

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO1
ARMANDO LOZANO @ AMID, (ACQUITTED) DAVE SAMSON,
(ACQUITTED) EUTQUIANO PACAÑA, JR., @ TOKING PACAÑA,
(ACQUITTED) AND RAUL...**

G.R. Nos. 137370-71. September 29, 2003

Ponente: PUNO, J.

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PUNO, J.:

This is an Automatic Review of the Decision[1] of the Regional Trial Court of Cebu City, Branch 7, in Criminal Cases Nos. CBU- 46172-73 finding appellant Raul "Boy Usher" Oco guilty beyond reasonable doubt of the crimes of murder and frustrated murder, and imposing the supreme penalty of death. The antecedent facts are as follows:

On January 19, 1998, the appellant, together with Armando "Amid" Lozano, Dave Samson and Eutiquiano[2] "Toking" Pacaña, Jr. were charged with murder and frustrated murder in the Regional Trial Court of Cebu City, Branch 7. The Information for murder reads as follows:

That on or about the 24[th] day of November, 1997 at about 9:30 o'clock in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, riding on two motorcycles, conniving and confederating together and mutually helping one another, together with Peter Doe, John Doe and Jane Doe, whose cases will be separately considered as soon as procedural requirements are complied with, armed with unlicensed firearms, did then and there willfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation and abuse of superior strength, attack, assault and use personal violence upon one Alden Abiabi by shooting him with the use of said unlicensed firearms, hitting him on the different parts of his body, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW. [3]

The Information for the frustrated murder case reads:

That on or about the 24[th] day of November, 1997, at about 9:30 o'clock in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, riding on two motorcycles, conniving and confederating together and mutually helping one another, together with Peter Doe, John Doe and Jane Doe, whose cases will be separately considered as soon as procedural requirements are complied with, armed with unlicensed firearms, with deliberate intent, with intent to kill, with treachery and evident premeditation and grave abuse of superior strength, did then and there suddenly attack, assault and use, personal violence upon the person of one Herminigildo Damuag by shooting him with the use of said unlicensed firearms, hitting him on the different vital parts of his body, thereby inflicting upon said Herminigildo Damuag serious physical injuries, which injuries under ordinary circumstances would cause the death of the victim, thus performing all the acts of execution which would have produced the crime of Murder as a consequence, but which nevertheless did not produce it by reason of causes independent of the will of the

herein accused, that is, by the timely and able medical assistance rendered to said Herminigildo Damuag which prevented his death.

CONTRARY TO LAW. [4]

Forthwith, the trial court issued a warrant for the arrest of the appellant and his co-accused. On January 20, 1998, upon learning of the issuance of the warrant for his arrest, accused PO2 Armando Lozano turned himself to the authorities and filed an Urgent Motion[5] praying that he be detained at the PNP Jail in Camp Sotero Cabahug, Gorordo Avenue, Cebu City. He feared that he might be a victim of reprisal and vengeance in Bagong Buhay Rehabilitation Center (BBRC) since many of the persons he has arrested as a police officer were detained in the facility. On January 21, 1998, appellant Raul Oco surrendered to the authorities and filed an Urgent Motion[6] praying similar relief sought by accused Lozano. Police Senior Inspector Pablo Gayacan Labra II returned to the court the unserved warrants.[7]

In the afternoon of January 21, 1998, Judge Martin A. Ocampo issued an Order[8] acting favorably on the request of the appellant and his co-accused to be detained at Camp Sotero Cabahug instead of at the BBRC.

Accused Dave Samson was arrested that same day,[9] while accused Eutiquiano Pacaña voluntarily surrendered to the police authorities on January 26, 1998.[10]

On January 29, 1998, Judge Martin issued an Omnibus Order[11] directing the detention of all accused at the BBRC for the duration of the trial. That same day, the appellant and his co-accused were arraigned in both cases. Assisted by their respective counsels, all of them entered a plea of "not guilty" to both charges.[12] The cases were tried jointly pursuant to Rule 119, sec. 14 of the Rules on Criminal Procedure.

During the trial, the prosecution presented twelve (12) witnesses while the defense presented thirty-one (31) witnesses.

Surviving victim Herminigildo Damuag testified that at around 9:30 p.m. of November 24, 1997, he was driving his motorcycle (referred to as the first motorcycle in the Records) along V. Rama Avenue, Cebu City with the late Alden Abiabi riding with him at the back. When they reached the vicinity of Pica Lumber, a white Tamaraw FX AUV overtook their motorcycle (first motorcycle) and blocked their path, forcing him to slow down.[13] Another motorcycle (second motorcycle), with two (2) riders on it, appeared behind the first motorcycle. From a distance of about two (2) to three (3) meters, one of the riders of the second motorcycle suddenly fired two (2) shots in close succession. Damuag attempted to look at the tires of his motorcycle, thinking that they have exploded. Suddenly, Abiabi pushed him with his body. Abiabi fell from the first motorcycle and slumped on the pavement face down. The Tamaraw FX AUV sped away.[14]

As Damuag was trying to control his motorcycle, he noticed another motorcycle (third motorcycle) passed by from behind him. His motorcycle zigzagged towards the gutter. Damuag was thrown off and hit the ground. He stood up and realized that he was hit at the right side of his body. He then heard a burst of gunfire from behind.[15]

Damuag saw the third motorcycle at about two (2) to three (3) meters. It was on a stop. Appellant was at the back of the third motorcycle, holding a short firearm in his right hand. Appellant fired his gun at him but missed. Although wounded, Damuag was able to run. However, the third motorcycle chased him. Upon reaching the vicinity of Five Brothers restaurant, Damuag stopped because he could not pass anymore. From a distance of about four (4) to five (5) meters, the appellant again fired two (2) more shots at Damuag.[16] The third motorcycle sped away towards B. Rodriguez Street.[17] Damuag was initially rushed to the Southern Islands Hospital. About three (3) hours later, his wife brought him to the Sacred Heart Hospital. He survived the attack

due to the timely medical attention given to him at the latter hospital.[18]

The attending physician, Dr. Dale Pasco, testified that when Damuag was brought to the hospital, the latter was bleeding profusely from the four (4) gunshot wounds at his back, two (2), at the side of his chest, and one (1), at the abdominal area. Damuag was immediately operated on. The doctor opined that without the surgery, Damuag would have died due to the gunshot wounds he sustained.[19]

Damuag was confined at the Sacred Heart Hospital from November 25, 1997 to December 10, 1997.[20] Subsequently, he was moved to CIG hospital. His hospitalization bills allegedly amounted to P160,000.00.[21] He likewise spent five thousand pesos (P 5,000.00) for medicines after having been discharged from the hospital. Prior to the shooting incident, he was earning P 150.00 a day as a driver of Marilou Aznar. The incident made him feel fearful for his life.[22]

