about 8:30 a.m., Pat. Baldado fetched Mangubat from his house and brought him to the Makati police station. At the station, Baldado told him to wait for a man who would be coming and see if the person was the gunman. Mangubat was posted at the top of the stairs at the second floor of the station.[59]

After a couple of hours, accused, came with Makati police Major Lovete. He ascended the stairs, passed by Mangubat and proceeded to Major Lovete's office at the second floor. While accused was going up the stairs, Pat. Baldado inquired from Mangubat if accused was the gunman. Mangubat initially declined to identify accused, saying that he wanted to see the man again to be sure. He also confided to Pat. Baldado that he was nervous and afraid for accused was accompanied by a police Major. When accused came out from Major Lovete's office, Pat. Baldado again asked Mangubat if accused was the gunman. Mangubat nodded his head in response.[60] Accused, together with Major Lovete and Pat. Baldado, boarded a Mercedes Benz and left. Mangubat was brought back to his post at Dasmariñas Village by other Makati policemen.[61]

Two (2) days later, Pat. Baldado visited Mangubat at his employer's house and asked him again if accused was really the gunman. Once more, Mangubat answered in the affirmative. Pat. Baldado told Mangubat that he would no longer ask him to sign a statement which he (Baldado) earlier prepared (Exhibit "HHH").[62] Baldado then

left.[63]

In the afternoon of July 23, 1991, Mangubat was also questioned by the NBI agents. Director Lim asked Mangubat if he could recognize the gunman. Mangubat said he could. Mangubat was shown twelve (12) pictures (Exhibits "E" to "E-11") of different men and was asked to identify the gunman from them. He chose one picture (Exhibit "E-10"), that of accused, and identified him as the gunman. Mangubat signed at the back of said picture. Mangubat's statement was taken. He was asked to return to the NBI the next day to make a personal identification.[64]

When Mangubat returned, a lineup was prepared in Lim's office in the presence of the media. At that time, accused's counsels, Attys. Jimenez and Malvar, were at the office of then Asst. Director Epimaco Velasco protesting to the submission of accused to identification. They pointed out that since the cases against accused had already been filed in court and they have secured a court order for the transfer of accused to the Makati municipal jail, any identification of accused should be made in the courtroom. Asst. Director Velasco insisted on the identification as it was part of their on-going investigation. Eventually, accused's counsels acquiesced but requested that identification be made without the presence of the media. Velasco turned them down and explained that if accused is not identified in the lineup, the media coverage would favor accused.[65]

All that time, accused was at the SOG office. He refused to join the lineup at Lim's office and remained seated. Ranin was compelled to bring to the SOG office the men composing the lineup and he asked them to go near accused. Ranin then told Mangubat to go in the office. Mangubat pointed to accused as the gunman.

With the identification of accused by Mangubat, the NBI wrote finis to its investigation.[66]

JUSSI LEINO, the surviving victim, suffered the following injuries:

"FINDINGS:

= Abrasion, 0.5 cm., temporal area, left.

= Wound, gunshot, entrance, circular in shape, 1.0 cm. in diameter, located at the upper lip, mouth, along the medial line, directed backwards and downwards, fracturing the maxillary bone and central and lateral incisors, both sides, to the buccal cavity then lacerating the tongue with fragments of the bullet lodged in the right palatine, tongue and tonsillar region.

SKULL

CHEST FOR RIBS X-RAY #353322

July 13, 1991

No demonstrable evidence of fracture. Note of radioopaque foreign body (bullet fragments) along the superior alveolar border on the right. No remarkable findings.

CT SCAN #43992 July 13, 1991

Small hyperdensities presumably bullet and bone fragments in the right palatine, tongue and tonsillar regions with associated soft tissue swelling.

Anterior maxillary bone comminuted fracture.

Temporal lobe contusions with small hematoma on the right side.

Minimal subarachnoid hemorrhage.

Intact bone calvarium.

x x x x x x x x"[67]

Dr. Pedro Solis, testified that the bullet entered the left temple of Leino. After entering Leino's head, it fractured his upper jaw and his front teeth. Some of the bullet fragments pierced his palette and tongue. Brain scanning revealed contusions on the temporal lobe and hemorrhage on the covering of the brain. Physical deformity resulted as a consequence of the gunshot wound because of the fractured upper jaw and the loss of the front teeth. Sutures were performed on the upper portion of his tongue. Nonetheless, Leino's injuries on the tongue caused him difficulty in speaking.[68]

Dr. Solis also testified as to the relative position of Leino and the gunman. He opined that the muzzle of the gun, like in the case of Maureen, must have been at a higher level than the victim's head. He concluded that the gun must have been pointed above Leino's head considering the acuteness and downward trajectory of the bullet.[69]

Dr. Leovigildo C. Isabela, a neuro-surgeon at the Makati Medical Center, operated on MAUREEN HULTMAN. He testified that when he first saw Maureen, she was unconscious and her face was bloodied all over. Maureen had a bullet hole on the left side of the forehead, above the eyebrow. Brain tissues were oozing out of her nostrils and on the left side of the forehead where the bullet entered.[70]

They brought Maureen to the x-ray room for examination of her skull. She was also given a CT scan. The examination revealed that she suffered injuries on the skull and brain. There were several splintered bullets in her brain and the major portion of the bullet, after it fragmented, was lodged beneath her right jaw.[71]

Maureen was rushed to the operating room for surgery. Dr. Isabela led a team who operated on her brain to arrest the bleeding inside her head, remove devitalized brain tissues and retrieve the splintered bullets embedded in her brain. Due to the extensive swelling of Maureen's brain and her very unstable condition, he failed to patch the destroyed undersurface covering of her brain.[72] After the surgery, Maureen's vital signs continued to function but she remained unconscious. She was wheeled to the ICU for further observation.

Two (2) weeks later, brain tissues and fluid continue to flow out of Maureen's nostrils due to the unpatched undersurface covering of her brain, leaving the swollen portion of her brain exposed. A second surgery was made on July 30, 1991 to repair Maureen's brain covering. He used the fascia lata of Maureen's right thigh to replace the destroyed covering of the brain. Nonetheless, Maureen remained unconscious. The trickle of brain tissues through her nose was lessened but Maureen developed infection as a result of the destruction of her brain covering. Maureen developed brain abscess because of the infection. She underwent a third operation to remove brain abscess and all possible focus of infection.[73]

Testifying on the extensive injuries suffered by Maureen Hultman, Dr. Solis explained that Maureen was shot at the left side of the forehead. The bullet entry was at 1.5 cm. above the eyebrow. Upon entering the forehead, the bullet fragmented into pieces and went from the left to the right side of the temple, fracturing the frontal bone of the skull. The bullet eventually settled behind the right jaw of Maureen.[74]

The wound inflicted on Maureen was mortal for it hit one of the most vital parts of the body, the brain. When Maureen was subjected to CT scan, they discovered hemorrhage in her brain. After the bullet hit her head, it caused hemorrhagic lesion on the ventricles of the brain and the second covering of the brain.[75]

The bullet also injured Maureen's eye sockets. There was swelling underneath the forehead brought about by edema in the area. Scanning also showed that Maureen's right jaw was affected by the fragmented bullet. The whole interior portion of her nose was also swollen.[76]

A team of doctors operated on Maureen's brain. They tried to control the internal bleeding and remove the splintered bullets, small bone fragments and dead tissues. The main bullet was recovered behind Maureen's right

jaw. There was also an acute downward trajectory of the bullet. Hence, it was opined that Maureen was shot while she was seated.[77]

With each passing day, Maureen's condition deteriorated. Even if Maureen survived, she would have led a vegetating life and she would have needed assistance in the execution of normal and ordinary routines.[78] She would have been completely blind on the left eye and there was possibility she would have also lost her vision on the right eye. All her senses would have been modified and the same would have affected her motor functions. There was practically no possibility for Maureen to return to normal.[79]

Maureen did not survive her ordeal. After ninety-seven (97) days of confinement in the hospital, she ceased to be a breathing soul on October 17, 1991.

For his exculpation, accused relied on the defense of denial and alibi. Accused claimed that on said date and time, he was not anywhere near the scene of the crime. He alleged that he was then in his house at #53 San Juan, Barrio Kapitolyo, Pasig. He slept at around 1:00 a.m. on July 13, 1991 and woke up at around 8:00 or 9:00 a.m. that same morning. Accused avowed his two (2) maids could attest to his presence in his house that fateful day.[80]

Accused averred that he only came to know the three (3) victims in the Dasmariñas shooting when he read the newspaper reports about it. He denied knowing prosecution eyewitnesses Agripino Cadenas and Vicente Mangubat before they identified him as the gunman.[81]

Accused admitted ownership of a box-type, silver metallic gray Mitsubishi Lancer, with plate number PDW 566. He, however, claimed that said car ceased to be in good running condition after its involvement in an accident in February 1991. Since May 1991 until the day of the shooting, his Lancer car had been parked in the garage of his mother's house in Dasmariñas Village. He has not used this car since then. Accused, however, conceded that although the car was not in good running condition, it could still be used.[82]

Accused said that on July 16, 1991, he went to the Makati police station at around 5:00 p.m. upon invitation of Chief of Police Remy Macaspac and Major Lovete who wanted to ask him about the ownership of the Lancer car parked in his mother's house. He readily gave a statement to the Makati police denying complicity in the crime. He submitted himself to a paraffin test. He was accompanied by the Makati police to the Crime Laboratory in Camp Crame and was tested negative for gunpowder nitrates.[83] After the test, he asked the Makati policemen to accompany him to the NBI for he had earlier committed to his mother that he would present himself to Director Lim.[84]

He arrived at Director Lim's office at about 9:30 to 10:00 p.m. He furnished Lim with the statement he earlier gave to the Makati police. Thereafter, Lim detained him at the NBI against his will.[85]

The following day, July 17, 1991, Lim and his agents brought him to the Manila Hotel for breakfast. When they returned to the NBI, he was asked to proceed to Lim's office. On his way, he saw a lineup formed inside Lim's office. The NBI agents forced him to join the lineup and placed him in the number seven (7) slot. He observed that the man who was to identify him was already in the room. As soon as he walked up to the lineup, Cadenas identified him as the gunman.[86]

A second identification was made on the same day at a house in Forbes Park. The NBI agents brought him to Forbes Park but he never saw Jussi Leino who allegedly identified him as the gunman in a lineup.[87]

A third identification was conducted on July 24, 1991. He was then seated at the office of Ranin for he refused to join another lineup. Despite his protest, the NBI agents insisted on the conduct of the identification and ordered a group of men to line up alongside him. While thus seated, he was identified by Mangubat as the gunman. He

complained that he was not assisted by counsel at any stage of said investigation.[88]

The defense also presented CLAUDIO TEEHANKEE III, son of accused Claudio Teehankee, Jr. He testified that from May 1989 to February 1991, he had been using his father's Lancer car bearing plate number PDW 566 in going to school.[89]

In February 1991, while driving his father's Lancer car, he accidentally hit a bicycle driver and two (2) trucks parked at the side of the road. The accident resulted in the death of the bicycle driver and damage to his father's car,[90] especially on its body. The timing of the engine became a little off and the car was hard to start. They had the car repaired at Reliable Shop located in Banawe Street, Quezon City. After a month, he brought the car to the residence of his grandmother, Pilar Teehankee, at Dasmariñas Village, Makati. He personally started the car's engine and drove it to Makati from the shop in Quezon City. He did not bring the car to their house in Pasig for it was still scheduled for further repairs and they preferred to have the repair done in a shop in Makati. Teehankee III claimed that from that time on, he was prohibited by his father from using the car because of his careless driving. He kept the keys to the car and since he was busy in school, no further repair on said car had been made.[91]

Accused also imputed the commission of the crimes at bar to Anders Hultman, adoptive father of deceased victim Maureen Hultman. He capitalized on a newspaper report that the gunman may have been an overprotective father. This theory was formed when an eyewitness allegedly overheard Maureen pleading to the gunman: "Huwag, Daddy. Huwag, Daddy." The defense presented Anders Hultman as a hostile witness.

ANDERS HULTMAN testified that he is a Swedish national. He and Vivian Hultman were married in the Philippines in 1981. Vivian had two (2) children by her previous marriage, one of whom was Maureen. He legally adopted Vivian's two (2) daughters in 1991. He and Vivian had three (3) children of their own.[92]

The defense confronted Anders with one of the angles of the crime in the initial stage of the investigation, i.e., that Maureen was overhead pleading to the gunman: "Huwag, Daddy. Huwag, Daddy." Anders explained that Maureen could not have uttered those words for Maureen never spoke Tagalog. He also said that all his children call him "Papa," not "Daddy." [93]

On July 12, 1991, he and Vivian permitted Maureen to have a night out but instructed her to be home by 2:00 a.m. Maureen just received her first salary in her first job and she wanted to celebrate with friends. At the time of the shooting, he and his wife were sleeping in their house. He woke up at around 5:15 a.m. of July 13, 1991 when a security guard came to their house and informed them about the killings.[94]

Anders admitted he had been vocal about the VIP treatment accorded to accused at the Makati municipal jail. On several occasions, he checked on accused in jail and discovered that accused was not in his cell. The jail guards even covered up accused's whereabouts. His complaint was investigated by the Congressional Committee on Crime Prevention, headed by Congressman Concepcion.[95]

The defense also presented two (2) Makati policemen, PAT. JAMES F. BALDADO and SPO3 ALBERTO FERNANDEZ, who investigated the shooting.

