

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO HERRERA, ACCUSED-APPELLANT.

G.R. Nos. 140557-58. December 05, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

On May 29, 1996 at around 6:30 p.m., Enrique Ganan was sitting on a steel chair at his home eating fishballs while cuddling his youngest child. He was engaged in a conversation with Ma. Rizza Aguilar and his brother Edwin. His wife, Mariel was situated a few meters away. At the same time, Corazon Cajipo was chatting with a friend about ten (10) meters away. The calm evening air was shattered when someone armed with a .38 caliber revolver suddenly approached Enrique from behind and fired at close range. Although wounded, Enrique managed to pass his child to his brother in the ensuing uproar and attempted to crawl to safety. His attacker, however, followed and pumped more bullets into him. After firing the sixth shot, the assailant casually walked away. When the smoke cleared, Enrique Ganan and Corazon Cajipo, who caught a slug in her temple, lay bloodied and fatally wounded.

For the killing of Enrique, accused Edgardo Herrera was charged with Murder in an Information, docketed as Criminal Case No. 96-9225, whose accusatory portion alleges:

That on or about the 29[th] of day of May 1996, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, EDGARDO C. HERRERA alias "JUN", did then and there willfully, unlawfully and feloniously with intent to kill and qualified with treachery shoot one ENRIQUE GANA Y DURA with a .38 caliber revolver on the vital parts of the body which caused his instantaneous death.

Contrary to law.[1]

For Corazon's death, Herrera was indicted for Homicide in an Information, docketed as Criminal Case No. 96-9226, alleging -

That on or about the 29[th] day of May 1996, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused EDGARDO C. HERRERA alias "JUN", with deliberate intent to kill, did then and there willfully, unlawfully and feloniously shoot one ENRIQUE GANA y DURA with a .38 caliber revolver and as a consequence of which hit one CORAZON CAJIPO y FULGENCIO causing upon the latter a mortal wound which caused her instantaneous death.

Contrary to law.[2]

Upon arraignment on November 7, 1996, accused entered a plea of "Not Guilty" to the crimes charged.[3] The cases were consolidated[4] and tried jointly.

Subsequently, the court a quo rendered judgment against accused, finding him guilty beyond reasonable doubt of both crimes, thus:

WHEREFORE, judgment is hereby rendered in the aforementioned cases as follows;

(1) In Criminal Case No. 96-9225, the Court finds the herein accused EDGARDO HERRERA GUILTY beyond reasonable doubt of MURDER, defined and penalized in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, and in view of the presence of qualifying circumstances of Treachery (Article 14, par. 16, Revised Penal Code) and also the aggravating circumstance of taking advantage by the accused of his public position, (Article 14, par. 1, Revised Penal Code), the Court hereby sentences him to suffer the supreme penalty of DEATH; and

(2) In Criminal Case No. 96-9226, the Court finds herein accused EDGARDO HERRERA GUILTY beyond reasonable doubt of HOMICIDE defined and penalized in Article 249 of the Revised Penal Code, and in view of the presence of the aggravating circumstance of taking advantage of his public office (Article 14, par. 1, Revised Penal Code) and there being no mitigating circumstance to offset it, the Court hereby sentences him to suffer an Indeterminate Penalty ranging from Ten (10) Years and One (1) Day of Prison Mayor as Minimum to Seventeen (17) Years, Four (4) Months and One (1) Day of Reclusion Temporal as Maximum.

Accused is further ordered to pay the legal heirs of Enrique Ganan the amount of P50,000.00 as indemnity for the death and P50,000.00 for moral and exemplary damages.

Likewise, accused is ordered to pay the heirs of Corazon Cajipo the amount of P50,000.00 as indemnity for the death, P50,000.00 as moral and exemplary damages and the additional sum of P25,000.00 as actual damages for funeral and burial expenses.

Costs against herein accused in both cases.

SO ORDERED.[5]

On automatic review before this Court, accused professes his innocence, alleging that-

I

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT EDGARDO HERRERA GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AND HOMICIDE AND IN DISREGARDING HIS TESTIMONY THAT HE ACTED ONLY IN SELF-DEFENSE.

II

ASSUMING FOR THE SAKE OF ARGUMENT THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III

THE TRIAL COURT LIKEWISE ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE THAT ACCUSED TOOK ADVANTAGE OF HIS POSITION AS POLICE OFFICER.

On the other hand, the Solicitor General recommends that the penalty of Death be reduced to Reclusion Perpetua in Criminal Case No. 96-9225; and that the maximum penalty imposed in Criminal Case No. 96-9226, be within the medium period of Reclusion Temporal.

The prosecution's version of the incident is summed thus in the People's brief:

On May 29, 1996, around 6:30 p.m., Enrique Ganan was sitting on a steel chair at the compound premises of his home at 2218 Cinco de Junio Street, Pasay City,[6] near the corner of Propetario Street eating fishballs and cuddling is youngest daughter while engaged in a conversation with Ma. Rizza Aguilar.[7] His wife, Mariel Ganan, was about 1 ½ to 2 meters away from him. A neighbor, Corazon Cajipo, was chatting with Elena Sobrevilla and other neighbors while resting her chin on the fence at a distance of more or less 10 meters away

from where Enrique Ganan was seated.[8]

