

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAN AVE Y TABOBO, ACCUSED-APPELLANT.

G.R. Nos. 137274-75. October 18, 2002

Ponente: PUNO, J.

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PUNO, J.:

The appellant, DAN AVE, was charged with the crimes of Frustrated Murder and Murder before the Regional Trial Court of Urdaneta, Pangasinan.

The Information in Criminal Case No. U-9168, for frustrated murder, reads:[1]

"That on or about August 24, 1996, in the evening at Brgy. Camantiles, Municipality of Urdaneta, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a long firearm with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot Atty. Napoleon Valenzuela, inflicting upon him a gunshot wound, the accused having thus performed all the acts of execution which would have produce(d) the crime of Murder as a consequence but, which nevertheless, did not produce it by reason of causes independent of the will of the accused that is, due to the timely and able medical assistance rendered to the said Atty. Napoleon Valenzuela which prevented his death, to his damage and prejudice.

CONTRARY to Art. 248, in relation to Arts. 6 and 50 of the Revised Penal Code."

The Information in Criminal Case No. U-9032, for murder, reads:[2]

"That on or about the 24th day of August, 1996, at Barangay Camantiles, municipality of Urdaneta, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the said accused with intent to kill and by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack and shoot one Pedro Valenzuela, Jr. y Castisima, with the use of a long firearm, hitting and injuring the head of said victim, and which injuries being fatal, caused his death, to the damage and prejudice of his heirs.

CONTRARY to Art. 248 of the Revised Penal Code."

The appellant was also charged with "Illegal Possession of Firearms," docketed as Criminal Case No. U-9153. The three (3) cases were later consolidated.[3]

The appellant went into hiding for almost two (2) years and his cases had to be archived.[4] On August 18, 1998, he was finally arrested and later pled not guilty to all the charges. The three (3) cases were tried jointly.[5]

The prosecution established that in the evening of August 24, 1996, Pedro Valenzuela, Jr., Atty. Napoleon Valenzuela, Isidro (Benito) Ave, Calixto Valenzuela, Leopoldo Valenzuela, and Rogelio Gacad had a drinking spree in the vicinity of the house of Pedro Valenzuela, Jr. in Barangay Camantiles, Urdaneta City, Pangasinan.[6] A rectangular bamboo bed served as their makeshift table. The place was well lighted by a 100-watt Philipps bulb placed just above them and by the lights coming from the house of Pedro. During the revelry, Pedro was seated beside his cousin, Atty. Valenzuela.[7]

At about 9:00 p.m., Rogelio Gacad found the need to answer the call of nature. With his back facing his companions, he relieved himself on a spot about five (5) or six (6) meters away from them.[8]

Out of nowhere, the appellant appeared. Unnoticed by the group, the appellant stood behind Pedro and fired at him with a long firearm from a distance of about three (3) meters. Pedro was hit at the back of his head and he slumped on the makeshift table. Atty. Valenzuela stood up and checked on Pedro. However, the appellant shot Atty. Valenzuela, the bullet hitting his stomach. The group scampered to safety.[9]

Leopoldo, brother of Pedro, helped Atty. Valenzuela hide inside their house. They heard another gunshot. Thereafter, the appellant left the crime scene. Three (3) minutes later, Leopoldo and his companions got out of the house and saw Pedro lying in a pool of blood. Atty. Valenzuela was rushed to the hospital while Pedro was taken to the morgue.[10]

Atty. Valenzuela survived the attack due to the immediate medical treatment he received from Dr. Candido San Juan of the Urdaneta Sacred Heart Hospital (USHH). The extent of the injury inflicted on Atty. Valenzuela and the operation that he underwent on account of such gunshot wound, were as follows:[11]

“x x x x x x x x

DIAGNOSIS:

= Gunshot wound, RUQ, Abdomen, Penetrating, Lacerating (R) Lobe, Liver, Perforating ascending colon, T&T slug lodging at the retroperitoneal space, pelvic area (R) no point of exit

OPERATION:

= Explor-lap, Hepatorrhapy, Colorrhapy and Exteriorization of Ileocecal portion,

= Evacuation of Blood clots and peritoneal lavage and repair of Gunshot wound.

x x x x x x x x”

Dr. San Juan explained that the bullet’s point of entry was in the abdomen. The slug entered the abdominal cavity and hit the right lobe of the liver and the ascending portion of the large intestine or colon. The slug lodged near the pelvic area, at the back, of Atty. Valenzuela. He was confined at USHH for seven (7) days, from August 24-31, 1996, and was later transferred to a hospital in Quezon City.