Pat. Baldado testified that in the course of his investigation, he learned from Mr. Jose Montaña that he sold his white Lancer car, with plate number PKX 566, to Saldaña Lending Investors in February 1991. This car was assigned to Ben Conti, Operations Manager of said company and was in the residence of Conti at the time of the shooting. The other witnesses he interviewed confirmed that Montaña's white Lancer car was not in the vicinity of Montaña's residence at the time of the incident.[96]

SPO3 Fernandez testified that he interviewed security guard Vicente Mangubat. Mangubat saw the gunman and the get-away car but could not give the control letters of the car's license plate. Fernandez went to one of the houses at the corner of Mahogany and Caballero Streets and asked the maid therein if he could use the phone. After placing a call, the maid told him that he saw the gunman and heard one of the victims say: "Daddy, don't shoot. Don't, don't." Fernandez tried to get the maid's name but the latter refused. The defense did not present this maid in court nor asked the court to subpoena her to testify. Neither was the alleged statement of the maid included in the Progress Report (Exhibit "13") prepared by the Makati police investigators.[97]

SPO3 Fernandez saw Mangubat the next time on July 16, 1991 when he and Baldado fetched the latter at Dasmariñas Village for identification of the gunman at the Makati police station.

At the police station, Fernandez and Baldado posted Mangubat at the lobby. After a few minutes, accused and company arrived. When accused passed by them, they instructed Mangubat to look around and see if he could identify the gunman. Mangubat failed to identify accused. Mangubat told Fernandez that the gunman was younger and shorter than accused.[98]

SPO3 Fernandez also took the statement of security guard Domingo Florece (Exhibit "MM"). It was signed by Florece in his presence. In said statement, Florece described the gunman's car as "medyo puti" (somewhat white).[99]

ELIZABETH AYONON, forensic chemist of the PNP Crime Laboratory, testified on the paraffin test she conducted on July 17, 1991 on both hands of accused.[100] As per Chemistry Report No. C 274-91,[101] the test yielded a negative result of gunpowder nitrates on accused's hands. In said Report, she noted that accused was subjected to paraffin test more than seventy-two (72) hours after the shooting incident. She explained that 72 hours is the reasonable period within which nitrate residues may not be removed by ordinary washing and would remain on the hands of a person who has fired a gun.[102]

ATTY. MANUEL Q. MALVAR, one of accused's counsel of record, also took the stand for the defense. He testified that in the course of handling the cases, he was able to confer with Ponferrada, Cadenas' supervisor at the Security agency where Cadenas was employed. Ponferrada informed him that Cadenas confided to him that he was tortured at the NBI and was compelled to execute a statement. Ponferrada, allegedly, refused to testify. Atty. Malvar, however, admitted the defense did not compel the attendance of Ponferrada by subpoena. On rebuttal, Cadenas denied the torture story.

Atty. Malvar also admitted that he and Atty. Jimenez were aware of the irregularities committed in the off-court identification of their client. When asked what he did to remedy this perceived irregularity, Malvar said he objected to the conduct of the lineup. When further pressed whether he filed a petition for review raising this issue with the Department of Justice upon the filing of the cases therewith, he said he did not. He offered the excuse that he deferred to Atty. Jimenez, the principal counsel of accused at that time. He also declared that although they knew that arraignment would mean waiver of the alleged irregularities in the conduct of the investigation and preliminary investigation, he and Atty. Jimenez allowed accused to be arraigned.[103]

The defense likewise relied on a number of news accounts reporting the progress in the investigation of the case. It presented seven (7) newspaper reporters as witnesses, viz: Nestor Barrameda of the Manila Times, Martin Marfil and Dave Veridiano of the Philippine Daily Inquirer, Nida Mendoza of Malaya, Itchie Kabayan and Alex Allan of the People's Journal and Elena Aben of the Manila Bulletin. The bulk of defense evidence consists of newspaper clippings and the testimonies of the news reporters, thus:

NESTOR BARRAMEDA, a news reporter of the Manila Times identified two (2) news reports as having been

partly written by him. One was a news item, entitled: "JUSTICE DEPT ORDERS PROBE OF THREE METRO KILLINGS" (Exhibit "1"), appearing on the July 16, 1991 issue of the Manila Times.[104] He, however, clarified that a news report is usually the product of collaborative work among several reporters. They follow the practice of pooling news reports where several reporters are tasked to cover one subject matter. The news editor then compiles the different reports they file and summarizes them into one story.[105]

The defense lifted only certain portions of Exhibit "1" and marked them in evidence as follows:

Exhibit "1-A":

"Bello directed NBI Deputy Director Epimaco Velasco to take over the investigation of the murders of Roland Chapman, 21, Eldon Maguan, 25, and three members of a family - Estrellita Vizconde and her daughters, Carmela, 19, and Anne Marie Jennifer, 7."

Exhibit "1-B"

"Police said that Chapman's assailant could have been angered when Hultman, a 10th grader at the International School in Makati was escorted home by Chapman after going to a disco."

Exhibit "1-C"

"The lone gunman, witnesses told police, first pistol-whipped Hultman."

Exhibit "1-D"

"The same witnesses said Chapman and Leino were shot when they tried to escape."

Exhibit "1-E"

"Other angles

Velasco said "we are pursuing two angles" in the Chapman murder.

One, he said, is the jealousy angle and the other is a "highly sensitive" matter that might involve influential people."[106]

Barrameda testified that he had no personal knowledge of the content of the news items marked as Exhibits "1-C" to "1-D". He just culled them from previous news reports of other newspapers. He admitted that the only portion he wrote based on an actual interview with NBI Asst. Director Velasco was Exhibit "1-E."

Barrameda identified another news item in the July 23, 1991 issue of the Manila Times, entitled: "NBI INSISTS IT HAS 'RIGHT' SUSPECT IN CHAPMAN SLAY" which was marked as Exhibit "2." Certain portions thereof, which were not written by Barrameda,[107] were lifted by the defense and offered in evidence, viz:

Exhibit "2-a"

Superintendent Lucas Managuelod, CIS director for the national capital region, claims, however, that another security guard, Vic Mangubat, had testified before the police that another man, not Teehankee, had fired at Chapman and his companions.

Exhibit "2-b"

The CIS official added that the absence of nitrite or powder burns on Teehankee's hands as shown by paraffin tests at the CIS laboratory indicated that he may not have fired the gun.[108]

MARTIN MARFIL, a reporter of the Philippine Daily Inquirer identified two (2) newspaper clippings which were

partly written by him.

One news item, which appeared on the July 17, 1991 issue of the Philippine Daily Inquirer, was entitled: "FBI JOINS PROBE OF DASMA SLAY" (Exhibit "3").[109]

Again, the defense marked in evidence certain portions of Exhibit "3", thus:

Exhibit "3-a"

"Witnesses said Hultman talked with the gunman whom she called "Daddy" shortly before Chapman's shooting."

Exhibit "3-b"

"But Ranin said they were also looking into reports that Hultman was a dancer before she was adopted by her foster parent."

Exhibit "3-c"

"Investigations showed that the gunman sped along Caballero street inside the village after the shooting and was believed to have proceeded toward Forbes Park using the Palm street gate."

On cross-examination, Marfil admitted that he did not write Exhibits "3-a" and "3-c". He just reiterated previous reports in other newspapers. They were based on speculations.

Marfil also wrote some portions of a news item, entitled: "TEEHANKEE SON HELD FOR DASMA SLAY," which appeared on the July 18, 1991 issue of the Philippine Daily Inquirer (Exhibit "4"), viz:

Exhibit "4-B"

"According to NBI Director Alfredo Lim, the break in the case came when the witness showed up and said that the gunman was on board a silver-metallic Lancer."

Exhibit "4-C"

"The witness said the gunman was standing a few feet away near the car and was talking to Hultman, who was shouting "Huwag! Daddy!" several times."[110]

Marfil's source of information was Director Lim. On cross-examination, Marfil admitted that the news reports marked as Exhibits "3" and "4" were written based on information available at that time.[111]

NIDA MENDOZA, a reporter of the Malaya identified a news report, entitled: "TEEHANKEE SON HELD ON DASMA SLAYING," which appeared on the July 18, 1991 issue of Malaya. She testified that she wrote a portion thereof, marked as Exhibit "5-c", and the sources of her information were several Makati policemen.[112] Exhibit "5-c" reads:

"Makati policemen, meanwhile, disputed NBI accounts that Teehankee was arrested at his house.

"They said Teehankee, the last remaining owner of a car with plate control number 566 who had not been questioned, voluntarily went to police headquarters upon invitation of Makati police chief Superintendent Remy Macaspac."[113]

The defense presented EXHIBITS "1-5" to prove: (a) the alleged concerted effort of the investigators to implicate accused as the lone gunman; (b) that there were other suspects aside from accused and that someone whom Maureen called as "Daddy" was the actual gunman; (c) that the initial police investigation showed that the gunman's car was a white Lancer with plate no. 566; and, (d) that after the NBI took over the investigation, the

white Lancer car of the gunman became a silver gray Lancer of accused and thereafter, he became the gunman.

ITCHIE CABAYAN, a reporter of the People's Journal identified the portions she wrote in the news item, entitled: "I WILL HOUND YOU", which appeared on the October 24, 1991 issue of People's Journal (Exhibit "6"). She identified the source of her information as Mr. Anders Hultman himself.[114]

The portions thereof were marked in evidence by the defense, viz:

Exhibit "6-a"

"I will be visiting him often and at the most unexpected occasion," Hultman said the day after his 17-year old daughter was cremated.[115]

Exhibit "6-b"

"The day Maureen died, a congressional hearing granted the Hultman family's request for permission to visit Teehankee in his cell "at anytime of their choice."

Exhibit "6-c"

"If on my next visit he still refuses to come out and is still hiding behind the curtain," Hultman said, "Congress told me that I can take the curtain down and jail authorities will pull him out." [116]

ALEX ALLAN, also a reporter of People's Journal co-wrote the news item marked as Exhibit "6". Specifically, he wrote Exhibits "6-d" and "6-e"[117] which read:

Exhibit "6-d"

"Kaawaawa naman ang mga Hultmans, tulungan natin sila," Ong was quoted as telling Vergel de Dios."

Exhibit "6-e"

"BIR insiders said Ong has shown a keen interest in the Chapman-Hultman, Vizconde and Eldon Maguan cases because he belongs to a secret but very influential multi-sectoral group monitoring graft and corruption and other crimes in high levels of government and society." [118]

Allan was not able to check or verify the information in Exhibit "6-e" given to him by BIR insiders for the latter refused to be identified.[119]

Exhibit "6" and its sub-markings were offered to prove: (a) the alleged blind and consuming personal rage and bias of Anders Hultman against accused; and (b) the unwarranted pressure, prejudice and prejudgment by some congressional leaders in favor of the Hultmans in violation of due process.

DAVE VERIDIANO, a reporter of the Philippine Daily Inquirer, identified the news account which appeared on the July 16, 1991 issue of the Inquirer, entitled: "DASMA SLAY SUSPECT IDENTIFIED" (Exhibit "7"). He wrote a portion of said article (Exhibit "7-c") and the source of his information was Camp Crame.[120] It reads:

Exhibit "7-c"

"Witnesses said the gunman fled aboard a white Mitsubishi Lancer with plate number `566.' The witnesses cannot tell the plate's control letters." [121]

Veridiano likewise identified a news item which appeared on the July 1991 issue of the Inquirer, entitled: "N.B.I. FINDINGS DISPUTED, SECOND WITNESS TAGS TEEHANKEE" (Exhibit "8"). The portions of said news item which he wrote were marked in evidence by the defense, viz:

Exhibit "8-a"

"At the Criminal Investigation Service, however, an investigator who asked not to be identified insisted that the NBI got the wrong man. The NBI has taken over the case from the CIS."

Exhibit "8-c"

"He said the CIS will shortly identify the suspect killer whom he described as "resembling Teehankee but looks much younger."

