

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CIPRIANO DE VERA, SR., @ “AMBOS,” ACCUSED-APPELLANT.

G.R. Nos. 121462-63. June 09, 1999

Ponente: VITUG, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-121462-63/>

VITUG, J.:

It was a celebration which started with revelry and ended in tragedy. The fatalities were 13-year old Gerardo Valdez y Torres and 29-year old Perlita Ferrer y Mamorno. Accused of having killed the two victims was Cipriano De Vera, Sr., an uncle of Gerardo, who was charged in three separate informations, inclusive of a charge for illegal possession of firearm, hereinbelow recited:

In Criminal Case No. U-7809 -

"That at past 12:00 o'clock midnight of December 31, 1993 and at dawn on the 1st day of January, 1994, or thereabouts, at barangay Cayambanan, municipality of Urdaneta, province of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, armed with a firearm, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Perlita Ferrer y Mamorno, inflicting upon the latter fatal wounds in the head, which directly caused her death, to the damage and prejudice of her heirs.

"Contrary to Article 249 of the Revised Penal Code."[1]

In Criminal Case No. U-7810 -

"That at dawn on the 1st day of January, 1994 and past 12:00 o'clock midnight of December 31, 1993, or thereabouts, at barangay Cayambanan, municipality of Urdaneta, province of Pangasinan, and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with a firearm, taking advantage of nighttime and the sporadic burst of firecrackers on New Year's day, with evident premeditation, treachery and deliberate intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot Gerardo Valdez y Torres, a 13-year old boy, inflicting upon him fatal wounds in the head, which directly caused his death, to the damage and prejudice of his heirs.

"Contrary to Article 248 of the Revised Penal Code."[2]

In Criminal Case No. U-7811 -

"That at dawn on the 1st day of January, 1994 and past 12:00 o'clock midnight of December 31, 1993, or thereabouts, at barangay Cayambanan, Urdaneta, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) firearm with ammunitions without authority of law; which firearm he used in shooting Gerardo Valdez y Torres, a 13-year old boy, and Perlita Ferrer y Mamorno, on the above-cited date, time and place.

"That accused is indicted in two (2) separate Informations for the crime of Murder for the fatal shooting of Gerardo Valdez y Torres and Homicide for the fatal shooting of Perlita Ferrer y Mamorno, before this

Honorable Court.

"Contrary to P.D. No. 1866." [3]

After a joint trial that followed the arraignment and the plea of "not guilty" entered by the accused with the assistance of counsel, Judge Antonio M. Belen of the Regional Trial Court of Lingayen, Pangasinan, Branch 38, found the accused guilty as charged and so sentenced him, thusly:

"Wherefore, in the light of the considerations discussed above, the court hereby, renders judgment in the above-entitled cases as follows:

"In Criminal Cases Nos. U-7809 and U-7810, the court finds the accused Cipriano de Vera, Sr. alias Ambos, guilty beyond reasonable doubt of the complex crime of Murder with Homicide defined and penalized by Article 48 of the Revised Penal Code and conformable thereto, pursuant to law, hereby sentences said accused to suffer the penalty of death and to pay the costs.

"The court further orders the accused to indemnify the heirs of the deceased Gerardo Valdez, the sum of P20,285.00 as actual damages; P50,000.00 as death indemnity and moral damages of P20,000.00 without subsidiary imprisonment in case of insolvency. The court likewise orders the accused to indemnify the heirs of the deceased Perlita Ferrer the sum of P35,000.00 as actual damages; P50,000.00 as death indemnity and P2,040,000.00 as loss of earning capacity of the late Perlita Ferrer without subsidiary imprisonment in case of insolvency.

"In Criminal Case No. U-7811, the court likewise finds and holds the accused, Cipriano de Vera, Sr. alias Ambos, guilty beyond reasonable doubt of the crime of Illegal Possession of Firearm and Ammunitions, penalized under the provision of Presidential Decree No. 1866 as amended, and conformable thereto, pursuant to law, hereby sentences said accused to suffer the indeterminate prison term of twelve (12) years of prison mayor as minimum to eighteen (18) years and ten (10) months of reclusion temporal as maximum and to pay the costs of the proceedings.

"SO ORDERED." [4]

The trial judge briefly narrated the evidence successively presented by the prosecution and the defense.

Evidence For the Prosecution. -

Neil Valdez, brother of Gerardo, recalled that at around midnight of 31 December 1993, he and Gerardo were exploding firecrackers when he noticed his uncle, Cipriano De Vera, Sr., go under a mango tree. Minutes later, he was startled by a gunshot, followed by the falling body of his brother, Gerardo, to the ground. When he looked around, he saw the accused, whom he clearly recognized, holding a long-barreled gun, about one meter long, also locally known as "sumpak." The accused was about 8 to 9 meters away from him. Just as he started to assist his brother, Neil heard shouts, about 40 to 50 meters away, that Perlita was also dead ("aynatay metten ni Perlita"). He learned moments later that Perlita was shot on the left side of the forehead above the left eye. The accused tried to flee from the scene. Neil proceeded to give chase but he was not able to overtake the accused. He speculated that the shooting was an offshoot of the land dispute between his father and the accused.

