



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 201565

- versus -

**EX-MAYOR CARLOS
ESTONILO, SR., MAYOR
REINARIO "REY" ESTONILO,
EDELBRANDO ESTONILO
a.k.a. "EDEL ESTONILO,"
EUTIQUIANO ITCOBANES
a.k.a. "NONONG
ITCOBANES," NONOY
ESTONILO-at large, TITING
BOOC-at large, GALI
ITCOBANES-at large,
ORLANDO TAGALOG
MATERDAM a.k.a. "NEGRO
MATERDAM," and CALVIN
DELA CRUZ a.k.a. "BULLDOG
DELA CRUZ,"**

Accused,

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

**EX-MAYOR CARLOS
ESTONILO, SR., MAYOR
REINARIO "REY" ESTONILO,
EDELBRANDO ESTONILO
a.k.a. "EDEL ESTONILO,"
EUTIQUIANO ITCOBANES
a.k.a. "NONONG
ITCOBANES," and CALVIN
DELA CRUZ a.k.a. "BULLDOG
DELA CRUZ,"**

Accused-Appellants.

Promulgated:

OCT 13 2014

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X

DECISION

LEONARDO-DE CASTRO, J.:

In this appeal, accused-appellants Ex-Mayor Carlos Estonilo, Sr. (**Carlos, Sr.**), Mayor Reinario Estonilo (**Rey**), Edelbrando Estonilo (**Edel**), Eutiquiano Itcobanes (**Nonong**), and Calvin Dela Cruz (**Bulldog**) seek liberty from the judgment¹ of conviction rendered by the Regional Trial Court (RTC), Branch 45, Manila, which found them guilty beyond reasonable doubt of the complex crime of Murder with Direct Assault in Criminal Case No. 05-238607.

The above-named accused-appellants, along with four others, namely: Nonoy Estonilo (**Nonoy**),² Titing Booc (**Titing**),³ and Gali Itcobanes (**Gali**),⁴ and Orlando Tagalog Materdam (**Negro**)⁵ were all charged in an Information dated July 30, 2004 that reads:

That on or about April 5, 2004 at 8:00 o'clock in the evening thereof, at Celera Elementary School,⁶ Brgy. Villa Inocencio, Municipality of Placer, Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with firearms, conspiring, confederating and mutually helping one another, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and shoot one FLORO A. CASAS, while in the performance of his duty being the District Supervisor of public schools, hitting the latter on the different parts of his body which caused his instantaneous death.⁷

On November 8, 2005, the prosecutor filed an Amended Information,⁸ which provides:

That on or about April 5, 2004, at Celera Elementary School, Brgy. Villa Inocencio, Municipality of Placer, Province of Masbate, Philippines, and within the jurisdiction of the Honorable Court of Masbate, the above-named accused EX-MAYOR CARLOS ESTONILO, SR. and MAYOR

¹ CA *rollo*, pp. 42-63.

² At large.

³ At large.

⁴ At large.

⁵ Although accused Negro was arrested on May 12, 2008, prior to the promulgation of the trial court's Decision, the latter ordered the conduct of a separate trial for accused Negro considering that the trial of the case was already at an end.

⁶ Sometimes referred to as Celera Inocencio Elementary School in some parts of the records.

⁷ Records, p. 2.

⁸ In an Order dated October 5, 2005, the RTC granted the prosecution's motion to amend the original Information. The said Order reads:

"As moved by Public Prosecutor Antonio B. Valencia, Jr., without opposition from the accused through counsel, in order that the participation of all the accused as well as their real names be clearly reflected in the Information, he is given fifteen (15) days from today within which to file an Amended Information.

Consequently, let today's arraignment and pre-trial be reset to November 9, 2005 to be called at 10:00 a.m. as requested." (Records, p. 145.)

REINARIO “REY” ESTONILO, conspiring and confederating together and helping one another, with intent to kill, and with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously induce their co-accused, EDELBRANDO ESTONILO AL[I]AS “EDEL ESTONILO[,]” EUTIQUIANO ITCOBANES AL[I]AS “NONONG ITCOBANES[,]” NONOY ESTONILO, TITING BOOC, GALI ITCOBANES, ORLANDO MATERDAM Y TAGALOG ALIAS “NEGRO MATERDAM[,]” [and] CALVIN DELA CRUZ AL[I]AS “BULLDOG DELA CRUZ[,]” who were all armed with firearms, to attack, assault and use personal violence upon the person of one FLORO A. CASAS, while in the performance of his duty being a District Supervisor of public schools, by then and there shooting the latter, hitting said FLORO A. CASAS on the different parts of his body which were the direct and immediate cause of his death thereafter.⁹