Exhibit "8-e"

"The source said that the police's "prime witness," identified only as Mangubat, saw everything that happened in the early morning of July 13. The witness, however, failed to identify Teehankee as the gunman." [122]

Veridiano was shown another news report, entitled: "CIS GIVES UP CHAPMAN SLAY CASE", which appeared on the July 26, 1991 issue of the Philippine Daily Inquirer (Exhibit 9). [123] He wrote the entire news account, [124] portions of which were marked by the defense in evidence, thus:

Exhibit "9-a"

"The CIS pulled out from the case a day after its so-called "surprise witness" picked Claudio Teehankee, Jr. from an NBI lineup."

He gathered this information from his source but he was not able to interview Mangubat himself. [125]

Exhibit "9-b"

"Sira ulo pala siya (Mangubat). Ilang beses kong pinarada sa kanya si Bobby (Teehankee Jr.) puro iling siya. Hindi raw ito ang suspect. Ngayon bigla niyang ituturo," said a red-faced Makati investigator who, as usual, did not want to be identified."

ELENA ABEN, a reporter from the Manila Bulletin, wrote the entire article, entitled: "US DIPLOMAT'S SON SHOT DEAD", which appeared on the July 14, 1991 issue of the Manila Bulletin (Exhibit "10"), [126] Two (2) portions thereof were marked as evidence by the defense, viz:

Exhibit "10-a-1"

"The victims were on their way home in Olanileino's Mercedes Benz with a diplomat's plate number when a white Lancer with plate number PKX-566 blocked its path."

Exhibit "10-a-2"

"US embassy spokesman Stanley Schrager said Chapman's father is a communications specialist. He said the shooting could be the result of an altercation on the street." [127]

Finally, VICTOR VEGA, a reporter of the Manila Bulletin, identified the news account he wrote which appeared on the July 16, 1991 issue of the Bulletin, entitled: "4 MURDER SUSPECTS FALL" (Exhibit "22"). Portions of said news item were marked by the defense as follows:

Exhibit "22-b"

x x x "He was shot to death by a group of armed men at the corner of Mahogany and Caballero Sts. in Dasmariñas Village at past 4 a.m. Friday."

Exhibit "22-c"

"The NBI sources said that jealousy sparked the slaying of Chapman who was killed in front of his friends on his way home from a party. The armed men, on board a white Lancer car, blocked the path of the victim's

Mercedes Benz car inside the village before the shooting."

Exhibit "22-a-1"

"The gunmen then alighted from their car and at gunpoint ordered Chapman to alight from the car. They shot Chapman several times in the body, while his companions identified as Maureen Hultman, and Jussi Olanileino, were seriously wounded when the gunmen sprayed the car with bullets.

"The gunmen escaped after the shooting. Lim said he will announce later the names of the detained suspects after their initial investigation."[128]

Finally, his article, entitled: "MAKATI SLAY SUSPECT IDENTIFIED" (Exhibit "23"), which appeared on the July 18, 1991 issue of the Manila Bulletin, was introduced by the defense in evidence as follows:

Exhibit "23-a-1"

"The NBI said Teehankee was one of four men who blocked Chapman's car on Mahogany St. in the subdivision."

Exhibit "23-a-2"

"Witnesses said they saw Teehankee order Chapman and his two companions, Maureen Hultman and Jussi Olanileino, a Finn, to get out of their car."

Exhibit "23-a-3"

"They identified the car used by the suspect, a silver gray Lancer with plate No. PDW 566. They added that they saw the same car in the garage of the Teehankee family."[129]

On cross-examination, Vega declared that the source of his two (2) stories was the NBI and they were based on information available to the NBI at that time.[130]

The prosecution recalled to the stand eyewitness VICENTE MANGUBAT as its rebuttal witness. Mangubat insisted that he was able to identify accused when he saw the latter at the Makati police station. He reiterated that the next day, Pat. Baldado of the Makati police went to his place of work in Dasmariñas Village and asked him if he was sure about the identity of the gunman. He told Baldado he was positive. Baldado then said him he would no longer require him to sign the statement he prepared for him earlier.[131]

LEONORA C. VALLADO, chief of the Forensic Chemistry Division of the NBI, was also presented as a prosecution rebuttal witness. She testified that extensive washing of hands or excessive perspiration can eliminate gunpowder nitrates lodged on skin pores of the hands. Continued washing with hot water can induce perspiration and remove nitrate residue embedded in the skin pores. Application of vinegar on the hand can register the same effect.[132]

She testified that their practice at the NBI is to take the paraffin test on a suspect within 72 hours from the time of the alleged firing of a gun, during which time, any possible trace of nitrate may still be found.[133]

She divulged that questions have been raised regarding the reliability of the paraffin test. She related that she once attended a training in Baguio City where they tried to test the accuracy of a paraffin test. In said training, two (2) NBI agents fired a .38 revolver. One of them washed his hands. They then subjected both agents to a paraffin test using diphyllamine reagent. Both yielded a negative result. Thus, she opined, the result of a paraffin test should merely be taken as a corroborative evidence and evaluated together with other physical evidence.[134]

The records show that the case was set for hearing on October 29, 1992 for the presentation by the defense of

sur-rebuttal evidence. However, a day before the scheduled hearing, the defense filed a Constancia^[135] manifesting that it shall waive its right to present sur-rebuttal evidence, the same being unnecessary. The defense, however, declared that this is without prejudice to the presentation of its evidence in the trial proper should the same be necessary.

At the hearing of October 29, 1992, the defense counsels did not appear. The prosecution moved in open court that the main cases and the petition for bail be submitted for decision in view of the absence of defense counsels who had manifested that they would no longer present their sur-rebuttal evidence. The motion was granted and the parties were given ten (10) days from receipt of the Order within which to submit their simultaneous Memorandum.^[136] It does not appear that the defense objected to this Order. The records show that the defense even filed a motion asking for additional time to file its Memorandum.^[137] In due time, both parties submitted their respective Memorandum.

On December 22, 1992, the trial court convicted accused CLAUDIO TEEHANKEE, JR. of the crimes charged.^[138] The dispositive portion of the Decision reads:

"WHEREFORE, premises considered, the Court hereby renders judgment:

"(1) In Criminal Case No. 91-4605, finding accused Claudio J. Teehankee, Jr., guilty beyond reasonable doubt of the offense of Murder, qualified by treachery, for the fatal shooting of Roland John Chapman, and sentencing said accused to suffer imprisonment of Reclusion Perpetua, and to pay the heirs of the said deceased the sum of Fifty Thousand Pesos (P50,000.00), Philippine Currency, plus moderate or temperate and exemplary damages in the sum of Five Hundred Thousand Pesos (P500,000.00), Philippine Currency;

"(2) In Criminal Case No. 91-4606, finding accused Claudio J. Teehankee, Jr., guilty beyond reasonable doubt of the offense of Murder, qualified by treachery, for the fatal shooting of Maureen Navarro Hultman, and sentencing him to suffer imprisonment of Reclusion Perpetua, and to pay the heirs of the said deceased the sum of Fifty Thousand Pesos (P50,000.00), Philippine Currency, plus the sums of Two Million Three Hundred Fifty Thousand Four Hundred Sixty-One Pesos and Eighty-Three Centavos (P2,350,461.83), Philippine Currency, as actual damages; Thirteen Million Pesos (P13,000,000.00), Philippine Currency, for loss of earning capacity of the said deceased; and One Million Pesos (P1,000,000.00), Philippine Currency, as moral, moderate and exemplary damages;

"(3) In Criminal Case No. 91-4607, finding accused Claudio J. Teehankee, Jr., guilty beyond reasonable doubt of the offense of Frustrated Murder, qualified by treachery, for the shooting of Jussi Olavi Leino, and sentencing him to suffer the indeterminate penalty of eight (8) years of prision mayor, as minimum, to ten (10) years and one (1) day of prision mayor, as maximum, and to pay the said offended party the sum of Thirty Thousand Pesos (P30,000.00), Philippine Currency; plus the sum of One Hundred Eighteen Thousand Three Hundred Sixty-Nine Pesos and Eighty-Four Centavos (P118,369.84), Philippine Currency, and another sum equivalent in Philippine Pesos of U.S.\$55,600.00, both as actual damages; an amount equivalent in Philippine Pesos of U.S.\$40,000.00, as loss of earning capacity of said offended party; and One Million Pesos (P1,000,000.00), Philippine Currency, as moral, moderate and exemplary damages.

"(4) In all these three cases, ordering said accused to pay all the offended parties the sum of Three Million Pesos (P3,000,000.00), Philippine Currency, as and for attorney's fees and expenses of litigation; and

"(5) To pay the costs in these three cases.

"Consequently the petition for bail is hereby denied for utter lack of merit.

"SO ORDERED."

Accused hired a new counsel in the person of Atty. Nicanor B. Gatmaytan, Jr. He filed a Motion for New

Trial,[139]alleging for the first time that the trial court erred in considering as submitted for decision not only the petition for bail but also the case on the merits. He claimed that accused's right to adduce further evidence was violated. His motion for new trial was denied.

Accused interposed the present appeal.[140] He contends that:

I. THE LOWER COURT ERRED IN FINDING THAT THE ACCUSED HAD BEEN POSITIVELY IDENTIFIED BY JUSSI LEINO, CADENAS AND MANGUBAT AS THE ONE WHO SHOT HIM, ROLAND CHAPMAN AND MAUREEN NAVARRO HULTMAN.

II. THE PROSECUTION HAS FAILED TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

III. THE PUBLICITY GIVEN THE CASE AGAINST THE APPELLANT WAS MASSIVE, OVERWHELMING, AND PREJUDICIAL AS TO EFFECTIVELY DEPRIVE THE ACCUSED OF RIGHT TO IMPARTIAL TRIAL.

IV. THE LOWER COURT ERRED IN FINDING THAT THE KILLING OF CHAPMAN AND HULTMAN AND THE SHOOTING OF LEINO WAS ATTENDED BY TREACHERY.

V. THE LOWER COURT ERRED IN GRANTING EXORBITANT MORAL AND EXEMPLARY DAMAGES AND LOSS OF EARNING CAPACITY.

VI. THE LOWER COURT ERRED IN AWARDING ATTORNEY'S FEES OF THREE MILLION PESOS (P3,000,000.00).

VII. THE LOWER COURT ERRED IN RENDERING JUDGMENT ON THE MERITS AND ON THE PETITION FOR BAIL AT THE SAME TIME WITHOUT GIVING THE ACCUSED THE OPPORTUNITY TO PRESENT ADDITIONAL EVIDENCE IN HIS DEFENSE ON THE MERITS OF THE CASE AND DENYING THE ACCUSED'S MOTION FOR NEW TRIAL.

We shall discuss these alleged errors in seriatim.

Appellant was convicted on the strength of the testimonies of three (3) eyewitnesses who positively identified him as the gunman. He vigorously assails his out-of-court identification by these eyewitnesses.

He starts by trying to discredit the eyeball account of Jussi Leino, the lone surviving victim of the crimes at bar. Appellant urges:

First, that Leino's identification of him outside an unoccupied house in Forbes Park was highly irregular.

Second, that Leino saw his pictures on television and the newspapers before he identified him.

Third, that Leino's interview at the hospital was never put in writing.

Fourth, that the sketch of appellant based on the description given by Leino to the CIS agents was suppressed by the NBI. It is surmised that the sketch must have been among the evidence turned over to the NBI when the latter assumed jurisdiction over the investigation.

Lastly, that Leino could not have remembered the face of appellant. The shooting lasted for only five (5) minutes. During that period, his gaze could not have been fixed only on the gunman's face. His senses were also dulled by the five (5) bottles of beer he imbibed that night.

It is understandable for appellant to assail his out-of-court identification by the prosecution witnesses in his first assignment of error. Eyewitness identification constitutes vital evidence and, in most cases, decisive of the

success or failure of the prosecution. Yet, while eyewitness identification is significant, it is not as accurate and authoritative as the scientific forms of identification evidence such as the fingerprint or DNA testing. Some authors even describe eyewitness evidence as "inherently suspect." [141] The causes of misidentification are known, thus:

x x x x x x x x

Identification testimony has at least three components. First, witnessing a crime, whether as a victim or a bystander, involves perception of an event actually occurring. Second, the witness must memorize details of the event. Third, the witness must be able to recall and communicate accurately. Dangers of unreliability in eyewitness testimony arise at each of these three stages, for whenever people attempt to acquire, retain, and retrieve information accurately, they are limited by normal human fallibilities and suggestive influences. (Emphasis Supplied) [142]

Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. [143]

Using the totality of circumstances test, we hold that the alleged irregularities cited by appellant did not result in his misidentification nor was he denied due process. There is nothing wrong in Leino's identification of appellant in an unoccupied house in Forbes Park. The records reveal that this mode was resorted to by the authorities for security reasons. [144] The need for security even compelled that Leino be fetched and escorted from his house in Forbes Park by U.S. embassy security officials and brought to the house where he was to make the identification. The Leinos refused to have the identification at the NBI office as it was cramped with people and with high security risk. [145] Leino's fear for his safety was not irrational. He and his companions had been shot in cold blood in one of the exclusive, supposedly safe subdivisions in the metropolis. Atty. Salvador Ranin, Chief of the Special Operations Group of the NBI, correctly testified that there is no hard and fast rule as to the place where suspects are identified by witnesses. Identification may be done in open field. It is often done in hospitals while the crime and the criminal are still fresh in the mind of the victim. [146]

Appellant cannot also gripe that Leino saw his pictures and heard radio and TV accounts of the shooting before he personally identified him. Indeed, the records show that on July 15, 1991, while Leino was still in the hospital, he was shown three (3) pictures of different men by the investigators. He identified appellant as the gunman from these pictures. He, however, categorically stated that, before the mug shot identification, he has not seen any picture of appellant or read any report relative to the shooting incident. [147] The burden is on appellant to prove that his mug shot identification was unduly suggestive. Failing proof of impermissible suggestiveness, he cannot complain about the admission of his out-of-court identification by Leino.