Dr. San Juan could not indicate the healing period of Atty. Valenzuela because he had to undergo another operation in the ileocecal portion (the junction between the small and large intestines). He opined that Atty. Valenzuela would have died if not for the immediate medical assistance he got at the hospital. Considering the location of the gunshot wound, Dr. San Juan said that the assailant could have been facing Atty. Valenzuela, or could have been standing beside him during the attack.[12]

During his confinement at the Urdaneta Sacred Heart Hospital, Atty. Valenzuela incurred medical expenses. The fifty-five (55) receipts for the expenses he incurred were marked as Exhs. “N”, “N-1” to “N-54.” He was subsequently transferred to Gen. Malvar Hospital in Commonwealth Avenue, Quezon City, where he received further medical care for his injury. The sixty (60) receipts covering the expenses he incurred in the said hospital were marked as Exh. “O”, Exh. “O-1” to Exh. “O-59.” His doctor’s fee (Exh. “P”) amounted to P16,251.80.[13]

Atty. Valenzuela is an associate lawyer at Maniacop Law Office in Quezon City. From August 1996 to February 1997, he failed to practice the law profession due to his injury. He claimed that his lost income for the said period amounted to P150,000.00. He works on a salary basis, but also receives appearance fees. He settled his hospital bills using his family’s savings in the bank. He suffered sleepless nights after the shooting incident because he

almost died. He could not think of any reason behind the shooting incident because the accused is his distant relative.[14]

Pedro Valenzuela, Jr. was autopsied by Dr. Ramon B. Gonzales, Jr., Rural Health Physician of the Municipal Health Office in Urdaneta, Pangasinan. The Autopsy Report[15] reads:

“x x x x x x x x

SIGNIFICANT EXTERNAL FINDINGS:

Ecchymosis both upper eyelids

Gunshot wound head, left parietal region 5mm. x 5mm. x 6 cm. deep directed upwards.

SIGNIFICANT INTERNAL FINDINGS:

Fracture, circular left parietal bone.

Slug recovered at right frontal area between brain and right frontal bone.

Cerebral hemorrhage and injury, left parietal lobe to right frontal lobe brain.

CAUSE OF DEATH:

Cerebral Hemorrhage and Injury, left parietal lobe to right frontal lobe, brain due to Gunshot Wound Head.”

The victim, 54, was a former member of the Philippine Navy. His wife, Erlinda Valenzuela, claimed that Pedro used to receive P6,258.00 monthly from the finance center at Camp Aguinaldo and P3,000.00 monthly from PVAO, as his old age pension. In addition, he earned P180.00 daily as a tricycle driver.[16]

Erlinda made a list[17] of the expenses she incurred during the wake and the internment of Pedro. She allegedly spent the following amounts: P91,341.50 for eighteen (18) days because several members of the Philippine Navy attended her husband’s wake,[18] P15,000.00 for the nine-day novena, P20,000.00, for the ninth month death anniversary, P25,000.00 for funeral services,[19] and P6,121.75 for the tomb, tomb stone and shade.

Erlinda did not present any receipts for the expenses she incurred, except for the funeral services provided by JC Mortuarium. She also admitted that the pensions her husband used to receive were transmitted to her and her children upon his death.[20]

To prove the charge of illegal possession of firearm, the prosecution presented SPO4 Roberto Manuel, the Assistant Firearms Chief of the Firearms and Explosives Office, Pangasinan Police Provincial Office, Lingayen, Pangasinan.[21] He testified that their office maintains the records of licensed firearm holders who are residents of Pangasinan and processes applications for firearm licenses and releases firearm licenses. As per the records forwarded to their office by Camp Crame, the appellant is not a licensed firearm holder.[22]

Another witness, SPO1 Juanito Pedral of the Firearms & Explosives PNCO of Police Regional Office I, San Fernando City, La Union, testified that the appellant is not included in the list of firearm holders in Region I.[23]

The appellant was the sole witness for the defense. He gave a different version of the shooting incident.

In the evening of August 24, 1996, the appellant was in his house in Barangay Camantiles, Urdaneta City. At 7:30 p.m., his 19-year old cousin, Richard Geron, came and told him that his mother, Marta, would talk to him concerning the spraying of their mango trees.[24] He went to the house of his Aunt Marta and along the way, walked past the house of Pedro Valenzuela, Jr. Someone from Pedro’s group saw him and whistled at him. He ignored them. When he reached his aunt’s house, they discussed how they would spray the mango trees. He

headed back home at 8:30 p.m.[25]

On his way home, the appellant again passed by the place where Pedro's group had been drinking. Leopoldo Valenzuela confronted him and said, "We were calling for you when you passed by, but you did not even mind us." The appellant apologized and explained that he did not notice them. Leopoldo asked him to join them. At first, the appellant refused but later relented in order not to slight Leopoldo.[26]

Calixto was also agitated because appellant snubbed them earlier that evening. Calixto allegedly confronted the appellant for refusing to drink with them and for acting like he was mad at them. Calixto gave him a drink. The appellant accepted it and again apologized but that did not placate Calixto. Calixto still badmouthed him and charged him of being arrogant. Thereafter, Calixto reached out for a long firearm and aimed it at him. They grappled for the firearm. During the struggle, the trigger accidentally went off. Calixto uttered, "vulva of your mother, get loose of the gun." The appellant was able to push Calixto away and ran to his house. He related the incident to his mother.[27]

The appellant claimed he had no quarrel with Pedro. He also saw for the first time Atty. Valenzuela that fateful night. He claimed that they owned the firearm.[28]

On November 10, 1998, the trial court granted the demurrer to evidence in the "illegal possession of firearm" case (Criminal Case No. U-9153). Relying in *People vs. Molina*,[29] in relation to Republic Act No. 8294, the appellant was acquitted for illegal possession of firearm.