Appellant emerged from Propetario Street behind Enrique Ganan and positioning himself at his right side, placed his left hand on Ganan's right shoulder and uttered: "Saan si Pareng Yayi" (referring to deceased Enrique Ganan) while his right hand pointed a gun at Enrique Ganan. He immediately fired it at close range hitting Ganan at the right side of his the neck near his head.[9] Commotion ensued. Immediately after the first shot was fired, Enrique Ganan, although wounded, stood up and passed the child he was cuddling to his brother. Appellant shot him again.[10] At that instance, witness Ma. Rizza Aguilar took her daughter and Ganan's eldest daughter and ran for safety. Witness Ma. Elena Sobrevilla took Ganan's other child who was then running to her father. After the second shot Ganan was already sprawled on the ground but still tried to escape by crawling on the cement floor towards the direction of his house. Appellant still pursued him and fired several more shots hitting Ganan in different parts of the body. After the sixth shot, accused casually walked away from the crime scene. Elena Sobrevilla heard that a stray bullet hit somebody. When she turned her gaze to Cajipo, she found her lying on the ground with the left side of her head drenched in blood. Two bodies were found lying in the premises - that of Corazon Cajipo with a bloodied head and that of Enrique Ganan with several gunshot wounds. It was only then that Ganan's wife, Mariel, who was dumbfounded by the whole shooting incident, found the nerve to run to her husband and embrace him. She still found him breathing. Neighbors arrived and brought Enrique Ganan to the Manila Sanitarium Hospital but he was pronounced dead on arrival.[11]

The body of Enrique Ganan and Corazon Cajipo were brought to the Veronica Memorial Chapel, Pasay City for autopsy as shown by the Requests for Autopsy.[12] The autopsy on the cadavers of Enrique Ganan and Corazon Cajipo were conducted by Dr. Ludovico J. Lagat, Medico Legal Officer of the NBI on May 29, 1996. xxx xxx xxx.

In the first assigned error, accused-appellant admits having killed the victim but asserts that he did so in self-defense. To bolster his cause, accused-appellant contends that all the elements of self-defense are present in this case. First, he claims that there was unlawful aggression because the victim allegedly tried to grab his gun when he asked the latter what really happened during the birthday of Rene Carrasco. Second, he points out that in anticipation of the imminent danger posed when the victim allegedly tried to go for accused-appellant's gun, he had to use "reasonable means most immediate to the person being unlawfully attacked and resist such force without much contemplation of the means of the method to be used." [13] Thus, according to him, his act of shooting the hand of the victim to stop the latter from reaching for his gun "is nothing but proof of spontaneous reflexes of self-preservation and should not be taken against him." [14] Third, he insists that he did not provoke the victim because he was merely asking him what really transpired during the birthday celebration of Rene Carrasco where he lost consciousness. He wanted to know whether it was true that the victim and his cohorts kicked him and urinated on him while he was unconscious.

In *People v. Cabansay*, [15] we reiterated the rule that self-defense, "[a]s a justifying circumstance shifts the prosecutorial burden of proving the guilt of the accused to the accused himself who must prove the elements of such defense, to wit: 1.) unlawful aggression on the part of the victim; 2.) reasonable necessity of the means employed to prevent or repel it; and 3.) lack of sufficient provocation on the part of the person defending himself. [16] It is incumbent upon the accused to rely on the strength of his own evidence which must be clear, sufficient and convincing, and not on the weakness of the evidence for the prosecution." [17]

A circumspect scrutiny of accused-appellant's version of what happened, however, leaves the Court unconvinced that he killed Enrique Ganan in self-defense.

According to accused-appellant, two (2) days prior to the incident or on May 27, 1996 at about 5:30 p.m. while he was cooling himself outside his house, the victim and one Tito approached him and invited him to attend in the

birthday celebration of Rene Carrasco alias Tokwa.[18] The celebration was held at the house of the victim.[19] Upon his arrival, accused-appellant greeted the celebrant and shook his hand.[20] He likewise shook the hand of Enrique Ganan, who was his kumpadre, he being the godfather of one of the latter's children.[21] Accused-appellant was then handed a bottle of beer which he took to one side and drank sparingly inasmuch as he planned not to stay long because he was then recuperating from injuries he sustained when his car collided with a jeep.[22]

When the bottle of beer was almost consumed, he asked permission to leave from the celebrant and Enrique, but he was handed another beer by the victim and was prevailed upon to remain and to join the others seated at the table.[23] He, however, informed Rene Carrasco and Enrique that the second beer would be his last and he would be leaving after that because he was still recovering from the vehicular mishap.[24] After consuming the second bottle, he stood up and bade leave of the people present, however, after doing so he passed out.[25] He was brought home by one Edmund Del Mundo and a certain Bong[26] where he regained consciousness.[27]

Suspecting that his drink was drugged, accused-appellant induced himself to vomit by inserting a finger in his throat.[28] After vomiting, he again lost consciousness and awoke at around 10:00 a.m. the next morning.[29] He was told by his wife that the two (2) men who brought him home left his service firearm which, upon examination, he discovered to have only one bullet left as the rest were already fired.[30] After examining his revolver, his attention was called by his wife who told him that her cousin Gigi Cajipo, mother of Corazon Cajipo, wanted to talk to him.[31] Gigi then informed him that when he passed out, Enrique Ganan and the other people present during the birthday celebration fired his handgun and made fun of him by kicking him and urinating on him.[32]

Skeptical at first that his kumpadre would humiliate him thus, accused-appellant then decided to confront the victim about what really transpired during the drinking session.[33] He then instructed a boy named Gardo to check if the victim was at home,[34] and upon being informed by the latter that Ganan was already in his house, accused-appellant reloaded his revolver and walked over to the victim's place.[35] He came upon Ganan sitting on a white chair talking to several people.[36] What happened thereafter is narrated by accused-appellant, to wit:

ATTY. POLLO

Q

In what manner did you greet the deceased Ganan?