Alden Abiabi did not survive the ambush. He sustained eight (8) gunshot wounds on the different parts of his body. Dr. Jesus P. Cerna testified that a bullet was deeply embedded in Abiabi's thoracic vertebrae and had not been retrieved despite diligent efforts to extract the same. Necropsy Report No. N-97-191 revealed that he died due to "shock, secondary to multiple gunshot wounds, face, body and extremities." [23] At the time of his death, Abiabi was working as a legal researcher at Clear, Inc., with a monthly income of P 8,000.00.[24] Mrs. Amelia Abiabi testified that she spent a total of P 250,000.00 for funeral services; P 50,000.00 of which was spent for the coffin alone.[25]

Damuag testified that he did not recognize the driver and the passenger of the second motorcycle and the driver of the third motorcycle because they were wearing their helmets.[26] He, however, recognized the appellant as one of the triggermen because the appellant was not wearing helmet at the time of the shooting incident. Instead, he had a towel tied around his forehead. The appellant was wearing a sleeveless undershirt (sando) and maong short pants. [27]

Ronald Barellano, a sixteen-year (16) old candle and flower vendor, corroborated Damuag's identification of the appellant as the second gunman. He testified that on the night of the shooting incident, he was in the company of eight other (8) children,[28] including another eyewitness, 14-year old Salem Tenebroso. They were buying barbeque in a store across the cemetery when a blue colored motorcycle (first motorcycle) driven by Herminigildo Damuag, with Alden Abiabi as a backrider, passed by them. Suddenly, a white Tamaraw FX blocked the first motorcycle, causing it to reduce its speed. Then, a black-colored motorcycle (second motorcycle) passed from behind the first motorcycle, and its backrider fired two shots at Abiabi. Abiabi fell from the motorcycle while Damuag continued driving in a zigzag manner. Damuag eventually fell to the ground five (5) meters away from Abiabi.[29]

Moments later, another motorcycle (third motorcycle) arrived at the scene. The motorcycle stopped and its backrider stepped his right foot on the ground. Without alighting from the third motorcycle, the backrider, whom Barellano recognized as the appellant, fired three (3) successive shots at Abiabi who was still sprawled on the ground face down.[30] Damuag tried to get near Abiabi but the appellant also fired at him. Damuag ran away, but the third motorcycle was able to catch up with him near the Five Brothers Restaurant. Appellant again shot Damuag twice. The third motorcycle then sped away.[31]

Barellano claimed that when the first shooting occurred, he and his companions walked towards the fallen Abiabi and stayed at a distance of around four (4) to five (5) meters. Thus, he had a good look at the face of the appellant when he arrived aboard the third motorcycle and shot Abiabi and Damuag.[32] Furthermore, the place was illuminated by a lamp post.[33] He recalled that the appellant had a towel wrapped around his forehead.[34] He knew the appellant even prior to the shooting incident. He used to accompany his friend, Salem Tenebroso,

whenever the latter would go to the residence of the appellant to feed the latter's roosters. Barellano, however, failed to recognize the three (3) other riders of the motorcycles because they were wearing helmets.[35] After the shooting incident, people milled at the crime scene. Barellano recognized barangay tanods Nato Maraveles and Zaldy Regodo in the crowd.[36]

For his part, Magno Ybanez, Jr. claimed that several minutes before the shooting incident, he saw the appellant and the three (3) accused (Dave Samson, Lorenzo "Amid" Lozano, and Eutiquiano "Toking" Pacaña) beside two (2) motorcycles parked along the sidewalk near the cemetery. At that time, the three (3) accused were not yet wearing their helmets. At 9:00 p.m., Ybanez, Jr. was walking along V. Rama Avenue, in front of Pica Lumber, when a motorcycle went past him. Although the two (2) riders were wearing their helmets, Ybanez, Jr. claimed that accused Samson was driving the second motorcycle, with accused Lozano as his passenger. Lozano allegedly shot twice at Abiabi, the passenger of the first motorcycle. Shortly thereafter, the third motorcycle, driven by Pacaña, appeared at the scene and its passenger, the appellant, fired at Abiabi and Damuag. Pacaña was then wearing his helmet while the appellant only had a towel tied around his forehead.[37]

Virginia Gamboa claimed that she also saw the three (3) accused and the appellant a couple of hours or so before the shooting incident along V. Rama Avenue. [38] Samson was wearing a black jacket and a puruntong short pants, Lozano was wearing a white sando and maong pants, while Pacaña was in short pants and maong jacket. The appellant was in a sleeveless undershirt, with a towel tied around his forehead.[39] The accused were not yet wearing their helmets. She recognized the three (3) accused and the appellant because she was only about five (5) to six (6) meters away from them and there was a bright light coming from the VECO post. She got curious why the accused and the appellant were there but she shrugged the thought off and went home.[40]

After dinner, Gamboa went out and proceeded towards Pica Lumber. She waited at a nearby store for her husband to come home from work. She then saw the accused and the appellant near the cemetery. They drove their motorcycles toward Lucio Drive and came back towards Nadela's compound. Gamboa claimed she recognized the three (3) accused although they wore their helmets because the front covers of the helmets were transparent. Samson was driving the motorcycle, with Lozano riding behind him. The motorcycle driven by Pacaña, with the appellant as passenger, was right behind Samson and Lozano's motorcycle. They were following the motorcycle of Damuag and Abiabi that was cruising at normal speed along V. Rama Avenue.[41]

Suddenly, a white Tamaraw FX AUV cut-off Damuag's motorcycle. Without much ado, Lozano, then riding another motorcycle, shot Abiabi twice. The latter fell on the ground. Damuag's motorcycle zigzagged and hit the ground. Lozano and Samson fled on board their motorcycle. The motorcycle of Pacaña and the appellant stopped near Abiabi who was then sprawled on the ground face down. The appellant fired several shots at Abiabi. Thereafter, the appellant fired at Damuag while the latter was trying to stand up. Damuag was hit. He tried to run, but Pacaña and the appellant chased him on board their motorcycle. The appellant again shot Damuag until he fell on the ground. The appellant and Pacana sped towards the direction where the other two (2) accused had earlier fled.[42]

Gamboa personally knew the three (3) accused and the appellant even before the shooting incident. Lozano is known as a policeman in their locality. The appellant, also known as "Boy Usher" in their place, was a barkada of her late husband, Rene Gamboa, while Pacaña is the brother-in-law of her brother-in-law. She also knew Samson since 1992 as she had seen him in the cockpit when she went there to fetch her husband.[43]

The prosecution theorized that the shooting incident was drug-related. The late Abiabi was a known anti-drug advocate while the appellant was a suspected drug lord. The other accused, on the other hand, allegedly had connections with the drugs trade.[44]

The appellant and his co-accused denied any participation in the shooting incident.