We have no reason to doubt the correctness of appellant's identification by Leino. The scene of the crime was well-lighted by a Meralco lamp post. Appellant was merely 2-3 meters away when he shot Leino. The incident

happened for a full five (5) minutes. Leino had no ill-motive to falsely testify against appellant. His testimony at the trial was straightforward. He was unshaken by the brutal cross-examination of the defense counsels. He never wavered in his identification of appellant. When asked how sure he was that appellant was responsible for the crime, he confidently replied: "I'm very sure. It could not have been somebody else." [148]

Appellant cannot likewise capitalize on the failure of the investigators to reduce to a sworn statement the information revealed by Leino during his hospital interviews. It was sufficiently established that Leino's extensive injuries, especially the injury to his tongue, limited his mobility. The day he identified appellant in the line-up, he was still physically unable to speak. He was being fed through a tube inserted in his throat. [149] There is also no rule of evidence which requires the rejection of the testimony of a witness whose statement has not been priorly reduced to writing. Reliance by appellant on the case of *People v. Alindog* [150] to erode Leino's credibility is misplaced. In *Alindog*, accused was acquitted not solely on the basis of delay in taking his statement, but mainly on the finding that the prosecution's evidence was, at best, circumstantial and "suspiciously short in important details," there being no investigation whatsoever conducted by the police.

We also reject appellant's contention that the NBI suppressed the sketch prepared by the CIS on the basis of the description given by Leino. There is nothing on the record to show that said sketch was turned over by the CIS to the NBI which could warrant a presumption that the sketch was suppressed. The suspicion that the sketch did not resemble appellant is not evidence. It is unmitigated guesswork.

We are not likewise impressed with the contention that it was incredible for Leino to have remembered appellant's face when the incident happened within a span of five (5) minutes. Five (5) minutes is not a short time for Leino to etch in his mind the picture of appellant. Experience shows that precisely because of the unusual acts of bestiality committed before their eyes, eyewitnesses, especially the victims to a crime, can remember with a high degree of reliability the identity of criminals. [151] We have ruled that the natural reaction of victims of criminal violence is to strive to see the appearance of their assailants and observe the manner the crime was committed. Most often, the face and body movements of the assailant create an impression which cannot be easily erased from their memory. [152] In the case at bar, there is absolutely no improper motive for Leino to impute a serious crime to appellant. The victims and appellant were unknown to each other before their chance encounter. If Leino identified appellant, it must be because appellant was the real culprit.

Appellant also assails his identification by Cadenas. He contends that Cadenas did not witness the crime. He stresses that when the Dasmariñas security force and the Makati police conducted an on-the-spot investigation on the day of the incident, neither came across Cadenas. The next day, in the afternoon of July 14, 1991, an NBI agent interviewed Cadenas and asked if he saw the incident. He merely replied: "Nakita ko pero patay na." He did not volunteer information to anyone as to what he supposedly witnessed. That same night, the NBI subpoenaed him for investigation. He went to the NBI the next morning. It was only the next day, July 16, 1991, that he gave his statement to the NBI. Cadenas allegedly told Ponferrada, his supervisor, that the NBI tortured him.

We reject appellant's submission. Cadenas' initial reluctance to reveal to the authorities what he witnessed was sufficiently explained during the trial. He related that he feared for his and his family's safety. His fear was not imaginary. He saw with his own eyes the senseless violence perpetrated by appellant. He knew appellant belonged to an influential family. It was only after consistent prodding and assurance of protection from NBI officials that he agreed to cooperate with the authorities. [153] The Court has taken judicial notice of the natural reticence of witnesses to get involved in the solution of crimes considering the risk to their lives and limbs. In light of these all too real risks, the court has not considered the initial reluctance of fear-gripped witnesses to cooperate with authorities as an indicium of incredulity. [154] It will not depart from this ruling.

Appellant's assertion that Cadenas was tortured by the NBI is not borne out by the records. Supposedly, Cadenas passed on to his superior, a certain Ponferrada, information about his torture. The allegation is an out and out hearsay as Ponferrada was not presented in the witness stand. Cadenas himself stoutly denied this allegation of torture. The claim of torture is also belied by the fact that Cadenas' entire family was allowed to stay with him at the NBI headquarters and likewise extended protection.[155]

Appellant then discredits his identification by VICENTE MANGUBAT, citing the testimony of defense witness Pat. James Baldado of the Makati Police. Pat. Baldado testified that Mangubat failed to identify appellant as the gunman the first time he was brought to the Makati police station. Mangubat, however, belied Baldado's story. He declared he positively identified appellant as the gunman at the Makati police station. He averred that the day after he identified appellant, Pat. Baldado returned to his place of work in Dasmariñas and asked him again whether appellant was the gunman. Again, he replied in the affirmative. Forthwith, Pat. Baldado said he would no longer ask him to sign a statement (Exhibit "HHH")[156] earlier prepared by Baldado. In said statement previously prepared by Baldado, Mangubat was supposed to state that appellant, whom he saw at the Makati police station, was NOT the gunman. We give more weight to the testimony of Mangubat. We find nothing in the records to suspect that Mangubat would perjure himself. The Court cannot be as generous to Pat. Baldado of the Makati Police. Mr. Hultman has proved that the Makati police, including some of its jail officials, gave appellant favored treatment while in their custody. The anomaly triggered nothing less than a congressional investigation.

II

We now rule on appellant's second assignment of error, i.e., that the trial court erred in not holding that the prosecution failed to establish his guilt beyond reasonable doubt.

First, he claims the trial court erred in citing in its Decision his involvement in previous shooting incidents for this contravenes the rule[157] that evidence that one did or omitted to do a certain thing at one time is not admissible to prove that he did or omitted to do the same or similar thing at another time. Second, the NBI failed to conduct an examination to compare the bullets fired from the gun at the scene of the crime with the bullets recovered from the body of Chapman. Third, the prosecution eyewitnesses described the gunman's car as white, but the trial court found it to be silver metallic gray. Fourth, appellant could not have been the gunman for Mangubat, in his statement dated July 15, 1991, said that he overheard the victim Maureen Hultman plead to the gunman, thus: "Please, don't shoot me and don't kill me. I promise Mommy, Daddy." Appellant also contends that a maid in a house near the scene of the crime told Makati police Alberto Fernandez that she heard Maureen say: "Daddy, don't shoot. Don't." Fifth, the NBI towed accused's car from Dasmariñas Village to the NBI office which proved that the same was not in good running condition. Lastly, the result of the paraffin test conducted on appellant showed he was negative of nitrates.

Appellant points to other possible suspects, viz: (a) ANDERS HULTMAN, since one of the eyewitnesses was quoted in the newspapers as having overheard Maureen plead to the gunman: "Huwag, Daddy."; and, (b) JOSE MONTAÑO, another resident of Dasmariñas Village, who had a white Lancer car, also bearing license plate control number 566.

We reject appellant's thesis as bereft of merit.

Appellant cannot hope to exculpate himself simply because the trial judge violated the rule on *res inter alios acta* when he considered his involvement in previous shooting incidents. This stance is a specie of a mid-1800 rule known as the English Exchequer Rule pursuant to which "a trial court's error as to the admission of evidence was presumed to have caused prejudice and therefore, almost automatically required a new trial." [158] The Exchequer rule has long been laid to rest for even English appellate courts now disregard an error in the admission of

evidence "unless in its opinion, some substantial wrong or miscarriage (of justice) has been occasioned." [159] American courts adopted this approach especially after the enactment of a 1915 federal statute which required a federal appellate court to "give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties." [160] We have likewise followed the harmless error rule in our jurisdiction. In dealing with evidence improperly admitted in trial, we examine its damaging quality and its impact to the substantive rights of the litigant. If the impact is slight and insignificant, we disregard the error as it will not overcome the weight of the properly admitted evidence against the prejudiced party. [161]

In the case at bar, the reference by the trial judge to reports about the troublesome character of appellant is a harmless error. The reference is not the linchpin of the inculpatory evidence appreciated by the trial judge in convicting appellant. As aforesaid, the appellant was convicted mainly because of his identification by three (3) eyewitnesses with high credibility.

The NBI may have also failed to compare the bullets fired from the fatal gun with the bullets found at the scene of the crime. The omission, however, cannot exculpate appellant. The omitted comparison cannot nullify the evidentiary value of the positive identification of appellant.

There is also little to the contention of appellant that his Lancer car was not in running condition. Allegedly, this was vicariously proved when the NBI towed his car from Dasmariñas Village where it was parked to the NBI office. Again, the argument is negated by the records which show that said car was towed because the NBI could not get its ignition key which was then in the possession of appellant. Clearly, the car was towed not because it was not in running condition. Even appellant's evidence show that said car could run. After its repairs, appellant's son, Claudio Teehankee III, drove it from the repair shop in Banawe, Quezon City to Dasmariñas Village, in Makati, where it was parked. [162]

Nor are we impressed by the alleged discrepancies in the eyewitnesses' description of the color of the gunman's car. Leino described the car as light-colored; Florece said the car was somewhat white ("medyo puti"); [163] Mangubat declared the car was white; [164] and Cadenas testified it was silver metallic gray. [165] These alleged discrepancies amount to no more than shades of differences and are not meaningful, referring as they do to colors white, somewhat white and silver metallic gray. Considering the speed and shocking nature of the incident which happened before the break of dawn, these slight discrepancies in the description of the car do not make the prosecution eyewitnesses unworthy of credence.

Appellant's attempt to pin the crimes at bar on Anders Hultman, the adoptive father of Maureen Hultman, deserves scant consideration. Appellant cites a newspaper item [166] where Maureen was allegedly overheard as saying to the gunman: "Huwag, Daddy. Huwag, Daddy." The evidence on record, however, demonstrates that Anders Hultman could not have been the gunman. It was clearly established that Maureen could not have uttered said statement for two (2) reasons: Maureen did not speak Tagalog, and she addressed Anders Hultman as "Papa," not "Daddy." [167] Moreover, Leino outrightly dismissed this suspicion. While still in the hospital and when informed that the Makati police were looking into this possibility, Leino flatly stated that Anders Hultman was NOT the gunman. [168] Leino is a reliable witness.

Appellant cannot also capitalize on the paraffin test showing he was negative of nitrates. Scientific experts concur in the view that the paraffin test has "xxx proved extremely unreliable in use. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be established from this test alone that the source of the nitrates or nitrites was the discharge of a firearm. The person may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives,

fireworks, fertilizers, pharmaceuticals, and leguminous plants such as peas, beans, and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco." [169] In numerous rulings, we have also recognized several factors which may bring about the absence of gunpowder nitrates on the hands of a gunman, viz: when the assailant washes his hands after firing the gun, wears gloves at the time of the shooting, or if the direction of a strong wind is against the gunman at the time of firing. [170] In the case at bar, NBI Forensic Chemist, Leonora Vallado, testified and confirmed that excessive perspiration or washing of hands with the use of warm water or vinegar may also remove gunpowder nitrates on the skin. She likewise opined that the conduct of the paraffin test after more than seventy-two (72) hours from the time of the shooting may not lead to a reliable result for, by such time, the nitrates could have already been removed by washing or perspiration. [171] In the Report [172] on the paraffin test conducted on appellant, Forensic Chemist Elizabeth Ayonon noted that when appellant was tested for the presence of nitrates, more than 72 hours has already lapsed from the time of the alleged shooting.

III

In his third assigned error, appellant blames the press for his conviction as he contends that the publicity given to his case impaired his right to an impartial trial. He postulates there was pressure on the trial judge for high-ranking government officials avidly followed the developments in the case (as no less than Vice-President Joseph Estrada and then Department of Justice Secretary Franklin Drilon attended some of the hearings and, President Corazon Aquino even visited victim Maureen Hultman while she was still confined at the hospital). He submits that the trial judge failed to protect him from prejudicial publicity and disruptive influences which attended the prosecution of the cases. He claims there were placards displayed during the hearing of the cases, spectators inside the courtroom clapped their hands and converted the proceedings into a carnival. In another instance, he was allegedly given the "finger sign" by several young people while he was leaving the courtroom on his way back to his cell.

