

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JEREMIAS T. PEREDA, ACCUSED-APPELLANT.*G.R. Nos. 268510 and 274142, August 11, 2025*

Ponente: LOPEZ, J., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-268510/>**LOPEZ, J., J.:**

This Court resolves the following consolidated cases: (1) the Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court filed by Jeremias Pereda y Tolete (Pereda), seeking to reverse and/or set aside the Decision[2] of the Court of Appeals (CA), which affirmed the Decision[3] of the Regional Trial Court (RTC) convicting him, Arnel Oares y Gastillo (Oares), and Jerwin Cruz y Roque (Cruz) (collectively, the accused) of the crime of murder and imposing upon them the penalty of reclusion perpetua without eligibility for parole, which this Court treated as an appeal in Our July 22, 2024 Resolution;[4] and (2) the respective Appeals filed by Oares[5] and Cruz[6] also seeking to reverse and/or set aside the same Decision of the CA and its subsequent Resolution.[7]

In Criminal Case No. C-102925, Pereda, Oares, and Cruz, together with Renato Perez Loveras @ Nono @ Nonong (Nono),[8] who was then at large, were charged with the crime of murder in connection with the killing of Kian Loyd Delos Santos (Kian):

That on or about the 16[th] day of August 2017, at about 8:30 o'clock in the evening, at Barrio Libis, Baesa, Caloocan City, Philippines and within the jurisdiction of this Honorable Court, [the] above-named accused PO3 Arnel G. Oares, PO1 Jeremias T. Pereda[,] and PO1 Jerwin R. Cruz, with the indispensable cooperation of accused Renato Perez Loveras @ Nono @ Nonong, with intent to kill and without any justifiable motive, with treachery, abuse of superior strength, with evident premeditation, with the use of firearm, and committed during nighttime, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously assault and shoot one Kian Loyd Delos Santos, a seventeen (17)-year old minor, thus inflicting upon him gunshot wounds at the back of his head, which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the deceased.

CONTRARY TO LAW.[9]

In Criminal Case Nos. C-102926 and C-102927, the accused were also charged with the crime of planting of evidence under Republic Act Nos. 10591 and 9165.[10]

The accused each entered a plea of not guilty.[11] Trial then followed.

The prosecution presented the following witnesses: (1) Sheen Concepcion (Sheen); (2) Princess Ann Alano (Princess); (3) Ma. Luisa J. Walican (Luisa); (4) Abraham Montano, Jr. (Abraham); (5) Randy Delos Santos (Randy); (6) Saldy Delos Santos (Saldy); (7) Dr. Erwin Erfe (Dr. Erfe); (8) Joselito Sarmiento Gallas (Joselito); (9) Hiyasmin G. Abarrientos (Abarrientos); (10) Police Chief Inspector Avelino U. Andaya (PCINSP Andaya); (11) PCINSP Engineer Richard Allan B. Mangalip (PCINSP Mangalip); and (12) PCINSP Dr. Jocelyn Padilla-Cruz (Dr. Padilla-Cruz).

Sheen, who was 14 years old at the time of the testimony, testified that she knew Kian as they had been friends since 2013, and she referred to him as "Kuya Kian" throughout her testimony. She described him and his family as helpful and kind. On August 16, 2017, she was out running an errand at a pharmacy (botika) located in front of their house. There, she noticed two motorcycles approaching, with the black one parking beside the pharmacy. Three persons alighted from the black motorcycle, two of them wearing black shirts and helmets, and another one wearing a red shirt and a helmet. She then stated that the person wearing a red shirt took off his helmet, and she later identified the person as "Nono." She identified the two persons wearing black shirts as Oares and Pereda, and also identified them in open court. She then heard Oares and Pereda ask Nono "nasaan na yung bahay ng sinasabi mong mag-aabot sa iyo ng droga?"[12] Nono pointed to Kian's house, and the three of them proceeded to the house. She then saw Oares, Pereda, and Nono kicking the gate of Kian's house and saying "walang gagalaw, walang gagalaw." [13]

After that, Sheen went back home as she forgot what she was supposed to buy. She told her sister about the men she saw and speculated that they might fire a gun. After her sister reminded her what to buy, Sheen went back to the pharmacy, where she noticed Oares, Pereda, and Nono making their way back to their motorcycles. She saw Lala, Kian's sister, crying in front of Kian's house. Sheen asked why she was crying and the latter responded that someone was looking for Kian. Then, she went back to the pharmacy where she found the three men and Nono. She noticed that whenever someone passed by, they would ask Nono if he had been referring to that person. Eventually, Nono pointed at Kian, who was passing by.[14]

Oares and Pereda then frisked Kian from the shoulder down. At this time, Kian was wearing a blue shirt and boxer shorts. When they finished, they said "oh, ano ito?"[15] and held what appeared to Sheen as drugs. Kian was then boxed by one of the two men, although Sheen could not tell who between the two of them punched him. Kian was crying when he begged, "[s]ir tama na po, pauwiin niyo na po ako kasi po may exam pa po ako bukas." [16] He was then made to sit on the ground beside the pharmacy. This time, Sheen was standing around three meters away from Kian. Sheen observed that Kian was being made to hold a towel that covered what appeared to be a firearm. Kian replied "[s]ir, ayaw ko po natatakot po ako." [17] Then, Kian was made to stand and his shirt was raised to cover his head.[18]

As Oares, Pereda, and Kian were about to walk, a man wearing a green shirt passed by and asked Oares and Pereda where they were bringing Kian, saying "saan natin dadalhin yan, sa prisinto ba o sa baba?" [19] The man wearing the green shirt was identified as Cruz, whom Sheen also identified in open court. Sheen added that she heard either Oares or Pereda answer "[i]baba na lang natin ito," [20] but she could not identify who said it.[21]

Then, Oares and Pereda dragged Kian going towards the basketball court. Cruz accompanied them. Sheen described Kian to be in between Oares and Pereda, and that an arm was around his neck while his shirt was pulled up. As Kian was dragged, she observed that Kian's slippers were left near one of the stores going towards the basketball court. At this time, Nono was handcuffed to one of the motorcycles.[22]

Sheen then went home. Princess later arrived at Sheen's house and she told Sheen that Kian was killed in an area near the riverside, and Sheen remarked that she saw him being taken by the men. Princess and Sheen then went to Kian's house, where they saw Kian's grandfather, whom they asked where Lala was. He replied that Lala went to the police precinct to get Kian. Sheen then went to the pharmacy where she waited for Lala and there she told Lala that she saw Kian being taken. Princess said that Kian was the one that was killed. Then, Saldy, Kian's father, arrived. Sheen repeated to him what she told Lala. Saldy told her not to joke around. After that, Saldy, Lala, and Sheen rushed to the riverside area, where they found Kian face down on the mud and holding a gun. Saldy cried. Sheen left because of what she witnessed and she cried upon arriving home.[23]

On cross-examination, Sheen clarified that the pharmacy was approximately two houses away, or around 12 to 15 meters away, from Kian's house. Further, the second motorcycle did not stop near the pharmacy but went to the basketball court, and that the person riding it was in police uniform. When she saw Kian being made to hold a gun wrapped in a towel, she was around five meters away.[24]

Next, Princess, who was 17 years old at the time of her testimony, testified that at around 8:00 p.m. on August 16, 2017, she was with Luisa near the pharmacy buying something when one motorcycle parked nearby, while another motorcycle proceeded to the basketball court. She then saw Oares, who she said was wearing green, and Pereda, who was in black, talking to Kian. The three were around 10 to 12 meters away from her. She identified Oares and Pereda in open court. At the time, Kian was wearing a blue shirt and a pair of boxer shorts. She added that Cruz was on the other motorcycle that was parked in the basketball court. Princess saw Oares and Pereda talking to Kian before she and Luisa started walking towards the basketball court. Oares and Pereda overtook them while telling people to get out of the way. They were dragging Kian with them. As Princess and Luisa were about to reach the house of Luisa near the basketball court, Princess saw Oares pushing Kian to the dark alley, which she referred to as the dulo. Next, she heard gunshots, but she did not know who fired the gun. Hearing these gunshots, she ran to the house of Luisa which was approximately four meters away, where she stayed until the gunshots subsided.[25]

On cross-examination, Princess confirmed that Luisa's house was approximately 60 meters from the pharmacy and another 10 meters from Luisa's house was where she saw Oares, Pereda, and Kian prior to Kian being pushed to the dark alley. She testified that the place where Kian was shot was approximately 10 to 12 meters away from where Kian was pushed. Responding to the clarificatory questions asked by the RTC, Princess stated that around two minutes after she saw Oares and Kian, she heard more than four gunshots.[26]

On re-direct examination, Princess was asked to sketch the relevant places she referred to in her testimony. She drew and pointed out the following: the pharmacy where she first saw Kian with Oares and Pereda; the alley leading to the basketball court area where she saw Oares dragging Kian, then another alley leading to Luisa's house; a vacant lot beside Luisa's house; and another house beside the vacant lot. In front of this house is a pigpen, leading to another alley, and Princess clarified that Oares pushed Kian in that alley, which she also referred to as the dulo.[27]

Luisa was near the pharmacy and was supposed to buy rice on the night of August 16, 2017 when she came across three police officers; she identified two of these officers in open court as Oares and Pereda. She saw the three police officers with a person wearing a blue shirt and boxer shorts, who she later confirmed was Kian. She stated that it was Pereda, wearing a black hooded jacket, who locked his arm around Kian's neck. She was not sure if Cruz was the one wearing a cap holding the left arm of Kian. She stated that it was Oares who was wearing green and was behind Kian. The four passed by the area where the basketball court was located and were going in the same direction as her house. She noted that Pereda was dragging Kian. She was 27 steps away from them when she heard Kian say "Sir, huwag po, sir" while in a sitting position covering his head with his hands. While Pereda was dragging Kian to the pigpen to where Cruz was waiting, Oares was standing by the side of a house.[28]

Luisa testified that after Kian was dragged to the pigpen, she saw Pereda fire his gun three or four times at Kian. Oares also fired his gun several times. Cruz was standing guard, while the other two police officers were firing their guns. She got scared so she ran towards Princess and the two of them went to the house of a neighbor and then later, to Luisa's house. While going back to her house, Luisa saw police officers standing nearby. She asked an individual there why the person was killed, and they responded "[n]anlaban po eh." She could not ascertain whether the man she asked was a barangay tanod or police officer. Kian, who was in a blue shirt and a pair of boxer shorts, was already lying down and covered. The body of Kian was uncovered and Luisa was asked if she

knew who that person was. Fearing retaliation, she responded that she did not.[29]