On November 11, 1998, the trial court rendered a Joint Decision,[30] finding the appellant guilty of murder and frustrated murder. It considered the "use of an unlicensed firearm in the commission of the crime" as an aggravating circumstance in the murder case and meted the death penalty against the appellant. It appreciated no aggravating or mitigating circumstance in the frustrated murder case. The dispositive portion of the trial court's decision reads:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, the Court finds the accused, DAN AVE y TABOBO, alias "Dan-Dan":

IN CRIMINAL CASE NO. U-9168:

GUILTY beyond reasonable doubt of the crime of FRUSTRATED MURDER and applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstance, hereby sentences him to suffer the indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of prision mayor in its medium period, as MINIMUM to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal in its medium period, as MAXIMUM; and to pay the offended party ATTY. NAPOLEON VALENZUELA in the amount of P216,251.80 as actual damages; P150,000.00 as loss of income; and P1,000,000.00 as moral damages.

IN CRIMINAL CASE NO. U-9032:

GUILTY beyond reasonable doubt of the offense of MURDER defined and penalized under Republic Act No. 7659, otherwise known as the Heinous Crime Law, the offense having been committed with the attendant special aggravating circumstance of the "use of unlicensed firearm in the commission of the crime" (Republic Act 8294), hereby sentences him to the ultimuum suplicium of DEATH to be executed pursuant to Republic Act No. 8177, known as the Lethal Injection Law, to pay the heirs of the victim, Pedro Valenzuela, in the amount of P50,000.00 as indemnity; P157,463.35 as actual damages; and P500,000.00 as moral damages.

To pay costs.

In fin, it is said: "Dura lex, sed lex, translated as: 'The law is harsh, but it is the law!'

SO ORDERED."

Hence, this automatic review.

The Appellant's Brief assigns the following errors:

"First: THE TRIAL COURT (ERRED) IN GIVING CREDENCE TO THE TESTIMONY OF THE WITNESSES FOR THE PROSECUTION, OVERLOOKED THE SIGNIFICANCE, SUBSTANCE AND INFLUENCE OF CONTRADICTORY EVIDENCE ON RECORD; and,

Second: THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIMES OF FRUSTRATED MURDER AND MURDER, BASED ON THE PROSECUTION'S EVIDENCE AND NOT ON THE UNCONTROVERTED TESTIMONY OF ACCUSED-APPELLANT."

We affirm the conviction with modifications.

The first error involves a calibration of the credibility of the prosecution witnesses. It is an established rule that when it comes to credibility of witnesses, appellate courts generally do not overturn the findings of trial courts. The latter are in a best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, demeanor, and behavior in court.[31] In the cases at bar, the trial court was highly impressed by the credibility of the prosecution witnesses, thus:[32]

"Unfortunately for the accused, the Court finds the testimonies of the witnesses for the prosecution which are unequivocal, forthright and replete with details, all of which were seals of self-authentication of their credibility and which convinced the Court to accord full faith and credit to their version. The records are barren of any unworthy motive on their part to fabricate the serious charges against the accused." (Italics ours)

In contrast, it rejected the appellant's defense of accidental shooting as a "prevaricated concoction, melodramatically orchestrated." It held:[33]

".... If it is really true that while the accused was grappling with Calixto Valenzuela (for) said long firearm, why did he fail to describe or relate how the victims sustained the fatal injuries?

If the accused is innocent as a cherubim, why did he not report immediately to the barangay officials or to the police authorities of Urdaneta City what really happened as per his version? Why did he sleep immediately? To join (M)orpheus in a sweet dreams (sic) of ecstasy?

x x x x x x x x

Why is it that the accused was only arrested on August 19, (sic) 1998 or two (2) years after the shooting incidents? He was found nowhere after the incident indicating that he fled. He is a revenant.

x x x x x x x x

Accused's version in sum is unconvincing, flawed as it is by serious inconsistencies. Accused resort to the jaded apologia of denial and accidental shooting hardly merits sympathy (sic)."

We have carefully studied the records of these cases. We also find the testimonies of the prosecution witnesses to be forthright and unequivocal. Their accounts of the shooting incident converged on material points. Atty. Valenzuela testified as follows:[34]

"PROS. MATRO:

Q:

Do you know personally this Dan-Dan Ave?

A:

I do not know him personally but I saw him on that night of the shooting in question.

Q:

If he is inside the courtroom, will you please point to him?

A:

There, sir.

INTERPRETER:

Witness is pointing to a person seated on the bench and when asked his name, he gave his name as Dan-Dan Ave.

x x x x x x x x

Q:

You said you were shot by Dan-Dan Ave, did you see him shoot Pedro Valenzuela?

A:

No, sir.

Q:

So, why did you say earlier that Dan-Dan Ave shot Pedro Valenzuela?

A:

Because when I heard the explosion, I looked at my cousin Pedro Valenzuela who made a gurgling sound and when I stood up and looking (sic) at him I also heard another explosion and when I looked up, I saw a person, that man, holding a gun, pointing at me, sir.