The appellant testified that at the time of the shooting incident, he was inside a chapel in Sambagan. He claimed that on November 24, 1997, he played mahjong from 3:00 p.m.- 9:00 p.m.[45] At around 9:00 p.m., he proceeded home to have supper and thereafter, went out to look for his five- year old son.[46] Not able to find his son, the appellant proceeded to Sambagan to meet Boy Misa and inform the latter that he could not lend him some money. On his way to Sambagan, he passed by a sari-sari store in A. Lopez St. and bought a bottle of Red Bull. The appellant also passed by the Our Lady of Lourdes Chapel. He noticed that the door was slightly opened so he went in to look at the clothes of the Virgin[47] for he intended to change the Virgin's clothes for the forthcoming fiesta celebration.

Upon entering the chapel, the appellant saw a group of women who informed him that the scheduled meeting that night in the chapel in connection with the forthcoming fiesta celebration was postponed. He recognized one of them as the wife of his co-accused Toking Pacaña. Appellant was seated at the cement floor for a few minutes when he heard an "unusual burst." However, he did not bother to investigate the origin or nature of the "unusual burst." He asked some people inside the chapel if they had seen Boy Misa but none of them did. He went out of the chapel, proceeded to a store across the chapel, and inquired from a group of persons milling around the store the whereabouts of Misa. Appellant was told that Misa was there earlier but had left however, and they did not notice where he went.[48]

The appellant proceeded home and went to bed. His son and daughter soon arrived and slept with him. A few minutes later, his wife, along with his sister-in-law and some neighbors, awakened him and told him that his kumpadre and good friend, Alden Abiabi, was shot at V. Rama St. He was shocked upon learning the information because the victim had no known enemy.[49]

The appellant changed his shirt and went towards Sambagan to inquire about the incident. On his way to Sambagan, he saw a group of women who told him that his good friend Alden was shot. He met another group who relayed the same information when he arrived in Sambagan. The appellant proceeded to A. Lopez and stayed at the barbeque stand until past 2:00 a.m.[50]

The appellant was thus surprised when he learned that he was implicated in the shooting of Alden. He and Abiabi were good neighbors and friends and he had no motive to kill the victim. He denied that he was a drug lord.[51] He also said that he was not in good terms with his three co-accused, hence, there was no basis for the alleged conspiracy. The appellant also charged Magno Ybañez with bias as he was one of the suspects in the killing of the latter's older brother.[52] Lolita Mosqueda,[53] Ernesto Herhuela[54] and Herminia Ferraren[55] were presented to corroborate appellant's defense of alibi.

Accused Armando Lozano, on the other hand, claimed that on November 24, 1997, he was training fighting cocks in the cockpit arena from 9:00 p.m. until 1:00 a.m. of the next day. Accused Lozano's companions, Vic Lozano,[56] Prospero Lozano, [57] Ritchie Ho,[58] Ramon Tabares[59] and Bendicto Orge,[60] corroborated his alibi. Accused Dave Samson asserted that he was in Larena, Siquijor on the night of November 24, 1997. His alibi was corroborated by Felizardo Balmadres.[61] Accused Eutiquio "Toking" Pacaña alleged that he was sleeping at his house at the time of the incident.[62]

The defense also presented Salem Tenebroso, Jr., Patsy Bolls, and PO1 Bienvenido Arlan, Jr. to prove that none of the alleged eyewitnesses recognized any of the perpetrators of the crime. Tenebroso, 14-year old, is one of Barellano's companion on the eve of November 24, 1997. Previously, he issued an Affidavit wherein he identified the appellant as one of the malefactors in the shooting incident.[63] Thereafter, he executed an Affidavit of Recantation,[64] claiming that he did not recognize any of the perpetrators because all of them were wearing

helmets. Tenebroso testified in court that shortly after the incident, he and Junnie Quigao were brought to the CIG Office at Camp Sotero Cabahug and were interviewed by a policeman. The two of them told the police officer that they could not recognize the persons who shot Abiabi because they were all wearing helmets. However, they were told by the investigator to state that the appellant was the one who killed Abiabi.[65]

For her part, Patsy Bolls, a reporter of Sunstar Super Balita Daily, testified that on December 7, 1997, she interviewed Damuag at the Sacred Heart Hospital where the latter was confined.[66] During the course of the interview, Damuag told her that he did not see who shot him and Abiabi.[67] The contents of the interview were printed on the December 8, 1997 issue of the SunStar Super Balita.[68] Bolls further testified that the interview was witnessed by another reporter, Garry Cabotaje of Sunstar Daily, and photographer Alex Badayos.[69] Damuag's wife, a lady whom she surmised as Damuag's neighbor, other patients, and the policemen guarding Damuag were also inside the room during the interview.[70]

PO1 Arlan, Jr. corroborated Boll's testimony. He told the court that he was inside Damuag's room during his interview. PO1 Arlan, Jr. claims that he heard Damuag telling the reporter that he did not recognize any of his assailants. His curiosity was aroused by Damuag's answer. So after Boll's interview, he asked Damuag if the latter really did not recognize who shot him and Abiabi. Damuag confirmed that he did not recognize any of the assailants.[71]

Teresita Bunal[72] and Eduardo Nabua[73] testified that prosecution witness Virgilia Gamboa was not present during the shooting incident. Rosalia Ybanez Nadela[74] and Christy Labistre,[75] on the other hand, contradicted Magno Ybanez's claim that he was within the vicinity of the incident and saw the tragic event.