On cross-examination, Luisa confirmed that she was standing inside the gate of her house around 27 steps away from where Kian was shot. While the area was dark, she was able to see them fire the gun because there was a glimpse of light that allowed her to see from such distance. There was also a hole in her gate so she was able to see from inside.[30]

The RTC asked clarificatory questions from Luisa. She confirmed that she was around three to four meters behind the police officers as they dragged Kian.[31]

Abraham, a barangay officer of Barangay 160, was presented next. He was in charge of operating the closed circuit television (CCTV) in the barangay. On August 17, 2017, Randy, Kian's uncle, went to the barangay hall to request CCTV footage from August 16, 2017, between 7:30 p.m. and 8:30 p.m. He said that he saved the footage from 8:00 p.m. to 8:30 p.m. because it was the portion that showed two persons dragging a third person, with a fourth person following them. A CCTV footage was played in court, showing that at around 8:24 p.m., two persons in civilian clothes passed by a basketball court: one wearing what appeared to be a sweater with a hood, and one wearing a cap. They were manhandling another person. After a few seconds, another person followed, wearing a cap in reverse. Abraham also copied the video from the DVR to a USB flash drive upon the request of the National Bureau of Investigation (NBI), and he handed the USB flash drive to the prosecutor in open court.[32]

Randy, Kian's uncle, testified next. He identified his Sinumpaang Salaysay, and confirmed that he was the informant in Kian's Certificate of Death, which he also identified. He explained that he identified Kian in the CCTV footage because of the clothes worn by Kian at that time.[33]

Saldy, Kian's father, identified the Letter-Request he sent to the Public Attorney's Office (PAO), the Complaint-Affidavit that he prepared, and the official receipts proving cemetery and funeral expenses for Kian totaling PHP 45,000.00. He also testified that Kian's death had a great effect on their family, as his wife, who was working overseas, came home without finishing her contract; his other son who was working left his job; and his daughter stopped studying.[34]

Dr. Erfe, director of the PAO Forensic Laboratory Services, testified that on August 21, 2017, he, together with other members of the forensic team and PAO lawyers, proceeded to Kian's house to perform an examination of Kian's cadaver as requested by his family. The PAO forensic team started the examination with a surface examination of the cadaver, then took its photos and videos. They noticed five gunshot wounds, three of which were entry wounds and two were exit wounds.[35]

Joselito testified that he knew Kian since the latter was 8 years old. At around 8:00 p.m. on August 16, 2017, he was in front of a house beside Kian's house, when Kian arrived and they talked. He observed nothing unusual about Kian at that time and recalled that Kian was wearing a blue shirt, blue boxer shorts, and red slippers. After their conversation, Joselito went home for dinner and then returned to the house beside Kian's house, where he saw many persons in the vicinity. He also saw police officers in civilian clothes, and two of them went up to Kian's house while another one was left outside. After seeing that, he and some companions went to the highway, and then he returned home. He then went to his sister's house which was on the same street where Kian's house was and where the incident happened. Before reaching his sister's house, police officers stopped him and he was told that there were some gunshots fired in the area.[36]

Joselito attested that for the length of time that he knew Kian, there was no instance where Kian was involved in any violent incident, quarrel, or illegal activity.[37]

Abarrientos, a ballisticsian from the Firearms Investigation Laboratory Division of the NBI, testified that on August 21, 2017, she and the investigation team went to the incident site to conduct trajectory examination on the bullet dent and graze that was found.[38] She identified FILD Report No. 121-21-8-2017,[39] which she prepared containing her findings,[40] and summarized their findings on the bullet trajectory examination. It stated that one bullet dent was "found at the lower part of the concrete fence and was fired in a downward direction slightly inclining to the right," while one bullet mark found at the wooden stand was "fired on a downward direction inclining to the right." [41]

Abarrientos also testified on her findings, confirming that upon examining one of the bullet dents on the wall, the possible direction of the shot was going downward and slightly inclining to the right. Examining the mark which was on a wooden stand, she found that the same was caused by a grazing bullet and concluded that the gunshots causing the dent and the mark were probably caused by two persons.[42]

PCINSP Andaya of the Crime Laboratory Office of the Northern Police District (NPD), led the team that conducted crime scene processing at around 10:00 p.m. on August 16, 2017. The team was able to recover from the scene four fired cartridge cases, one firearm magazine, one .45 caliber firearm, and two plastic sachets containing white crystalline substance. Upon clarification from the RTC, PCINSP Andaya confirmed that the investigators were already at the scene when they arrived. Upon his arrival, the victim was face down in a squatting position, leaning to the right towards the wall, and holding a .45 caliber firearm on his left hand. Two of the fired cartridges were found on the left side of the victim. When asked for the distance of the fired cartridges from the victim, PCINSP Andaya stated that from a reference point, which is the post of a nearby house, the body was 10.5 feet away from the said point, while the two cartridges were 5.5 feet and 6 feet away from the reference point. The two sachets containing white crystalline substance were found inserted inside the brief of the victim, who was also wearing blue shorts aside from the said brief.[43]

In the Inventory of Evidence,[44] which PCINSP Andaya saw his fellow officer prepare and was incorporated into the August 16, 2017 Memorandum with the subject "After SOCO Report: re-Shooting Incident,"[45] the .45 caliber firearm with serial no. 561852 was marked as "KLD," two fired cartridge cases from an alleged .45 caliber firearm were marked as "KLD-1" and "KLD-2" while two fired cartridge cases from an alleged caliber 9mm firearm was marked as "KLD-5" and "KLD-6." [46]

PCINSP Mangalip testified that he prepared reports on the examinations he conducted on the pieces of evidence recovered from the scene, and identified these reports.[47]

In the Chemistry Report No. D-144-17-S,[48] it was found that the two specimen tested positive for methamphetamine hydrochloride. In Chemistry Report No. C-203-17,[49] it was found that a caliber 9mm firearm with serial no. M00272Z tested positive for the presence of gunpowder nitrates. PCINSP Mangalip attested that this firearm is the service pistol of Oares who was present at the time the cotton swab of the firearm was taken. He added later that Oares turned over this firearm to him, and after the firearm was swabbed, it was returned to Oares. PCINSP Mangalip also stated that he conducted a test for the presence of gunpowder nitrates on two other firearms in Chemistry Report No. C-203-17, which yielded negative results. He also confirmed that based on the examination, the hands of Kian's cadaver yielded negative results on the presence of gunpowder nitrates,[50] per Chemistry Report No. C-58-17,[51] which he identified. He then explained that this result meant that the hands of the victim did not fire any firearm.[52]

Dr. Padilla-Cruz, a Medico-Legal Officer at NPD Crime Laboratory, performed an autopsy on Kian's cadaver while it was at the morgue.[53] After an autopsy, she noted all injuries in Medico-Legal Report No. A17-454N,[54] with attached anatomical sketches, which she identified in court.[55]

Based on her examination, Dr. Padilla-Cruz testified that she found two gunshot wounds on the head of the cadaver. She opined that the possible distance from the tip of the barrel of the gun to the wounds were around 60cm or two feet. Based on the location and trajectory of the wounds, she said that the possible position of the victim was in a sitting or kneeling position at the time the wounds were inflicted. For the first gunshot wound, she added that since the injury was on the left side and at the back of the ear, it was less likely that the victim had seen the assailant when the wound was inflicted. As to the second gunshot wound, it was located at the back of the forehead and as such, the victim would not have seen the assailant. She also confirmed that the cause of the victim's death were the gunshot wounds in his head, which finding was also noted in the Certificate of Death that she prepared and identified in court.[56]

The defense presented the following as witnesses: (1) Oares; (2) Police Inspector Jerry Tomas Damaso (PINSP Damaso); (3) Pereda; and (4) Cruz.

Oares testified that at around 8:00 p.m. on August 16, 2017, he was in Barangay 160, Libis Baesa, Caloocan City conducting the One Time Big Time Operation. The police officers positioned themselves in various places, and he was at an alley and heading to the basketball court. He was with Cruz, Pereda, and the asset. He said that the asset was with them because there were reports of drug trade activity in the area and the asset supposedly had information on a "pot session activity." When they were about to reach the basketball court, he said that the asset asked to cover his face to protect his identity, and Pereda and Cruz covered the face of the asset with his shirt. They passed through the basketball court, and they arrived at a dark narrow path going to the right. As they were about to turn right on the path, one or two persons, approximately 10 meters away, fired a shot towards them. Oares instructed Pereda and Cruz to secure the asset as he would follow where the gunshot came from. Pereda and Cruz, together with the asset, turned right while Oares turned left and proceeded to where the gunshot came from. Oares said that two shots were fired at him while he was able to fire his gun around twice. While he was running after the shooter, he was able to fire his gun three to four times. When the shooter was no longer firing back, he called his police chief while hiding, telling him that there was an encounter, and waited for his police chief to arrive. After around five minutes, the police chief, Pereda, and Cruz arrived at the area where the encounter happened. The police chief then called an investigator and secured the scene. He clarified that he was hiding around five to six meters away from where the victim was found.[57]

On cross-examination, Oares testified that he could not recall the name of the asset he mentioned earlier.[58] When asked as to what the manual or procedure for the Philippine National Police (PNP) provided for in situations where there was gunfire, he replied that "if it is an operation and if there is a gunshot fired towards us[,] we have the right to retaliate." [59]

PINSP Damaso identified Firearms Identification Report No. FAIS-579-SOCO-17, which involved the firearms examination he performed on a firearm with serial no. 561852 and four fired cartridge cases recovered from the scene. He was able to determine that two of the fired cartridge cases, marked as "KLD-1" and "KLD-2" were fired from the firearm with serial no. 561852.[60]