Q:

After that, what happened next?

A:

I felt some kind of pain and sensation on my stomach and then I heard my cousin, Leopoldo Valenzuela, who told me that it was Dan-Dan Ave who shot (us).

x x x x x x x x

Q:

Now, Mr. Witness, how far was this Dan-Dan Ave from you when you saw him holding a firearm and pointing at you?

A:

I think three (3) meters away, sir.

Q:

What were your relative positions with Pedro Valenzuela from Dan-Dan Ave at that time?

A:

I was seated beside Pedro Valenzuela, sir.

Q:

And where was Dan-Dan Ave when you saw him holding a gun aiming at you?

A:

He was directly behind Pedro Valenzuela, sir.

Q:

And how far was Pedro Valenzuela from him?

A:

I think it was also three (3) meters away, sir.

Q:

And how many explosions did you hear Mr. Witness?

A:

Three (3) explosions because after I was shot, my cousin Leopoldo Valenzuela helped me and we went inside the house of Pedro Valenzuela, sir.

COURT:

Q:

How many explosions did you hear or not?

A:

Three, because when we were inside the house of Pedro Valenzuela, the accused again fired another shot when I was inside the house, sir.

Q:

So one for Pedro Valenzuela, and one for you and another, when you were already inside the house?

A:

Yes, your Honor.

PROS. MATRO:

Q:

How far is the house of Pedro Valenzuela from the place where you were having the drinking?

A:

Just two (2) meters away, just beside the house, sir.”

x x x x x x x x

Q:

It was nine o’clock in the evening when the incident took place. How were you able to recognize the person of the accused?

A:

The place where we were drinking was lighted by a Philipps bulb, sir.”

Leopoldo Valenzuela, a brother of the deceased victim, corroborated the testimony of Atty. Valenzuela, thus:[35]

"PROSECUTOR MATRO:

Q:

And at that particular time, 9:00 in the evening, do you recall if there was any unusual incident that happened?

A:

There was, sir.

Q:

What was that unusual incident you are referring to?

A:

Somebody fired his gun, sir.

Q:

What happened when somebody fired his gun?

A:

Pedro Valenzuela was shot at the back of his head, sir.

Q:

Did you see who shot him?

A:

Yes, sir.

Q:

Who shot him?

A:

Dan Ave.

(The witness is pointing to a person seated on the bench inside the courtroom wearing stripe shirt and blue pants, who when asked his name answered 'DAN AVE').

Q:

How were you able to recognize the person of Dan Ave when it was 9:00 o'clock in the evening.

A:

It was bright because there was light, sir.

Q:

Where was that light placed or attached?

A:

It was near the house or just above us, sir.

Q:

What kind of light was that?

A:

It was a Philipps bulb, sir.

x x x x x x x x

Q:

Where was the accused when he shot the victim Pedro Valenzuela?

A:

He was at the back of Pedro Valenzuela, sir.

Q:

How far was he?

A:

Around 3 meters, sir.

x x x x x x x x

Q:

How many times did Dan Ave shoot Pedro Valenzuela?

A:

Once, sir.

x x x x x x x x

Q: And after Pedro Valenzuela fell down, what happened next, if any?

A: Atty. Valenzuela stood up and he was about to assist Pedro Valenzuela and again there was another gunshot?

Q: Where did that gunshot emanate?

A: From Dan Ave, sir.

Q: And where was this shot directed?

A: To Atty. Valenzuela, sir.

x x x x x x x x

Q:

Where was Dan Ave in relation to Atty. Valenzuela when he fired at him?

A:

He was at the back of Pedro Valenzuela and Atty. Valenzuela, sir.

Q:

How many times did the accuse(d) fire at Atty. Valenzuela?

A:

Only once, sir.

x x x x x x x x

PROSECUTOR MATRO:

Q:

...before Dan Ave shot Pedro Valenzuela, did you notice his presence?

A:

No, sir.

Q:

Why not when you were supposed to be facing his direction?

A:

We already noticed his presence when we heard his (sic) gunshot, sir.

Q:

And what kind of firearm did Dan Ave used in shooting Pedro Valenzuela and Atty. Valenzuela?

A:

It was a long firearm, like this, sir

x x x x x x x x

Q:

After Atty. Valenzuela was shot, what did you do?

A:

I assisted Atty. Valenzuela and we went inside the house of Pedro Valenzuela, sir.”

So did Rogelio Gacad who testified as follows:[36]

“ATTY. AOANAN: (CROSS-EXAMINATION)

x x x x x x x x

Q:

Now, it was when you were urinating that you heard the gunshot report, is that correct?

A:

Yes, sir.

Q:

And according to your sworn statement, you heard three consecutive shots, is that correct?

A:

Yes, sir.

Q:

Now, Mr. Witness, when you were urinating, were you facing East, West, North, or South?

A:

West, sir.

x x x x x x x x

COURT:

Q:

What is the direction of the place where you were urinating in relation to the place where you were drinking?
What direction were you in relation to the place where you were drinking, that is the question of the counsel?

A:

West side, sir.