We cannot sustain appellant's claim that he was denied the right to impartial trial due to prejudicial publicity. It is true that the print and broadcast media gave the case at bar pervasive publicity, just like all high profile and high stake criminal trials. Then and now, we rule that the right of an accused to a fair trial is not incompatible to a free press. To be sure, responsible reporting enhances an accused's right to a fair trial for, as well pointed out, "a responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field x x x . The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism." [173]

Pervasive publicity is not per se prejudicial to the right of an accused to fair trial. The mere fact that the trial of appellant was given a day-to-day, gavel-to-gavel coverage does not by itself prove that the publicity so permeated the mind of the trial judge and impaired his impartiality. For one, it is impossible to seal the minds of members of the bench from pre-trial and other off-court publicity of sensational criminal cases. The state of the art of our communication system brings news as they happen straight to our breakfast tables and right to our bedrooms. These news form part of our everyday menu of the facts and fictions of life. For another, our idea of a fair and impartial judge is not that of a hermit who is out of touch with the world. We have not installed the jury system whose members are overly protected from publicity lest they lose their impartiality. Criticisms against the jury system are mounting and Mark Twain's wit and wisdom put them all in better perspective when he observed: "When a gentleman of high social standing, intelligence, and probity swears that testimony given under the same oath will outweigh with him, street talk and newspaper reports based upon mere hearsay, he is worth a hundred jurymen who will swear to their own ignorance and stupidity x x x . Why could not the jury law be so altered as to

give men of brains and honesty an equal chance with fools and miscreants?"[174] Our judges are learned in the law and trained to disregard off-court evidence and on-camera performances of parties to a litigation. Their mere exposure to publications and publicity stunts does not per se fatally infect their impartiality.

At best, appellant can only conjure possibility of prejudice on the part of the trial judge due to the barrage of publicity that characterized the investigation and trial of the case. In *Martelino, et al. v. Alejandro, et al.*, [175] we rejected this standard of possibility of prejudice and adopted the test of actual prejudice as we ruled that to warrant a finding of prejudicial publicity, there must be allegation and proof that the judges have been unduly influenced, not simply that they might be, by the barrage of publicity. In the case at bar, the records do not show that the trial judge developed actual bias against appellant as a consequence of the extensive media coverage of the pre-trial and trial of his case. The totality of circumstances of the case does not prove that the trial judge acquired a fixed opinion as a result of prejudicial publicity which is incapable of change even by evidence presented during the trial. Appellant has the burden to prove this actual bias and he has not discharged the burden.

We have minutely examined the transcripts of the proceedings and they do not disclose that the trial judge allowed the proceedings to turn into a carnival. Nor did he consent to or condone any manifestation of unruly or improper behavior or conduct inside the courtroom during the trial of the case at bar. The transcripts reveal the following:

1. At the August 14, 1991 hearing, the defense counsel called the attention of the court to the visible display of a placard inside the courtroom. Acting on the manifestation, the trial judge immediately directed that the placard be hidden. Only then did he order the start of the arraignment of accused.[176]

On the same hearing, the defense counsel asked for the exclusion of the media after they had enough opportunity to take pictures. The court granted defense's request, noting that the courtroom was also too crowded.[177]

2. During the testimony of Domingo Florece, an argument ensued between the defense lawyer and the fiscal. When part of the audience clapped their hands, the defense counsel invoked Rule 119, Section 13 of the Rules of Court and moved for the exclusion of the public. Assistant Prosecutor Villa-Ignacio objected on the ground that the public was not unruly. The trial judge noted that there were yet no guidelines drafted by the Supreme Court regarding media coverage of trial proceedings.[178] Collaborating defense counsel, Atty. Malvar, complained that the outpouring of sympathy by spectators inside the courtroom has turned the proceedings into a carnival. He also manifested that he personally saw that when accused was being brought back to his cell from the courtroom, a group of young people were pointing dirty fingers at accused in full view of policemen. Forthwith, the trial judge declared that he could not be dissuaded by public sentiments. He noted that the clapping of hands by the public was just a reaction at the spur of the moment. He then admonished the audience not to repeat it.[179]

3. At the hearing of July 14, 1992, the parties again argued on the coverage of the trial by the press. The defense alleged that the media coverage will constitute mistrial and deny accused's constitutional right to due process. It invoked the provision in the Rules of Court which allows the accused to exclude everybody in the courtroom, except the organic personnel. The prosecutor, however, argued that exclusion of the public can be ordered only in prosecution of private offenses and does not apply to murder cases. He added that the public is entitled to observe and witness trial of public offenses. He quoted the U.S. case of *Sheppard v. Maxwell* [180] where it was held: "A responsible press is always regarded as the handmaiden of effective judicial administration especially in the criminal field. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, the prosecutors and judicial processes to extensive public scrutiny and criticism. What transpires in the courtroom is public property." The trial judge then ruled that the media should be given a chance to cover the proceedings before the trial proper but, thereafter, he prohibited them from taking pictures

during the trial. They were allowed to remain inside the courtroom but were ordered to desist from taking live coverage of the proceedings.[181]

4. At the August 14, 1992 hearing, before the hearing began, the trial judge gave the media two (2) minutes to take video coverage and no more. Trial then ensued.[182]

5. At the September 8, 1992 hearing, the trial judge again gave the media two (2) minutes to take pictures before the trial proper. Afterwards, the reporters were duly admonished to remain silent, to quietly observe the proceedings and just take down notes.[183]

6. On September 10, 1992, before the start of the afternoon session, the judge admonished the media people present in the courtroom to stop taking pictures.[184]

Parenthetically, appellant should be the last person to complain against the press for prejudicial coverage of his trial. The records reveal he presented in court no less than seven (7) newspaper reporters and relied heavily on selected portions of their reports for his defense. The defense's documentary evidence consists mostly of newspaper clippings relative to the investigation of the case at bar and which appeared to cast doubt on his guilt. The press cannot be fair and unfair to appellant at the same time.

Finally, it would not be amiss to stress that on May 29, 1992, the trial judge voluntarily inhibited himself from further hearing the case at bar to assuage appellant's suspicion of bias and partiality.[185] However, upon elevation of the trial judge's voluntary Order of Inhibition to this Court, we directed the trial judge to proceed with the trial to speed up the administration of justice.[186] We found nothing in the conduct of the proceedings to stir any suspicion of partiality against the trial judge.

IV

In his fourth assigned error, appellant claims that treachery was not present in the killing of Hultman and Chapman, and the wounding of Leino for it was not shown that the gunman consciously and deliberately adopted particular means, methods and forms in the execution of the crime. Appellant asserts that mere suddenness of attack does not prove treachery.

The three (3) Informations charged appellant with having committed the crimes at bar with treachery and evident premeditation. Evident premeditation was correctly ruled out by the trial court for, admittedly, the shooting incident was merely a casual encounter or a chance meeting on the street since the victims were unknown to appellant and vice-versa. It, however, appreciated the presence of the qualifying circumstance of treachery.

We hold that the prosecution failed to prove treachery in the killing of Chapman. Prosecution witness Leino established the sequence of events leading to the shooting. He testified that for no apparent reason, appellant suddenly alighted from his car and accosted him and Maureen Hultman who were then walking along the sidewalk. Appellant questioned who they were and demanded for an I.D. After Leino handed him his I.D., Chapman appeared from behind Leino and asked what was going on. Chapman then stepped down on the sidewalk and inquired from appellant what was wrong. There and then, appellant pushed Chapman, pulled a gun from inside his shirt, and shot him. The gun attack was unexpected. "Why did you shoot me?" was all Chapman could utter.

Concededly, the shooting of Chapman was carried out swiftly and left him with no chance to defend himself. Even then, there is no evidence on record to prove that appellant consciously and deliberately adopted his mode of attack to insure the accomplishment of his criminal design without risk to himself. It appears to us that appellant acted on the spur of the moment. Their meeting was by chance. They were strangers to each other. The time

between the initial encounter and the shooting was short and unbroken. The shooting of Chapman was thus the result of a rash and impetuous impulse on the part of appellant rather than a deliberate act of will. We have consistently ruled that mere suddenness of the attack on the victim would not, by itself, constitute treachery.[187] Hence, absent any qualifying circumstance, appellant should only be held liable for Homicide for the shooting and killing of Chapman.

As to the wounding of Jussi Leino and the killing of Maureen Hultman, we hold that treachery clearly attended the commission of the crimes. The evidence shows that after shooting Chapman in cold blood, appellant ordered Leino to sit on the pavement. Maureen became hysterical and wandered to the side of appellant's car. When appellant went after her, Maureen moved around his car and tried to put some distance between them. After a minute or two, appellant got to Maureen and ordered her to sit beside Leino on the pavement. While seated, unarmed and begging for mercy, the two were gunned down by appellant. Clearly, appellant purposely placed his two victims in a completely defenseless position before shooting them. There was an appreciable lapse of time between the killing of Chapman and the shooting of Leino and Hultman — a period which appellant used to prepare for a mode of attack which ensured the execution of the crime without risk to himself. Treachery was thus correctly appreciated by the trial court against appellant insofar as the killing of Hultman and the wounding of Leino are concerned.

V and VI

We come now to the civil liability imposed against appellant. Appellant posits that the awards of moral and exemplary damages and for loss of earning capacity of Maureen Hultman, Roland Chapman and Jussi Leino were exorbitant. He likewise claims that the trial court's award of attorney's fees was excessive.

In its Decision, the trial court awarded to Jussi Leino and the heirs of victims Hultman and Chapman the following damages:

1. For the murder of Roland John Chapman, appellant was sentenced to pay the heirs of the deceased the sum of Fifty Thousand Pesos (P50,000.00) as indemnity for death and the sum of Five Hundred Thousand Pesos (P500,000.00) as moderate or temperate and exemplary damages.
2. For the murder of Maureen Navarro Hultman, appellant was sentenced to pay the heirs of the deceased the sum of: Fifty Thousand Pesos (P50,000.00) as indemnity for death; Two Million Three Hundred Fifty Thousand Four Hundred Sixty-one Pesos and Eighty-three Centavos (P2,350,461.83) as actual damages; Thirteen Million Pesos (P13,000,000.00) for loss of earning capacity of deceased; and, One Million Pesos as moral, moderate and exemplary damages.
3. For the shooting of Jussi Olavi Leino, appellant was sentenced to pay: Thirty thousand pesos (P30,000.00) as indemnity for the injury; One Hundred Eighteen Thousand Three-Hundred Sixty Nine Pesos and Eighty-four Centavos (P118,369.84) and the sum equivalent in Philippine pesos of U.S.\$55,600.00, both as actual damages; an amount equivalent in Philippine pesos of U.S.\$40,000.00, for loss of earning capacity of Jussi Leino; and, One Million Pesos (P1,000,000.00) as moral, moderate and exemplary damages.
4. In all three cases, appellant was also ordered to pay each of the offended parties the sum of One Million Pesos (or a total of three million pesos) for attorney's fees and expenses of litigation.
5. Costs of litigation.[188]

The early case of *Heirs of Raymundo Castro v. Bustos*[189] discussed in detail the matter of damages recoverable in case of death arising from a felony, thus:

"When the commission of a crime results in death, the civil obligations arising therefrom are governed by penal laws, `xxx subject to the provisions of Art. 2177, and of the pertinent provisions of Chapter 2, Preliminary Title on Human Relations, and of Title XVIII of this Book (Book IV) regulating damages.' (Art. 1161, Civil Code)

"Thus, every person criminally liable for a felony is also civilly liable." (Art. 100, Revised Penal Code). This civil liability, in case the felony involves death, includes indemnification for consequential damages (Art. 104, id.) and said consequential damages in turn include `xxx those suffered by his family or by a third person by reason of the crime.' (Art. 107, id.) Since these provisions are subject, however, as above indicated, to certain provisions of the Civil Code, (w)e will now turn to said provisions.

"The general rule in the Civil Code is that:

"In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably foreseen by the defendant." (Art. 2202)

"When, however, the crime committed involves death, there is Art. 2206 which provides thus:

"The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos even though there may have been mitigating circumstances. In addition:

"(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

"(2) If the deceased was obliged to give support according to the provisions of article 291, the recipient who is not an heir called to the descendant's inheritance by law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

"(3) The spouse, legitimate or illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased."