Pereda testified that on the night of August 16, 2017, he was at Barangay 160, Libis Baesa, Caloocan City conducting Oplan Galugad. He stated that he, together with Oares who was the team leader, and Cruz started patrolling together with an asset. He claimed that this asset will point to them where a "pot session" is being held and point out the person to whom they will serve an arrest warrant. When they passed the basketball court, the asset pointed to the place where the "pot session" was supposedly being conducted, and at the end of the court, they turned to the right and into a dark, winding, and narrow road. While they were traversing this road, someone fired a gun at them and they took cover. Oares retaliated, and said that the shooter ran away. They proceeded towards a road going down towards the river, and upon reaching the river, Oares instructed that they should

secure the asset while Oares would run after the shooter. Pereda said that they secured the asset going to the right, while the shooter ran towards the left. Pereda did not know the asset personally, but he is supposedly known as alias "JR." He claims that the person who was seen with him in the CCTV footage was in fact this asset, and not Kian.[61]

On cross-examination, Pereda stated that he could not remember any of the names of the other police officers who were allegedly with him when he conducted Oplan Galugad.[62]

Cruz testified that on the night of August 16, 2017, he was in Barangay 160, Libis Baesa, Caloocan City conducting Oplan Galugad together with Oares, who was their team leader, Pereda, and an asset. They were with an asset because he would supposedly point out places where there was an ongoing "pot session" and to point out the person subject of a warrant of arrest that they were going to serve. They first went to where the supposed "pot session" was ongoing. Along the way they passed by a basketball court and they turned into a narrow and dark alley. Then, shots were fired towards them and they took cover. Around two shots were fired at them. Oares fired back. They went down near the river until they reached a dark place. At that point, Oares instructed them to secure the asset, so Pereda and Cruz, together with the asset, went to the right while the shooter turned to the left. Oares then informed them that he will be running after the shooter. Cruz did not personally know the asset but they called him "JR." [63]

On cross-examination, Cruz affirmed that he could not ascertain from which directions the shots came from when they were fired at. He also clarified that the hands of all three officers were not subjected to paraffin examination.[64]

In its Decision,[65] the RTC found the three accused guilty of murder, and acquitted them of the charges for planting of evidence, as follows:

WHEREFORE, premised on the foregoing considerations, judgment is hereby rendered as follows:

a. In Criminal Case No. C-102925, the court finds accused PO3 Arnel Oares [y] [Gastillo], PO1 Jeremias Pereda [y] Tolete[,] and PO1 Jerwin Cruz [y] Roque GUILTY of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, and hereby sentences each of the accused to suffer the penalty of Reclusion Perpetua without eligibility [for] parole under Republic Act No. 9346. They are also DIRECTED to indemnify the heirs of KIAN LOYD DELOS SANTOS as follows:

1. PHP 100,000.00 as civil indemnity
2. PHP 100,000.00 as moral damages
3. PHP 45,000.00 as actual damages
4. PHP 100,000.00 as exemplary damages with interest on all damages hereby awarded at the rate of 6% [per annum] from the finality of the decision until fully paid.

b. In Criminal Case No. C-102926, the court finds accused PO3 Arnel Oares [y] [Gastillo], PO1 Jeremias Pereda [y] Tolete and PO1 Jerwin Cruz [y] Roque NOT GUILTY for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt.

c. In Criminal Case No. [C-102927], the court finds accused PO3 Arnel Oares [y] [Gastillo], PO1 Jeremias Pereda [y] Tolete and PO1 Jerwin Cruz [y] Roque NOT GUILTY for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt.

Lastly, the case against accused Renate Perez Loveras @ Nonong is ordered ARCHIVED pending his apprehension. Let an alias warrant be issued for his arrest.

SO ORDERED.[66]

The RTC found that all the elements of the crime of murder are present. After reviewing the testimonies, it found that Oares and Pereda accosted Kian at the pharmacy and when they were about to leave, Cruz asked them where they were bringing Kian. They responded "[i]baba na lang natin ito." [67] Kian was then dragged by the accused and they passed by the basketball court while overtaking Princess and Luisa along the way. Upon reaching the dark end near the river, the group stopped and shots were fired causing the death of Kian. The RTC concluded that the identification of the witnesses were positive, categorical, and consistent. More, there was an absence of evidence of improper motive to testify on the part of the prosecution witnesses. [68]

Next, the RTC found that conspiracy existed among the accused, as they were identified by the prosecution witnesses from the time Kian was accosted at the pharmacy until the place where the shooting occurred. The witnesses also established that Oares and Pereda shot Kian while Cruz "stood guard and did not attempt or prevent the killing." The RTC also noted that Oares admitted to having shot Kian. [69]

The RTC found that the qualifying circumstance of treachery was present. It found that at the time he was shot, there was no opportunity for Kian, a 17-year-old minor, to defend himself as he was in a sitting position, covering his head with his hands, and pleading. Kian was shot without any provocation, and the time, place, and manner of attack were deliberately chosen and cloaked by the accused with impunity to ensure its execution. The trajectory of the bullets showed that Kian was positioned lower than the assailants and in a kneeling or sitting position, and the distance from the barrel of the gun to Kian was around 60 cm or two feet. The circumstance of superior strength is absorbed into treachery. [70]

On the other hand, the RTC found that the circumstances of evident premeditation and nighttime were not present. [71]

The RTC rejected the defense of Oares that a shootout had occurred. It noted that Oares stated that he initially fired two shots using his service firearm when the shooter was around 10 meters in front of him, and fired another four shots from around five to six meters for a total of six shots. However, this is inconsistent with the physical evidence as Dr. Padilla-Cruz explained that the distance of the firearm to the victim at the time the firearm was fired was around 60 cm or 2 feet from the tip. More, the paraffin examination on the hands of Kian yielded a negative result for the presence of gunpowder nitrates. Abarrientos also testified that the bullet dent and mark showed that both bullets were fired downward and inclined to the right. [72]

The RTC also did not find as meritorious the defenses of alibi and denial interposed by Pereda and Cruz, as they were positively identified by the prosecution witnesses as the ones who were with Oares and Kian, with Pereda being identified as the second shooter. The RTC noted that while Pereda's service firearm yielded negative results for gunpowder residue, there was no paraffin examination conducted to determine if he had recently fired a gun. [73]

Oares filed a Motion for Partial Reconsideration, [74] while Cruz and Pereda jointly filed a Motion for Reconsideration. [75] These were denied by the RTC in an Order. [76]

The accused appealed to the CA. Oares raised the issues that: (1) the prosecution failed to prove his guilt beyond reasonable doubt, (2) there were material inconsistencies and contradictions in the prosecution witness testimonies, and (3) the presumption of regularity in the performance of duty should apply to him. Pereda and Cruz put in issue that the RTC erred in finding them guilty beyond reasonable doubt. [77]

In its Decision, [78] the CA denied their appeal, thus:

WHEREFORE, the appeal is DENIED. The assailed Decision of Branch 125 of the Regional Trial Court of Caloocan City dated [November 29, 2018] in Criminal Case No. C-102925 is AFFIRMED.

SO ORDERED.[79]

The CA confirmed that the prosecution witnesses positively identified the three accused as the persons who accosted and killed Kian. Luisa witnessed Oares and Pereda shoot Kian, and she also identified Cruz. Sheen and Princess also testified that they saw the three accused with Kian just before the latter's death.[80]

The CA concluded that the inconsistencies pointed out by the accused are minor and do not go into the elements of the crime of murder. On the inconsistency that the witnesses differed as to the number of motorcycles in the pharmacy, and that Princess testified that she ran towards the house of Luisa after hearing gunshots, while Luisa testified that they first stayed at another house, the CA held that these did not go into the elements of the crime, and witnesses are not expected to have perfect memory of every single detail. The CA confirmed that there was no inconsistency in the testimony of Princess that she identified Kian as the person with Oares and Pereda, while Luisa referred to her as an asset, as Luisa later on clarified that she initially mistook the person as an asset. On the supposed inconsistency that Princess identified Oares and Pereda as being near the pharmacy but did not identify Cruz, while Luisa saw three officers but can only identify three of them, the CA observed that Princess identified all three accused but did not notice where Cruz was after the shooting. On the point that Princess did not see who fired at Kian while Luisa testified that she saw Oares and Pereda shoot Kian, this difference is easily explainable as the angle at which their eyes could perceive, or the fact that Princess might have turned away during the occurrence.[81]

As for Sheen's testimony, Oares pointed out that she never testified on the presence of Princess and Luisa near the vicinity. However, this is perfectly believable considering a startling occurrence was happening at that time.[82]

As for the supposed inconsistency between Dr. Padilla-Cruz and Dr. Erfe's testimonies as to the number of gunshots is irrelevant. It did not involve the elements of the crime of murder, given that the number of shots has no effect on their criminal liability in view of their positive identification as the persons who caused Kian's death.[83]

The CA also noted that no evidence of ill motive on the part of any of the prosecution witnesses were presented.[84]

On the presence of the qualifying circumstance of treachery, the CA rebuffed the argument that the RTC erred in considering the testimony of Dr. Padilla-Cruz, as her testimony was the opinion of an expert and is admissible in evidence. Dr. Padilla-Cruz testified that based on Kian's position, he was likely shot by one to two persons while in a sitting or kneeling position, and further, Kian might not have seen who caused one of the gunshots while he did not see who caused the other gunshot. Thus, the CA noted that the accused pushed Kian to the alley and made him kneel so as to render him powerless to resist the fatal attack. As such, treachery was present.[85]

Next, the acts of the three accused before, during, and after the killing displayed a common design to accost and kill Kian and, as such, conspiracy was present among the three of them. The CA noted that all the accused arrived at the area at around the same time, that Oares and Pereda shot Kian after the latter was pushed towards the dark alley, and that Cruz stood by as Kian was shot.[86]

The CA found that the invocation of the presumption of regularity and the related defense of performance of lawful duty is unavailing. It remarked that "the manner by which Kian was killed leaves very serious doubt as to the regularity of the police operations on that night." Further, it ruled that if an accused invokes a justifying circumstance, the accused waived the presumption of innocence and now has the burden of proving the existence

of such justifying circumstance. Also, it found that the requisites for the justifying circumstance of performance of legal duty were not proven.[87]

The CA found as inconsequential the arguments raised by the accused regarding the paraffin test, which yielded negative results for Kian and for the service firearms of Pereda and Cruz, as there is positive identification by witnesses as to the identity of a perpetrator.[88]

The testimonies also showed conspiracy among the accused and the presence of the qualifying circumstance of treachery.[89]

As to the penalty, the CA found that the RTC properly imposed the penalty of reclusion perpetua without eligibility for parole, the awards of civil indemnity, moral damages, and exemplary damages each in the amount of PHP 100,000.00, and PHP 45,000.00 in actual damages, all with legal interest.[90]

Proceedings after the issuance of the CA Decision

After the CA Decision was rendered, the three accused diverged in their respective subsequent procedural steps. Oares timely filed a Motion for Reconsideration,[91] while Pereda and Cruz, represented by the same counsel, did not timely file a motion for reconsideration to assail the CA Decision.