After the trial, the trial court found the appellant guilty of murder and frustrated murder. The trial court disregarded Salem Tenebroso's Affidavit of Recantation and gave full credence to his previous Affidavit identifying the appellant as one of the gunmen. Further, the court doubted the credibility of eyewitnesses Gamboa and Ybanez, Jr. who claimed to have seen not only the face of the appellant but of his three (3) co-accused as well. Thus, the appellant's co-accused were acquitted. The dispositive portion of the trial court's Judgment, dated December 16, 1998, provides:

WHEREFORE, this Court hereby makes the following dispositions:

- 1). In Crim. Case No. CBU-46172: the Court finds accused Raul Oco alias "Boy Usher" Guilty beyond reasonable doubt as principal in the crime of Murder defined and penalized by Article 248 of the Revised Penal Code in relation to Article 7659 and hereby sentences him to Death. Said accused is further ordered to indemnify the heirs of the deceased Alden Abiabi in the sum of One Million Pesos (P1,000,000.00);
- 2). In Crim. Case No. CBU-46173: the Court finds accused Raul Oco alias "Boy Usher" Guilty beyond reasonable doubt as principal in the crime of Frustrated Murder defined and penalized by Article 248 in relation to Article 50 of the Revised Penal Code and hereby sentences him to suffer the penalty of Reclusion Perpetua and to indemnify the victim Herminigildo Damuag in the sum of Five Hundred Thousand Pesos (P500,000.00);
- 3). In Crim. Case Nos. CBU-46172 for Murder and CBU-46173 for Frustrated Murder – on the ground of reasonable doubt- accused SPO2 Armando Lozano alias "Amid Lozano", Dave Samson, and Eutiquiano Pacaña alias "Toking Pacaña" are ACQUITTED-because there is no moral certainty in the unprejudiced mind of this Court that said three (3) other accused had participated in the commission of the crimes with which they were charged (Rule 133, Rules of Court).

Costs de officio.

SO ORDERED.

The case is now with this Court for review.

The appellant insists that he has no motive to kill Abiabi, a known anti-drug advocate, because he is not a drug lord as the prosecution depicted him to be during trial.[76] In fact, Mrs. Abiabi admitted during trial that she has a debt of gratitude to the appellant as the latter lent her some money in the past.[77] Furthermore, Damuag is his close friend and he has no reason to injure.[78]

The appellant also assails that his identification as one of the assailants of Abiabi and Damuag is incredulous because it is against human experience for an assassin to kill without covering his face to prevent his identification. He claims that the fact that his co-accused used helmets to hide their identities would make it more logical for him to use also a helmet while shooting at Abiabi and Damuag in plain view of many witnesses.[79] The appellant insists on his alibi that he was inside a chapel in Sambagan, Cebu City, while the shooting incident was in progress.

We affirm the judgment of conviction.

Motive is not an essential element of a crime, and hence, need not be proved for purposes of conviction.[80] Standing alone, the failure of the prosecution to adduce proof of the appellant's motive to kill Abiabi and injure Damuag would not exculpate him, especially since he was positively identified by at least two credible witnesses as one of the assailants.

To be sure, the fact that the appellant's companions wore helmets does not make his identification by the eyewitnesses incredulous. We agree with the Solicitor General's observation that criminals carry out their criminal designs differently. Some cover their faces, but others boldly perform their criminal acts in full view of the public. The records show that appellant belongs to the latter category.

Ronald Barellano gave a detailed account of the incident, and emphatically claimed that he saw the appellant when he shot Abiabi, viz:

ATTY. SENO:

Q:

In other words, Master Barellano, ... when you turned your eyes towards where Abiabi was, the first two (2) shots which you heard were already fired?

WITNESS:

A:

Yes, sir.

Q:

And what you saw when you turned your eyes towards where the two (2) shots, the first two (2) shots were fired, was Abiabi who fell on the ground?

A:

Yes, sir.

...

Q:

In other words, you did not witness the actual firing of the first two (2) shots. Is that correct?

WITNESS:

A:

I saw when he was shot twice.

...

COURT TO WITNESS:

Q:

You mean before he was shot by Raul Oco you saw somebody else shooting Abiabi while he was riding at the back of the motorcycle?

WITNESS:

A:

I saw when he was shot.

Q:

You actually saw Abiabi being shot while he was still riding on a motorcycle?

A:

Yes, Your Honor.

Q:

And you saw him fell down with (sic) the motorcycle as a result of the shooting?

A:

Yes, Your Honor.

Q:

Who shot him?

A:

I do not know the person, Your Honor.

Q:

Where was he located, the person who first shot Abiabi?

A:

The person was backriding on a motorcycle.

Q:

There were two (2) persons on that motorcycle?

A:

Yes, Your Honor.

...

Q:

You said you saw Raul Oco in (sic) that crime scene. When did you first see Raul Oco? When he was still riding on a motorcycle?

A:

I saw Raul Oco at the time he shot (Abiabi).

Q:

You did not see him riding a motorcycle before the shooting?

A:

No, Your Honor.

...

Q:

You never saw him riding a motorcycle before the shooting started or before you saw him shooting Abiabi?

A:

While Raul Oco was riding a motorcycle I did not see his face. I saw his face at the time he shot Abiabi.

Q:

You saw his face at the time he shot Abiabi?

A:

Yes, Your Honor.

...

Q:

Did you see Raul Oco while he was still riding a motorcycle before the shooting or before he shot Abiabi?

A:

Yes, Your Honor.

Q:

Did you see his face while he was seated in the motorcycle?

A:

No, Your Honor, I did not see his face.

Q:

How did you know that it was Raul Oco if you did not see his face?

A:

When the motorcycle stopped and he stepped his right foot on the ground and shot I saw his face.

Q:

So, that was the only time that the person you saw riding that motorcycle before was Raul Oco?

A:

Yes, Your Honor.

Q:

Because the person you saw riding in (sic) the motorcycle have (sic) the same clothes as Raul Oco when he was shooting Abiabi?

A:

Yes, Your Honor.

Q:

And you saw that person riding the motorcycle wearing that towel around his head that you described before?

A:

Yes, Your Honor. [81]

Barellano's testimony on how the appellant shot Damuag is equally clear. His testimony reads as follows:

COURT:

So let us ask him again—

Q:

Do you mean that Raul Oco, when you saw him shooting Abiabi, was still on the top of the motorcycle?

A:

Yes, Your Honor.

...

ATTY. SENO:

Q:

So, after that person who fired the three (3) successive shots space(d) at less than a second from each other completely fired the three (3) shots, he sat back straight on the motorcycle and sped away? Is that not correct?

A:

No, sir.

Q:

What did he do?

A:

He still shot Damuag.

Damuag's testimony identifying Raul Oco as his gunman was unequivocal, direct and leaves no room for doubt. He related in open court how he was able to identify the appellant that tragic night, thus:

COURT TO WITNESS:

Q:

Alright that first shot that hit you, did you glance back already and saw Raul Oco immediately after you were hit?

WITNESS:

A:

I saw him and I face (sic) him.

Q:

You saw him immediately after the first shot was fired that hit you?

A:

Yes, Your Honor.

Q:

Did he fire another shot at you afterwards?

A:

At the time I ran away he fired another shot, Your Honor.

Q:

And that second shot hit you?

A:

No, Your Honor.

Q:

So, you glanced back and saw the accused Raul Oco in between the first and the second shot. Is that correct?