Samuel Nicer testified that a few days before the incident, he saw the accused sporting a gun. Around midnight of 31 December 1993, he, together with Rodrigo Gallardo, Raffy Bustamante and some other friends, again chanced upon the accused holding the same one-meter long gun, which the latter, in fact, pointed at them. At about 12:10 a.m. of 01 January 1994, while on his way home, the witness saw the accused walking towards the east, in front of the Dominguez ricemill, still carrying his "sumpak."

Jesusa Valdez, sister of Gerardo, stated that at about 10:45 p.m. of 31 December 1993, she and Gerardo were

invited by Mary Ann, daughter of the accused, to partake of the New Year's meal at the latter's house. While thereat, they were warned by the accused not to go out of their house that night because there would be a traitor (judas) in the vicinity. Later, at their own house, she was at the terrace watching Neil and Gerardo explode firecrackers when she saw the accused, then under a mango tree, shoot Gerardo, using a firearm about 2-1/2 feet long. While she went to succor her brother, she saw the accused going eastward. She attested to the existence of a feud between her father and the accused.

SPO1 Asterio Dismaya, a member of the Philippine National Police and duty investigator, said that their office received in the morning of 01 January 1994 a report on the shooting incident. He proceeded to Cayambanan, Urdaneta, with one Sgt. Reyes and conducted a "spot investigation." A sketch of the surroundings showed that the bullet traveled from the east to the west direction and that there was no obstruction between Gerardo and Perlita, the fence along the road being only about one meter high. The accused was fingered to be the culprit responsible for the shooting incident. The latter's wife told the police officers that the accused had already left for Manila at midnight of 31 December 1993. SPO1 Dismaya was later to learn that the accused had "surrendered" to Sgt. Prudencio Cawagan of the Urdaneta Police.

Dr. Ramon Gonzales, Jr., Rural Health Officer of Urdaneta, Pangasinan, declared having conducted an autopsy examination on 01 January 1994 and 03 January 1994, respectively, on the remains of Gerardo Valdez and Perlita Ferrer. Gerardo had sustained three gunshot wounds; viz: The first wound, on the right parietal region, behind the right ear, was rounded, about 8 mm. x 7 mm., directed inwards with a point of entry but no point of exit; the pellet was found on the muscle liner at the left temple of the victim. The second wound, 17 mm. x 12 mm., at the mid-parietal region, middle part of the lower neck just above the nape, also indicated a point of entry but no point of exit; the slug was found in the right occipital of the brain. The third wound, 15 mm. x 9 mm., in the mid-occipital region, at the back of the neck above the second wound, likewise had a point of entry and no point of exit; the slug was found in the cranial cavity. Dr. Gonzales testified that the distance between the first and second wounds was approximately two inches and about an inch between the second and third wounds. The first slug went through the brain and stopped at the left temple; the second went through the brain and caused bleeding; and the third penetrated the skull and entered the brain. According to him, all the wounds were fatal. The slugs were kept in his office since he was not asked to turn them over to the police. The autopsy on Perlita revealed that she had suffered a gunshot wound on the left eyebrow. It had a point of entry but no point of exit, and the slug was found at the right parietal lobe of the brain. The wound was fatal. He said that the slugs he recovered from Gerardo Valdez were similar to the slugs he recovered from Perlita Ferrer which he also kept in his office.

Angelita Ferrer, the mother of Perlita, upon learning that the latter had been shot, repaired at once to the hospital but Perlita had already expired by the time she arrived. At the time of her death, Perlita was 29 years old, single, and earning P8,000.00 a month as the manager of a restaurant in Quezon City. The witness said that she spent P16,995.00 for her daughter's night vigils and P15,000.00 for the funeral.

Dalia Ferrer stated that she and her sister Perlita were in Cayambanan for the New Year's celebration at the invitation of Julito De Vera. The house of Gerardo was about 40 to 50 meters from where her sister was standing when shot. Perlita was brought to the Sacred Heart Hospital where Neil Valdez informed her that the assailant was the accused.

Renato Valdez, the father of Gerardo, confirmed that he and the accused, a cousin, had a dispute over the land given to Renato's father by their grandfather of which the accused wanted a share. At about 12:05 in the morning of 01 January 1994, he was at the house of his friend Meni in Nancalabasaan, Urdaneta, when informed by his son Neil that Gerardo had been shot by the accused. He promptly proceeded to the Sacred Heart Hospital but he was unable to reach his son alive. He spent P2,375.30 for Gerardo's hospitalization, P4,200.00 for the vigil, P4,000.00

for the lompos, P3,000.00 for the tomb, P300.00 for the lapida, P200.00 for the church rites, P10.00 for the burial permit and P5,000.00 for the funeral expenses. Gerardo was in first year of high school when he died.

Evidence For the Defense.

Cipriano De Vera, Jr., a son of the accused, claimed that around 9:00 p.m. of 31 December 1993, he was on guard duty at the Iglesia ni Cristo Chapel in Cayambanan with Neil Valdez, Jovito Opinion and Julius De Vera. Neil left at around 10:00 p.m. after being informed that his brother Gerardo had been shot. Neil returned at 12:15 a.m. of 01 January 1994 and stayed with the group until 2:00 a.m. The witness said that Neil used to be a member of the church until he was expelled therefrom.