In a Resolution,[92] the CA denied the Motion for Reconsideration filed by Oares.[93]

The CA issued a June 14, 2023 Partial Entry of Judgment (for Pereda and Cruz)[94] (Partial Entry of Judgment), certifying that the CA's Decision already became final and executory as to Pereda and Cruz on January 22, 2023.[95]

On August 14, 2023, Cruz filed an Entry of Appearance with Omnibus Motion for Leave of Court to Recall Entry of Judgment and Admit and Give Due Course to Notice of Appeal of Accused PO1 Jerwin R. Cruz (Cruz Omnibus Motion for Leave),[96] with Notice of Appeal[97] where he, under new representation, asserted that he was prevented from interposing a timely appeal due to the "mistake and gross and palpable negligence of his former counsel," as this former counsel believed that the CA will automatically elevate the case to this Court. As such, he prayed for the Partial Entry of Judgment to be recalled insofar as it pertained to him, and for his appeal to be given due course. Cruz also questioned the finding that he was present at the scene of the crime, and challenged the finding that he was in conspiracy with the other accused.[98]

On August 18, 2023, Pereda, with the same representation he previously had with the CA, filed with this Court the instant Petition under Rule 45 of the Rules of Court. Pereda admitted his failure to file his Notice of Appeal with the CA and explained that he believed the case would be elevated to this Court through automatic review.[99] The underlying theory of the instant Petition is reproduced below:

The petitioner is thinking that after the Court of Appeals has issued a Decision affirming the Decision of the Regional Trial Court of Caloocan City Branch 125 convicting the petitioner for the crime of murder, with the penalty of reclusion perpetua, that this case will be elevated and will undergo an automatic review before the Honorable Supreme Court, in accordance with [People v. Mateo] that is why petitioner failed to file its notice of appeal hence, this appeal by petition for review on certiorari under Rule 45.[100] (Citation omitted)

Pereda likewise alleged that his counsel received a copy of the Notice of Partial Entry of Judgment[101] of the CA on August 15, 2023, claiming that he had 15 days from the said date within which to file his Petition for Review on Certiorari.[102] The instant Petition was filed on August 18, 2023.[103]

To further justify this remedy resorted to, the Petition invokes the case of *People v. Olpindo*,[104] where this Court "exercise[d] its prerogative to relax the technical rules of procedure in the interest of justice." [105]

Meanwhile, in its October 23, 2023 Resolution, the CA, citing the interest of justice, granted Cruz's Omnibus Motion for Leave, recalling the Partial Entry of Judgment with respect to Cruz and giving due course to his appeal.[106]

Oares filed a Notice of Appeal[107] questioning the CA Decision and Resolution. In its November 20, 2023 Resolution, the CA gave due course to his appeal.[108]

Proceedings with this Court

In its Comment[109] to Pereda's Petition, the Office of the Solicitor General (OSG) countered that Pereda lost his right to appeal the CA's Decision for failure to timely file the proper remedy. Consequently, the judgment attained finality as to Pereda and should be immutable.[110]

The OSG argued further that even if the Petition was a timely and proper appeal, it would still be substantially infirm as there is no basis to reverse his conviction for the crime of murder, as the Petition is "an almost exact replica" of his Appellant's Brief filed with the CA. The OSG stated that its Consolidated Appellee's Brief sufficiently addressed the issues raised by Pereda in his Appellant's Brief.[111]

In a Resolution,[112] this Court treated Pereda's Petition as an appeal, and consolidated it with the appeals filed by Oares and Cruz.[113]

In its Manifestation and Motion,[114] the OSG confirmed that its Consolidated Appellee's Brief fully addressed the issues raised by the accused in their respective briefs.[115]

Arguments of the parties

In his Appellant's Brief,[116] Oares argued that the prosecution failed to prove his guilt beyond reasonable doubt as the evidence presented were contradictory and inconsistent. He pointed out several supposed inconsistencies in the testimonies of Princess and Luisa despite their statement that they were together at that time: (1) the number of motorcycles they saw; (2) the identity of the person who was with the accused at the pharmacy; (3) the identity of the person with the accused while going to the basketball court; (4) the number of police officers that they saw in the pharmacy; (5) what they saw when Kian was brought to the dulo; (6) and the respective witnesses' reactions after hearing gunshots. He maintained that as a consequence, the testimonies of Princess and Luisa are not credible.[117]

Next, Oares claimed that the RTC relied on the "assumption and hypothetical statements" of Dr. Padilla-Cruz as to the position of Kian at the time he was shot despite the fact that her finding as to the number of gunshot wounds found in Kian's body was different from the finding of Dr. Erfe. Next, Oares claimed that the RTC relied on the result of the paraffin test on Kian's cadaver despite being conducted four days after his death, which rendered the test unreliable and doubtful. Particularly, Oares stated that Dr. Padilla-Cruz found two wounds on the cadaver, while Dr. Erfe stated that there were five gunshot wounds. Also, Dr. Padilla-Cruz's testimony as to the position of Kian at the time he was shot is merely guesswork and possibility.[118]

Oares also asserted that the RTC erred in disregarding his testimony on what actually took place on that night in question, citing in his favor the presumption of regularity in the performance of duty. As such, there is no conspiracy to speak of among the three accused. He also averred that the dismissal of the charges against them for planting of evidence made his statements more credible.[119]

In their Appellant's Brief,[120] Pereda and Cruz maintain that the prosecution's witnesses gave contradicting statements. Luisa testified that she saw Oares and Pereda shoot Kian, while Princess testified that she did not see who shot Kian, despite both witnesses being together at that time. Also, they insisted that since it was dark, it was

impossible for Luisa to have seen Oares and Pereda shooting Kian. Next, while Luisa testified that after hearing the gunshots they went to her neighbor's house, Princess testified that they ran towards Luisa's house. Princess allegedly also never mentioned Cruz in their testimony.[121]

Pereda and Cruz also claimed that the RTC erred in finding the existence of conspiracy among the three of them in view of the contradicting statements on their respective identification and involvement in the case. Also contradicting is the finding that the service firearms of Pereda and Cruz yielded negative for gunpowder residue while the service firearm where Oares tested positive is inconsistent with the testimony that the shots fired at Kian were caused by two persons. They also contend that it was possible that the person whose face was covered by his own shirt was not Kian, as the accused all testified that the person seen with them in the video was a police asset.[122]

Pereda and Cruz added that they are not guilty of murder as it was Oares who admitted that he was engaged in a shootout with Kian. In fact, they were instructed by Oares to secure the asset and they did not fire their service firearms on that night. Thus, they underscored that there was no conspiracy among the three of them and "it was only accused-appellant Oares who shot Kian Delos Santos. This fact is actually admitted by accused-appellant Oares himself." Thus, Pereda and Cruz concluded that they should be acquitted.[123]

In its Consolidated Brief for the Appellee,[124] the OSG countered that the alleged inconsistencies pointed out by Oares in the testimonies of the prosecution witnesses are minor, and that there is unity in their accounts as to the important aspects of the story. What was beyond dispute was the material points that Kian was dragged by the accused, and afterwards gunshots were heard. Further, Luisa actually witnessed the shooting. As such, these testimonies, as bolstered by the laboratory reports and CCTV footage, point to the three accused as the killers of Kian. No evil motive was ever ascribed to Luisa, Princess, and Sheen to risk their lives in coming out to testify against the accused who were all police officers, as they had nothing to gain by perpetrating falsehoods against these authority figures.[125]

Oares cannot rely on the doctrine of presumption of regularity in the performance of official duties as such doctrine is not absolute when there is evidence of transgression of protocol.[126]

Next, the supposed conflict between the number of wounds as testified by Dr. Padilla-Cruz and Dr. Erfe does not detract from the credibility of either of them. As Oares already admitted to killing Kian, it is not material whether Kian's death resulted from two or five gunshot wounds. The OSG further contended that the sheer number of wounds refute the claim of Oares that he was defending himself when he fired at Kian. The statement of Dr. Padilla-Cruz that there was a possibility that Kian was killed while sitting down or kneeling is standard from an expert who carefully balances their findings with other probable explanations. The OSG remarked that in invoking the circumstance of fulfillment of a duty, the burden of evidence shifts to them to prove that they are entitled to such circumstance. However, the claim of self-defense on the part of Oares is "intrinsically irrational and fantastic." [127]

More, the CCTV footage, which was shown without much objection in court and identified by Abraham, the barangay officer assigned to the barangay CCTV showed three malefactors, two of them were dragging and roughing up a victim while a third malefactor was following closely. Randy, Kian's uncle, identified the victim in the CCTV footage as Kian based on the clothes he wore.[128]

Thus, the CCTV footage coincided with the testimonies of Luisa, Princess, and Sheen, and disproved the defense of the accused that Kian engaged them in a shootout in the dark.[129]

The contention that the acquittal in the charge for planting of evidence also supports acquittal in the murder case

is unmeritorious, as the acquittal was based on the nature of evidence of planting as hearsay and had nothing to do with the guilt of the accused for the crime of murder.[130]

As for Pereda and Cruz, the OSG observed that they admitted their presence at the crime scene and the leadership of Oares in their squad. As to the claim that Pereda's service firearm tested negative for gunpowder nitrates, the OSG pointed out the RTC's observation that there was no examination conducted to test whether he had recently fired a gun. More, the community of purpose of all three accused was evident as Oares and Pereda maltreated Kian until they dragged him to the dark area where he was shot to death, while Cruz followed without any objection as to the cruelty taking place.[131]

Cruz filed his Supplemental Brief[132] with this Court, reiterating that the prosecution witnesses failed to identify him in view of their conflicting testimonies. At any rate, assuming his identity was established, he claims that he should not be liable as a conspirator as his mere presence is not sufficient to establish conspiracy.[133]

This Court's Ruling

This Court resolves to dismiss the Appeals, and affirm with modification the CA Decision and Resolution.