"The amount of P3,000 referred to in the above article has already been increased by this Court first, to P6,000.00 in *People v. Amansec*, 80 Phil. 426, and lately to P12,000.00 in the case of *People v. Pantoja*, G.R. No. L-18793, promulgated October 11, 1968,[190] it must be stressed that this amount, as well as the amount of moral damages, may be adjudicated even without proof of pecuniary loss, the assessment of the moral damages being `left to the discretion of the court, according to the circumstances of each case.' (Art. 2216)

"Exemplary damages may also be imposed as a part of this civil liability when the crime has been committed with one or more aggravating circumstances, such damages being `separate and distinct from fines and shall be paid to the offended party.' (Art. 2230). Exemplary damages cannot however be recovered as a matter of right; the court will decide whether or not they should be given. (Art. 2233)

"In any event, save as expressly provided in connection with the indemnity for the sole fact of death (1st par., Art. 2206) and in cases wherein exemplary damages are awarded precisely because of the attendance of aggravating circumstances, (Art. 2230) `xxx damages to be adjudicated may be respectively increased or lessened according to the aggravating or mitigating circumstances,' (Art. 2204) `but the party suffering the loss or injury must exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission in question.' (Art. 2203) `Interest as a part of the damages, may, in a proper case, be adjudicated in the discretion of the Court.' (Art. 2211) As to attorneys' fees and expenses of litigation, the same may be recovered only when exemplary

damages have been granted (Art. 2208, par. 1) or xxx when there is a separate civil action."

"Stated differently, when death occurs as a result of a crime, the heirs of the deceased are entitled to the following items of damages:

"1. As indemnity for the death of the victim of the offense -- P12,000.00 (now P50,000.00), without the need of any evidence or proof of damages, and even though there may have been mitigating circumstances attending the commission of the offense.

"2. As indemnity for loss of earning capacity of the deceased -- an amount to be fixed by the court according to the circumstances of the deceased related to his actual income at the time of death and his probable life expectancy, the said indemnity to be assessed and awarded by the court as a matter of duty, unless the deceased had no earning capacity at said time on account of permanent disability not caused by the accused. If the deceased was obliged to give support, under Art. 291, Civil Code, the recipient who is not an heir, may demand support from the accused for not more than five years, the exact duration to be fixed by the court.

"3. As moral damages for mental anguish, — an amount to be fixed by the court. This may be recovered even by the illegitimate descendants and ascendants of the deceased.

"4. As exemplary damages, when the crime is attended by one or more aggravating circumstances, — an amount to be fixed in the discretion of the court, the same to be considered separate from fines.

"5. As attorney's fees and expenses of litigation, — the actual amount thereof, (but only when a separate civil action to recover civil liability has been filed or when exemplary damages are awarded).

"6. Interests in the proper cases.

"7. It must be emphasized that the indemnities for loss of earning capacity of the deceased and for moral damages are recoverable separately from and in addition to the fixed sum of P12,000.00 (now P50,000.00) corresponding to the indemnity for the sole fact of death, and that these damages may, however, be respectively increased or lessened according to the mitigating or aggravating circumstances, except items 1 and 4 above, for obvious reasons."[191]

We shall first review the damages awarded to the heirs of ROLAND JOHN CHAPMAN in light of the law and the case law.

Appellant claims that the award of Five Hundred Thousand (P500,000.00) pesos as moderate or temperate and exemplary damages to the heirs of Ronald John Chapman was baseless.

We start with the observation that the trial court should not have lumped together the awards for moderate or temperate and exemplary damages at Five Hundred Thousand Pesos (P500,000.00), without specifying the particular amount which corresponds to each, as they are of a different kind. We shall, however, consider their propriety and reasonableness.

The amount of Five Hundred Thousand (P500,000.00) pesos cannot be given as temperate or moderate damages for the records do not show any basis for sustaining the award. Nor can it be given as exemplary damages. The killing of Chapman was not attended by either evident premeditation or treachery. Be that as it may, the award can be considered as one for moral damages under Article 2206 (3) of the New Civil Code.[192] It states:

"Art. 2206. The amount of damages for death caused by a crime xxx shall be at least (fifty thousand pesos, under current jurisprudence) xxx. In addition:

x x x

(3) The spouse, legitimate or illegitimate descendants and ascendants of the deceased may demand moral

damages for mental anguish by reason of the death of the deceased."

Moreover, considering the shocking and senseless aggression committed by appellant, we increase the amount of moral damages to One Million (P1,000,000.00) pesos for the death of Chapman.

We next rule on the legality of damages awarded to the heirs of MAUREEN NAVARRO HULTMAN.

Appellant argues that the damages for the death of Maureen should be awarded to her mother, Vivian Hultman, and her natural father. He contends that under Article 352 of the New Civil Code, Anders Hultman as adoptive father of Maureen, is not entitled to said award. Only the parents by nature of Maureen should inherit from her.

We reject the argument. Under the Family Code which was already in effect at the time of Maureen's death, Anders Hultman, as adoptive father, is entitled to the award made by the trial court. Article 190 of the Family Code provides:

x x x x x x x x

"(2) When the parents, legitimate or illegitimate, or the legitimate descendants of the adopted concur with the adopters, they shall divide the entire estate, one-half to be inherited by the parents or ascendants and the other half, by the adopters;

x x x x x x x x

"(5) When only the adopters survive, they shall inherit the entire estate;"

It does not appear on the records whether Maureen was survived by her natural father. During the trial of these cases, only Vivian and Anders Hultman testified on their claim of damages. Hence, we find that the award of damages in their favor has sufficient factual and legal basis.

Appellant also urges that the award to the heirs of Maureen Hultman of One Million Pesos (P1,000,000.00) as moral and exemplary damages is unjustified or, at the very least, exorbitant and should be reduced.

We hold that the award of One Million (P1,000,000.00) pesos is amply justified by the circumstances. The records reveal that Maureen hovered between life and death for ninety-seven (97) days. Her family experienced the peaks and valleys of unspeakable suffering. During that time, she underwent brain surgery three (3) times. Her condition was never stable and remained critical. It was always touch and go with death. She could not be left alone at the hospital. Her parents had to be perpetually by her side at least six (6) to seven (7) hours daily. After the shooting, their siblings had to be sent back to Sweden for their safety. Left unattended, her family's business took a downspin. Soon, her family's assets were depleted, then wiped out. A total of twenty-three (23) doctors attended to her and their bills ballooned without abatement. They were forced to rely on the goodness of the gracious. Her family started receiving contributions from other people to defray the medical expenses and hospital bills.[193] Maureen never regained consciousness until her demise on October 17, 1991, at the tender age of seventeen. Under the foregoing circumstances, we thus find the award of One Million Pesos (P1,000,000.00) as moral damages to be reasonable.

Moreover, we find that the grant of exemplary damages is called for by the circumstances of the case. Under Article 2229 of the Civil Code,[194] in addition to the award of moral damages, exemplary or corrective damages may be adjudged in order to deter the commission of similar acts in the future. The award for exemplary damages is designed to permit the courts to mould behavior that has socially deleterious consequences. Its imposition is required by public policy to suppress the wanton acts of an offender.

In the case at bar, appellant's unprovoked aggression snuffed the life of Maureen Hultman, a girl in the prime of

her youth. Hultman and her companions were gunned down by appellant in cold-blood, for no apparent reason. Appellant's vicious criminality led to the suffering of his victims and their families. Considering our soaring crime rate, the imposition of exemplary damages against appellant to deter others from taking the lives of people without any sense of sin is proper. Moreover, since the killing of Hultman was attended by treachery and pursuant to Article 2229 of the New Civil Code,[195] we impose an award of Two Million (P2,000,000.00) pesos as exemplary damages against appellant for the death of Maureen Hultman.

We now review the award of One Million Pesos (P1,000,000.00) as moral, moderate and exemplary damages to victim JUSSI LEINO.

From the record, it is incontrovertible that Leino likewise suffered extensive injuries as a result of the shooting. His upper jaw bone was shattered. He would need a bone transplant operation to restore it. His tongue was also injured. He partially lost his sense of taste for his taste buds were also affected. When he was discharged from the hospital, he had difficulty in speaking and had to be fed through a tube running down his nose. He lost eight of his teeth. The roots of his teeth were cut off and the raw nerves were exposed. But all these speak only of his physical injuries and suffering. More devastating was the emotional strain that distressed Leino. His parents were in Europe for a vacation at the time of the shooting. Only a neighbor attended to him at the hospital. It took two (2) days for his father to come and comfort by his bedside. Leino had trouble sleeping in peace at night. The traumatic event woke him up in the middle of the night. Black memories of the incident kept coming back to mind.[196] Understandably, the ill-effects of the incident spilled over his family. Seppo Leino, Jussi's father, was tortured by thoughts of insecurity. He had to relocate his entire family to Europe where he felt they would be safe.[197] Under the foregoing circumstances, we find that an award of One Million (P1,000,000.00) pesos to Jussi Leino as indemnity for moral damages is justified and reasonable.

As in the case of Hultman, since the shooting of Leino was committed with treachery and pursuant to Article 2229 of the New Civil Code,[198] appellant is additionally adjudged liable for the payment to Leino of Two Million (P2,000,000.00) pesos as exemplary damages.

We come now to the trial court's monetary award to compensate the LOSS OF EARNING CAPACITY OF VICTIMS JUSSI LEINO and MAUREEN HULTMAN.

To be compensated for loss of earning capacity, it is not necessary that the victim, at the time of injury or death, is gainfully employed. Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money. In *Cariaga v. Laguna Tayabas Bus Company*,[199] we awarded to the heirs of Cariaga a sum representing loss of his earning capacity although he was still a medical student at the time of injury. However, the award was not without basis for Cariaga was then a fourth year medical student at a reputable school; his scholastic record, which was presented at the trial, justified an assumption that he would have been able to finish his course and pass the board in due time; and a doctor, presented as witness for the appellee, testified as to the amount of income Cariaga would have earned had he finished his medical studies.

In the case at bar, the trial court awarded the amount, equivalent in Philippine pesos, of Forty Thousand Dollars (U.S. \$40,000.00) for loss of earning capacity of JUSSI LEINO. We agree with appellant that this amount is highly speculative and should be denied considering that Leino had only earned a high school degree at the International School, Manila, in 1989. He went back to Finland to serve the military and has just arrived in Manila in February 1991 to pursue his ambition to become a pilot. At the time of the shooting on July 13, 1991, he has just enrolled at the Manila Aero Club to become a professional pilot. He was thus only on his first year, first semester, in said school and was practically, a mere high school graduate. Under the foregoing circumstances, we find the records wanting with substantial evidence to justify a reasonable assumption that Leino would have been

able to finish his studies at the Manila Aero Club and ultimately become a professional pilot.

We now pass upon the propriety of the award of Thirteen Million Pesos (P13,000,000.00) for loss of earning capacity of deceased MAUREEN HULTMAN. We find that the award is not supported by the records.

In adjudging an award for Maureen's loss of earning capacity, the trial court incorrectly used the monthly salary of a secretary working in Sweden, computed at two thousand dollars (\$2,000.00) a month, as per the estimate given by Anders Hultman. Nowhere in the records does it appear that, at the time of her death, Maureen had acquired the skills needed for a secretarial job or that she intended to take a secretarial course in preparation for such job in Sweden. Anders Hultman himself testified that there was uncertainty as to Maureen's future career path, thus:

"ATTY. VINLUAN:

Q Mr. Witness, if Maureen would not been (sic) shot and she continued her studies, what professional career would she would (sic) like to pursue considering her interests and inclinations?

"WITNESS:

A That is very difficult to say. She has just turned 17 and our projection is that, certainly she would have been an artist in the creative side. She would have become an actress or a movie producer or probably she would have been a college graduate.

"ATTY. VINLUAN:

Q But if you would just say based on the salary of a secretary in Sweden, how much would she have earned?

A Not less than Two Thousand Dollars a month."[200]

Clearly, there is no factual basis for the award of thirteen million (P13,000,000.00) pesos to the heirs of Maureen for loss of earning capacity as a probable secretary in Sweden.

In any event, what was proved on record is that after graduating from high school, Maureen took up a short personality development course at the John Roberts Powers. Maureen was employed at the John Roberts Powers at the time of her death. It was her first job. In fact, she had just received her first salary, for which reason she went out with her friends to celebrate on that fateful day. However, neither the nature of her work nor her salary in said company was disclosed at the trial. Thus, to compute the award for Maureen's loss of earning capacity, we are constrained to use the minimum wage prevailing as of the date of her death (October 17, 1991), i.e., one hundred eighteen pesos (P118.00).[201] Allowing for reasonable and necessary expenses in the amount of P19,800.00, her net income per annum would amount to P26,859.17.[202] Hence, using the formula repeatedly adopted by this Court:[203] $(2/3 \times [80 - \text{age of victim at time of death}]) \times \text{a reasonable portion of the net income which would have been received by the heirs as support}$, [204] we fix the award for loss of earning capacity of deceased Maureen Hultman at Five Hundred Sixty-Four Thousand Forty-Two Pesos and Fifty-Seven Centavos (P564,042.57).