ATTY. AOANAN:

Q:

So, Mr. Witness, to be very clear, we suppose that the place where you were sitting is the place where you were urinating. Now, where is the place where you were drinking?

A:

At my back, sir, which is the east side.

COURT:

Q:

How far were you?

A:

Around five to six (5-6) meters, Your Honor.

ATTY. AOANAN:

Q:

And what caught your attention to look where (sic) the gun reports?

A:

Yes, sir, I looked when I heard the gun report and I saw Dan-Dan Ave.

COURT:

Q:

Where was the accused when you saw him in relation to your companions?

A:

East side of my companions, Your Honor.

x x x x x x x x

COURT'S QUESTIONING:

x x x x x x x x

Q:

While you were drinking for 2-1/2 hours, Dan-Dan Ave was not yet there?

A:

Yes, Your Honor.

Q:

When was the first time you saw him before the shooting?

A:

When he shot Pepe (Pedro) Valenzuela, Your Honor.

Q:

Do you mean to say that he just arrived at that particular time, nine o'clock in the evening?

A:

Yes, Your Honor.

Q:

It is not very clear yet with the Court. Ave shot first who?

A:

Pepe Valenzuela, Your Honor.

x x x x x x x x

Q:

Before you looked back, you said that you heard gun report. How many gun report did you hear before you looked back?

A:

Two (2) gun reports, Your Honor.

Q:

And then, the third gun report?

A:

Yes, sir.

Q:

How many times did he fire at Pepe Valenzuela?

A:

Once, Your Honor.

Q:

After firing at Pepe Valenzuela once, what else did the accused do?

A:

He also fired his gun at Atty. Valenzuela who was hit on the right side of his stomach, Your Honor.

Q:

How many times when he fired upon the lawyer?

A:

Once, Your Honor.

Q:

Then, what did he do?

A:

... he fired another shot, I am not exactly sure what direction, because I was already nervous, Your Honor."

The lack of ill motive on the part of the prosecution witnesses in testifying against the appellant makes their testimonies more credible. We note that Atty. Valenzuela had not met the appellant prior to the shooting incident.[37] A resident of Quezon City, Atty. Valenzuela was in Pangasinan that tragic day because his cousin Pedro had requested for his legal assistance concerning a theft case filed against him.[38] He was clueless on why the appellant shot him and Pedro because they are the appellant's distant relatives.[39] The appellant himself confirmed that it was his first time to encounter Atty. Valenzuela that fateful night. He admitted he had no prior misunderstanding with Atty. Valenzuela and Pedro.[40] As for Rogelio, there is also no iota of evidence that he has ill feelings toward the appellant.

The blood relationship of Leopoldo and Atty. Valenzuela to Pedro would not make their testimonies unworthy of belief. On the contrary, relationship could strengthen the witnesses' credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit.[41] Their natural interest in securing the conviction of the guilty would deter them from implicating a person other than the true offender.[42]

We reject appellant's claim that the trial court has overlooked "contradictory evidence" that would affect the credibility of the prosecution witnesses. Essentially, these evidence, according to the appellant are:

(1)

The prosecution's evidence on the sitting arrangements of the deceased victim and his companions during the shooting incident are allegedly full of inconsistencies.

(2)

Rogelio lied when he demonstrated at the trial how the appellant shot the victims since, at that time, Rogelio was urinating and he turned around only after he had heard the two (2) successive gunshots. His testimony should be disregarded pursuant to the doctrine *falsus in uno falsus in omnibus*.

(3)

The trajectory of the bullets that hit Pedro and Atty. Valenzuela, per the medical findings of Dr. San Juan, are inconsistent with the testimonies of Leopoldo and Rogelio on the position of the appellant vis-a-vis his victims, Pedro and Atty. Valenzuela. For instance, Rogelio claimed that he (the appellant) was on the east side of the two (2) victims when he shot Pedro. However, the medical report of Dr. Gonzales, Jr. showed that the fatal bullet entered the left portion of Pedro's head. The appellant argues that if he were in the east when he shot Pedro, the head injury would have been on the right side, not on the left side.

On the other hand, the trajectory of the bullet that hit Atty. Valenzuela belies the claim of Rogelio that he (appellant) was standing directly behind Pedro during the shooting incident. The appellant claims that the medical records show that the bullet entered the right side of Atty. Valenzuela's stomach and the slug lodged deeper into the right side. The appellant suggests that if Pedro were sitting at the right side of Atty. Valenzuela while the appellant was directly behind Pedro, the bullet that hit Atty. Valenzuela would have proceeded further to the left side, not the right side.

It is elementary that not all inconsistencies in the witnesses' testimony affect their credibility. Inconsistencies on minor details and collateral matters do not affect the substance of their declaration, their veracity, or the weight of their testimonies.[43] Thus, although there may be inconsistencies on the testimonies of witnesses on minor details, the same do not impair the credibility of the witnesses where there is consistency in relating the principal

occurrence and positive identification of the assailants.[44]

In the cases at bar, it was fully established that prosecution witnesses Leopoldo, Atty. Valenzuela and Rogelio Gacad were at the crime scene during the shooting incident. They unanimously identified the appellant as the assailant. They declared that the appellant appeared at the scene unnoticed and suddenly fired two (2) successive shots at them. One shot was for Pedro who was hit in the head, the other, for Atty. Valenzuela who was seriously wounded in the stomach. They identified the weapon used as a long firearm. The consistent testimonies of the aforesaid prosecution witnesses on these material points cannot be disregarded by any court.