A:

When I stood up after I was slumped I saw Raul Oco, Your Honor.

Q:

I thought you said you glanced back after you were hit by the first shot. You did not. So when you were hit by the first shot, did you glance back immediately at Raul Oco?

A:

I saw Raul Oco, Your Honor.

Q:

After you were hit?

A:

Yes, Your Honor.[82]

The appellant's identity as one of the assailants became even more apparent after a series of clarificatory questions propounded by Judge Ocampo on Damuag, to wit:

COURT:

Q:

... Alright let's ask him again for the last time. Were you hit by the first shot?

WITNESS:

A:

At the time when my motorcycle was in a zigzag manner I was already hit, Your Honor.

Q:

Did you see who fired that shot at you that hit you?

A:

No, Your Honor.

Q:

You did not. So after you were hit you immediately glanced back and saw Raul Oco?

A:

When my motorcycle was in a zigzag manner I slumped to the gutter then stood up and I saw Raul Oco.

Q:

You saw him after you were hit by the first shot?

A:

Yes, Your Honor.

Q:

So that is very clear- he saw Raul Oco when he glanced back after he was hit by the first shot. So what happened? Did he shoot you again?

A:

Yes, Your Honor.

Q:

You saw him shooting at you?

A:

Yes, Your Honor?

Q:

You actually saw Raul Oco shooting at you the second shot he fired?

A:

Yes, Your Honor.

Q:

But that second shot did not hit you?

A:

Yes, Your Honor, I was not hit.

Q:

And then you ran away?

A:

Yes, I ran away, Your Honor.

Q:

And you suffered three (3) other gunshot wounds. Is that correct?

A:

Yes, Your Honor.

Q:

Did you see actually Raul Oco fire those three (3) other shots at you?

A:

Yes, Your Honor.

Q:

So you actually saw him shooting at you those three (3) shots?

A:

Yes, Your Honor.[83]

Despite the cross-examination by the defense counsel, Damuag was unmoved. He firmly asserted that notwithstanding the wounds he sustained from the first shot, he glanced back and saw appellant Oco fire his gun at him.

ATTY. BRAGAT:

Q:

After the shot that did not hit you, your instinct was to run away with all immediacy because you feared for your life. Correct? Having been wounded earlier?

A:

Yes, sir.

Q:

And you are telling the Honorable Court that while running away for fear of (sic) your life you still turned your back to see what was at your back so that you could see Oco firing those three (3) shots hitting you?

A:

I did not run fast because I was already hit.

COURT:

That does not answer the question.

WITNESS:

Yes, sir, I saw Raul Oco.

COURT TO WITNESS:

Q:

So inspite of the three (3) hits you still looked at? (sic)

A:

Yes, Your Honor.[84]

We stress the rule that findings of the trial court on the credibility of witnesses must be respected and not disturbed on appeal, unless there is a compelling reason to revise them. The trial court is in the best position to calibrate the credibility of the eyewitnesses, having seen and heard them testify in court as they recount events that took place that fateful evening.[85]

We see no reason to deviate from this rule.

It is to be noted that Damuag is not just an ordinary eyewitness. He is a survivor of that tragic incident. His identification of his attacker deserves full credit. It is the natural reaction of victims of criminal violence to strive to see the looks and faces of their assailants and observe the manner in which the crime was committed. Most often, the face of the assailant and the body movements create lasting impression that cannot be easily erased from their memory.[86] The Court finds Damuag's testimony credible as it is replete with details and corroborated on material points by Ronald Barellano, also a credible witness. These two eyewitnesses had no ulterior motive to be untruthful in their identification of appellant as one of the culprits. Where there is nothing to indicate that a witness was actuated by improper motive, his positive identification and categorical declarations on the witness stand under solemn oath deserve full faith and credence.[87]

The failure of Damuag to reveal the identity of his assailants shortly after the shooting incident does not taint his credibility. He was in critical condition when rushed to the Sacred Heart Hospital. Dr. Dale Pasco opined that Damuag would have died due to the wounds he sustained if he were not immediately operated on. He was placed in the intensive care unit (ICU) until November 30, 1997 and stayed at the hospital until December 10, 1997 without adequate security.

In her testimony, Patsy Bolls revealed that on December 7, 1997, she was sent by her editor to verify

Congressman Cuenco's complaint that there were no policemen guarding Damuag at the Sacred Heart Hospital. She interviewed some people and was able to verify the complaint, thus:

Q:

Why did you go to that hospital?

A:

Because earlier Congressman Cuenco called the police informing us that nobody, no policeman was guarding Damuag in his room and we were assigned by our Editor-in-Chief, Atty. Seares to see and for us to confirm how true the information of Cong. Cuenco (is).

...

Q:

Were you able to interview the police officers?

A:

Yes sir, I asked them how true (is) the allegation that earlier on the day there were no policemen assigned there to guard Damuag.

Q:

And what was the answer of the police officers?

A:

They said it was true because the duty in the hospital was from 8:00 to 4:00; 4:00 to 12:00; 12:00 to 8:00. So those policemen- when we went there those policemen were assigned on the 4:00 to 12:00 shifting. So it was true that there were no policemen assigned during the 8:00 to 4:00 shifting.

...

Q:

Were there other matters that you interviewed the police about?

A:

Actually, I did not interview the policemen, it was them who divulged the information that earlier a certain Junjun, brother of Abiabi went to see and almost he made a scene in the room and almost according to the policemen almost choke him but I didn't—it was alleged that was their statement and it was confirmed by Damuag and his wife that it was true because this certain Junjun was really angry with Damuag thinking that Damuag was part of the crime. [88]

PO1 Bienvenido Arlan, Jr. also admitted before the court that there was no one guarding Damuag in the morning

of December 7, 1997. He also testified that Damuag's life was in danger, viz:

COURT TO WITNESS

Q:

How did you come to know that the person you are going to guard is one of the victims in the shooting incident? ...

A:

Your Honor, when we were ordered by Sinugbuan to guard Damuag, we were also informed that Damuag was one of the victims and his life is (sic) in danger.

...

Q:

Did you know or come to know why nobody was guarding Damuag prior to your shift?

A:

I do (sic) not know, Your Honor.

...

Q:

But those police officers in that shift failed to appear?

A:

Yes, Your Honor.

...

(PROS. GALANIDA)

Q:

Did you come to know who were those tasked to guard Damuag before your shift at 4:00 o'clock of December 7?

A:

Yes, mam, it was PO3 Teves and PO1 Baquerquer.

Q:

They were not there in their post? Correct?

A:

Yes, mam.

Q:

Did you come to know what happened to them?

A:

No, mam.

Q:

You did not hear that they were sanctioned or what?