A

I greeted him good afternoon Pare, something bad might have happened during the birthday celebration of Rene Carrasco and its quite shameful.

Q

And what did he do after you greeted him?

A

I first asked Yaye what really transpired because I lost consciousness during that time.

Q

What in the first place was your purpose in talking with Ganan?

A

To know the whole truth of what really transpired when I lost consciousness and if they really kick[ed] and urinated [on] me and did something "pambababoy sa akin" and if its true we might as well forget each other as kumpare and return its (sic) other's candle and that if it's true also I'd rather leave that place and live in another place.

Q

When you asked Ganan with that question, what did he do?

A

He did not answer but instead, he grabbed my gun.

Q

Where is your gun located that time?

A

It was tucked at the right side of my waist and I was wearing a fatigue jacket.

Q

Was he able to grab the gun?

A

Yes, he was able to hold the muzzle of the gun.

COURT

Q

According to you it was tucked, meaning the muzzle of the gun is inside your waist? What was showing is the handle of the gun?

A

Yes, Your Honor.

Q

How was he able to grab the gun?

A

He was able to grab my gun but I pulled it out.

COURT

Q

So he was not able to grab your gun you pulled it out?

A

Yes Your Honor.

Continue.

ATTY POLLO

Q

So after pulling out your gun what happened Mr. Witness?

A

I was able to fire twice and my target was his hand.

COURT

Q

He is unarmed why did you shoot him?

A

because he was trying to grab the gun from me.

Continue.

ATTY POLLO

Q

So after firing your gun twice do you know if he was hit?

A

I do not know if he was hit.

Q

And after those two shots what did the victim Ganan do?

A

He was already standing by then and trying to reach up for my gun which at that time I was already raising my gun with my right hand pointed up.

COURT

Q

According to you you were already standing is it the understanding of the Court that when he allegedly tried to grab your gun he was just seated on that chair?

A

Yes Your Honor, he was still sitting but trying to stand up.

Continue.

ATTY POLLO

Q

By the way, who is taller between you, you or Ganan?

A

I'm taller than him sir.

Q

What is your height?

A

Five six and a half sir.

ATTY POLLO

Q

How about Ganan?

A

I think he is about five two sir.

Q

So what did you do when the victim was trying to reach your gun or grab the same?

A

I just raised my hand with my gun and he is still trying to take possession of it.

Q

And what happened?

A

Suddenly somebody pushed Yaye from behind and Yaye was able to pull my right hand downward.

Q

And after the victim was able to pull down your hand what happened?

A

With the push from behind Yaye, he fell on his knees, his hands was (sic) still holding on to my right hand a gunshot came from the place where I was facing.

COURT

Q

Are you trying to tell this Court that somebody shoot (sic) you when you were thrusting allegedly with Ganan?

A

Yes Your Honor.

ATTY POLLO

Q

So what did you do when you heard that shot.

A

I look[ed] at the place where the gunshot came and I saw nobody.

Q

How about Yaye what happened to Yaye?

A

He was still on his knees pulling my right hand and I still fired another shot aimed at his arm sir, to let go of my hand.

COURT

Q

So you shot him again?

A

Yes Your Honor.

ATTY POLLO

Q

And what happened after that?

A

I heard another shot coming from the same place where I first heard a gunshot.

COURT

Q

What did you do when you heard another gunshot in that direction where the alleged first gunshot was fired?

A

I was able to free my hand from the hands of Yaye and raised my hand with my gun and look[ed] where the gunshot came from, I did not make any step.

ATTY POLLO

Q

So what else transpired after this?

A

I saw Ganan pull up his shirt and looking at my face tried to pull a gun tucked in his waist.

COURT

Q

You saw the gun?

A

I just saw the handle because at first I did [not] notice that it was tucked in.

Q

At that time you saw Enrique Ganan pulling out his gun how many shots were then fired at him?

A

Three Your Honor.

ATTY POLLO

Q

So when you saw him trying to pull his gun what did you do?

A

I aimed my gun towards his hand which was then pulling his gun at his stomach.

COURT

Q

According to you the gun was tucked, how many times did you fire at him again this time?

A

Another shot Your Honor.

Q

So that is the fourth shot?

A

Yes Your Honor.

Q

All the four shots fired did it hit the deceased Ganan?

A

Only the fourth one Your Honor.

Q

How about the one you said you fired at his shoulder?

A

I am not sure if it hit him Your Honor.

ATTY POLLO

Q

And the fourth shot where did it hit Ganan?

A

He was hit in the head.

COURT

Q

You were aiming at his hand but you hit him in the head?

A

Well, it happened so fast while my gun was aimed at his hand, he suddenly stoop[ed] and [I] hit his head instead while I was looking at the direction where the gunshots are coming from.

ATTY POLLO

Q

So after firing the fourth shot what happened?

A

I look[ed] around to see if there were people hit.

Q

And what did you see?

A

I saw nobody hit.

Q

So what did you do next after seeing that there were no other persons hit?

A

I saw Ganan sprawled on the ground and I did not have a chance to bring him to the hospital because there was somebody shooting at me.

Q

So what did you do?