In *People vs. Sabalones*,[45] it was alleged that the prosecution account had inconsistencies relating to the number of shots heard, the interval between the gunshots and the victims' positions when they were killed. We dismissed the allegation as "minor and inconsequential flaws" which strengthen, rather than impair, the credibility of said eyewitnesses and held that "such harmless errors are indicative of truth, not falsehood," and do not cast serious doubt on the veracity and reliability of the testimony of the complainant.

In line with the above ruling, we hold that the cited inconsistencies in the testimonies of the prosecution witnesses and their sketches of the sitting arrangement during their drinking spree refer to trivial matters and are insufficient to destroy their credibility. We do not expect witnesses to give an "error-free testimony," especially when the hearing of the case took place almost two (2) years after the shooting incident, as in the cases at bar.

The other inconsistent evidence alluded to by the appellant was the trajectory of the bullets that caused the death of Pedro and seriously injured Atty. Valenzuela vis-à-vis the sketch of Rogelio showing that the appellant appears to be standing on the east side of Pedro. Appellant contend that if he were east of Pedro, the bullet would have entered the right side of the head, not the left, as per his medical records.

Again, we are not convinced that Rogelio indeed "lied" when the latter claimed that the appellant was standing in the east, directly behind Pedro, during the shooting incident. At the trial, Rogelio testified that he was facing west when he urinated. His companions were behind him, or in the east. He turned around upon hearing the first two (2) bursts of gunfire. It is clear that Rogelio did not see the exact positions of the appellant and Pedro when the first shot was fired. What he saw then was that Pedro was hit in the head and slumped on the bamboo bed while Atty. Valenzuela was hit in the stomach while about to help Pedro. It was only then that Rogelio saw the appellant who was armed with a long firearm, standing behind Pedro. Clearly, the sketch drawn by Rogelio pertains to the positions of the protagonists after, and not during the shots were fired. The alleged "inconsistency" is, therefore, more imaginary than real. Even assuming that the position of the appellant was not accurately depicted in the questioned sketch, still, it does not negate the fact that the appellant was the triggerman. He was the only person standing there, close to the victims, with his long firearm pointed at Pedro and Atty. Valenzuela's direction. There could be no other culprit.

As for the injury of Atty. Valenzuela, the records show that he was moving when the appellant shot him—he was turning to his right to check on Pedro after the first gunshot. Thus, the appellant was almost in front, or, at the very least, at the side of Atty. Valenzuela, although he was still standing behind Pedro, when the second shot was fired.

The foregoing position of the parties is consistent with the medical opinion of Dr. San Juan. He explained that the trajectory of the bullet as it entered the right side of the stomach of Atty. Valenzuela showed that the appellant was in front or at the side of the said victim. [46] He opined that Atty. Valenzuela could have been in a stooping position when he was shot in such a stooping position, it was not far-fetched that the bullet's entry was at the right side of his stomach and for the slug to lodge on the right side of his pelvic area, at the back.[47]

In sum, we are morally convinced of appellant's guilt. Significantly, the records show that he took flight after the killing—the shooting incident happened on August 24, 1996 while the appellant was arrested only on August 18, 1998, almost two (2) years later. The appellant did not offer any explanation for his long absence. Flight, when unexplained, is an indicium of guilt.[48] Indeed, the innocent is as bold as a lion, while the guilty runs even when no man pursues him.

The trial court correctly found the appellant guilty of murder and frustrated murder in view of the presence of treachery. There is treachery when the means, methods, and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and such means, methods, and forms of execution were deliberately and consciously adopted by the accused without danger to his person.

In the cases at bar, the appellant surreptitiously arrived at the crime scene. He suddenly shot Pedro and Atty. Valenzuela from behind at a close range of three (3) meters while he was having a drinking spree with their relatives and friends. The attack was unexpected and swift. Pedro and Atty. Valenzuela had no opportunity to defend themselves and the appellant was not exposed to any danger in view of the unexpected attack. Thus, the aggravating circumstance of treachery was established.

The medical report showed that Atty. Valenzuela was critically wounded during the shooting incident. His vital organs, namely, lungs and abdomen, were perforated. The gunshot wound would have caused his death, had it not been for the timely and adequate medical intervention provided by Dr. San Juan. Thus, the appellant was also correctly found liable for the frustrated murder of Atty. Valenzuela.

We now review the penalties for the crimes committed by the appellant.

The records show that the appellant was not licensed to possess or carry a firearm.[49] Thus, the firearm he used in shooting his victims is unlicensed.

When the crimes at bar were committed in August 1996, the rule was that “one who kills another with the use of an unlicensed firearm commits two (2) separate offenses of (1) either homicide or murder under the Revised Penal Code, and (2) aggravated illegal possession of firearm under the second paragraph of Section 1 of Presidential Decree No. 1866.”[50]

The penalty for murder under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659,[51] is reclusion perpetua to death while the penalty prescribed for aggravated illegal possession of firearm, i.e., the killing of a person with the use of an unlicensed firearm, under P.D. No. 1866,[52] is death.