When they were arraigned on November 9, 2005, the accused-appellants pleaded not guilty to the crime charged. On the same date, the RTC issued a pre-trial order which stated, among others:

- a) Upon request by the prosecution, the defense admitted the following:
 1. The identities of the five (5) accused present;
 2. As to the jurisdiction of this Court, there was an Order from the Honorable Supreme Court as to the transfer of venue;
 3. The fact of death of Floro A. Casas;
 4. That the victim Floro A. Casas at the time of his death was a District Supervisor of the Department of Education.
- b) However, upon request by the defense, the prosecution did not admit that Ex-Mayor Carlos Estonilo, Sr. and Mayor Reinario Estonilo were not at the scene of the incident during the incident.¹⁰

The prosecution presented nine witnesses, namely: Elsa Q. Casas (Elsa), the victim’s wife; Felix Q. Casas (Felix), the victim’s son; Dr. Ulysses P. Francisco (Dr. Francisco), the Municipal Health Officer, Placer, Masbate; Senior Police Officer 4 Restituto L. Lepatan, Sr. (SPO4 Lepatan), Placer Police Station; Serapion M. Bedrijo (Serapion), employee of Municipal Councilor candidate Boy dela Pisa; Carlo S. Antipolo (Antipolo), a resident of Placer, Masbate; Diego L. Casas (Diego), cousin of the victim; Rosalinda V. Dahonan (Rosalinda), a resident of Placer, Masbate; and Servando P. Rosales (Servando), former employee of Ex-Mayor Carlos, Sr.¹¹

The testimonies of the foregoing witnesses consisted of the following:

⁹ Records, p. 152.

¹⁰ Id. at 160.

¹¹ Id. at 523.

Felix narrated that on April 4, 2005, the day before his father, Floro Casas (Floro), was gunned down, he was with the latter and some teachers at the Celera Inocencio Elementary School, Placer, Masbate; that they were working on the closing ceremonies to be held the following day; that one Ranio Morales called on Floro and told him that Mayor Carlos, Sr. wanted to see him at his (Ranio) house; that Floro and Felix went to see Mayor Carlos, Sr.; that when they saw Mayor Carlos, Sr., he showed them (Floro and Felix) a program of a celebration of the Federation of 7th Day Adventist that contained the names of the governor, the congressman, and Placer mayoralty candidate Vicente Cotero (Cotero), as guests of the said activity; that Felix asked his father why Cotero's picture was so big while Mayor Carlos, Sr.'s name was not mentioned in the program; that Floro replied that he cannot help it because Cotero paid for the program; that the answer angered Mayor Carlos, Sr. and he scolded Floro; that Mayor Carlos, Sr. said "*you are now for Cotero but you're only Estonilo when you ask for my signature to sign the voucher. This is up to now that you will be the supervisor of Celera*"; that Floro responded "*when are you a superintendent when you don't have any scholastic standing. Just look if I will still vote for your son*"; that Mayor Carlos, Sr. replied "*let's see if you can still vote*"; and that the following day, Floro was shot to death.¹²

But prior to the April 4, 2005 incident, Felix recounted that on December 10, 2003, upon invitation of Nonoy, he joined the latter's group for a drinking spree at a videoke bar; that they talked about the death of one Titing Villester; that Nonoy told Felix that "*brod, do not be afraid, because others are supposed to be afraid [of] us because they believe that we were the ones who killed Titing Villester*"; that afterwards Felix and the group were fetched at the videoke bar by Edel, a messenger of Mayor Carlos, Sr.; that they were brought to the house of one Bobong Baldecir (a nephew of Mayor Carlos, Sr.) in Daraga; that upon arriving thereat, Rey uttered "*it's good that Dodong (Felix's nickname) is with you*"; that Nonoy then said "*who would not [be] otherwise, his father would be the next victim after Titing Villester*";¹³ that Rey then turned to Felix and said, "*it's very important that your father is with us because a District Supervisor has a big [role] in the Comelec's choice for those teachers who would become members of the Board of Election Inspectors*"; that Felix clarified that Rey was then the 2004 mayoralty candidate for Placer, Masbate; and that Felix went along with him since he was in Daraga, the bailiwick of the Estonilos.¹⁴

On cross examination, the counsel for the accused tried to discredit Felix by questioning him on why it took him a long time to execute an affidavit relative to his father's killing. Felix explained that he went to Cebu to stay away from Placer, which is under the Estonilo's jurisdiction.¹⁵ The

¹² Id. at 24-25.