A

I left the scene.[37]

The foregoing narration of accused-appellant detailing the manner by which he supposedly defended himself from the assault of the victim is incredible.

First, accused-appellant claims that Ganan grabbed the muzzle of his gun only to turn around when he admitted that the gun was tucked in his waist and he pulled it out so the victim was not able to grab it. These contradictory accounts alone on how accused-appellant drew his gun seriously undermines his claim of self-defense.

Second, it is inconceivable how he could have aimed the weapon at Ganan's hand and then fire it when they were supposedly grappling for possession of the gun most of the time. The sequence described by accused-appellant where he held his revolver up in the air with his extended right hand and then fired a third shot at the victim before he resumed the same position particularly strains the credulity of the Court.

Third, going by accused-appellant's account, it simply goes against the grain of human experience for both accused-appellant and the victim who were supposedly grappling for possession of the revolver not to be

momentarily startled by not only one but two gunshots coming from another firearm. It is also highly unusual that Ganan would want to grab possession of the accused-appellant's handgun while the said gun was pointed at both of them.

Fourth, it is likewise unusual for accused-appellant, allegedly distracted by gunfire from an unidentified assailant and whose eyes are supposed to be focused towards the gunman, to have fired at point-blank range and to hit the victim at the back of the head had not the latter, for some arcane reason, stooped down as if to deliberately meet the oncoming bullet's trajectory.

Fifth, it is equally odd that while accused-appellant claims that he was fired upon, neither he nor the eyewitnesses to the incident was able to identify the supposed gunman, considering that it is the most natural reaction for victims of criminal violence to look at the faces of their assailants and observe the manner in which the crime was committed.[38] Most often, the face of the attacker, and his body movements create lasting impressions which cannot be easily erased from their memory.[39] Curiously too, neither were any slugs or spent shells from the alleged assailant's firearm recovered from the crime scene.

Sixth, accused-appellant mentions seeing a gun tucked in the waist of Ganan which the latter allegedly tried to pull out when he raised his shirt. However, other than accused-appellant's bare allegation that he saw the firearm tucked in the victim's waist, there is no other evidence on record to show that the alleged gun of the victim ever existed.

Seventh, the nature and number of the gunshot wounds negates accused-appellant's claim of self-defense. The victim suffered six (6) gunshot wounds on the head, shoulder, right arm, right hand, and right thigh. If accused-appellant shot the victim just to defend himself, it certainly defies reason why he had to pump several bullets on the head, shoulder, arm and thigh of the latter. What is more damning, Dr. Ludovino Lagat, the Medico Legal Officer who performed the autopsy on the victim testified that the most fatal wound located on the head, was inflicted not more than half an inch from behind,[40] or at point-blank range. It has been held in this regard that the location and presence of several wounds on the body of the victim is physical evidence that eloquently refutes accused-appellant's allegation of self-defense.[41]

Eighth, the calm and composed demeanor of accused-appellant in the face of an outrage committed on his person is not the normal behavior of someone who has just suffered the embarrassment of being urinated upon and kicked around in public when he confronted the alleged perpetrator of such an offensive affront on his dignity.

Ninth, accused-appellant's allegation of self-defense was established solely by his testimony. He failed to corroborate his claim of self-preservation with evidence other than his own testimony. In this connection, it has been held that the plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but is also extremely doubtful in itself.[42]

Succinctly stated, accused-appellant's tale is too riddled with loopholes to be believed. The Court has consistently held that to be credible, testimonial evidence should not only come from the mouth of a credible witness but it should also be credible, reasonable and in accord with human experience.[43] Verily -

. . . It is a well-settled rule that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself.[44] The test to determine the value or credibility of testimony of a witness is whether or not such is in conformity with common knowledge and consistent with the experience of mankind.

Even were the Court to accept accused-appellant's claim of self-defense at its face value, his pretensions at self-preservation do not inspire belief.

As the Court pointed out in *People v. Gadia*[45]: "Where an accused invokes self-defense, the burden is shifted to him to prove that he killed the victim to save his life. For this reason he must rely on his own evidence and not on the weakness of the evidence for the prosecution,[46] for such can no longer be disbelieved after the accused admits the killing.[47] He must prove the presence of all the requisites of self-defense, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; (3) lack of sufficient provocation on the part of the person defending himself.[48] Of these requisites, the most decisive is that the victim was guilty of unlawful aggression. This is because the theory of self-defense is based on the necessity on the part of the person being attacked to prevent or repel the aggression.[49] Hence, absent evidence of prior unlawful and unprovoked attack by the victim, the claim of self-defense cannot prosper." [50]

Although it is a cardinal principle in criminal law that the prosecution has the burden of proving the guilt of the accused, the rule is reversed where the accused admits committing the crime, but only in defense of one's self.[51] In interposing self-defense, accused-appellant admits authorship of the killing and the burden of proof is shifted to him to establish that the killing was justified.[52] Going by accused-appellant's account in this case, Ganan's initial reaction hardly amounts to unlawful aggression as contemplated by law. According to him, the victim tried to grab his gun which was still tucked in his waist but accused-appellant beat Ganan to it by pulling the revolver out. With the firearm already in accused-appellant's hand, there was no chance for the victim to use it against him.