On June 6, 1997, however, Congress approved Republic Act No. 8294.[53] It provides that “if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.”[54] In *People v. Molina*,[55] we held that “where murder or homicide is committed, the separate penalty for illegal possession shall no longer be meted out inasmuch as it becomes merely a special aggravating circumstance.”

The trial court applied R.A. No. 8294 in the murder case at bar and in line with our ruling in *Molina*[56] held that the use of the unlicensed firearm in the killing of Pedro aggravated the commission of the crime. He then meted the maximum penalty of death to the appellant.

After *Molina*, however, the Revised Rules of Criminal Procedure was promulgated by this Court and became effective on December 1, 2000. Section 8 of Rule 110 requires that the complaint or information must specify the qualifying and aggravating circumstances of the offense if they are to be appreciated. In the case at bar, the special aggravating circumstance of “use of unlicensed firearm” was not alleged in the informations. The two (2)

informations at bar, for murder and frustrated murder, merely alleged that the appellant used a "long firearm." They did not allege that the firearm used was unlicensed. The failure of the prosecution to allege in the Information the aggravating circumstance of use of unlicensed firearm in committing the crime of murder prevents us from imposing the death penalty on the appellant even if the same was proved at the trial. The appellant should, therefore, suffer the lesser penalty of reclusion perpetua.

The penalty prescribed by the Revised Penal Code for the consummated crime of murder is reclusion perpetua to death. For frustrated murder, Article 50 of the same Code decrees the imposition of the penalty next lower in degree or reclusion temporal.[57] Absent any aggravating or mitigating circumstance, the imposable penalty should be reclusion temporal in its medium period, the duration of which is from 14 years, 8 months and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law, the minimum penalty shall be within the range of prision mayor,[58] the penalty next lower from reclusion temporal. The gravity of the injury suffered by Atty. Valenzuela and the manner of execution of the crime by the appellant compel us to impose the maximum term of 12 years of prision mayor as his minimum indeterminate sentence, and 14 years, 8 months and 1 day of reclusion temporal medium as his maximum indeterminate sentence.

As for the civil liability of the appellant for the death of Pedro Valenzuela, Jr., we affirm the award of civil indemnity in the amount of P50,000.00.[59] As regards the actual damages, it appears that the amount of P157,463.25 was based solely on the personal list prepared by the widow of the deceased victim. The only expense supported by an official receipt was the memorial services provided by JC Mortuary, amounting to P25,000.00 marked as Exhibit "F." The Court can only give credence to actual expenses supported by receipts which appear to have been genuinely spent in connection with the victim's death.[60] The moral damages in the amount of P500,000 is also modified and reduced to P50,000.00 pursuant to the current policy of this Court.[61]

The claim of Atty. Valenzuela for the medical expenses he incurred in connection with the injury he suffered is affirmed as they are properly documented. His lost earnings while recuperating, however, is not supported by evidence. The claim that his lost income amounted to P150,000.00, from August 1996 to February 1997, is too general and vague. The moral damages awarded in the amount of P1,000,000.00 is modified and reduced to P50,000.00.

IN VIEW WHEREOF, the Joint Decision, dated November 11, 1998, of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 45, in Criminal Cases Nos. U-9032 and U-9168, is **AFFIRMED**, with the following modifications:

- In Criminal Case No. U-9032, for murder, the appellant is sentenced to suffer the penalty of reclusion perpetua and ordered to pay the heirs of the deceased victim, Pedro Valenzuela, Jr., the amounts of: (a) P50,000.00 as civil indemnity for his death, (b) P25,000.00 as actual damages, and (c) P50,000.00 as moral damages.
- In Criminal Case No. U-9168, for frustrated murder, the appellant is sentenced to suffer the indeterminate sentence of 12 years of prision mayor maximum as minimum, to 14 years, 8 months and 1 day of reclusion temporal medium as maximum. The appellant is also ordered to pay Atty. Napoleon Valenzuela the amounts of: (a) P216,251.80 as actual expenses and (b) P50,000.00 as moral damages.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Vitug, Panganiban, Sandoval-Gutierrez, Corona, Morales, and Callejo, JJ., concur.
Bellosillo, Mendoza, Quisumbing, Ynares-Santiago, Carpio, and Austria-Martinez, JJ., on official leave.