A:

They were sanctioned, mam. Teves is now in the Detachment of Cebu City Mobile Group and Baquerquer is now in Sta. Catalina, Negros Oriental. [89]

Given the circumstances, it is but natural for Damuag not to disclose the identity of his assailants. It would be unfair to expect Damuag, a surviving witness to a tragic incident, to further expose himself to the danger possibly accompanying his revelation of the appellant's identity.

As against his positive identification by the prosecution witnesses, the appellant's alibi is worthless. For alibi to prosper, the requirements of time and distance must be strictly met. It is not enough to prove that the accused was somewhere else when the crime was committed; he must also demonstrate by clear and convincing evidence that it was physically impossible for him to be at the scene of the crime during its commission.[90] Ferraren, who allegedly saw the appellant at the chapel at the time of the shooting incident testified that the distance between the chapel and the crime scene can be negotiated on foot within five minutes.[91] Given this distance, it is not impossible for appellant to be at the scene when the crime was committed.

That the other accused were acquitted does not necessarily mean that the appellant likewise deserves an acquittal. Accused Lozano, Pacaña and Samson were acquitted based on reasonable doubt as to their identity. This does not negate the trial court's findings on the existence of the acts constituting the crimes alleged in the Informations. In any event, appellant's conviction does not only result from the trial court's finding of conspiracy but from his own act of shooting Abiabi and Damuag.

We come now to the proper designation of the crimes committed by the accused and the corresponding penalties for these crimes.

We agree with the trial court that treachery attended the killing of Abiabi and the wounding of Damuag. There is treachery "when the offender commits any of the crimes against the person, employing means, methods or forms

in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might take." [92] For treachery to exist, two conditions must be found: (1) that at the time of the attack, the victim was not in a position to defend himself; and (2) the offender consciously adopted the particular means, method or form of attack employed by him. [93] In the case at bar, the motorcycle driven by Damuag (first motorcycle) was suddenly blocked by a white Tamaraw FX. Without any warning, the backrider of the second motorcycle, coming from behind, suddenly fired successive shots at Damuag and Abiabi. While Abiabi was helplessly laid at the pavement face down due to the wounds he sustained, appellant mercilessly shot at him. On the other hand, Damuag, already wounded, tried to escape but appellant pursued him and shot at him three more times. The unexpected and sudden attack on the victims, rendering them unable and unprepared to defend themselves, such suddenness having been meant to ensure the safety of the gunman as well as the success of the attack clearly constitutes *alevosia*. [94]

The trial court also found that the offenses were committed with abuse of superior strength. The malefactors not only outnumbered the victims; at least two of them were armed. More, the circumstances clearly show that the assailants deliberately took advantage of their combined strength in order to consummate the crime. Nevertheless, the aggravating circumstance of abuse of superior strength is absorbed by treachery. [95]

We also agree with the trial court that the generic aggravating circumstance of use of motor vehicle is present. The appellant and his companions used motor bicycles in going to the place of the crime, in carrying away the effects thereof, and in facilitating their escape.

We do not agree with the trial court, however, in its appreciation of the aggravating circumstance of nighttime. This circumstance is considered aggravating only when it facilitated the commission of the crime, or was especially sought or taken advantage of by the accused for the purpose of impunity. The essence of this aggravating circumstance is the "*obscuridad*" afforded by, and not merely the chronological onset of, nighttime. [96] Although the offense was committed at night, nocturnity does not become a modifying factor when the place is adequately lighted, and thus could no longer insure the offender's immunity from identification or capture. [97] In this case at bar, a lamp post illuminated the scene of the crime.

Likewise, we find that the offenses were not committed by a band. A crime is deemed to have been committed by a band or *en cuadrilla* when more than three armed malefactors take part in its commission. [98] The four armed persons contemplated in this circumstance must all be principals by direct participation who acted together in the execution of the acts constituting the crime. The Code does not define or require any particular arms or weapons; any weapon which by reason of its intrinsic nature or the purpose for which it was made or used by the accused, is capable of inflicting serious or fatal injuries upon the victim of the crime may be considered as arms for purposes of the law on *cuadrilla*. In the case at bar, the prosecution alleged that the accused and his three other co-conspirators used unlicensed firearms in the perpetration of the offenses. However, the evidence on record shows that only two of them carried firearms. *En cuadrilla*, as an aggravating circumstance, cannot therefore be appreciated.

There was also no evidence presented to show that the offenses were committed with the aid of armed men. Aid of armed men or persons affording immunity requires that the armed men are accomplices who take part in minor capacity, directly or indirectly. [99] We note that all four accused were charged as principal. The remaining suspects --- John Doe, Jane Doe and Peter Doe--- were never identified and charged. Neither was proof adduced as to the nature of their participation.

There was also a paucity of proof to show that evident premeditation attended the commission of the crimes. For this circumstance to be appreciated, there must be proof, as clear as that of the killing, of the following elements:

(1) the time when the offender determined to commit the crime; (2) an act indicating that he clung to his determination; and (3) sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act.[100] Evident premeditation must be based on external facts which are evident, not merely suspected, which indicate deliberate planning. There must be direct evidence showing a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to kill the victim.[101] No such evidence was presented to prove the presence of this circumstance.

In the same vein, no evidence was adduced to prove that the firearms used in the shooting incident were unlicensed, hence, this circumstance cannot be appreciated.

The presence of treachery qualified the killing of Abiabi to Murder punishable by reclusion perpetua to death under Art. 248 of the Revised Penal Code, as amended by Rep. Act. No. 7659, viz:

ART. 248. Murder.- Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity. (emphasis supplied)

The presence of the aggravating circumstance of the use of motor vehicle would have raised the penalty to death, pursuant to Art. 63 of the Revised Penal Code, if not for the presence of the mitigating circumstance of voluntary surrender which the trial court failed to appreciate.

For voluntary surrender to be appreciated, the following requisites should be present: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority or the latter's agent; and (3) the surrender was voluntary.[102] Further, the surrender must be spontaneous in such a manner that it shows the interest of the accused to surrender unconditionally to the authorities, either because he acknowledged his guilt or because he wishes to save them the trouble and expenses necessarily incurred in search and capture.[103] All these requisites have been complied with in the case at bar.