Furthermore, taking into consideration accused-appellant's background and training as a policeman as well as his bigger build than the victim, not to mention the fact that the latter was seated when the altercation started, it was the victim and not accused-appellant who was, in fact, in a disadvantageous position. In other words, there was no imminent and real threat to the life or limb of accused-appellant under said circumstances. There was thus no justification for accused-appellant to fire at the victim. Assuming *arguendo* that the scenario described by accused-appellant above actually took place, it will not extricate him from his predicament. In *People v. Riduca*,[53] the Court rejected accused's claim of self-defense, thus:

Such evidence even if conceded to be true, does not make out a case of self-defense. Neither the words nor the acts attributed to the deceased in the foregoing testimonies indicate that there was any imminent or real threat or danger to the life or limb of appellant. xxx and if, indeed, Rillamas did take hold of the barrel of appellant's rifle or even tried to grab it, We do not believe it was justified for appellant "to remove the safety lock and fire" his weapon.

In their relative positions, appellant had more freedom of action than the deceased who was sandwiched among the three other passengers xxx whose position would have made it difficult for the deceased to try to snatch appellant's rifle. In other words, between the two of them, appellant had the better chance to win in the struggle for the rifle.

Indeed, an even closer scrutiny of accused-appellant's very own testimony only yields additional support for the prosecution's case. Accused-appellant, for instance, admitted that before he went to confront the victim, he made sure that his revolver was fully loaded.[54] He asked a boy named Gardo to observe Ganan's house to see if he was present and to report the matter immediately to him.[55] To these unmistakably preparatory acts must be added the fact that by accused-appellant's admission, he was subjected to the ignominy of being kicked and urinated upon by the victim. Even accused-appellant's description of the scene before the shooting incident closely resembles the account given by the prosecution witnesses.[56]

In sum, accused-appellant failed to corroborate his claim of self-defense with evidence other than his own testimony, despite the fact that there were other persons in the *locus criminis* when the incident happened and who, therefore, may have witnessed it.

In stark contrast, the evidence of the prosecution is well nigh overwhelming.

First, there were three (3) eyewitnesses to the incident, namely: Ma. Rizza Aguilar, Ma. Elena Sobrevilla and the victim's widow, Mariel M. Ganan. All three (3) eyewitnesses positively identified accused-appellant as the gunman who fired the shots which killed Enrique Ganan and Corazon Cajipo.[57] All three (3) eyewitnesses declared that Ganan was shot on his right by the accused-appellant from behind.[58] All three (3) eyewitnesses remained steadfast and unyielding on cross-examination that accused-appellant was the assailant who shot the deceased,[59] despite repeated attempts by defense counsel to throw them off track. While the said eyewitnesses may be either close or related by affinity to the victim, no less than accused-appellant himself admitted that he could not impute any ill-motive against any of them for testifying against him.[60]

Second, the physical evidence, namely the multiple gunshot wounds sustained by Enrique Ganan, belie to accused-appellant's testimony that he hit the victim only once. Indeed, the sheer number of wounds alone totally negates accused-appellant's pretensions at self-defense and, in fact, indicates a determined effort on his part to kill and not just defend himself.[61] Intent to kill may be deduced from the nature of the wound inflicted and the kind of weapon used.[62] In this case, accused-appellant was armed with a .38 caliber revolver. While the victim sustained only one head wound, its location and the distance from which it was fired confirms the prosecution's account that Ganan was shot from behind above the back of his right ear at point blank range.[63]

Third, immediately after the incident, accused-appellant fled to Batangas and hid there for one and a half (1½) months.[64] Flight strongly indicates a guilty mind and betrays the existence of a guilty conscience.[65] Indeed, flight is an implied admission of guilt and accused-appellant's act of fleeing to Batangas after shooting the victims cannot but betray his guilt and his desire to evade responsibility therefor.[66] Certainly, a righteous individual will not cower in fear and unabashedly admit the killing at the earliest possible opportunity if he were morally justified in doing so. If the accused-appellant honestly believed that his acts constituted self-defense against the unlawful aggression of the victim, he should have reported the incident to the police instead of escaping and avoiding the authorities.[67]

All told, the Court finds no reason to reverse the ruling of the court a quo insofar as the crimes were committed. What remains to be determined is the propriety of the penalties imposed on accused-appellant.

With regard Criminal Case No. 96-9225, Murder is the unlawful killing of any person when qualified by any of the circumstances listed under Article 248 of the Revised Penal Code.[68] Treachery or alevosia, aptly alleged in the information, is one such qualifying circumstance.

Given the prevailing facts of the case, the Court agrees with the trial court that the killing of Enrique Ganan was attended by alevosia. "There is treachery when the offender commits any of the crimes against persons, 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 make.[69] The qualifying circumstance of treachery attended the killing as the two conditions for the same are present, i.e. (1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.[70] The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on the part of the victim." [71]

In the case at bar, Enrique Ganan was in the comforts of his home, eating fishballs while cuddling his youngest daughter and was engaged in conversation with some visitors when he was shot in the head from behind by the gunman. As in the recent case of *People v. Padilla*, [72], treachery is evident when the accused-appellant suddenly positioned himself at the back of the unsuspecting victim, pointed his gun at him and, without any warning, promptly delivered the fatal shots. The victim was unaware of the attempt on his life and the danger that lurked

behind him. 5There was no way the victim could have defended himself, taken flight or avoided the assault. The attendance of treachery qualifies the killing to Murder.

As regards Criminal Case No. 96-9226, the Solicitor General points out that that there is jurisprudential support to upgrade the killing of Corazon Cajipo to Murder on account of alevosia although she was not the intended victim of the assailant.