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- [1] Original Records, Criminal Case No. U-9168, p. 1.
- [2] Id., Criminal Case No. U-9032, p. 1.
- [3] Original Records, Criminal Case No. U-9168, p. 17; Original Records, Criminal Case No. U-9032, p. 25.
- [4] Original Records, Criminal Case No. U-9168, p. 10.
- [5] Id., p. 13.
- [6] Exh. "G", Original Records, Criminal Case No. U-9032, p. 4; TSN, Rogelio Gacad, September 15, 1998, p. 4; TSN, Leopoldo Valenzuela, September 22, 1998, p. 6;
- [7] TSN, Rogelio Gacad, September 15, 1998, p. 8; TSN, Atty. Napoleon Valenzuela, September 15, 1998, p. 38; TSN, Leopoldo Valenzuela, September 22, 1998, p. 7; TSN, Dan Ave, Oct. 19, 1998, pp. 14-15.
- [8] TSN, Rogelio Gacad, September 15, 1998, pp. 16-17, 19, 24-25; TSN, Atty. Napoleon Valenzuela, September 15, 1998, p. 33; TSN, Leopoldo Valenzuela, September 22, 1998, p. 8.
- [9] TSN, Rogelio Gacad, September 15, 1998, pp. 5-7, 10, 13, 15, 29; TSN, Atty. Napoleon Valenzuela, September 15, 1998, pp. 35-36; TSN, Leopoldo Valenzuela, September 22, 1998, pp. 8-9.
- [10] TSN, Atty. Napoleon Valenzuela, September 15, 1998, p. 36; TSN, Leopoldo Valenzuela, September 22, 1998, p. 9-10.
- [11] Exh. "I", Original Records, Criminal Case No. U-9168, p. 43.
- [12] TSN, Dr. Candido P. San Juan, September 24, 1998, pp. 12, 15.
- [13] TSN, Atty. Napoleon Valenzuela, October 6, 1998, pp. 19-20.
- [14] Id., pp. 21-24.
- [15] Exh. "J", Original Records, Criminal Case No. U-9032, p. 6.
- [16] TSN, Erlinda Valenzuela, September 16, 1998, pp. 3-4.
- [17] Exh. "D", Original Records, Criminal Case No. U-9032, p. 50.
- [18] TSN, Erlinda Valenzuela, September 16, 1998, p. 5; Exh. "E", Exh. "E-1" to Exh. "E-6", Original Records, Criminal Case No. U-9032, pp. 42-48.
- [19] Exh. "F", Original Records, Criminal Case No. U-9032, p. 49.
- [20] TSN, Erlinda Valenzuela, September 16, 1998, p. 8.
- [21] TSN, SPO4 Roberto Manuel, October 12, 1998, pp. 3-4.
- [22] Id., p. 5; see also Exh. "Q", Original Records, Criminal Case No. U-9032, p. 147.
- [23] TSN, SPO1 Juanito N. Pedral, Oct. 12, 1998, p. 16; Exh. "R", Original Records, Criminal Case No. U-9032, p. 148.
- [24] TSN, Dan Ave, Oct. 19, 1998, pp. 3-5.
- [25] Ibid.

- [26] Id., pp. 5-6.
- [27] Id., pp. 7-8.
- [28] Id., pp. 9-10.
- [29] July 22, 1998.
- [30] Original Records, Criminal Case No. U-9032, pp. 213-264.
- [31] *People vs. Alo*, 348 SCRA 702, 711 (2000).
- [32] Joint Decision, p. 51.
- [33] Id., pp. 38-39.
- [34] TSN, Atty. Napoleon Valenzuela, September 15, 1998, pp. 34-38.
- [35] TSN, Leopoldo Valenzuela, September 22, 1998, pp. 6-8.
- [36] TSN, Rogelio Gacad, September 15, 1998, pp. 16-18, 25-26.
- [37] TSN, Atty. Napoleon Valenzuela, September 15, 1998, p. 34.
- [38] Id., p. 42.
- [39] Id., p. 40; TSN, Atty. Napoleon Valenzuela, October 6, 1998, p. 24.
- [40] TSN, Dan Ave, October 19, 1998, p. 9.
- [41] *People vs. Rendoque*, 322 SCRA 622 (2000); *People vs. Entila*, 325 SCRA 226 (2000).
- [42] *People vs. Bagcal*, 350 SCRA 402 (2001).
- [43] *People vs. Bato*, 325 SCRA 671 (2000).
- [44] *People vs. Valla*, 323 SCRA 74 (2000).
- [45] *People vs. Sabalones*, 294 SCRA 751, 794 (1998).
- [46] TSN, Dr. Candido San Juan, September 25, 1998, pp. 14-15.
- [47] Id., pp. 19-20.
- [48] *People vs. Sabalones*, 294 SCRA 751, 798 (1998).
- [49] See Notes 27 and 28.
- [50] *People vs. Quijada*, 259 SCRA 191 (1996).
- [51] “An Act to Impose the Death Penalty on Certain Heinous Crimes,...” R.A. No. 7659 took effect on December 31, 1993.
- [52] Section 1 of P. D. No. 1866 reads:
- “x x x x x x x x
- If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed.”

[53] Entitled “An Act Amending the Provision of Presidential Decree No. 1866, as amended, entitled ‘Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes.’”

[54] Section 1, R.A. 8294.

[55] 292 SCRA 742, 782 (1998).

[56] Ibid.

[57] It provides that "the penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principals in a frustrated felony"

[58] The duration is 6 years and 1 day to 12 years.

[59] *People vs. Ibo*, 353 SCRA 663 (2001).

[60] *People vs. Avillana*, 332 SCRA 19 (2000).

[61] *People vs. Francisco*, 330 SCRA 497 (2000).

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