Glenda De Vera testified that on the eve of 31 December 1993, she celebrated the coming of the New Year with her family, relatives and some guests. It was her father, the accused, who prepared the food for them. Her father, as well as some of the visitors, left the house at around 10:00 p.m. When her father failed to return, her sister looked for him in Barangay Paurido where she was informed by relatives that he already had left for Manila. She testified that the accused had worked in Manila and would go home to Urdaneta only thrice a year. At around 1:00 a.m. of 01 January 1994, she learned that one of their neighbors had been hit by a stray bullet. When she and her sister Grace were informed that their father was being sought by the police, Grace went to Manila to apprise the accused about it. Her father was not able to return to Pangasinan immediately but later he "surrendered" to the police authorities.

Romeo Barcelona, a relative of the wife of the accused, stated that in the evening of 31 December 1993, at about 11:00 p.m., the accused was at their house in Barangay Paurido, where he helped prepare the food they would partake for the evening celebration. The accused finished cooking at 1:00 a.m. of 01 January 1994. After eating, they went to bed and woke up at around 6:00 a.m. Shortly thereafter, the accused left for Manila.

The accused, Cipriano De Vera, Sr., asserted that he arrived in Urdaneta from Manila on 27 December 1993. In the evening of 31 December 1993, he cooked the food for his family. After taking their supper at about 8:15 p.m., his children went to the Iglesia ni Cristo chapel while he departed for Barangay Paurido, Urdaneta, to cook for his cousin, Felicidad Barcelona. He arrived in Barangay Paurido at 10:30 p.m., celebrated with his relatives and there spent the night. He woke up at 6:00 a.m., and left for Manila after taking a bath and having his breakfast. He arrived in Manila in the afternoon of 01 January 1994 and proceeded to work the next day. When he returned from his work that day, he was surprised to find his daughter, Grace, who went to see him about a pending warrant for his arrest. He was able to return to Urdaneta only on 06 January 1994. After attending a religious service at the Iglesia ni Cristo chapel, he proceeded to Barangay Paurido. He went to the Urdaneta police station on 08 January 1994 to inquire about a warrant of arrest issued against him on a pending rape charge but he was promptly put to jail.

The accused sought to discredit the testimony of Neil Valdez and surmised that the latter had testified against him for his having given previously a warning against Neil's visits to his daughter and also because the Valdez family would want him to vacate the lot which he and his family were occupying. On the other hand, prosecution witness Samuel Nicer, the accused claimed, also held grudges against him (the accused). Nicer suspected that Glenda and Grace, daughters of the accused, to be the persons responsible for the expulsion of Nicer from the Iglesia ni Cristo.

Neil Valdez and Samuel Nicer were presented on rebuttal. Neil said that neither Cipriano De Vera, Jr., nor the accused was a member of the Iglesia ni Cristo, either in Cayambanan or in Nancalabasaan, Urdaneta. Nicer, for his part, denied having been expelled from the Iglesia ni Cristo. Also presented at the witness stand was Isagani Pagaduan, Cayambanan Secretary of the Iglesia Ni Cristo from 1985 to 1993 who attested that Neil Valdez had

never been expelled from the church. He also declared that on 31 December 1993, Neil Valdez stayed at the Iglesia ni Cristo chapel only until 10:00 p.m., and that the latter did not come back that night after leaving the place.

As aforesaid, the court a quo, presided over by Judge Antonio M. Belen, found for the prosecution and convicted the accused. Forthwith, the case was elevated to this Court for automatic review pursuant to Republic Act No. 7659 on account of the imposition by the trial court of the death penalty.

In challenging the decision that has convicted him of all the charges, accused-appellant contends that -

"I. THE TRIAL COURT'S DECISION IS INCONSISTENT WITH THE EVIDENCE.

"A. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES THE ALLEGED EYEWITNESSES

"B. THE TRIAL COURT ERRED IN HOLDING THE APPELLANT LIABLE FOR PERLITA FERRER'S DEATH.

"II. THE TRIAL COURT'S DECISION IS INCONSISTENT WITH LAW AND JURISPRUDENCE.

"A. THE TRIAL COURT ERRED IN CONVICTING THE APPELLANT OF A COMPLEX CRIME CONSTITUTING CRIMES ALLEGED IN SEPARATE INFORMATION.

"B. THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

"C. THE TRIAL COURT ERRED IN NOT DETERMINING MOTIVE AS IMPORTANT FOR CASES IN WHICH THE IDENTIFICATION OF THE ACCUSED IS DOUBTFUL.

"D. THE TRIAL COURT ERRED IN DISREGARDING THE APPELLANT'S DEFENSE OF ALIBI.

"E. THE TRIAL COURT ERRED IN NOT APPRECIATING VOLUNTARY SURRENDER AS A MITIGATING CIRCUMSTANCE.

"F. THE TRIAL COURT ERRED IN CONVICTING THE APPELLANT OF VIOLATION OF P.D. No. 1866.

"G. THE TRIAL COURT ERRED IN CONVICTING THE APPELLANT OF SEPARATE OFFENSES.

"III. THE TRIAL COURT VIOLATED THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE AS IT RESOLVED ALL DOUBTS AGAINST THE APPELLANT.

"IV. THE TRIAL COURT VIOLATED THE RIGHT OF THE APPELLANT TO A PRELIMINARY INVESTIGATION.