Citing *People v. Basao*,^[73] the Solicitor contends that assuming the real object of the assault was Enrique Ganan and that the death of Corazon Cajipo was purely accidental, it does not modify the nature of the crime nor lessen the accused's criminal liability because when accused-appellant fired his gun, the attack was made in continuous aggression that cannot be broken up to constitute separate, distinct and independent assaults.

We agree but only insofar as it affirms accused-appellant's culpability for the death of Corazon. It cannot be said that a crime against a victim was qualified by treachery where he was hurt solely because he was in the wrong place at the wrong time.^[74] The flaw in the Solicitor's argument lies in his failure to appreciate the kind of firearm used and the number of shots fired by the malefactor in relation to an apparent confusion of what constitutes a complex crime under the Revised Penal Code. The concept of a complex crime is defined in Article 48 of the Revised Penal Code which states that -

ART 48. Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000)

The cases at bar clearly do not fall under any of the two instances of complex crimes that would merit the imposition of the prescribed penalty in its maximum period. In *Basao*, supra, the victims were on board their speeding motorcycle when they were fatally strafed with a volley of automatic gunfire from the accused's M-16 Armalite rifle. In this case, accused-appellant, using a single action .38 cal. Smith & Wesson revolver, fired several times. In *People v. Bermas*,^[75] reiterating the earlier ruling of *People v. Vargas, Jr.*,^[76] the Court observed that -

Evidently, this is a case where several persons were killed and others injured by successive shots. In the case of *People vs. Mones*, the Supreme Court found the accused guilty of three distinct and separate murders, each qualified by treachery, when the said accused fired a series of shots killing three persons attending a school commencement exercise. Similarly, in the case of *People vs. Desierto*,^[77] it was ruled that several shots from a Thompson sub-machinegun causing several deaths, although caused by a single act of pressing the trigger of the sub-machinegun, in view of its special mechanism, the person firing it only has to keep pressing the trigger of the sub-machinegun, with his finger and it would fire continually. Hence, it is not the act of pressing the trigger which should be considered as producing several felonies, but the number of bullets which actually produced them.^[78] ... Consequently, the accused should be responsible for each of the resultant crimes instead of the complex crime of double murder under Article 48 of the Revised Penal Code.

Be that as it may, the sad fact remains that for being at the wrong place at the wrong time, Corazon's life came to an abrupt end. On that fateful evening while she was chatting with a friend, her young life was cut short by a stray bullet fired from accused-appellant's gun. While it may not have been the intention of accused-appellant to shoot her, this fact will not exculpate him because, as we pointed out in *People v. Hilario*,^[79] "The fact that accused killed a person other than their intended victim is of no moment. According to Art. 4 of the Revised Penal Code, criminal liability is incurred by any person committing a felony although the wrongful act be different from that which is intended. One who commits an intentional felony is responsible for all the consequences which may naturally or logically result therefrom, whether foreseen or intended or not.^[80] The rationale of the rule is found in the doctrine, *el que es causa de la causa es causa del mal causado*, or he who is the cause of the cause is the

cause of the evil caused.[81] The accused performed voluntary acts. The purpose was to kill. Hence, notwithstanding the mistake in the identity of the victim, the accused is still criminally liable." [82]

The Court, however, agrees with the Solicitor General that the trial court improperly applied the aggravating circumstance of taking advantage of public position pursuant to Article 14, paragraph 1 of the Revised Penal Code in imposing the death penalty on accused-appellant for the killing of Enrique Ganan. To appreciate this aggravating circumstance, the public officer must use the influence, prestige or ascendancy which his office gives him as a means by which he realizes his purpose.[83] The essence of the matter is presented in the inquiry "Did the accused abuse his office to commit the crime?" [84]

In the case at bar, there was no showing that accused-appellant took advantage of his being a policeman to shoot Ganan or that he used his "influence, prestige or ascendancy" in killing the victim. Accused-appellant could have shot Ganan even without being a policeman. In other words, if the accused could have perpetrated the crime even without occupying his position, there is no abuse of public position.[85] The mere fact that accused-appellant is a policeman and used his government issued .38 caliber revolver to kill Ganan is not sufficient to establish that he misused his public position in the commission of the crime.[86] Furthermore, since the information failed to allege this aggravating circumstance, the same cannot be appreciated against accused-appellant. A generic aggravating circumstance must be alleged in the information if its appreciation would result in raising the penalty from reclusion perpetua to death.[87]

There being no modifying circumstances to be appreciated, the proper imposable penalty for the killing of Enrique Ganan is reclusion perpetua pursuant to Article 63, paragraph 2, in relation to Article 248 of the Revised Penal Code, as amended by R.A. No. 7659.[88]

So too must the penalty imposed by the trial court for the death of Corazon Cajipo be modified. The penalty for Homicide is Reclusion Temporal.[89] Considering that there is neither any mitigating nor aggravating circumstance, the imposable penalty as provided in Article 249, in conjunction with Article 64 (1) of the Revised Penal Code, is Reclusion Temporal in its medium period. Applying the Indeterminate Sentence Law, the proper penalty should be Ten (10) years of Prision Mayor, as minimum, to Seventeen (17) Years and Four (4) Months of Reclusion Temporal as maximum.