¹³ TSN, February 21, 2006, pp. 11-22.

¹⁴ Id. at 31-50.

¹⁵ TSN, February 22, 2006, p. 26.

defense confronted Felix of a criminal case against him for illegal use of prohibited drugs, for which he was out on bail.¹⁶

On March 28, 2006, the prosecution presented two witnesses, Dr. Ulysses Francisco y Pedrano and SPO4 Restituto Lepatan, Sr. The prosecution and the defense entered into stipulation of facts relative to their testimonies.

[Stipulation of Facts on Dr. Ulysses P. Francisco's testimony:]

1. That Dr. Ulysses P. Francisco, a Municipal Health Officer of Placer, Masbate, is expert in medicine;
2. That he was the one who conducted the Post-Mortem Examination on the dead body of Floro Casas y Baronda on April 6, 2004 at Katipunan, Placer, Masbate;
3. That in connection with his examination, he prepared the Post-Mortem Examination Report, marked as Exhibit "F," the printed name and signature of Dr. Ulysses P. Francisco, marked as Exhibit "F-1";
4. That he also prepared the Certificate of Death, marked as Exhibit "G" and the Sketch of a Human Body, marked as Exhibit "H";
5. The veracity and truthfulness of the Post-Mortem Findings indicated in the Post-Mortem Examination Report; and
6. In the course of the examination of the victim, the said witness recovered three slugs: the 1st slug was marked as Exhibit "I," the fragmented slug as Exhibit "I-1," and the metallic object consisting of two pieces of Exhibit "I-2."

[Stipulation of Facts on SPO4 Restituto L. Lepatan, Sr.'s testimony:]

1. That there exists a Police Blotter in the Record/Blotter Book of the Placer, Masbate Police Station relative to the shooting incident that occurred on April 5, 2004 at Celera Elementary School. Said Police Blotter was requested to be marked by the prosecution as Exhibit "J";
2. That said witness prepared the Police Report dated April 17, 2004 relative to the blotter written on the Blotter Book. Said Police Report was requested to be marked as Exhibit "J-1" and the signature of Sr. Police Officer IV Restituto L. Lepatan, Sr. as Exhibit "J-1-a";
3. The existence of the Police Blotter as appearing in the Blotter Book page number 325. Said Police Blotter book page 325 was requested to be marked as Exh. "K" and the bracketed portion thereof as Exh. "K-1."¹⁷

¹⁶ Id. at 3.

¹⁷ Records, pp. 212-213; Order dated March 28, 2006.

According to Dr. Francisco, Floro sustained gunshot wounds caused by more than one firearm based on the sizes of the slugs recovered and that some of them were fired at close range. The counsel for the accused waived his cross examination.¹⁸

Prosecution witness Serapion testified that while he was printing the name of Municipal Councilor candidate Boy dela Pisa on the street facing the Celera Elementary School on the night of April 5, 2004, he heard gunshots coming from inside the compound of the school; that after two or three minutes, he saw more or less six persons coming out of the school; that he was able to identify three of them as present in the courtroom: Edel, Nonoy, and Nonong; that he saw the six men approach Mayor Carlos, Sr.'s vehicle, which was parked near the school; that Mayor Carlos, Sr. and Rey came out of a house nearby; that upon reaching the vehicle, Serapion heard Nonoy say to Mayor Carlos, Sr. "*mission accomplished, sir*"; that Mayor Carlos, Sr. ordered Nonoy and his group to escape, which they did using two motorbikes towards the direction of Cataingan; and thereafter, that Mayor Carlos, Sr. and Rey drove towards the direction of Daraga.¹⁹

During his cross examination, the defense tried to discredit Serapion by confronting him with the fact that he has a pending criminal case for frustrated murder and that he was out on bail.²⁰

Antipolo testified that on April 5, 2004, he was riding his motorcycle and passing by the gate of the Celera Elementary School when he heard gunshots and someone shouted that Floro was shot; that he stopped, alighted from his motorcycle, went to the gate, and saw four persons holding short firearms; that he identified Nonoy and Negro as the two who fired at Floro about seven times; that he identified Edel and Nonong as the two other gun holders; that at that moment, Gali shouted "*sir, that's enough, escape!*"; that Gali was accompanied by someone named Ace, Titing and Bulldog; that right after Gali shouted for them to escape, all of them hurriedly left the school compound; that he saw Mayor Carlos, Sr.'s pick-up vehicle arrive soon thereafter; that Mayor Carlos, Sr., Rey and Negro alighted from the vehicle and watched the proceedings; that he heard Mayor Carlos, Sr. say "*leave it because it's already dead*"; and that afterwards, the police officers arrived.²¹

In an attempt to discredit Antipolo, the defense counsel confronted him with a criminal case against him for homicide of one Edgardo Estonilo (brother of accused-appellant Edel) that happened on October 30, 2005.²²

¹⁸ TSN, March 28, 2006, pp. 11-14.