"V. THE SENTENCE OF DEATH IMPOSED BY THE TRIAL COURT IS AN UNCONSTITUTIONAL PENALTY AND THUS VOID.

"A. MURDER AS DEFINED BY R.A. NO. 7659 IS NOT A HEINOUS CRIME.

"B. THERE IS NO COMPELLING REASON TO REIMPOSE THE DEATH PENALTY FOR MURDER.

"C. THE RULING IN PEOPLE VS. ECHEGARAY DESERVES REEXAMINATION." [5]

Well-settled is the rule that the factual findings of, including particularly the assessment on the credibility of witnesses made by, a trial court are accorded a great degree of respect and will not, absent strong cogent reasons, be disturbed on appeal. In this instance, the Court sees no justification to set aside the conclusions arrived at by

the trial court and its holding that accused-appellant indeed is responsible for the death of the two victims.

Neil Valdez, testifying before the trial court, categorically pointed to the accused to be the perpetrator of the killings. Neil stated:

"Q Do you know Gerardo Valdez y Torres, the victim in Criminal Case No. U-7810?

"WITNESS:

"A Yes, sir.

"Q Where is he now?

"A Already dead, sir.

"Q What age when your brother, Gerardo Valdez, died?

"A He was 13 years old, sir.

"Q Do you know also the accused in these three (3) cases, Cipriano de Vera?

"A Yes, sir.

"Q Why do you know Cipriano de Vera?

"A He is my uncle and a neighbor, sir.

"Q Why is he your uncle?

"A Because the father of Cipriano de Vera and the father of my father are brothers, sir.

"Q How is Cipriano de Vera properly called in your place?

"A Alias `Ambos,' sir.

"Q You said you are neighbors, how far is your house to his house?

"A It is around fifteen (15) meters away, sir.

"Q Now, during the midnight of December 31, 1993, do you know where you were?

"A Yes, sir.

"Q Where were you? at about midnight of December 31, 1993?

"A I was beside my brother, Gerardo Valdez, lighting firecrackers, sir.

"Q Why were you lighting firecrackers?

"A It was eve of New Year or New Year's eve, sir.

"Q At what particular place were you near your brother, Gerardo Valdez, at that time?

"A

Infront of our house, sir.

"Q What barangay?

"A Cayambanan, Urdaneta, Pangasinan, sir.

"Q Now, as you were infront of your house lighting firecracker near your brother, do you observe any unusual incident that took place thereat?

"A

I noticed the accused Ambos went to the road and then returned under the mango tree and thereafter, he held a

shot bang and I saw my brother, Gerardo Valdez fell down and when I looked around I saw Cipriano de Vera holding a long firearm and pointed to the direction of my brother, Gerardo Valdez, sir.

"Q

Kindly describe this long firearm which you saw pointed by the accused at your brother?

"A One (1) meter long and the barrel is iron pipe, sir.

"Q Do you know what is the popular name of that firearm which you saw in the possession, control and custody of the accused?

"A They called `sumpak,' sir, or called `Pasoot.'

"Q What is the ammunition used in that `sumpak' or `palsoot'?"

"A Gauge 12, sir.

"Q What is the gauge 12 bullet called for, what kind of firearm?

"A Bullet of a shotgun, sir.

"Q What did you see the accused do as he was holding that `sumpak' directed to your brother at the time?

"A When I lighted firecracker there was a big `bang' and I saw the accused pointed direct to my brother and when I looked at my brother, he fell down, sir.

"Q How far were you from the accused when you saw directed the firearm towards your brother and shot him?

"ATTY. EVANGELISTA:

We will object, Your Honor. There is not testimony as to the shooting by the accused to his brother. This witness testified on he light firecracker and he heard a big `bang' and saw holding iron bar. He did not say, he

shot, Your Honor.

"COURT:

"Q How far were you when you saw the accused pointing that `sumpak' towards your brother?

"WITNESS:

"A Eight (8) to nine (9) meters away, sir.

"FISCAL:

"Q Will you demonstrate how the accused held the long firearm (sumpak) directed to your brother and heard this loud sound `bang?"

"WITNESS:

"A Like this, sir (Witness now demonstrating to the Court extending his right hand at the right side and the left is extended forward as if holding something).

"Q What further action did the accused, if any, while he was holding that firearm?

"A I saw the accused pushed something on the `sumpak' and my brother was hit, sir.

"Q As the accused has made that motion pushing forward with his right hand, what did you see as a result of that action made by the accused on the gun, if any?

"A The gun fired, sir.

"Q Now, when you saw your brother hit by the action of the accused firing the gun, what more, if any, did you observe?

"ATTY. EVANGELISTA:

We object, Your Honor. There is no such fired the gun. What he said, he pushed something. He did not fire any trigger, Your Honor.

"COURT:

The accused pushed something.

"Q What else did you observe, if any?

"WITNESS:

"A After the gun fired, I saw my brother fell down and when I embraced him he was injured on his head, sir.

"FISCAL:

"Q Simultaneously, when you saw your brother was hit, what more did you observe in the surroundings, if any?

"WITNESS:

"A Then, I also heard shouts because somebody was hit nearby, sir.

"Q Can you tell where did these shouts originate in relation to the place of your brother, Gerardo Valdez was?