Following prevailing jurisprudence[90] and in line with controlling policy, the Court finds the award of P50,000.00 as civil indemnity for the death of the victims proper without any need of proof[91] other than the death of the victim.[92] The award of moral damages by the trial court to the victims' heirs is likewise proper and is pegged at P50,000.00 by controlling case law[93] taking into consideration the pain and anguish of the victim's family[94] brought about by his death.[95]

The award of P25,000.00 as actual damages for the funeral and burial expenses incurred by heirs of Corazon Cajipo, being amply supported by documentary evidence[96] is likewise sustained. However, with the absence of any aggravating circumstance, the award of exemplary damages should be deleted.[97]

WHEREFORE, the Decision dated September 27, 1999 of the Regional Trial Court of Pasay City, Branch 110, finding accused-appellant guilty beyond reasonable doubt of Murder in Criminal Case No. 96-9225, and finding accused-appellant guilty beyond reasonable doubt of Homicide in Criminal Case No. 96-9226, is hereby **AFFIRMED** with **MODIFICATIONS**. In Criminal Case No. 96-9225, accused-appellant is sentenced to suffer the penalty of Reclusion Perpetua; and in Criminal Case No. 96-9226, he is sentenced to suffer an indeterminate penalty ranging from Ten (10) Years of Prision Mayor, as minimum, to Seventeen (17) Years and Four (4) Months of Reclusion Temporal, as maximum. Further, accused-appellant is ordered to pay the heirs of Enrique Ganan the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages; and to pay the heirs of

Corazon Cajipo the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as funeral and burial expenses. The award for exemplary damages is DELETED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.
Buena, J., on official leave.

[1] Record, p. 1

[2] Ibid., p. 41.

[3] Id., pp. 88, 91.

[4] Id., p. 91.

[5] Id., p. 320.

[6] TSN, 18 March 1997, p. 8.

[7] Ibid., pp. 8-10; TSN, 27 February 1998, p. 6.

[8] TSN, 27 February 1998, pp. 5-7; 2 October 1998, pp. 8-9; 5 August 1997, p. 5.

[9] TSN, 18 March 1997, pp. 10, 15; 27 February 1998, p. 8.

[10] TSN, 27 February 1998, p. 8-10.

[11] TSN, 5 August 1997, pp. 4-34; 27 February 1998, pp. 11-17; 18 March 1997, pp. 8-16.

[12] Exhibits A and F.

[13] Appellant's Brief, p. 9.

[14] Ibid.

[15] G.R. No. 138646, 6 March 2001, p. 7.

[16] Revised Penal Code, Article 11; *People v. Arizala*, 317 SCRA 244, 251 [1999], citing *People v. Navarro*, 295 SCRA 139 [1998] and *People v. Villamor*, 292 SCRA 384 [1998].

[17] *People v. Vallador*, 257 SCRA 515, 524 [1996], citing *People v. Quino*, 232 SCRA 400 [1994] and *People v. Alviado*, 247 SCRA 300 [1995].

[18] TSN, 17 March 1999, pp. 6-7.

[19] Ibid., p. 8.

[20] Id.

[21] Id.

[22] Id., p. 9.

[23] Id., pp. 10-11.

[24] Id., p. 12.

[25] Id.

[26] Id., p. 13.

[27] Id.

[28] Id.

[29] Id.

[30] Id., p. 14.

[31] Id.

[32] Id., p. 15.

[33] Id., pp. 15-16.

[34] Id., p. 16.

[35] Id., p. 17.

[36] Id., p. 18.

[37] TSN, 17 March 1999, pp. 19-23.

[38] *People v. Dee, et al.*, G.R. Nos. 115251-52, 5 October 2000, 342 SCRA 115, 124, citing *People v. Pulusan*, 290 SCRA 353, 372 [1998].

[39] *People v. Arellano*, G.R. No. 131518, 17 October 2000, 343 SCRA 276, 286, citing *People v. Dolar*, 231 SCRA 414 [1994].

[40] TSN, 22 January 1997, pp. 46-47.

[41] *People v. Samudio*, G.R. No. 126168, 7 March 2001, p. 9, citing *People v. Saragina*, 332 SCRA 219 [2000].

[42] *Del Rosario v. People*, G.R. No. 141749, 17 April 2001, p. 6, citing *Jacobo v. CA*, 270 SCRA 270 [1997].

[43] *People v. Gonzales*, G.R. No. 106873, 3 October 2000, 341 SCRA 688,705, citing *People v. Atad*, 266 SCRA 262 [1997]; *People v. Cayabyab*, 274 SCRA 387 [1997]; *People v. Manambit*, 271 SCRA 344 [1997]; *People v. Salazar*, 272 SCRA 481 [1997].

[44] *People v. Cayabyab*, 274 SCRA 387, 398 [1997]; *People v. Obzunar*, 265 SCRA 547, 567 [1996].

[45] G.R. No. 132384, 21 September 2001, pp. 17-18.

[46] *Del Rosario v. People*, G.R. No. 141749, 17 April 2001.

[47] *People v. Rabanal*, G.R. No. 119542, 19 January 2001.

[48] *People v. Pantorilla*, 322 SCRA 337 [2000].

[49] *People v. Florague*, G.R. No. 134779, 6 July 2001.

[50] *People v. Francisco*, 333 SCRA 725 [2000].

[51] *People v. Magallanes*, 275 SCRA 222 [1997].

[52] *People v. Camacho*, G.R. No. 138629, 20 June 2001, p. 7, citing *People v. Unarce*, 270 SCRA 756 [1997].

[53] 55 SCRA 190, 199 [1974].

[54] TSN, 6 April 1999, p. 16.