Pereda availed of the wrong remedy, and even treating it as an appeal, it is still filed out of time. However, We shall resolve the instant case considering that the Appeals of Oares and Cruz have been given due course

Preliminarily, examining the Petition on its face as a petition for review on certiorari, which is what it claims to be, several defects can already be found which already justifies its denial.

To begin, Rule 45, Section 5[134] of the Rules of Court provides that failure to comply with the requirements regarding the contents of a petition for review on certiorari "shall be sufficient ground for the dismissal thereof."

These requirements found in Rule 45, Section 4[135] of the Rules of Court that petitioner failed to comply with are the following: the material dates showing when notice of the judgment or final order or resolution subject thereof was received, a clearly legible duplicate original or a certified true copy of the judgment or final order or resolution, and a sworn certification against forum shopping. Instead of alleging the date of receipt of the CA Decision or Resolution, Pereda cited the date of August 15, 2023 which is the date his counsel received the Partial Entry of Judgment of the CA.[136] Notably, the copy of the CA Decision attached to the Petition is a mere photocopy, and was purportedly certified by Atty. Oliver S. Yuan, Pereda's counsel, on August 18, 2023, or the same date as the filing of the Petition.[137] Under Supreme Court Administrative Circular No. 03-96, a "certified true copy" is understood to be "such other copy furnished to a party at his instance or in his behalf, duly authenticated by the authorized officers or representatives of the issuing entity." [138] Hence, a copy certified by petitioner's counsel, instead of the authorized officers or representatives of the CA, will not suffice.

Further, the instant Petition lacks a verified declaration of the electronic submission of the soft copy of the Petition.[139]

Likewise, the instant Petition lacks the additional attestation in the verification as required under Rule 7, Section 4[140] of the 2019 Amendments to the 1997 Rules of Civil Procedure, particularly, the statement that "the pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation."

Next, an examination of the instant Petition, in relation to the surrounding circumstances, would reveal that Pereda is seeking relief using the wrong remedy. To recall, the RTC and the CA imposed the penalty of reclusion perpetua without eligibility for parole.

Olpindo, the case cited by the Petition as its basis for the relaxation of the technical rules of procedure, emphasized that "since the enactment of [Republic Act] No. 9346, in 2006, prohibited the imposition of the death

penalty, the procedure on automatic review of death penalty cases under Rule 122 of the Rules of Court has been rendered ineffective and is, thus, suspended." [141]

Therefore, it reiterated the general rule that where the penalty imposed is reclusion perpetua or life imprisonment, regardless of whether or not the penalty prescribed was supposed to be death, appeal shall be made by filing a notice of appeal before the RTC or the CA, whichever is appropriate. Thus:

1.

In cases where the prescribed penalty is death, but where reclusion perpetua or life imprisonment was imposed by reason of [Republic Act] No. 9346, appeal shall be made by filing a notice of appeal either before the Regional Trial Court or the Court of Appeals, as the case may be, pursuant to Sec. 3(c), Rule 122 of the Rules of Court.

2.

In cases where the penalty of reclusion perpetua or life imprisonment is imposed not by reason of [Republic Act] No. 9346, appeal shall be made by filing a notice of appeal either before the Regional Trial Court or the Court of Appeals, as the case may be, pursuant to Sec. 3(c), Rule 122 of the Rules of Court[.]

Likewise, this Court clarified that a petition for review on certiorari that raises questions of fact may be treated as an appeal, in the interest of substantial justice, thus:

4.

In cases where the penalty of reclusion perpetua or life imprisonment is imposed and the accused files a petition for review on certiorari under Rule 45 of the Rules of Court, only questions of law may be raised. However, based on the interests of substantial justice, a petition for review on certiorari that raises questions of fact may be treated as an ordinary appeal in order to throw the whole case open for review.[142]

This notwithstanding, it does not necessarily follow that We do away with the requirements of an appeal. In this regard, it appears that the period to avail either an appeal or a petition for review on certiorari has long passed by the time the instant Petition was filed.

In the instant case, Pereda admits that he failed to file a notice of appeal with the CA, in order to properly assail the December 14, 2022 CA Decision. Instead, the instant Petition was filed on August 18, 2023.[143]

Pereda conspicuously never mentioned the date when he or his counsel received a copy of the CA Decision. Instead, Pereda volunteers the date of August 15, 2023 when his counsel received the Partial Entry of Judgment of the CA.[144] However, this is irrelevant as the 15 days to file a petition for review on certiorari is reckoned from the notice of the assailed decision or resolution,[145] and not from the notice of the entry of judgment.

To stress, this Court does not countenance the improper remedy that Pereda availed of in filing the Petition, not to mention its procedural lapses. However, We observe that the CA, in its October 23, 2023 Resolution, granted Cruz's Omnibus Motion for Leave in the interest of justice, recalling the Partial Entry of Judgment with respect to Cruz and giving due course to his appeal.[146] The same counsel that previously handled the case for both Pereda and Cruz remains the counsel of Pereda. Notably, the fatal flaw that prevented Cruz from timely filing a notice of appeal, that is, the gravely mistaken idea that the CA will automatically forward the case to this Court and that there is no need to file a notice of appeal, was the very same thing that prevented Pereda from also filing a notice of appeal. While Cruz was able to rectify the same by obtaining new legal representation and filing a notice of appeal that was given due course by the CA, Pereda was unfortunately unable to file such a notice of appeal, and

instead resorted to filing the Petition with this Court.

Thus, considering that the CA gave due course to the appeals filed by Oares and Cruz,[147] the interest of substantial justice and judicial economy persuades this Court to consider all the appeals and resolve the case at hand.

All the elements of the crime of murder are present, and all three accused are liable as co-conspirators

Article 248 of the Revised Penal Code penalizes the crime of murder as follows:

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 temporal in its maximum period to death, if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
- In consideration of a price, reward or promise.
- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.
- With evident premeditation.
- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Jurisprudence provides that the elements of the crime of murder are as follows: (1) that a person was killed; (2) that the accused killed them; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) that the killing was not parricide or infanticide.[148]

This Court finds that all of the elements of murder are present, and that all three accused are liable as principals of the crime. The elements that a person was killed, and that the killing was not parricide or infanticide, are not contested by any of the parties.

Further, as to the element that the accused killed the deceased, even Oares admits to shooting Kian. Pereda and Cruz also aver that Oares was the one who shot Kian.

The RTC and the CA are consistent in their finding that the accused killed Kian. They cited the testimonies of the prosecution witnesses who were able to testify on the respective parts of the series of events, and in addition, considered the analysis on the results of the examinations performed on the crime scene and the cadaver.

Sheen was in front of the pharmacy and was able to see Oares, Pereda, and Nono as they went to Kian's house. Later, she went back to the pharmacy where she saw Kian being frisked and later boxed by Oares and Pereda. Then, Cruz joined Oares and Pereda and asked them where they will bring Kian. After that, Oares and Pereda dragged Kian towards the basketball court, with Cruz following them.

Princess testified that she saw Oares and Pereda dragging Kian to the area near the basketball court, in the direction of Luisa's house, and then to the dulo which was near a pigpen, which was in turn near a house that was just one vacant lot away from Luisa's house, and then witnessed Oares push Kian to the dark alley in the dulo. She

then heard several gunshots around two minutes after last seeing Oares push Kian to this alley.

Luisa also saw Pereda dragging Kian, locking his arm on the latter's neck, while Cruz was behind Kian. She saw them pass the basketball court and to the pigpen area, which was near her house. Then, while around 27 footsteps away, she saw Oares and Pereda fire their guns several times at Kian, while Cruz was standing nearby and did not do anything to prevent the shooting.

Dr. Erfe performed an examination on Kian's cadaver as requested by Kian's family, where his team noticed five gunshot wounds, comprising of three entry wounds and two exit wounds. Abarrientos, a ballisticsian from the NBI, conducted trajectory examination in the crime scene and noted that the bullet dent and marks found at the scene indicated that the bullets were fired downward and inclining to the right.

Dr. Padilla-Cruz of the NPD, after an autopsy on Kian's cadaver, found two gunshot wounds on Kian's head. In her opinion, the distance of the tip of the barrel of the gun to the wounds was about 60cm or two feet, and the possible position of the victim was in a sitting or kneeling position at the time the gun was fired. She added that for the first wound, it was unlikely that the victim had seen the assailant as it was located on the left side and at the back of the ear. More, as the second wound was at the back of the forehead, the victim would not have seen it.

In this regard, it is settled that a trial court's assessment of the credibility of witnesses is accorded great weight and respect, as it had "the full opportunity to observe directly the deportment and the manner of testifying of the witnesses before it, and is in a better position to properly evaluate testimonial evidence." [149] Here, the RTC and the CA found no improper motive on the part of the prosecution witnesses in testifying, indicating that their testimonies are worthy of credence. [150]

In addition, the factual findings of a trial court, when affirmed by the appellate court, are binding on this Court. [151] The RTC and the CA were consistent in their factual findings leading to the conclusion that the guilt of all the accused was proven beyond reasonable doubt.

The accused, on the other hand, contend that several inconsistencies impair the credibility of the prosecution witnesses. We find the arguments on this point as unmeritorious.

We agree with the finding of the RTC and the CA that in general, the supposed inconsistencies are minor and do not go into the elements of the crime charged. [152]

The CA, in addressing the inconsistencies raised by the accused, ruled as follows, either finding that there was no inconsistency at all or that the inconsistency was on a minor matter not pertaining to the elements of murder:

The first and fifth inconsistenc[ies] raised by accused Oares are extremely minor details that do not even have anything to do with the elements of the crime which he is accused of. Witnesses are not expected to have perfect memory to the effect that they would be able to recall every single detail of a crime scene, much more such trivial and irrelevant matters such as the number of motorcycles and where they went after the alleged crime.

The second supposed inconsistency raised by accused Oares is not even an inconsistency at all. He claims that Princess identified the person with the accused-appellants as Kian, while Luisa claimed that the said person was an asset. Even a basic and cursory examination of the TSN would show that Luisa would later on clarify that she initially mistook Kian for an asset. Accused Oares also faults Princess for not correcting Luisa when she called Kian an asset. It would be unnatural to expect Princess to correct Luisa right then and there taking into consideration they were in what could only be described as a stressful and tense situation.