"A On the West direction, sir.

"Q About how many meters did you hear the shout to the place where you were?

"A Forty (40) to fifty (50) meters away, sir.

"Q Can you tell us what were the shouts about?

"A They said Perlita died, sir.

"Q Did you come to know why Perlita died?

"A

He was also hit on the left side of the forehead just above the left eye, sir.

"Q Do you know the reason why this Perlita was hit on her left forehead?

"A According to the information, I heard that Perlita was facing towards our direction and perhaps an extra bullet hit her, sir.

"ATTY. EVANGELISTA:

We move to strike out the answer of the witness on the ground that it is hearsay. Aside from being hearsay, it is based on conjecture.

"COURT:

As part of narration, the answer stay on the record.

"FISCAL:

"Q How many times did you see the accused made this motion firing the long firearm (sumpak)?

"WITNESS:

"A Only once, sir.

"Q Now, what happened next when you saw your brother, Gerardo Valdez hit and nearby he fell down?

"A Yes, sir. My brother was hit and fell down and I embraced him and I saw the accused ran, sir.

"COURT:

"Q Where?

"WITNESS:

"A Towards the East direction, sir. When I tried to chase him he ran farther, so, I did not continue chasing him.

"FISCAL:

"Q How far in meters have you gone in chasing the accused Eastward?

"WITNESS:

"A When I saw him he was around seventy (70) meters around because it was bright, so, I recognized him because there was moonlight and it was bright, sir.

"Q How many meters did you take this chase to the accused?

"A

I chased the accused up to the place where he entered there were concrete fence, so, we lighted the place with flashlight and thickly populated and there were thick grasses, sir.

"Q How many meters from the place where you chased the accused to the place where you stopped when the accused entered in that place?

"A A distance of One Hundred (100) meters, sir, from the place where we were.

"Q

Now, after you were not able to chase the accused, what transpired next?

"A

After he went to the East direction, sir.

"Q

By the way, who were your companions in chasing this accused as you said earlier `we?'

"A

My uncle Victorino Valdez and no more, sir.

"Q What more transpired when you went Eastward?

"A

I called for my father and told him that my brother died, sir.

"Q Can you point this Cipriano de Vera, alias `Ambos' whom you saw that night carrying that `sumpak' aimed at your brother and hit on his back of his head?

"A

He is there, sir (Witness pointing to the accused)."[6]

The witness did not waver during the cross-examination. He went on to respond to questions thusly:

"ATTY. EVANGELISTA:

"Q Mr. Witness, at the time of the incident you testified to here, were you facing your brother?

"FISCAL "

At what particular time?

"ATTY. EVANGELISTA:

The alleged shooting.

"FISCAL:

We object, that is misleading.

"COURT:

Answer.

"WITNESS:

"A I was not facing him directly, sir. He was on my side, sir.

"COURT:

"Q What side?

"WITNESS:

On my left side, sir.

"Q To what direction?

"A North direction, sir.

"Q So, your brother was North of you at the time he was shot, correct?

"A Yes, sir.

"Q How far was he from you?

"A Around three (3) meters away, sir.

"COURT:

Go ahead.

"ATTY. EVANGELISTA:

"Q And where was he facing at that time?

"WITNESS:

"A He was facing North towards the road, sir.

"Q And you say that the accused was allegedly on the Eastern side of the place where you were?

"A Yes, sir.

"Q At that moment therefore, Mr. Witness, you were facing towards the Northeast, direction?

"FISCAL:

What moment?

"ATTY. EVANGELISTA:

At that time of the shooting.

"COURT:

Answer.

"WITNESS:

"A I was facing the suspect, sir.

"ATTY. EVANGELISTA:

"Q Mr. Witness, why are you facing the East direction the suspect?

"WITNESS:

"A I was facing the firecrackers, sir.

"Q You mean to say, you are throwing the firecrackers in front of the accused?

"A No, sir, within our compound.

"Q But it is towards its direction?

"A

It is far from him and those are just small firecrackers, sir.

"Q How far is it from him the firecrackers being thrown to you?

"A Six (6) meters away, sir.

"Q Will you point to any particular point that is six (6) meters away?

"A From here up to the place of the accused where he was sitting, sir. (Estimated to be five (5) meters).

"Q Mr. Witness, and how far were you throwing of your firecrackers?

"A About two (2) meters away from me, sir.

"Q And how far was it from the place of you are standing?

"A From here up to the stenographer, sir.

"Q Mr. Witness, do you have to throw the firecrackers towards the direction of the accused?

"A At the time we throw those firecrackers the accused was not yet there. There were no persons before he shot my brother, sir.

"Q When you saw your brother allegedly shot, were you lighting a firecracker at that time?

"A I was waiting the last firecracker which I lighted to exploid, sir.

"Q In other words, your attention was towards the firecracker which you have just thrown?

"FISCAL:

Misleading, Your Honor.

"COURT:

Answer.

"WITNESS:

"A

At the time, I was waiting for the firecracker to exploid. My attention was on that direction and I saw the accused fire his gun, sir."[7]

The above testimony of Neil Valdez was bolstered by an account of the incident given by Jesusa Valdez. Jesusa declared:

"Q Now, at about 12:05 in the early morning of January 1994, do you still recall where you were?