¹⁹ TSN, April 25, 2006, pp. 6-20.

²⁰ TSN, April 26, 2006, pp. 10-11.

²¹ TSN, June 20, 2006, pp. 5-38.

²² TSN, July 12, 2006, pp. 3, 19-20.

Elsa was presented to testify on the probable motive for the killing of Floro, the circumstances surrounding the killing and its discovery, their family background, her husband's line of work, how she felt on their loss, and the expenses relative to his killing. She testified that she heard there were people who were jealous of Floro's position because he could bring voters to his side during election time; that Placer mayoralty candidate Cotero donated medals for the 2003-2004 closing ceremony of the entire district of public schools; that during the closing ceremony, the donor's name was announced, which angered then Mayor Carlos, Sr.;²³ that when Floro was processing a voucher worth ₱70,000.00, Mayor Carlos, Sr. refused to sign the same and even threw the voucher on the floor saying "*let this be signed by Vicente Cotero*"; and that Floro's cousin, Diego Casas, helped Floro secure the Mayor's signature by ensuring Mayor Carlos, Sr. that Floro was for him, and only then did Mayor Carlos, Sr. agree to sign the voucher.²⁴

Diego L. Casas corroborated Elsa's testimony relative to the fact that he helped Floro secure Mayor Carlos, Sr.'s signature on the voucher.²⁵

Rosalinda testified that at 7:00 a.m. on April 10, 2004, Mayor Carlos, Sr. went to her house and told her that he would kill her husband following Floro; that she was shocked and scared, thus, she went to the Placer Police Station and reported the incident; that she went to see her husband, who was then campaigning for mayoralty candidate Cotero, and informed him of what happened; and that she went to Elsa's house and informed the latter of the threat.²⁶

Servando attested that at about 7:00 a.m. on April 1, 2004, he was in the house of Mayor Carlos, Sr. together with said Mayor, Nonong, Edgar Estonilo, the group of Bulldog, Negro, Alias "S" [Ace], Rollie, Nonong, Edel, and Gali; that he witnessed Mayor Carlos, Sr. say "*ipatumba si Floro Casas*"; that Servando later learned that the mayor's men were unsuccessful in their goal because Floro was no longer in Barangay Taberna, where they intended to execute the mayor's order; and that Mayor Carlos, Sr. and his men again planned to kill Floro at Celera Elementary School on April 4, 2004.²⁷

During cross examination, the defense confronted Servando with the latter's *Affidavit of Retraction*, which he executed on June 14, 2004. The affidavit contained a withdrawal of his *Sinumpaang Salaysay* taken on May 30, 2004 at the Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG) Camp Bonny Serrano, Masbate City relative to the criminal complaint for direct assault with murder filed against Mayor

²³ TSN, January 31, 2006, pp. 8-21.

²⁴ Id. at 32-37.

²⁵ TSN, September 26, 2006, pp. 13-30.

²⁶ TSN, November 14, 2006, pp. 6-15.

²⁷ TSN, May 27, 2008, pp. 4-10.

Carlos, Sr. and his company. He was also asked about two criminal charges filed against him in Cebu relative to violation of Republic Act No. 9165, illegal sale and illegal possession of dangerous drugs.²⁸

On re-direct examination, Servando narrated that Mayor Carlos, Sr.'s nephew, Bobong Baldecir, fetched him from his house and he was brought to the house of Mayor Carlos, Sr. in Daraga; that from there, he was brought to Atty. Besario in Cebu; that Atty. Besario informed him about the Affidavit of Retraction that he was supposed to sign, which he did not understand as it was written in English; and that he clarified that the contents of the affidavit was not his but those of Bobong.²⁹

The defense on its part called to the witness stand Jesus Baldecir, Jr. (Jesus/Bobong), Quirino D. Calipay (Quirino), and the five accused-appellants.