As to the third inconsistency which concerns the number of police officers at the crime scene, we note that Princess in fact identified three (3) police officers, namely accused-appellants Oares, Pereda, and Cruz.

However, Princess did not notice where Cruz was after the shooting of Kian. The Court has recognized the truism that human memory is naturally fickle, and its frailty would not always allow for precise recollection of events.

As to the fourth supposed inconsistency, which relates to the failure of Princess to see who shot Kian, while Luisa was able to identify as accused-appellants Oares and Pereda as being responsible for the same, said failure of the former to witness who specifically shot Kian could easily be explained by a variety of factors, such as the angle from which her eyes could perceive, objects that could have obstructed her view, or even the perfectly plausible fact that Princess, a minor at the time of the incident, might have turned away during a startling occurrence, thus, not allowing her perfect unobstructed view of the exact moment Kian was killed. In any event, that Princess did not see the actual shooting of Kian does not detract from her ability to positively identify the accused-appellants, as we have earlier discussed.

As to Sheen's testimony, accused Oares faults her for not mentioning that Princess and Luisa were in the vicinity of the crime. Moreover, accused Oares claims that it is contrary to human nature for Sheen to stay at the pharmacy, when, in her testimony, she claimed that she was fearful of the events unfolding. Her inconsistencies, accused submits, shows her bias against him, which led to her uttering penurious statements. Again, this matter deserves little consideration, that Sheen did not witness the other prosecution witnesses is perfectly believable taking into consideration that a startling occurrence was taking place at that time. In the same light, it is not contrary to human nature to freeze in fear in the face of a tense event such as when a child is being dragged away by mysterious men. Moreover, other than accused Oares'[s] bare actuation, no evidence of [ill will] was exhibited by Sheen, or for that matter, any of the witnesses. Sheen's fear of what was then happening, and how she acted in response to that fear are irrelevant matters which do not detract from her positive identification of the accused-appellants.

....

Accused-appellant Oares submits as ground for acquittal the fact that prosecution witnesses Dr. Padilla-Cruz and Dr. Efre are not in agreement as to the number of gunshot wounds Kian sustained. The number of gunshot wounds, whether it be two (2), as Dr. Padilla-Cruz found, or five (5), as Dr. Efre testified to, is an irrelevant matter which has nothing to do with the elements of the crime of murder. That accused-appellants shot Kian twice or five times would not have an effect on their criminal liability in the face of their positive identification as the authors of Kian's death.[153] (Citations omitted)

In sum, this Court finds that these purported inconsistencies are insufficient basis from departing from the findings of the RTC and the CA that the accused killed Kian.

On the other hand, the version of events propounded by the accused, assuming it to be true, would not exculpate them from liability.

To recall, Pereda and Cruz pointed to Oares as the shooter. Oares admitted to shooting Kian, but invokes the presumption of regularity in the performance of duty and the justifying circumstance of performance of lawful duty. This Court is not convinced.

In *People v. Cawaling*,^[154] which involved murder charges against police officers, this Court laid down the requisites of the justifying circumstance of lawful performance of duties as police officers: "(1) the accused acted in the performance of a duty, and (2) the injury or offense committed is the necessary consequence of the due performance or lawful exercise of such duty."^[155]

The same requisites were reiterated in *Balanay v. Sandiganbayan*,^[156] also concerning a murder charge against a police officer, where this Court added that an accused invoking this justifying circumstance admits the crime charged and now has the burden of proof shifted unto them to prove their justification:

It is a settled jurisprudence that in criminal cases the prosecution has the onus probandi in establishing the guilt of the accused. *Ei incumbit probatio qui dicit, non que negat*, i.e., he who asserts, not he who denies, must prove. However, once the defendant admits the crime charged but raises a justification for its commission, the burden of proof is shifted to him to prove justification to relieve himself of any criminal liability or mitigate its gravity. To prove justification, the defendant must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if it were weak, it could not be disbelieved after the accused had admitted the killing. In the instant case, by invoking the justifying circumstance of fulfillment of a duty under Article 11 of the Revised Penal Code, petitioner had the burden of proving that: (a) as the offender, he acted in the performance of a duty, and (b) the injury or offense committed was the necessary consequence of the due performance or lawful exercise of such duty[.][157] (Citations omitted)

In *Herrera v. Sandiganbayan*,^[158] which involved a murder charge against police officers, this Court laid down the requisites in determining whether the defense of fulfillment of duty in relation to the presumption of regularity in the performance of official acts can be availed of:

Intertwined with their argument that they were acting in self defense, petitioners want this Court to appreciate the presumption of regularity in the performance of their official acts.

This contention has no merit. In order to consider the defense of fulfillment of a duty, it must be shown that: (1) the accused acted in the performance of a duty or in the lawful exercise of a right or office; and (2) the injury caused or the offense committed is the necessary consequence of the due performance of duty or the lawful exercise of a right or office.^[159] (Citation omitted)

Here, there was no showing of either requisite. The acts shown in the prosecution evidence as discussed above would show that the accused were not acting in the performance of a duty. Even assuming that they were performing their duties as police officers, it is not shown that the killing of Kian is a necessary consequence of the due performance of such duty.

Further, the presumption of regularity in the performance of official duty is disputable by proof to the contrary, and as such applies only when nothing in the record shows deviation from standard conduct and consequently does not apply when the act is irregular on its face:

It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course. There is indeed merit in the contention that where no ill motives to make false charges was successfully attributed to the members of the buy-bust team, the presumption prevails that said police operatives had regularly performed their duty, but the theory is correct only where there is no showing that the conduct of police duty was irregular. *People v. Dulay* and *People v. Ganenas* in fact both suggest that the presumption of regularity is disputed where there is deviation from the regular performance of duty. Suffice it to say at this point that the presumption of regularity in the conduct of police duty is merely just that—a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth.^[160] (Citations omitted)

On the day Kian was killed, Oares stated that they were conducting One Time Big Time Operation, while this was called Oplan Galugad by Pereda and Cruz. Regardless of nomenclature, the killing of a minor could not be considered standard in this operation.

The Revised PNP Operational Procedures (2013), which would be the prevailing version at the time the crime was committed, provides for the situations when the use of firearm during police operations is justified:

RULE 8. USE OF FIREARM DURING POLICE OPERATIONS

8.1 Use of Firearm When Justified

The use of firearm is justified if the offender poses imminent danger of causing death or injury to the police officer or other persons. The use of firearm is also justified under the doctrines of self-defense, defense of a relative, and defense of a stranger. However, one who resorts to self-defense must face a real threat on his life, and the peril sought to be avoided must be actual, imminent and real. Unlawful aggression should be present for self-defense to be considered as a justifying circumstance.

The relevant portions of the said rule are retained in the Revised Philippine National Police Operational Procedures (2021):

Section 2-5 Use of Firearm During Police Operations

2.11 Use of Firearm When Justified. The use of firearm is justified if the offender poses an imminent danger of causing death or injury to the police officer or other persons. The use of firearm is also justified under the doctrines of self-defense, defense of a relative, and defense of a stranger. However, one who resorts to self-defense must face a real threat on his/her life, and the peril sought to be avoided must be actual, imminent and real. Unlawful aggression should be present for self-defense to be considered as a justifying circumstance. The police shall not use warning shots during police operation except when the police officer is outnumbered and overpowered, and his/her life and limb is in imminent danger.

It is telling that when Pereda was asked as to what the manual or procedure of the PNP provides for in situations where there is gunfire, he replied that "if it is an operation and there is a gunshot fired towards us[,] we have the right to retaliate." [161] It appears that Oares did not calibrate his approach to the supposed gunshots fired towards him, broadly claiming that he had the right to retaliate.

Indeed, the defense evidence did not show that his retaliation with the use of his firearm was pursuant to the Revised PNP Operational Procedures, as there was no showing of imminent danger of causing death or injury to the police officer or other persons, or that the peril sought to be avoided is actual, imminent, and real. Further, neither has any of the accused proven any of the requisites of self-defense, defense of a relative, and defense of a stranger. Notably, despite their claims that gunshots were fired in their direction, none of the accused were shown to have been shot anywhere on their person.

Under these guidelines, the accused failed to prove that the use of their firearm in that situation is in accordance with the performance of their duty and is the necessary consequence of the due performance of this duty. As succinctly stated in *People v. De la Cruz*, [162] "[p]erformance of duties does not include murder." [163]

Further, this Court affirms the finding of the RTC and the CA that the killing was attended with the qualifying circumstance of treachery.

In *People v. Lastimosa*, [164] We reiterated that treachery is present "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 [ensure] its execution, without risk to himself arising from the defense which the offended party might make." [165] In order to find the presence of treachery, two elements must be proven: "(1) that at the time of the attack, the victim was not in a position to defend himself or herself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him or her." [166]

In the same case, this Court found that the use of a gun and the aiming at vital parts, such as the head, with multiple shots indicated treachery as it showed that the accused deliberately and consciously aimed at the vital parts to ensure the commission of the offense:

Further, Lastimosa adopted means to ensure the execution of his criminal intent — the use of a gun and the aiming of the same at Ildefonso's vital parts.

In *People v. Natindim*, the Court appreciated the qualifying circumstance of treachery, declaring that the location of the wound indicated that the accused deliberately and consciously aimed at the victim's vital part to ensure the commission of the offense:

Pepito was unarmed and looking out the window to ascertain the noise outside when appellant Edimar shot him on his head which consequently knocked him on the floor. The prosecution also established that appellants consciously and deliberately adopted the mode of attack. They lurked outside Pepito's residence and waited for him to appear. When Pepito emerged from his window with a flashlight which he used to focus on and determine the people outside his house, appellant Edimar immediately shot him on the head with the use of a firearm. The location of the wound obviously indicated that the appellants deliberately and consciously aimed for the vital part of Pepito's body to ensure the commission of the crime. The attack was done suddenly and unexpectedly, leaving Pepito without any means of defense. More importantly, the subsequent hacking of Pepito when he lay lifeless on the floor indicated treachery since he was already wounded and unable to put up a defense.