"A Yes, sir. I was in our terrace and I was watching my brothers, Gerardo Valdez, and Neil Valdez lighting firecrackers infront of our house, sir.

"Q while you were there in your terrace watching your brothers lighting firecrackers, do you remember having noticed unusual incident that happened at that time?

"A

I saw the accused shot my brother, Gerardo Valdez, while the accused was under the mango tree, sir.

"Q

Now, can you describe that weapon used by the accused in shooting your brother, Gerardo Valdez?

"A It is a long firearm about 2 and 1/2 foot long, sir, and it is adjustable and bullet is like a pipe.

"Q Can you demonstrate how the accused shot your brother?

"A The accused pointed his gun towards my brother with his right hand lower and his left hand about 45 degree by the gun with his right 45 degrees, sir.

"FISCAL:

To make the demonstration better, this witness be given a long object to represent.

"WITNESS: (continuing)

"A

First, the accused held the butt of the gun with his right hand as if pulling something while the left hand holding the middle extended forward pulled then pushed the gun, sir, the mechanism of the gun.

"FISCAL:

"Q How far were you from the accused when you saw him shot your brother?

"WITNESS:

"A More or less, eight (8) meters away, sir.

"Q What transpired next after that?

"A

After the shooting, I approached my brother and I went near him while there I heard shouts coming from the West direction saying that someone was shot in that place, sir.

"Q When you went near your brother, Gerardo, who fell down after he was shot, what did you do?

"A I embraced my brother and I saw the accused going towards the East direction, sir." [8]

Cipriano De Vera, Jr., the son of the accused, tried hard to discredit Neil Valdez by asserting that the latter was with him on the night of the incident and left only after he had learned of the death of his brother. This assertion, however, was convincingly rebutted by Isagani Pagaduan, a former secretary of the Iglesia ni Cristo, who attested to the fact that Neil had left the chapel at around 10:00 p.m. and never returned that evening.

The Court cannot look with favor at the alibi proffered by the accused for not only is it considered one of the weakest defenses, obviously due to its being capable of easy fabrication,[9] but also because it may not prevail over witnesses' positive identification that points to him as the perpetrator of the crime.[10] At all events, for the defense of alibi to prosper, it is not enough that the accused can prove his being at another place at the time of its commission; it is likewise essential that he can show physical impossibility for him to be at the locus delicti.[11] Appellant himself has averred that Paurido, Urdaneta, Pangasinan, is just about eight to nine kilometers away from Cayambanan, Urdaneta, Pangasinan, and could be reached by a tricycle in just about twenty to thirty minutes.

Neither can the Court agree with appellant that the witnesses for the prosecution have been goaded by improper motives in testifying against him. Nothing of substance has here been presented to convince the Court that the prosecution witnesses would deliberately lie, send the wrong man to jail or even to the gallows, and set the real malefactor scot-free.

The trial court has correctly appreciated the qualifying circumstance of treachery against appellant. Treachery exists when the means of execution employed by the accused gives the victim no opportunity to defend himself or retaliate, and the means of execution are deliberately or consciously adopted.[12] It has been amply shown in this instance that the victims have been totally unprepared for the sudden and unexpected attack. It is also evident that appellant has placed himself at a safe distance in firing at his victims, indeed hiding behind the noise and merriment of the New Year's celebration, to avoid any risk to himself and then to cover up his nefarious deed.

The contention of the defense that the trial court has erred in not appreciating the mitigating circumstance of voluntary surrender in favor of appellant has no merit. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself unconditionally to the authorities either because (1) he acknowledges his guilt, or (2) he would wish to save the State of having to itself effect his capture and arrest pertinent to the crime with which he is charged and in regard to which that mitigating circumstance is invoked.[13] Voluntary surrender is not a mitigating circumstance where it appears that the purpose of the

accused in going to the authorities is for an entirely different matter.

In the case at bar, appellant himself said that he had gone to the police station in Urdaneta merely to inquire about a warrant of arrest in connection with a pending case against him for rape. Thus:

"Q And Mr. witness, in Manila, do you know what happened?

"A When I arrived, I worked as a masonry, sir.

"COURT

"Q Cementing what?

"A I worked as a masonry in a construction of a house, sir.

"ATTY. EVANGELISTA

"Q After working, what did you do?

"A I went home to the house of my elder sister in Makati, sir.

"Q And what did you find out when you went home?

"A I came upon my daughter, Grace, sir.

"Q

What day was that?

"A January 1, 1994 in the afternoon and asked why was she there, sir. She told me that I had a warrant of arrest, sir.

"Q What else did you inquire regarding the warrant of arrest from your daughter, Grace?

"A It was a warrant of arrest regarding my pending case for Rape, sir.

"Q And what did you tell her, if any?

"A I told her to go home ahead because I will follow since I still have work to do, sir.

"Q Mr. witness, you said you were to follow Grace, where were you to follow her?

"A Here in Urdaneta, Pangasinan, sir.

"Q Did you follow Grace in Urdaneta, Pangasinan?

"A Yes, sir.

"Q What day did you follow her?

"A It was in January 6, 1994, sir.

"Q And where did you proceed that day?

"A I dropped by the chapel, sir.

"Q What chapel are you referring to?

"A The Church of Christ (INK), sir.