It also bears emphasis that in the computation of the award for loss of earning capacity of the deceased, the life expectancy of the deceased's heirs is not factored in. The rule is well-settled that the award of damages for death is computed on the basis of the life expectancy of the deceased, and not the beneficiary.[205]

Lastly, appellant seeks a reduction of the award of attorney's fees in the amount of Three Million Pesos (P3,000,000.00), claiming that the same is exorbitant.

We disagree. The three (3) private complainants were represented by the ACCRA law firm, with Atty. Rogelio Vinluan as lead counsel. They agreed to pay the amount of One Million (P1,000,000.00) pesos each as attorney's

fees and for litigation expenses. The three criminal cases were consolidated. A continuous trial was conducted, with some hearings having both morning and afternoon sessions. The trial lasted for almost one and a half years. More than forty (40) witnesses testified during the hearings. Several pleadings were prepared and filed. A total of sixty-eight (68) documentary exhibits were presented by the prosecution. Incidents related to the trial of the cases came up to this Court for review at least twice during the pendency of the trial.[206] Given these circumstances and the evident effort exerted by the private prosecutor throughout the trial, the trial court's award of a total of Three Million (P3,000,000.00) pesos as attorney's fees and litigation expenses appears just and reasonable.

VII

In his last assigned error, appellant urges that the hearings conducted on the cases, where no less than forty-one (41) witnesses were presented by the parties,[207] were merely hearings on the petition for bail concerning the murder charge for the killing of Roland Chapman, and not a trial on the merits of all three (3) cases. Appellant insists that after the termination of the hearing, he still had the right to adduce evidence at the trial proper. He claims he was denied due process when the trial court considered all the cases submitted for decision after the defense waived its right to present its surrebuttal evidence.

Appellant's position is untenable. This issue was resolved at the very first hearing of the cases on August 9, 1991. The incident then pending was appellant's petition for bail for the murder of Chapman. It will be remembered that, initially, there was only one murder charge against appellant since Maureen Hultman succumbed to death during the course of the proceedings on October 17, 1991.

Thus, at the initial hearing on August 9, 1991, the incident for resolution was appellant's petition for bail. The prosecution sought to present the surviving victim, Jussi Leino, to testify on all three (3) charges to obviate delay and inconvenience since all three (3) charges involved one continuing incident. Appellant, through counsel, objected to the testimony of Leino insofar as the two (2) frustrated murder charges (with respect to the wounding of Leino and Hultman) were concerned. He argued that since the pending incident was the petition for bail with respect to the killing of Chapman, any testimony relative to the two (2) other charges in which bail were recommended was irrelevant.

After arguments, the defense suggested that if the prosecution would present Leino to testify on all three (3) charges, it should wait until after accused's arraignment on August 14, 1991.[208] The prosecution agreed on the condition that there shall be trial on the merits and, at the same time, hearing on the petition for bail. Defense counsel agreed.[209]

As agreed upon, accused was arraigned and the prosecution presented Jussi Leino as its first witness to testify on all three (3) cases. No objection was made by the defense.[210]

Subsequent proceedings likewise disprove appellant's insistence that the hearings conducted by the trial court were limited to the petition for bail, viz:

1. The prosecution presented all their witnesses and documentary evidence relative to the shooting incident, including evidence in support of the claim for damages. These witnesses were extensively cross-examined by the defense counsels. The defense never objected that evidence on damages would be unnecessary if its intention was really to limit presentation of evidence to appellant's petition for bail.
2. After the prosecution and the defense rested their cases, the trial court issued an Order[211] directing the parties to submit their Memorandum, after which "the main case as well as the petition for bail are respectively submitted for Decision and Resolution." After receipt of this Order, the defense counsel filed two (2) motions for extension of time to file the defense Memorandum. In both Motions, the defense did not object to the trial court's Order

submitting for decision the main case and the petition for bail. Neither did it move for a reconsideration of this Order and notify the court that it still had witnesses to present.

3. In compliance with said Order, appellant's counsel, Atty. Rodolfo Jimenez, filed a Memorandum and Supplemental Memorandum praying for accused's acquittal. This is inconsistent with the defense's position that the hearing conducted was only on the petition for bail. If the defense insist that what was submitted for decision was only his petition for bail, he would have only prayed that he be granted bail.

4. Upon receipt of the notice of promulgation of judgment from the trial court, the defense did not interpose any objection to the intended promulgation. In fact, the defense attended the promulgation of the Decision and manifested that they were ready therefor.

All these clearly show that the merits of the cases and the petition for bail were heard simultaneously and appellant acquiesced thereto. Moreover, appellant's right to present additional evidence was not abridged by the trial court. On the contrary, the records disclose that the trial court afforded the defense fair opportunity to adduce its evidence. It took the defense almost one and a half years to submit its evidence. The defense presented more than twenty (20) witnesses and several documentary evidence. It was only after the trial court rendered a decision against appellant that he filed a motion for new trial,[212] through his new counsel, Atty. Gatmaytan, Jr. For the first time, he alleged that the joint decision of the cases, both on the merits and on the petition for bail, was irregular for he was not given a chance to present further evidence to corroborate his alibi. We note that in his motion for new trial,[213] appellant did not even identify his alleged additional witnesses and the substance of their testimonies. Nor was it shown that he could not have produced these evidence at the trial with reasonable diligence. Appellant's motion was a patent ploy to delay the decision on his cases. His motion was properly denied by the trial court.

IN VIEW WHEREOF, we hereby AFFIRM WITH MODIFICATIONS the Decision of the trial court, dated December 22, 1992, thus:

(1) In Criminal Case No. 91-4605, finding accused Claudio J. Teehankee, Jr., guilty beyond reasonable doubt of the crime of Homicide for the shooting of Roland John Chapman, and sentencing said accused to suffer an indeterminate penalty of imprisonment of eight (8) years and one (1) day of prison mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum, and to pay the heirs of the said deceased the following amounts: Fifty Thousand (P50,000.00) pesos as indemnity for the victim's death; and, One Million (P1,000,000.00) pesos as moral damages.

(2) In Criminal Case No. 91-4606, finding accused Claudio J. Teehankee, Jr., guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, for the shooting of Maureen Navarro Hultman, and sentencing him to suffer imprisonment of reclusion perpetua, and to pay the heirs of the said deceased the following amounts: Fifty Thousand (P50,000.00) pesos as indemnity for her death; Two Million Three Hundred Fifty Thousand Four Hundred Sixty-One Pesos and Eighty-Three Centavos (P2,350,461.83) as actual damages; Five Hundred Sixty-Four Thousand Forty-Two Pesos and Fifty-Seven Centavos (P564,042.57) for loss of earning capacity of said deceased; One Million Pesos (P1,000,000.00) as moral damages; and Two Million (P2,000,000.00) pesos as exemplary damages.

(3) In Criminal Case No. 91-4807, finding accused Claudio J. Teehankee, Jr., guilty beyond reasonable doubt of the crime of Frustrated Murder, qualified by treachery, for the shooting of Jussi Olavi Leino, and sentencing him to suffer the indeterminate penalty of eight (8) years of prison mayor as minimum, to fourteen (14) years and eight (8) months of reclusion temporal as maximum, and to pay the said offended party the following amounts: Thirty Thousand (P30,000.00) pesos as indemnity for his injuries; One Hundred Eighteen Thousand Three

Hundred Sixty-Nine Pesos and Eighty-Four Centavos (P118,369.84) and the equivalent in Philippine Pesos of U.S.\$55,600.00, both as actual damages; One Million (P1,000,000.00) pesos as moral damages; and, Two Million (P2,000,000.00) pesos as exemplary damages.

(4) In all three cases, ordering said accused to pay each of the three (3) offended parties the sum of One Million Pesos (P1,000,000.00; or a total of Three Million [P3,000,000.00] pesos] for attorney's fees and expenses of litigation; and

(5) To pay the costs in all three (3) cases.

SO ORDERED.

Regalado, Mendoza, and Francisco, JJ., concur.

Narvasa, C.J., (Chairman), on official leave.

[1] The Court received the Appellant's Brief on March 21, 1994, the Appellee's Brief on November 10, 1994 and Appellant's Reply Brief on March 6, 1995. With the filing of the Reply Brief, the case was deemed submitted for decision.

[2] Original Records, p. 1.

[3] Ibid., p. 220.

[4] Ibid., p. 41.

[5] TSN, August 9, 1991, pp. 35-36.

[6] Ibid., pp. 38 & 66.

[7] Ibid., pp. 68, 71-72.

[8] Ibid., 76-82.

[9] TSN, August 14, 1991, pp. 5-8.

[10] Jussi Leino and Maureen Hultman were former schoolmates at the International School.

[11] TSN, August 14, 1991, pp. 15-20.

[12] Ibid., pp. 21-22.

[13] Ibid., pp. 22-24, 29-30, 80.

[14] Seppo Leino, Jussi's father, was a Finnish national and a communications specialist at ADB; TSN, October 4, 1991, pp. 64-65.

[15] TSN, August 14, 1991, pp. 31-32, 104.

[16] Ibid., pp. 33-40, 105-109.

[17] Ibid., pp. 37-39.

[18] Ibid., pp. 97-98.

[19] Ibid., pp. 40-42, 53.

[20] Ibid., pp. 43 & 111.

[21] Roxas' residence was only about three (3) houses away from the scene of the crime; TSN, August 27, 1991, pp. 10-11.

[22] TSN, September 3, 1991, pp. 11 & 14.

[23] TSN, September 23, 1991, pp. 43-45.

[24] Florece was about 85 steps away from the scene of the crime; TSN, August 27, 1991, p. 22.

[25] TSN, August 27, 1991, pp. 30, 34-35; see also Exhibit "C," Sworn Statement of Florece, Folder of Prosecution Exhibits, at p. 119.

[26] See Sworn Statement of Cadenas, dated July 16, 1991, Exhibit "BB," Folder of Prosecution Exhibits, at p. 154.

[27] TSN, September 23, 1991, p. 64.

[28] TSN, September 3, 1991, pp. 31-32.

[29] TSN, August 27, 1991, p. 21; TSN, September 3, 1991, p. 32; TSN, September 23, 1991, p. 62.

[30] TSN, September 11, 1991, pp. 30 & 32.

[31] TSN, August 27, 1991, pp. 35-37, 46-47.

[32] Ibid., p. 44.

[33] TSN, August 14, 1992, pp. 18-19.

[34] Before 9 a.m. of July 13, 1991, NBI Director Lim received a call from U.S. embassy officials, informing him about a shooting incident at Dasmariñas Village, which resulted in the death of an American citizen (Chapman) and the wounding of two (2) others; TSN, October 4, 1991, p. 10.

[35] TSN, October 2, 1991, pp. 184-187.

[36] Ibid, pp. 188-189, 192.

[37] Ibid., pp. 190-196.

[38] TSN, August 27, 1991, pp. 192-193, 206, 213-218, 224; TSN, October 2, 1991, pp. 190-191.

[39] TSN, September 23, 1991, pp. 92-102; TSN, October 2, 1991, pp. 201-204.

[40] TSN, October 4, 1991, pp. 35-47.

[41] TSN, August 27, 1991, pp. 221-224, 233-236.

[42] TSN, October 2, 1991, pp. 205-208.

[43] Ibid., pp. 208-211.

[44] Exhibit "BB," supra.

[45] TSN, October 2, 1991, pp. 218-222.

[46] Ibid., pp. 223-228.

[47] Ibid., pp. 229-231, 248-249.

[48] Ibid., pp. 252-254.

[49] Ibid., pp. 255-257.

[50] Ibid., pp. 259-260.

[51] At that time, Cadenas was staying at the NBI compound for security purposes, together with witnesses in other cases who were also placed under NBI protection; TSN, October 2, 1991, pp. 268-269.

[52] Exhibit "DD," Photo of the identification, Folder of Prosecution Exhibits, p. 161.

[53] TSN, October 2, 1991, p. 260.

[54] TSN, August 14, 1991, pp. 116 & 126.

[55] Ibid., pp. 120-122, 128-137.

[56] Ibid., pp. 132-148.

[57] TSN, October 2, 1991, pp. 283-284.

[58] TSN, September 3, 1991, p. 34; TSN, September 11, 1991, p. 60

[59] Ibid., pp. 37-38; *ibid.*, pp. 72-73.

[60] Ibid., pp. 37-42; *ibid.*, pp. 68-75.

[61] TSN, September 3, 1991, pp. 41-44.

[62] Original Records, p. 709.

[63] TSN, September 3, 1991, pp. 44-45; TSN, October 19, 1992, pp. 18-19.

[64] TSN, September 3, 1991, pp. 45-50.

[65] TSN, October 2, 1991, pp. 285-294.

[66] Ibid., pp. 295-299.