The same reasoning applies in the instant case. The location of the wounds in Ildefonso's body, the head and the neck, as well as the fact that Lastimosa shot Ildefonso thrice, shows that Lastimosa deliberately and consciously adopted means to ensure the commission of the offense. Thus, treachery attended the killing.[167] (Citations omitted)

Further, in *People v. Mendoza*,[168] We found that there was treachery when the victim was shot from behind, ensuring that the victim could not do anything to defend themselves, and that being shot in the head showed that it was deliberately adopted to ensure their death without any risk to the assailant:

What is decisive is that the execution of the attack made self-defense or retaliation impossible on the part of the victim. Since Bulatao was not facing Mendoza, he did not, in any way, expect the attack, and was not able to do anything to protect himself. Moreover, the fact that Bulatao was shot on the head shows that it was deliberately adopted to ensure that he was killed instantly, without any risk to Mendoza. Treachery was, therefore, present.[169] (Citation omitted)

Similar circumstances are present here. As testified by Dr. Padilla-Cruz, there were two gunshot wounds to the head which were fired from a firearm that was around 60cm or two feet away. She opined that Kian was in a sitting or kneeling position at the time the gun was fired. For the first wound, she testified that it was unlikely that Kian had seen the assailant as he was about to be shot as the wound entered from the left side and at the back of the ear. Additionally, for the second wound, it entered from the back of the forehead so Kian would not have seen it.

Therefore, when Kian was shot, he was not in a position to defend himself. Next, We note that the prosecution evidence showed the chain of events that led to Kian being particularly put in this location and in that position by the accused, allowing them to shoot Kian with impunity and ensuring the execution of the crime. Considering all these circumstances, treachery was present.

This Court also affirms the findings of the RTC and the CA that there was conspiracy among the accused, and as such, they are all equally liable for the crime.

Under Article 8 of the Revised Penal Code, there is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it."

In *People v. XXX265481*,[170] this Court reiterated that proof of conspiracy need not be direct and may be

implied or inferred from the acts of the accused, who do not need to have participated in all details of the execution of the crime or know the exact participation by their other co-conspirators.[171]

Further, in *People v. Dela Cruz*,[172] We confirmed that conspiracy may be inferred from acts of the accused that show a "joint purpose and design, concerted action, and community of interest." [173]

This Court likewise affirms the findings of the RTC and the CA on the existence of conspiracy. The CA noted the following circumstances: "1) [accused] arrived at the area at more or less the same time; 2) [accused] Oares and Pereda shot Kian after he was pushed towards a dark alley; and 3) [accused] Cruz stood by while [Oares and Pereda] shot Kian." [174] The RTC observed that the prosecution witnesses were able to positively identify all the accused from the time Kian was accosted at the pharmacy until where the shooting occurred and was able to testify that Oares and Pereda shot Kian while Cruz "stood guard and did not attempt [to] prevent the killing." We add that the evidence was able to show the joint purpose and design, concerted action, and community of interest among the three of them in dragging Kian from the pharmacy, beyond the basketball court area, past Luisa's house, and to the dark alley near the pigpen where Kian was eventually shot. For these series of events, it was unmistakable that despite each of them not doing every act established by the prosecution evidence, the accused acted in concert with one another.

Thus, this Court finds that conspiracy existed among Oares, Pereda, and Cruz. As a consequence of such a finding, "each of the conspirators is made criminally liable for the crime actually committed by any one of them." [175]

Further, We likewise agree with the RTC that the circumstances of evident premeditation, abuse of superior strength, and nighttime cannot be appreciated in this case. We also add that the circumstance of use of firearm cannot be appreciated.

The qualifying circumstance of evident premeditation requires "that the execution of the criminal act be preceded by cool thought and reflection upon the resolve to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment." [176] Its requisites are the following:

- (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act. [177]

Here, no proof was provided that the accused were determined to commit the crime at one point and of the lapse of sufficient time between this determination and the execution of the crime.

For abuse of superior strength and nighttime, jurisprudence provides that these two "are absorbed by and necessarily included" in treachery. [178]

The Information also alleged the aggravating circumstance of use of firearm. However, as it failed to allege that the said firearm is a loose firearm, and further, lacking any evidence presented to prove this, the circumstance shall not be considered by this Court. [179]

In sum, We affirm the findings of the RTC and the CA that all the elements of the crime of murder are present, and that all three of the accused are guilty beyond reasonable doubt.

Modification of the penalty imposed in the CA Decision and Resolution is in order, which applies to all three accused

However, this Court finds it proper to modify the imposed penalty and monetary awards. To recall, the RTC and the CA imposed the penalty of reclusion perpetua without eligibility for parole, and imposed the amount of civil

indemnity, moral damages, and exemplary damages each in the amount of PHP 100,000.00, and actual damages in the amount of PHP 45,000.00, all with corresponding legal interest.

The imposable penalty for murder under Article 248 of the Revised Penal Code is reclusion perpetua to death.

As We ruled above, the circumstance of treachery was present and this qualified the crime to murder. Hence, it cannot anymore be used as a generic aggravating circumstance.

Since no generic aggravating circumstances can be appreciated, the penalty of reclusion perpetua shall be applied, pursuant to the second paragraph of Article 63 of the Revised Penal Code.[180] Thus, the proper penalty to be imposed should be reclusion perpetua, removing the phrase "without eligibility for parole." This is because "the phrase 'without eligibility for parole' is to be used to qualify the penalty of reclusion perpetua when circumstances are present warranting the imposition of the death penalty but which penalty is not imposed because of [Republic Act] No. 9346." [181] As there are no circumstances warranting the imposition of the death penalty due to the lack of generic aggravating circumstances, the said phrase should be deleted.[182]

In line with *People v. Jugueta*, [183] the corresponding monetary awards should be PHP 75,000.00 as civil indemnity, PHP 75,000.00 as moral damages, and PHP 75,000.00 as exemplary damages.[184] More, this Court resolves to award PHP 50,000.00 as temperate damages in lieu of actual damages. In *People v. Racal*, [185] We emphasized that "when actual damages proven by receipts during the trial amount to less than the sum allowed by the Court as temperate damages, the award of temperate damages is justified in lieu of actual damages which is of a lesser amount." [186] In this case, receipts and testimony showed funeral and/or burial expenses in the amount of PHP 45,000.00, [187] which is less than the amount of PHP 50,000.00 prescribed as temperate damages in *Jugueta*. [188] These monetary awards shall also earn legal interest at the rate of 6% per annum from the date of the finality of this Decision until fully paid.[189]

Finally, this Court emphasizes that the modification in the judgment applies to all the accused. Rule 122, Section 11(a) of the Rules of Court provides that "[a]n appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the [CA] is favorable and applicable to the latter." In *Lim v. Court of Appeals*, [190] this Court clarified that Rule 122, Section 11(a) applies whether or not the co-accused filed an appeal, so long as the judgment was favorable.[191]

Thus, even if the Entry of Judgment was already issued in relation to Pereda and Cruz, and this was later recalled only as to Cruz, this judgment insofar as the modifications stated above shall apply to all of the accused.

ACCORDINGLY, the Appeals are DENIED. The December 14, 2022 Decision and the May 15, 2023 Resolution of the Court of Appeals in CA-G.R. CR-HC No. 13162 are AFFIRMED with MODIFICATION.

The Partial Entry of Judgment (for PO1 Jeremias Pereda y Tolete and PO1 Jerwin Cruz y Roque) dated June 14, 2023 in CA-G.R. CR-HC No. 13162 is RECALLED.

Accused-appellants Arnel Oares y Gastillo, Jeremias Pereda y Tolete, and Jerwin Cruz y Roque are GUILTY beyond reasonable doubt of murder and are each sentenced to suffer the penalty of reclusion perpetua. They are SOLIDARILY LIABLE to PAY the heirs of Kian Loyd Delos Santos the amounts of PHP 75,000.00 as civil indemnity; PHP 75,000.00 as moral damages; PHP 75,000.00 as exemplary damages; and PHP 50,000.00 as temperate damages.

In line with current jurisprudence, legal interest at the rate of 6% per annum is imposed on all damages awarded from the date of the finality of this Decision until fully paid.

SO ORDERED.

Leonen, SAJ. (Chairperson), Lazaro-Javier, Kho, Jr., and Villanueva, JJ., concur.

[*] Also referred to as "Gastilo," "Castillo," and "Gatacilo" in some parts of the rollo and records.

[1] Rollo (G.R. No. 268510), pp. 3-90.

[2] Id. at 57-90. The December 14, 2022 Decision in CA-G.R. CR-HC No. 13162 was penned by Associate Justice Alfonso C. Ruiz II and concurred in by Associate Justices Ramon M. Bato, Jr. and Ronaldo Roberto B. Martin of the Fourth Division, Court of Appeals, Manila.

[3] Id. at 22-56. The November 29, 2018 Decision in Crim. Case Nos. C-102925, C-102926, and C-102927 was penned by Presiding Judge Rodolfo P. Azucena, Jr. of Branch 125, Regional Trial Court, Caloocan City.

[4] Id. at 129-130.

[5] Rollo (G.R. No. 274142), pp. 34-37.

[6] CA rollo, pp. 360-362.

[7] Id. at 262-263. The May 15, 2023 Resolution in CA-G.R. HC No. 13162 was penned by Associate Justice Alfonso C. Ruiz II and concurred in by Associate Justices Ramon M. Bato, Jr. and Ronaldo Roberto B. Martin of the Fourth Division, Court of Appeals, Manila.

[8] Also referred to as "Nong" in some parts of the rollo.

[9] RTC records, vol. I, pp. 2-3.

[10] Rollo (G.R. No. 268510) pp. 59-61.

[11] RTC records, vol. II, pp. 75-77.

[12] TSN, Sheen Concepcion, March 19, 2018, p. 18.

[13] Id. at 19, 10-19.

[14] Id. at 19-22.

[15] Id. at 24.

[16] Id. at 25.

[17] Id. at 27.

[18] Id. at 22-27.

[19] Id. at 28.

[20] Id. at 32.

[21] Id. at 27-29, 32.

[22] Id. at 29, 30, 33.

[23] Id. at 34-37.

[24] TSN, Sheen Concepcion, March 22, 2018, pp. 10-12, 25-26, 29.