"Q What time was that?

"A I arrived at the INK chapel 2:30 in the afternoon, sir.

"Q And what did you do there?

"A I attended the religious service, sir.

"Q And how long did you stay there?

"A After the church service, I proceeded to Paurido, Urdaneta, Pangasinan, sir, to sleep there.

"Q The following day, January 7, 1994, what did you do next, if any?

"A I still helped working in Paurido, Urdaneta, Pangasinan, sir.

"Q Did you not inquire on the reported warrant of arrest against you, Mr. witness?

"A I asked them about it but I was the one who personally went to the police station of Urdaneta, Pangasinan, sir, on January 8, 1994.

"Q Upon reaching the police station of Urdaneta, Pangasinan, what happened there?

"A They informed me that I have a pending case in the police station and told me that I will be incarcerated, sir.

"Q And you were incarcerated?

"A Yes, sir.

"Q And do you know why you were incarcerated that day?

"A Because of the Rape case filed against me, sir.

"Q Mr. witness, did you come to know that incident that transpired in Brgy. Cayambanan, Urdaneta, Pangasinan about 12:05 of January 1, 1994?

"A I was only informed when I was already jailed, sir."[14]

Appellant brings up the alleged violation of his right to preliminary investigation. The right to preliminary investigation, however, may be waived, and it will be deemed to have been waived by failing to invoke it prior to, or at least at the time of, the arraignment.[15] The question of whether there has been a preliminary investigation,

or whether it has been properly conducted, should be interposed prior to the plea of the accused.[16] The Office of the Solicitor General is correct in contending that it would now be late in the day for appellant to raise the issue for the first time in this appeal before the Court.

Anent the allegation that appellant could not have been responsible likewise for the death of Perlita Ferrer, the Court agrees with the observations of the trial court that -

(1) the slug extracted from the right parietal lobe of Perlita's brain is similar to the pellets extracted from the head of Gerardo;

(2) the wounds sustained by the two victims were caused by gunshot and the ammunitions used are pellets, like the ones used in a shotgun;

(3)

Perlita was standing on the same line of direction as Gerardo when accused-appellant fired his sumpak -

along with the fact that Perlita would appear to have fallen at just about the same time as Gerardo did after the shot was delivered, are circumstances that all point just to the contrary.

The trial court erred, however, in convicting appellant for Illegal Possession of Firearm and Ammunitions. In *People vs. Valdez*, [17] the Court, citing *People vs. Molina* [18] and *People vs. Feloteo* [19] held that there could be no separate conviction for Illegal Possession of Firearms under Presidential Decree No. 1866 in view of the amendments introduced by Republic Act No. 8294 and that the illegal possession of firearms should thenceforth be taken as an aggravating circumstance pursuant to Section 1 of the amendatory law. Nevertheless, the alleged use of an unlicensed firearm as a special aggravating circumstance in Criminal Case No. U-7809 and Criminal Case No. U-7810 would be improper. While it was established by the testimonies of Neil and Jesusa Valdez that appellant used a sumpak in shooting the victims, it was not equally established that appellant had no license to possess it. The fact that the firearm appeared to be a homemade gun or illegally manufactured would not dispense with the requirement of proof that it was unlicensed.[20] Besides, Republic Act No. 8294 took effect only on 06 July 1997 and could only be given retroactive effect if favorable to the accused, such as in its application to Criminal Case No. U-7811, but not when it would aggravate the criminal liability of the accused.

Finally, appellant raises the issue of whether or not the trial court has acted rightly or has erred in convicting him for the complex crime of murder with homicide. Here, the Court finds for accused-appellant and quotes with approval the observation made by the Office of the Solicitor General, viz:

"The record of the case will show that three separate informations were filed against appellant, one for the murder of Gerardo Valdez, the second for homicide for the death of Perlita Ferrer, and the third for illegal possession of firearms. This Honorable Court has held that 'while the trial court can hold a joint trial of two or more criminal cases and can render a consolidated decision, it cannot convict the accused of a complex crime consisting of the various crimes alleged on the two informations' (*People vs. Legaspi*, 246 SCRA 206, 213). Thus, appellant cannot be held liable for the complex crime of murder with homicide but should be held liable separately for these crimes." [21]

In *People vs. Legaspi*, [22] abovesited by the Solicitor General, the appellants were charged with two separate informations, one for double murder (Criminal Case No. C-28760 [87] and the other for violation of R.A. No. 6539 (Criminal Case No. C-28761 [87]). The Court there held:

"x x x Their conviction can only be limited to the crime alleged or necessarily included in the allegations in the separate informations. What controls is the description of the offense, as alleged in the information (Santos vs. People, 181 SCRA 487 [1990]). While the trial court can hold a joint trial of two or more criminal cases and can render a consolidated decision, it cannot convict the accused of a complex crime constitutive of the various crimes alleged in the two informations. Thus, the accused were deprived of their constitutional right to be informed of the nature and cause of the accusation against them (1987 Constitution, Art. III, Sec. 14[2])."[23]

There is, nevertheless, a need to modify the award of damages awarded by the trial court to the heirs of the victims. In *People vs. Alberto Nullan, et al.*,[24] the Court had occasion to restate the rules; viz:

"With respect to damages, the recovery of actual damages must be premised upon competent proof and best evidence obtainable by the injured party showing the actual expenses incurred in connection with the death, wake or burial of the victim. Courts cannot simply assume that damages are sustained by the injured party, nor can it rely on speculation or guesswork in determining the fact and amount of damages. In the case at bench, the Court accepts as having been incurred the amount of P52,851.96 for doctor fees, hospital bills, funeral cremation, burial services and the cost of the tomb of the victim for which supporting receipts are on record. The alleged reasonable miscellaneous expenses of P40,000.00 are disallowed for not having been sufficiently proved. The actual damages awarded by the trial court should be thus reduced to only P52,851.96. Relative to the amount of damages for loss of earnings, the trial court has fixed the amount of P1,000,000.00 based on the victim's life expectancy of 65 years. This Court has consistently used the formula: $[\frac{2}{3} \times (80 - \text{age of victim at time of death})]$ in determining life expectancy. The victim in this case therefore can be said to have had a life expectancy of $[\frac{2}{3} \times (80 - 46)]$ 23 years. The trial court has aptly estimated his annual income to be close to P120,000.00 from which amount should be deducted the necessary and incidental expenses which the victim would have incurred if he were alive, estimated at 50%, to about a balance of P60,000.00 net annual income. In computing the loss of earning capacity of the victim, several factors are considered besides the mathematical computation of annual income times life expectancy. Allowances are also made for circumstances which could reduce the computed life expectancy of the victim like the nature of his work, his lifestyle, age and state of health prior to his death, and the rate of loss sustained by the heirs of the victim. All taken, the sum of P1,000,000.00 for loss of earning capacity of the deceased victim awarded by the trial court must be increased to P1,380,000.00. The award of moral damages of P100,000.00 arising from the mental anguish suffered by the surviving spouse, Julie Gotanci, and testified to by her, is reasonable."

Angelita Ferrer, mother of Perlita, said that she had spent a total of P31,995.00 for the vigil and funeral expenses of her daughter. The trial court awarded her the sum of P35,000.00. Only the amount of P15,000.00 for funeral expenses, however, was duly receipted. Renato Valdez, father of Gerardo, stated that the family had spent a total of P19,085.30 for Gerardo's wake and funeral. The trial court awarded him P20,285.00 but the receipted amount, however, totaled only P7,785.30. The awards made by the court a quo must thus be reduced correspondingly. Relative to the award of damages for loss of earning capacity to the heirs of Perlita Ferrer, using the formula in *People vs. Nullan*, the entitlement thereto should be modified by reducing it to the amount of P1,632,000.00 from P2,040,000.00. The award of moral damages by the trial court in favor of the heirs of Gerardo, being justified, can be sustained.

WHEREFORE, the decision, dated 20 April 1995, of the Regional Trial Court of Lingayen, Pangasinan, Branch 38, is MODIFIED thusly:

In Criminal Case No. U-7809, accused-appellant Cipriano De Vera, Sr., is found GUILTY of Homicide for the death of Perlita Ferrer y Mamorno and is sentenced to suffer an indeterminate imprisonment term of from nine (9) years and one (1) day of prison mayor to fifteen (15) years and six (6) months of reclusion temporal and ordered to pay the heirs of Perlita Ferrer y Mamorno civil indemnity ex delicto of P50,000.00, actual damages of P15,000.00, and P1,632,000.00 for loss of earning capacity.

In Criminal Case No. U-7810, accused-appellant Cipriano De Vera, Sr., is found GUILTY of Murder for the death of Gerardo Valdez y Torres and is sentenced to suffer the penalty of reclusion perpetua and ordered to pay the heirs of Gerardo Valdez y Torres civil indemnity ex delicto of P50,000.00 and actual damages of P7,785.30. The award of moral damages decreed by the trial is affirmed.

Criminal Case No. U-7811 is DISMISSED.

Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.
Puno, and Panganiban, JJ., on leave.

[1] Rollo, p. 27.

[2] Ibid., pp. 27-28.

[3] Ibid., p. 28.

[4] Ibid., pp. 40-41.

[5] Ibid., pp. 81-82.

[6] TSN, 06 June 1994, pp. 3-10.

[7] TSN, 07 June 1994, pp. 16-19.

[8] TSN, 21 June 1994, pp. 4-5.

[9] People vs. Montealto, 269 SCRA 755.

[10] People vs. Grefaldia, 273 SCRA 591.

[11] People vs. Eubra, 274 SCRA 180.

[12] People vs. Hubilla, Jr., 252 SCRA 471.

[13] People vs. Maalat, 275 SCRA 206; People vs. Sion, 277 SCRA 127.

[14] TSN, 28 September 1994, pp. 4-5.

[15] Gonzales vs. Court of Appeals, 277 SCRA 518.

[16] See People vs. Lapura, 255 SCRA 85.

[17] G.R. No. 127663, 11 March 1999.

[18] G.R. No. 115835-36, 22 July 1998.

[19] G.R. No. 124212, 17 September 1998.

[20] Mallari vs. Court of Appeals, 265 SCRA 456; People vs. Evangelista, 256 SCRA 611.

[21] Rollo, p. 24.

[22] 246 SCRA 206.

[23] At p. 213.

[24] G.R. No. 126303, 14 April 1999.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.