The records reveal that the warrant for the appellant's arrest was issued on January 19, 1998. Immediately upon learning its issuance, and without having been served on him, the appellant contacted his co-accused PO2 Lozano and communicated his desire to surrender. PO2 Lozano called City Director, Police Superintendent Alejandro Carpio Lapinid and voluntarily surrendered himself at around 7:00 p.m. of January 20, 1998. As per their agreement, the appellant was fetched by SPO2 Perfecto Silverderio Codiñera at around 12:15 a.m. of January 21, 1998, and was directly brought to the PNP Jail at Camp Sotero Cabahug, Gorordo Ave., Cebu City. Police Senior Inspector Pablo Gayacan Labra II issued a compliance report attaching thereto the unserved warrants, and explaining the attendant circumstances, viz:

The COMPLIANCE/RETURN OF WARRANT OF ARREST

...

That on the 20[th] day of January 1998 this office received the original copy of the Warrant of Arrest against Police Officer 2 Armando LOZANO, Raul OCO @ Boy Usher, Dave SAMSON and Eutiquio PACAÑA, Jr., all residents of A. Lopez St., Lobangon, Cebu City for Violation of Murder and Frustrated Murder issued and signed by that Honorable Court dated 19 January 1998.

However, at about 7:00 o'clock in the evening of January 20, 1998, Police Officer 2 Armando LOZANO voluntarily surrendered to City Director, Police Superintendent Alejandro Carpio LAPINID while at around 12:15 o'clock in the morning of January 21, 1998, Raul OCO @ Boy Usher was fetched by Senior Police

Officer 2 Perfecto Silvederio Codiñera and immediately brought to this office.[104]

Moreover, one of the reasons cited by Judge Ocampo in acting favorably to the request of the appellant and accused Lozano to be detained at the PNP Jail at Camp Sotero Cabahug, Gorordo Avenue, Cebu City instead of the Bagong Buhay Rehabilitation Center (BBRC) was their voluntary surrender, viz:

In the meantime and until further orders of this Court- since this case is now under the jurisdiction of Branch 7 presided by undersigned judge- and since the said accused had voluntarily surrendered to the authorities anyway- they may continue to be detained at the PNP Jail where they have been brought after their surrender- since their transfer to the BBRC forthwith would obviously expose them to the harm or danger that they are precisely adverting to and explained by them in their aforesaid Urgent Motions. [105] (emphasis supplied)

Finally, the appellant's testimony as to the circumstances of his voluntary surrender was never rebutted. He testified as follows:

Q:

When did you see him (accused Dave Samson) again from that last time you said 1993 when you saw him last?

A:

At the time I surrendered at Gorordo.

Q:

When you said you surrendered, you surrendered to whom?

....

A:

At first, I approached Atty. Bragat and I also approached Dodong Lozano and Dodong Lozano called up thru telephone at the camp.

Q:

And did you in effect voluntarily surrender at the camp?

A:

Yes, sir.

Q:

Do you recall when was that?

A:

On January 21, 1998.

Q:

You said you surrendered voluntarily at the camp on January 21, 1998. Was that voluntary surrender in relation to these two cases for which you now stand trial?

A:

Yes, sir.[106]

Like any other common criminal, the appellant could have opted to go on hiding. But he chose to surrender himself to the authorities and face the allegations leveled against him. True, he did not admit his complicity to the crimes charged against him but he nonetheless spared the government of time and expense. For this, he should be credited with the mitigating circumstance of voluntary surrender. This offsets the aggravating circumstance of the use of motor vehicle, and pursuant to Art. 63(4) of the Revised Penal Code, the appellant should be meted the lesser of the two penalties, i.e., reclusion perpetua.

For the serious wounding of Damuag, the appellant committed frustrated murder, the same having been committed with intent to kill and with treachery, as afore explained. A crime is at its frustrated stage "when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator." The means and method employed by the appellant clearly show intent to kill. Indeed, Damuag could have died as a result of the gunshot wounds he sustained if it were not for the timely operation performed on him. Under Art. 50 of the Revised Penal Code, the penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony. Applying the same offsetting of the aggravating circumstance of the use of motor vehicle and of the mitigating circumstance of voluntary surrender, the penalty should have been reclusion temporal in its medium period. However, under the Indeterminate Sentence Law, "the court shall sentence the accused to an indeterminate sentence the maximum of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty lower to that prescribed by the Code for the offense." [107] Considering all the circumstances, the indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum, and fourteen (14) years and eight (8) months of reclusion temporal as maximum would be proper.

We come to the award of damages. The trial court ordered the appellant to indemnify the heirs of Abiabi and the victim Herminigildo Damuag the amount of P1,000,000.00 and P500,000.00, respectively, without specifying what these amounts represent.

In line with the recent jurisprudence, we modify the amount due the heirs of Abiabi as follows: (a) P50,000.00 as actual damages representing the duly receipted expense for the purchase of the coffin, (b) P50,000.00 as civil indemnity, and (c) P25,000.00 as temperate damages.

Except for the cost of the coffin, the remainder of P250,000.00, which Mrs. Abiabi claimed to have spent for funeral and burial services, is unsubstantiated and therefore, cannot be awarded.

Furthermore, although Mrs. Abiabi testified that her husband earned P8,000.00 monthly as a legal researcher of Clear, Inc., we cannot award indemnity for loss of earning capacity in the absence of documentary evidence.[108] There are only two exceptions to the general rule requiring documentary evidence for claims for damages for loss of earning capacity: (1) if the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available; or (2) if the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[109] Clearly, this case does not fall under the exceptions.

We reduce the amount due the victim Herminigildo Damuag. Damuag cannot recover actual damages for aside from his bare allegations that he spent P160,000.00 for hospitalization and P5,000.00 for medicinal needs, there is nothing on the record to substantiate his claim. In lieu of this, we award the amount of P25,000.00 as temperate damages since it cannot be denied that he has suffered some pecuniary loss because of the incident.

IN VIEW WHEREOF, the joint decision on review is hereby AFFIRMED with the following MODIFICATIONS.

(1)

In Crim. Case No. CBU-46172, appellant Raul Oco @ Boy Usher is found GUILTY beyond reasonable doubt of MURDER under Art. 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, and is sentenced to suffer the penalty of reclusion perpetua. He is ORDERED to pay the heirs of Alden Abiabi the amount of P50,000.00 as actual damages, P50,000.00 as civil indemnity, and P25,000.00 as temperate damages.

(2)

In Crim. Case No. CBU-46173, appellant Raul Oco @ Boy Usher is found GUILTY beyond reasonable doubt of FRUSTRATED MURDER and is sentenced to suffer an indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum, to fourteen (14) years and eight (8) months of reclusion temporal as maximum. He is ORDERED to indemnify Herminigildo Damuag the amount of P25,000.00 as temperate damages.

Costs de officio.

SO ORDERED.

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

[1] Rollo, pp. 85- 114.

[2] Also referred to as Eutiquio in some parts of the records.

[3] Records, Vol. I, pp. 1-3.