- [25] TSN, Princess Ann Alano, April 2, 2018, pp. 4, 6-12.
- [26] Id. at 22, 28, 66.
- [27] Id. at 41-67.
- [28] TSN, Ma. Luisa J. Walican, April 5, 2018, pp. 7-8, 11-17, 22.
- [29] Id. at 17-20.
- [30] Id. at 36-37.
- [31] Id. at 45.
- [32] TSN, Abraham B. Montana, April 12, 2018, pp. 5, 6, 9, 13-18, 20.
- [33] TSN, Randy Delos Santos, April 16, 2018, pp. 5-9.
- [34] TSN, Saldy Delos Santos, April 19, 2018, pp. 10-16.
- [35] TSN, Dr. Erwin P. Erfe, April 23, 2018, pp. 41-60.
- [36] TSN, Joselito Gallas, April 26, 2017, pp. 6-9, 12-13, 18-19, 23, 24.
- [37] Id. at 21-22.
- [38] TSN, Hiyasmin G. Abarrientos, May 7, 2018, pp. 4-8.
- [39] RTC records, vol. II, pp. 376-377.
- [40] TSN, Hiyasmin G. Abarrientos, May 7, 2018, pp. 10-15.
- [41] RTC records, vol. II, p. 376.
- [42] TSN, Hiyasmin G. Abarrientos, May 7, 2018, pp. 15-16.
- [43] TSN, PCINSP Avelino U. Andaya, May 10, 2018, pp. 8, 9, 11, 13-21.
- [44] RTC records, vol. II, p. 368.
- [45] Id. at 369-370.
- [46] Id.
- [47] TSN, PCINSP Engr. Richard Allan B. Mangalip, May 10, 2018, p. 38-46.
- [48] RTC records, vol. II, p. 360.
- [49] Id. at 366.
- [50] TSN, PCINSP Engr. Richard Allan B. Mangalip, May 10, 2018, pp. 48-50, 52, 63.
- [51] RTC records, vol. II, p. 362.
- [52] TSN, PCINSP Engr. Richard Allan B. Mangalip, May 10, 2018, p. 54.
- [53] TSN, PCINSP Dr. Jocelyn Padilla-Cruz, July 9, 2018, pp. 5-12.
- [54] RTC records, vol. II, pp. 357-359.
- [55] TSN, PCINSP Dr. Jocelyn Padilla-Cruz, July 9, 2018, pp. 13-20.

- [56] Id. at 24-25, 29-34, 49.
- [57] TSN, Arnel G. Oares, August 6, 2018, pp. 10-21.
- [58] Id. at 28.
- [59] Id. at 31.
- [60] TSN, PINSP Jerry Tomas Damaso, August 16, 2018, pp. 5-6, 10-11.
- [61] TSN, Jeremias T. Pereda, August 23, 2018, pp. 6, 9, 11, 12, 15, 19.
- [62] Id. at 26.
- [63] TSN, Jerwin R. Cruz, August 30, 2018, pp. 6-9, 11.
- [64] Id. at 24-25, 30.
- [65] Rollo (G.R. No. 268510), pp. 22-56.
- [66] Id. at 55-56.
- [67] Id. at 41.
- [68] Id. at 41-42.
- [69] Id. at 42-43.
- [70] Id. at 44-49.
- [71] Id. at 43-44, 50.
- [72] Id. at 50-51.
- [73] Id. at 50-52.
- [74] RTC records, vol. III, pp. 330-361.
- [75] Id. at 317-329.
- [76] Id. at 436-437.
- [77] Rollo (G.R. No. 268510), p. 72.
- [78] Id. at 57-90.
- [79] Id. at 89.
- [80] Id. at 73-79.
- [81] Id. at 79-81.
- [82] Id. at 81-82.
- [83] Id. at 82.
- [84] Id.
- [85] Id. at 83-84.
- [86] Id. at 85.

- [87] Id. at 86-87.
- [88] Id. at 70.
- [89] Id. at 73.
- [90] Id. at 88.
- [91] CA rollo, pp. 235-247. Dated January 19, 2023.
- [92] Id. at 262-263.
- [93] Id. at 263.
- [94] Id. at 274.
- [95] Id.
- [96] Rollo (G.R. No. 274142), pp. 3-33.
- [97] CA rollo, pp. 360-362.
- [98] Rollo (G.R. No. 274142), pp. 4-31.
- [99] Id. at 4-5.
- [100] Id.
- [101] Not attached to the rollo in G.R. No. 268510.
- [102] Rollo (G.R. No. 268510), p. 5.
- [103] Id. at 2-3.
- [104] 919 Phil. 1024 (2022) [Per C.J. Gesmundo, En Banc].
- [105] Id. at 1037.
- [106] CA rollo, p. 457. Dated November 6, 2023.
- [107] Rollo (G.R. No. 274142), pp. 34-37.
- [108] CA rollo, p. 466.
- [109] Rollo (G.R. No. 268510), pp. 99-126.
- [110] Id. at 112-117.
- [111] Id. at 117-118.
- [112] Id. at 129.
- [113] Id.
- [114] Id. at 134-139.
- [115] Id. at 134-135.
- [116] CA rollo, pp. 42-86.
- [117] Id. at 53, 59-74.

[118] Id. at 53-54, 75-76, 79-81.

[119] Id. at 54-58, 74, 75, 81-82.

[120] Id. at 130-142.

[121] Id. at 133-137.

[122] Id. at 135-137.

[123] Id. at 138-139.

[124] Id. at 158-191.

[125] Id. at 170-176.

[126] Id. at 176.

[127] Id. at 176-181.

[128] Id. at 181-182.

[129] Id. at 181.

[130] Id. at 182-183.

[131] Id. at 184-185, 188.

[132] Rollo (G.R. No. 268510), pp. 140-162.

[133] Id. at 140-159.

[134] SECTION 5. Dismissal or Denial of Petition. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

[135] SECTION 4. Contents of Petition. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42.

[136] Rollo (G.R. No. 268510), p. 5.

[137] Id. at 57-90.

[138] See also *Pinakamasarap Corporation v. National Labor Relations Commission*, 534 Phil. 222, 230 (2006) [Per J. Austria-Martinez, First Division].

[139] See *In re Issuance of a Writ of Habeas Corpus of Inmates Reyes and Evangelista*, 873 Phil. 1067, 1073 (2020) [Per J. Zalameda, Third Division].

[140] SECTION 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath or verified.

A pleading is verified by an affidavit of an affiant duly authorized to sign said verification. The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading, and shall allege the following attestations:

- (a) The allegations in the pleading are true and correct based on his or her personal knowledge, or based on authentic documents;
- (b) The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
- (c) The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

The signature of the affiant shall further serve as a certification of the truthfulness of the allegations in the pleading.

A pleading required to be verified that contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

[141] *People v. Olpindo*, 919 Phil. 1024, 1052 (2022) [Per C.J. Gesmundo, En Banc].

[142] *Id.* at 1053.

[143] *Rollo* (G.R. 268510), pp. 2-3.

[144] *Id.* at 5.

[145] See *Almero v. Heirs of Pacquing*, 747 Phil. 479, 494 (2014) [Per J. Brion, Second Division].

[146] *CA rollo*, p. 457.

[147] *Id.* at 457, 466.

[148] *People v. Ragudo, Jr.*, 953 Phil. 239, 258 (2024) [Per J. J. Lopez, Second Division].

[149] *People v. Regaspi*, 768 Phil. 593, 598 (2015) [Per J. Peralta, Third Division].

[150] *Rollo* (G.R. No. 268510), pp. 42, 82.

[151] *People v. Agalot*, 826 Phil. 541, 549-550 (2018) [Per J. Martires, Third Division].

[152] *Rollo* (G.R. No. 268510), pp. 73-84.

[153] *Id.* at 80-82.

[154] 355 Phil. 1 (1998) [Per J. Panganiban, First Division].

[155] *Id.* at 37-38.

[156] 397 Phil. 853 (2000) [Per J. De Leon Jr., Second Division].

[157] *Id.* at 863.

[158] 598 Phil. 511 (2009) [Per J. Azcuna, First Division].

[159] Id. at 542.

[160] *People v. Obmiranis*, 594 Phil. 561, 577-578 (2008) [Per J. Tinga, Second Division].

[161] TSN, Arnel G. Oares, August 6, 2018, p. 31.

[162] 298 Phil. 36 (1993) [Per J. Cruz, First Division].

[163] Id. at 44.

[164] G.R. No. 265758, February 3, 2025 [Per C.J. Gesmundo, First Division].

[165] Id. at 32. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

[166] Id.

[167] Id.

[168] 905 Phil. 922 (2021) [Per J. J. Lopez, Third Division].

[169] Id. at 939.

[170] 956 Phil. 611 (2024) [Per J.M. Lopez, Second Division].

[171] Id. at 628.

[172] 928 Phil. 343 (2022) [Per J. Inting, En Banc].

[173] Id. at 351, citing *People v. Niegas*, 722 Phil. 301, 311-312 (2013) [Per J. Leonardo-De Castro, First Division].

[174] Rollo (G.R. No. 268510), p. 85.

[175] *People v. Batulan*, 858 Phil. 77, 92-93 (2019) [Per J. Lazaro-Javier, Second Division].

[176] *People v. Lastimosa*, G.R. No. 265758, February 3, 2025 [Per C.J. Gesmundo, First Division] at 33. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

[177] Id.

[178] *People v. Natindim*, 889 Phil. 18, 44-45 (2020) [Per J. Hemando, Third Division].

[179] *People v. Lastimosa*, G.R. No. 265758, February 3, 2025 [Per C.J. Gesmundo, First Division] at 33. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

[180] *People v. Laceste*, 355 Phil. 136, 148 (1998) [Per J. Davide, Jr., En Banc].

[181] *People v. Jaime*, 836 Phil. 871, 887 (2018) [Per J. Martires, Third Division].

[182] See *Ramos v. People*, 803 Phil. 775 (2017) [Per J. Perlas-Bernabe, First Division].

[183] 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

[184] Id. at 848.

[185] 817 Phil. 665 (2017) [Per J. Peralta, Second Division].

[186] Id. at 685. (Citation omitted)

[187] TSN, Saldy Delos Santos, April 19, 2018, pp. 10-15.

[188] 783 Phil. 806, 853 (2016) [Per J. Peralta, En Banc].

[189] *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, 929 Phil. 754, 780-781 (2022) [Per J. Leonen, En Banc].

[190] 524 Phil. 692 (2006) [Per J. Austria-Martinez, First Division].

[191] *Id.* at 700.

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