[67] As per the medico-legal report of Dr. Pedro P. Solis, Exhibit "K", Folder of Prosecution Exhibits, p. 138.

[68] TSN, September 18, 1991, pp. 85-92.

[69] Ibid., p. 94.

[70] TSN, October 2, 1991, pp. 26, 28.

[71] Ibid., pp. 29-30.

[72] Ibid., pp. 31-32.

[73] Ibid., pp. 33-43.

[74] TSN, September 18, 1991, pp. 27-39.

[75] Ibid., pp. 41-46, 55.

[76] Ibid., pp. 48-51.

[77] Ibid., pp. 57, 68-69.

[78] Ibid., pp. 66 & 73.

[79] Ibid., pp. 76 & 82.

[80] TSN, October 9, 1992, pp. 75-76, 132, 136, 186-187.

[81] Ibid., pp. 77, 151-157.

[82] Ibid., pp. 77-81, 183.

[83] Ibid., pp. 81-87.

[84] Ibid., pp. 87-89.

[85] Ibid., pp. 92-93.

[86] Ibid., pp. 94-107.

[87] Ibid., pp. 114-117.

[88] Ibid., pp. 112-114.

[89] TSN, October 9, 1992, pp. 10-11, 24.

[90] As a result of this accident, a criminal charge for reckless imprudence was filed against him. However, in view of the desistance of the victim's parents, the case against him was dismissed; *id.*, pp. 11-14; See also Resolution, dated May 16, 1991, Exhibit "30," Folder of Defense Exhibits, p. 60.

[91] Ibid., pp. 20-41, 63-64.

[92] TSN, July 14, 1992, pp. 49-60, 72.

[93] Ibid., pp. 79-80, 90.

[94] TSN, July 22, 1992, pp. 28, 35, 43 and 109.

[95] Ibid., pp. 74-75.

[96] TSN, August 10, 1992, pp. 77-78, 86-88.

[97] TSN, August 14, 1992, pp. 16-30, 51-52.

[98] Ibid., pp. 31-35.

[99] TSN, August 18, 1992, pp. 22, 24, 33.

[100] As per request of Captain Roberto Reyes, Chief of the Special Investigation Division, Makati Police Station; Exhibit "20", Folder of Defense Exhibits, p. 50.

[101] Exhibit "21," Folder of Defense Exhibits, p. 51.

[102] TSN, August 25, 1992, pp. 12, 14, 20-25, 83-87.

[103] TSN, September 1, 1992, pp. 89-105.

[104] Folder of Defense Exhibits, p. 16.

[105] TSN, July 29, 1992, pp. 14-19.

[106] Folder of Defense Exhibits, p. 16.

[107] TSN, July 29, 1992, pp. 32, 39-40.

[108] Folder of Defense Exhibits, p. 17.

[109] Ibid., p. 18.

[110] Ibid., p. 19.

[111] TSN, July 29, 1992, pp. 56-61.

[112] Ibid., pp. 69-71, 76.

[113] Folder of Defense Exhibits, at p. 21.

[114] TSN, August 4, 1992, pp. 12-19.

[115] Folder of Defense Exhibits, at p. 22.

[116] Ibid., at p. 23.

[117] TSN, August 7, 1992, pp. 30-34.

[118] Folder of Defense Exhibits, at p. 23.

[119] TSN, August 7, 1992, p. 36.

[120] Ibid., pp. 40 & 49.

[121] Folder of Defense Exhibits, at p. 24.

[122] Ibid., p. 25.

[123] Ibid., p. 26.

[124] TSN, August 7, 1992, p. 59.

[125] Ibid., p. 63.

[126] Ibid., pp. 77-78.

[127] Folder of Defense Exhibits, p. 28.

[128] Ibid., pp. 63-64.

[129] Ibid., p. 64.

[130] TSN, August 12, 1992, pp. 68, 72 and 74.

[131] TSN, October 19, 1992, pp. 18-19; There was a statement in the unsigned sworn statement prepared by Baldado (Exhibit "HHH") to the effect that Mangubat saw accused at the Makati police station but categorically stated that accused was not the gunman.

[132] Ibid., pp. 110-116.

[133] Ibid., pp. 116-117.

[134] Ibid., pp. 118-121.

[135] Original Records, p. 740.

[136] Order, dated October 29, 1992, Original Records, p. 743.

[137] See Motion for Additional Time, dated November 6, 1992, p. 744.

[138] Decision, penned by Judge Job B. Madayag, presiding judge, Makati Regional Trial Court, Branch 145; Rollo, pp. 50-78.

[139] Original Records, pp. 989-1001.

[140] Atty. Lino M. Patajo, Former Associate Justice of this Court, represented accused in the present appeal.

[141] LaFave and Israel, Criminal Procedure, Hornbook Series, 1992 ed., p. 353.

[142] Ibid.

[143] See *Neil v. Biggers*, 409 US 188 [1973]; *Manson v. Brathwaite*, 432 US 98 [1977]; *Del Carmen*, Criminal Procedure, Law and Practice, 3rd Edition, p. 346.

[144] TSN, August 14, 1991, p. 126

[145] Ibid, pp. 116, 120-122.

[146] TSN, October 2, 1991, pp. 276-277.

[147] TSN, August 17, 1991, p. 117.

[148] Ibid.

[149] TSN, August 14, 1991, p. 117.

[150] *Supra*.

[151] *People v. Campa*, G.R. No. 105391, February 28, 1994, 230 SCRA 431.

[152] *People v. Apawan*, G.R. No. 85329, August 16, 1994, 235 SCRA 355.

[153] TSN, September 23, 1991, pp. 96, 107-109.

[154] *People v. Bongadillo*, G.R. No. 96687, July 20, 1994, 234 SCRA 233; *People v. Israel*, G.R. No. 97027, March 11, 1994, 231 SCRA 155; *People v. Fuertes*, G.R. No. 104067, January 17, 1994, 229 SCRA 289.

[155] TSN, September 23, 1991, pp. 90-97.

[156] Original Records, p. 709.

[157] Section 48, Rule 130, Rules of Court.

[158] *LaFave and Israel*, op cit, p. 1160.

[159] Ibid. Rulings were based on the so-called Harmless Error legislation included in the English Judicature Act of 1873.

[160] Ibid., p. 1161.

[161] *People v. Garcia*, G.R. No. 105805, August 16, 1994, 235 SCRA 371; *People v. Chatto*, G.R. No. 102704, 219 SCRA 785; *People v. Peran*, G.R. No. 95259, October 26, 1992, 215 SCRA 152; *People v. Pizarro*, G.R. No. 49282, July 6, 1992, 211 SCRA 325, 336; *People v. Martinez*, G.R. No. 100813, January 31, 1992, 205 SCRA

666.

[162] TSN, October 9, 1992, pp. 37-39.

[163] TSN, August 27, 1991, pp. 3, 34-35.

[164] TSN, September 3, 1991, pp. 28-29.

[165] TSN, September 23, 1991, p. 62.

[166] Exhibit "4-c", Folder of Defense Exhibits, at p. 19.

[167] TSN, October 4, 1991, p. 49; TSN, July 14, 1992, pp. 79-84.

[168] TSN, October 4, 1991, p. 80.

[169] Turner, Criminalities, Bancroft Whitney Co., 1915 ed., p. 141; See also Richardson, Modern Scientific Evidence, Anderson Co., p. 495.

[170] People v. Ducay, G.R. No. 86939, August 2, 1993, 225 SCRA 1; People v. Hubilo, G.R. No. 101741, 220 SCRA 389; People v. Pasiliao, G.R. No. 98152-53, October 26, 1992, 215 SCRA 163; People v. Clamor, G.R. No. 82708, July 1, 1991, 198 SCRA 642; People v. Talingdan, G.R. No. 94339, November 9, 1990, 191 SCRA 333.

[171] TSN, October 19, 1992, 110, 114-117.

[172] Exhibit "21," Folder of Defense Exhibits, p. 51.

[173] Sheppard v. Maxwell, 384 US 333, 350, 86 S Ct. 1507, 1515, 16 L ed. 600 [1966].

[174] Mark Twain, Sketches, New and Old, New York, Harper and Bros. 1899.

[175] L-30894, March 25, 1970, 32 SCRA 108.

[176] TSN, August 14, 1991, p. 5.

[177] Ibid., pp. 51-52.

[178] Indeed, it was only on October 22, 1991 that this Court issued a Resolution regarding live television and radio coverage of hearing of cases. This en banc Resolution was brought about the live coverage of the hearing of the libel case filed by then President Aquino against newspaper columnist Luis Beltran. The testimony of Pres. Aquino as complainant was fully carried on air by the media. Then Congressman Art Borjal called the attention of this Court to the possible excessiveness and impropriety of such coverage. Forthwith, the Court issued the October 22, 1991 Resolution proscribing the live radio and television coverage of court proceedings. Video footage of hearings for news purposes was to be taken prior to the commencement of the trial proper.

[179] TSN, August 27, 1991, pp. 95-104.

[180] Supra.

[181] TSN, July 14, 1992, pp. 5-11, 16-17.

[182] TSN, August 14, 1992, p. 13.

[183] TSN, September 8, 1992, p. 11.

[184] TSN, September 10, 1992, p. 8.

[185] Order dated May 29, 1992, Original Records, pp. 560-563.

[186] En Banc Resolution, dated June 16, 1992, A.M. No. 91-6-508-RTC, Original Records, p. 564.

[187] *People v. Supremo*, G.R. No. 100915, May 31, 1995, citing *People v. Ramirez*, G.R. Nos. 80747-48, October 17, 1991, 203 SCRA 25, 36; *People v. Tugbo, Jr.*, G.R. No. 75894, April 22, 1991, 196 SCRA 133; *People v. Tumaob*, No. L-2300, May 27, 1949, 83 Phil. 738.

[188] Decision, Rollo, at pp. 77-78.

[189] G.R. No. L-25913, February 28, 1969, 27 SCRA 327.

[190] As per the policy adopted by the Court en banc on August 30, 1990, the amount of civil indemnity for death caused by a crime has been increased to P50,000.00; *People v. Sazon*, G.R. No. 89684, September 18, 1990, 189 SCRA 700, 714.

[191] *Heirs of Raymundo Castro v. Bustos*, supra, at pp. 332-335.

[192] Art. 2206. The amount of damages for death caused by a crime xxx shall be at least (fifty thousand pesos, under current jurisprudence) xxx. In addition:

x x x

(3) The spouse, legitimate or illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased."

[193] TSN, October 4, 1991, pp. 21-25; TSN, July 22, 1992, p. 69.

[194] "Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."

[195] Supra.

[196] TSN, October 4, 1991, pp. 68-70, 76 & 78; TSN, August 14, 1991, p. 46.

[197] TSN, October 4, 1991, p. 79.

[198] Supra.

[199] No. L-11037, December 29, 1960, 110 Phil 346.

[200] TSN, October 4, 1991, pp. 36-38.

[201] As per Wage Order Nos. NCR-02 and 02-A, effective January 8, 1991.

[202] Using the equation: Equivalent Monthly Rate = Applicable Daily Rate x 365 divided by 12; See Annex "A" of Rules Implementing Wage Orders Nos. NCR-02 and NCR-02-A, January 8, 1991. Thus:

Equivalent Monthly Rate = P118.00 x 365

12

= P3,589.17

With allowance for the requirement of at least one (1) month salary as 13th month pay, the gross income per annum would amount to P46,659.17.

[203] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 54470, May 8, 1990, 185 SCRA 110; *Monzon v.*

Intermediate Appellate Court, G.R. No. 72828, January 31, 1989, 169 SCRA 760; *Davila v. Philippine Airlines*, No. L-28512, February 28, 1973, 49 SCRA 497; *Villa Rey Transit, Inc. v. Court of Appeals*, No. L-25499, February 18, 1970, 31 SCRA 511.

[204] *People v. Alvero, Jr.*, G.R. No. 72319, June 30, 1993, 224 SCRA 16.

[205] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 54470, May 8, 1990, 185 SCRA 110, 121, citing *Davila v. Philippine Airlines*, No. L-28512, February 28, 1973, 49 SCRA 497.

[206] Motion to Inhibit Presiding Judge and Order of Inhibition, Adm. Matter No. 91-6-508-RTC, Original Records, at p. 564; and, Petition for Certiorari relative to the conduct of another preliminary investigation for the Amended Information for Murder for the supervening death of Maureen Hultman, G.R. No. 103102, March 6, 1992, 207 SCRA 134, Original Records, pp. 329-336.

[207] Appellant himself presented more than twenty (20) witnesses.

[208] TSN, August 9, 1991, pp. 35-36.

[209] *Ibid.*, pp. 76-82.

[210] TSN, August 14, 1991, pp. 5-8.

[211] Original Records, at p. 743.

[212] *Ibid.*, pp. 989-1000.

[213] Original Records, pp. 989-1001.

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