[55] TSN, 17 March 1999, p. 16.

[56] *Ibid.*, p. 18.

[57] TSN, 18 March 1997, pp. 6-7; 5 August 1997, pp. 6-9, 13-14; 27 February 1998, pp. 6-8.

[58] TSN 18 March 1997, p. 19; 5 August 1997, p. 19; 27 February 1998, pp. 8-9

[59] TSN, 18 March 1997, pp. 26-36; 5 August 1997, pp. 26-31; 2 October 1998, pp. 10-28.

[60] TSN, 6 April 1999, pp. 24-25.

[61] *People v. Baniel*, 275 SCRA 472 [1997].

[62] *People v. Bayod*, G.R. No. 122644, 5 February 2001, p. 16.

[63] TSN, 22 January 1997, pp. 22-23, 42-47.

[64] TSN, 6 April 1999, pp. 24-27.

[65] *People v. Mira*, G.R. No. 123130, 2 October 2000, 341 SCRA 631, 642, citing *People v. Bahenting*, 303 SCRA 558, 566 [1999].

[66] *People v. Surilla*, G.R. No. 129164, 24 July 2000, 336 SCRA 376, 386, citing *People v. Villanueva*, 284 SCRA 501,510 [1998].

[67] *People v. Manlulu*, 231 SCRA 701, 709 [1994].

[68] *II Reyes*, Revised Penal Code, p. 472, 14th Revised Ed. (1998).

[69] Revised Penal Code, Article 14, par. 16.

[70] *People v. Galam*, 325 SCRA 489 [2000].

[71] *People v. Garcia*, G.R. No. 129216, 20 April 2001, p. 17, citing *People v. Sumalpong*, 284 SCRA 464 [1998].

[72] G.R. Nos. 138472-73, 9 August 2001, p. 12; see also *People v. Perreras*, G.R. No. 139622, 31 July 2001, p. 9 and *People v. Barellano*, 319 SCRA 567, 588-589 [1999].

[73] 310 SCRA 743, 777 [1999].

[74] *People v. Guillermo*, 302 SCRA 507 [1999].

[75] 309 SCRA 741, 782 [1999].

[76] 184 SCRA 254 [1990]; see also *People v. Parajinog*, 203 SCRA 673 [1991].

[77] C.A. 45 O.G. 4542.

- [78] I Reyes, Revised Penal Code, pp. 559-560, 9[th] Revised Ed. (1971).
- [79] G.R. No. 128083, 16 March 2001, p. 10.
- [80] I Reyes, Revised Penal Code, p. 64, 12[th] Revised Ed. (1981).
- [81] *People v. Ural*, 56 SCRA 138 [1938].
- [82] *Supra*; see *People v. Oanis*, 74 Phil. 257 [1943].
- [83] *Supra*.
- [84] *People v. Magayac*, 330 SCRA 767, 777 [2000], citing *U.S. v. Rodriguez*, 19 Phil. 150, 156-157 [1911].
- [85] *People v. Joyno*, 304 SCRA 655, 670-671 [1999].
- [86] *People v. Villa, Jr.*, 331 SCRA 142, 154 [2000], citing *People v. Pantoja*, 25 SCRA 468, 471-472 [1968]; *People v. Magayac*, *supra*.
- [87] *People v. Legaspi*, G.R. Nos. 1336164-65, 30 April 2001, pp. 13-14.
- [88] *People v. Lao-as*, G.R. No. 126396, 29 June 2001, p. 8; *People v. Perreras*, *supra*.
- [89] *People v. Consejero*, G.R. No. 118334, 20 February 2001, p. 14.
- [90] *People v. Amion*, G.R. No. 140511, 1 March 2001, p. 13; *People v. Court of Appeals, et al.*, G.R. Nos. 103613 & 105830, 23 February 2001, p. 52, citing *People v. Pedroso*, G.R. No. 125128, 19 July 200, 336 SCRA 163; *People v. Go-od*, G.R. No. 134505, 9 May 2000, 331 SCRA 612; *People v. Flores*, G.R. No. 129284, 17 March 2000, 328 SCRA 461.
- [91] *People v. Concepcion, et al.*, G.R. No. 131477, 20 April 2001, p. 18, citing *People v. De Vera*, 312 SCRA 640 [1999].
- [92] *People v. Mindanao*, G.R. No. 123095, 6 July 2000, 335 SCRA 200; *People v. Quijon*, 325 SCRA 453 [2000]; *People v. Buluran*, *supra*.
- [93] *People v. Pardua, et al.*, G.R. No. 110813, 28 June 2001, citing *People v. Jabonero*, G.R. No. 132247, 21 May 2001; *People v. Ereneo*, 326 SCRA 157 [2000].
- [94] *People v. Alba, et al.*, G.R. Nos. 130627 & 139477-78, 31 May 2001, p. 15, citing *People v. Ereneo*, *supra*.
- [95] *People v. Langit*, 337 SCRA 323 [2000]; *People v. Mindanao*, *supra*.
- [96] Exhibits T, U and V.
- [97] *People v. Maneng*, G.R. No. 123147, 13 October 2000, 343 SCA 88, 96, citing *People v. Abdul*, 310 SCRA 246 [1999]; *People v. Guzman*, 326 SCRA 131 [2000]; *People v. Quilatan*, G.R. No. 132725, 28 September 2000, 341 SCRA 247, 257, citing *People v. Estares*, 282 SCRA 524 [1997].

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