[4] Id. at 3A-3C.

[5] Id. at 74-75.

[6] Id. at 75A- 75B.

[7] Id. at 76.

[8] Id. at 78.

[9] Id. at 80.

[10] Id. at 94.

[11] Id. at 131-133.

[12] Id. at 134.

- [13] TSN, Herminigildo Damuag, March 3, 1998, pp. 12-13.
- [14] Id. at 14-15.
- [15] Id. at 15-16.
- [16] Id. at 30-31.
- [17] Id. at 16-22, 26-27.
- [18] Id. at 28.
- [19] TSN, Dr. Dale Pasco, Feb. 26, 1998, pp. 19-20.
- [20] Exh. "I", Original Records, Vol. 1, p. 37.
- [21] Supra note 13 at 31.
- [22] Id. at 32.
- [23] Exh. "A," Records, Vol. 1, p. 34.
- [24] TSN, Amelia Abiabi, March 4, 1998, p. 50.
- [25] Id. at 62-64. See Exhibit "AA-1," Records, Vol. I, p. 294.
- [26] Supra note 13 at 59-60.
- [27] Id. at 23, 60-61.
- [28] Salem Tenebroso, Junie Quigao, Joel Quigao, Jingle Maraveles, Elam (Elan) Maraveles, Girlie Maraveles, Ela Maraveles, and Jida.
- [29] TSN, Ronald Barellano, April 13, 1998, pp. 15-17.
- [30] Id. at 18.
- [31] Id.
- [32] Id., April 14, 1998, pp. 8-10.
- [33] Supra note 29 at 32.
- [34] Id. at 57-58.
- [35] Id. at 29.
- [36] Id. at 32-34.
- [37] Magno Ybañez, Sworn Statement, December 9, 1997. Ybañez affirmed his Sworn Statement when he testified on March 16, 1998.
- [38] TSN, Virginia Gamboa, April 21, 1998, pp. 7-8.
- [39] Id. at 59-64.
- [40] Id. at 8-9.
- [41] Id. at 10-13.

- [42] Id. at 13-22.
- [43] Id. at 4-6.
- [44] TSN, Col. Cesar G. Pagtakhan, March 18, 1998, p. 17.
- [45] TSN, Raul Oco, June 13, 1998, pp. 8-9.
- [46] Id. at 10.
- [47] Id. at 10-11.
- [48] Id. at 10-13.
- [49] Id. at 14.
- [50] Id. at 15-16.
- [51] Id. at 20.
- [52] Id. at 22-26.
- [53] TSN, Lolita Mosqueda, July 15, 1998, p.11.
- [54] TSN, Ernesto Herhuela, July 20, 1998, p.11.
- [55] TSN, Herminia Ferraren, June 4, 1998, pp. 5-11.
- [56] TSN, Vic Lozano, June 17, 1998, pp. 4-8.
- [57] TSN, Prospero Lozano, June 18, 1998, pp. 9-14.
- [58] TSN, Ritchie Ho, June 15, 1998, pp. 6-8.
- [59] TSN, Ramon Tabares, June 11, 1998, pp. 7-10.
- [60] TSN, Benedicto Orge, June 16, 1998, pp. 6-12.
- [61] TSN, Felizardo Balmadres, June 3, 1998, pp. 13-19.
- [62] TSN, Eutiquiano Pacaña, July 9, 1998, pp. 6-8.
- [63] Records, Vol. I, pp. 31-33.
- [64] Exhibit "VV," Records, Vol. I, pp. 50-52.
- [65] TSN, Salem Tenebroso, May 18, 1998, p. 27.
- [66] TSN, Patsy Bolls, May 21, 1998, p. 5.
- [67] Id. at 7.
- [68] Id. at 10. See also Exh. "38-A", Records, Vol. II, p. 529.
- [69] Id. at 5.
- [70] Id. at 8.
- [71] TSN, PO1 Bienvenido Arlan, Jr., June 24, 1998, pp. 6-9.
- [72] TSN, Teresita Bunal, May 20, 1998, p. 11.

- [73] TSN, Eduardo Nabua, May 25, 1998, p. 7.
- [74] TSN, Rosalia Ybañez Nadela, May 13, 1998, pp. 7-9.
- [75] TSN, Christy Labistre, July 6, 1998, pp. 6-8.
- [76] TSN, Raul Oco, June 13, 1998, p. 20.
- [77] Memorandum of Accused Oco, November 18, 1998, Records, Vol. I, p. 704, adopted as part of the Appellant's Brief.
- [78] Id.
- [79] Appellant's Brief, p. 17; Rollo, p. 192.
- [80] People v. Aposaga, 108 SCRA 574, 595 (1981).
- [81] TSN, Barellano, April 14, 1998, pp. 15-23.
- [82] TSN, Herminigildo Damuag, March 3, 1998, p. 65.
- [83] Id. at 67-68.
- [84] Id. at 68-69.
- [85] People vs. Sanchez, et al., 367 SCRA 520 (2001).
- [86] People vs. Dolar, 231 SCRA 414 (1994).
- [87] People v. Benito, 303 SCRA 468 (1999).
- [88] TSN, Patsy Bolls, May 21, 1998, pp. 5-9.
- [89] TSN, PO1 Bienvenido Arlan, Jr., June 24, 1998, pp. 15-27.
- [90] People vs. Albarido, et al., 368 SCRA 194 (2001).
- [91] Supra note 55 at 37-39.
- [92] Revised Penal Code, Art. 14, par. 16.
- [93] People v. Avendano, G.R. No. 137407, January 28, 2003.
- [94] People vs. Jarandilla, 339 SCRA 381 (2000).
- [95] People v. Delmo, et al., G.R. Nos. 130078-82, October 4, 2002.
- [96] U.S. v. Paraiso, 17 Phil. 142.
- [97] People vs. Macaliag, 337 SCRA 502 (2000).
- [98] Art. 14 (6).
- [99] People v. Candado, et al., 84 SCRA 508 (1978).
- [100] People v. Tamayo, et al., G.R. No. 138608, September 24, 2002.
- [101] People v. Loterono, G.R. No. 146100, November 13, 2002.
- [102] People v. Zeta, G.R. Nos. 140901-02, May 9, 2002.

[103] Id.

[104] Records, Vol. I, p. 76.

[105] Id. at 78.

[106] TSN, Raul Oco, July 13, 1998, pp. 6-7.

[107] Section 1, Act No. 4103 as amended by Act No. 4225.

[108] People v. Caraig, G.R. Nos. 116224-27, March 28, 2003.

[109] People v. Pajotal, 368 SCRA 674, 689 (2001).

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