Jesus denied Servando's allegation that he (Jesus) forced him to sign the Affidavit of Retraction. Jesus narrated that Servando gave word that he (Servando) wanted to meet him (Jesus); that upon their meeting, Servando told him that he wanted to retract his sworn statement because Mayor Carlos, Sr. and his company did nothing wrong; that Jesus, Servando and Servando's wife went to Cebu to meet Atty. Besario; that while traveling, Servando told him that was evading the men of Governor Go, Vicente Coter and Casas because he feared for his life; that during the meeting Atty. Besario prepared the affidavit and translated it to Cebuano dialect; that afterwards, Jesus, Servando and Servando's wife went to the Capitol so that Servando could sign it before the prosecutor; that Jesus, Atty. Besario, Servando and his wife, and Dante Estonilo (another nephew of Mayor Carlos) went to Manila to meet with the media; that the media asked Servando whether he was forced to sign, or was given money or reward to sign the affidavit of retraction, Servando replied in the negative; and that the purpose of the press meeting was to present Servando and show that he was not kidnapped.³⁰

But during his cross examination, Jesus admitted that his nickname was Bobong, and that Mayor Carlos, Sr. is his uncle; that he is one of the accused in the criminal case for the kidnapping of Servando; and that it was Dante (Dante) Estonilo who arranged for the meeting with the media, and who served as Servando's and his wife's companion, while he was with Atty. Besario.³¹

During his turn, accused-appellant Mayor Carlos, Sr. testified that in the early evening of April 5, 2004 he was in a house near the Celera Elementary School attending a birthday party; that while thereat, he heard

²⁸ Id. at 16-18; records, p. 14, Exhibit "8."

²⁹ Id. at 22-25.

³⁰ TSN, July 1, 2008, pp. 6-25, 35.

³¹ Id. at 27-37.

successive gunshots and went out to ride his vehicle so he could check the source of the gunshots; that when he reached the school gate someone informed him that Floro was gunned down; that he did not see the victim because according to the people it was boarded in a jeep and brought to the hospital; and that he and his son, Rey, confirmed that they were at the school minutes after the incident.³²

During cross examination, Mayor Carlos said that he and Floro were close friends; that he learned that he and his son were suspects in Floro's killing five months after the incident; that he confirmed that Rey and Calvin dela Cruz were with him while inquiring about the shooting at the school; and that he denied having met Felix on April 4, 2004, seeing Rosalinda after April 5, 2004, or that Servando was his bodyguard.³³

Accused-appellant Rey testified that in the early evening of April 5, 2004 he was in his house and was planning to campaign at Barangay Matagantang, Placer, Masbate; that on his way to said *barangay*, he passed by Celera Elementary School and noticed his father's vehicle, and that there were several people thereat; that he stopped and stayed in the school for a few minutes, and then proceeded to meet his candidates for counselors at Ranio's house; and that afterwards, they all went to Barangay Matagantang.³⁴

On cross examination, Rey expressed that this criminal case may be politically motivated because his opponents could not attribute anything to him since he won as mayor.³⁵

Quirino narrated that in the evening of April 5, 2004, he and his family were having supper at their house located in front of Celera Elementary School's guardhouse, when they heard gunshots; that they immediately laid down, while Quirino ran across the road and took cover at the school fence; that he peeped through the fence and saw three persons firing a gun; that he could not identify them or their victim because it was a bit dark; that after 10 to 20 seconds, he went back home; that a certain Joel Alcantara and his companions went to him asking him to go with them inside the school, once inside the school, they saw Floro lying face down; that he took the liberty to go to the police headquarters located five minutes away; and that when he and the Placer Chief of Police arrived at the school, he noticed Mayor Carlos, Sr. standing near the gate.³⁶

For his part, accused-appellant Nonong testified that in the evening of April 5, 2004 he was engaged in a drinking spree in Nining Berdida's house

³² TSN, August 4, 2008, pp. 4-9.

³³ Id. at 16-37.

³⁴ TSN, August 5, 2008, pp. 4-8.

³⁵ Id. at 11.

³⁶ TSN, September 1, 2008, pp. 6-19.

at Barangay Pili, Placer, Masbate; and that he stayed in her place until 11:00 p.m.³⁷

During his cross examination, accused-appellant Nonong acknowledged that Mayor Carlos, Sr. is his uncle and Rey is his second cousin; that he was not Mayor Carlos, Sr.'s bodyguard, but admitted that he handled the latter's fighting cocks; and admitted that Barangay Pili is 40 to 45 minutes away from the *poblacion* of Placer.³⁸

Edel related that in the evening of April 5, 2004, he was sleeping in his house when Rey called him to go to Ranio's house in Placer, Masbate for a meeting; that their group passed by Celera Elementary School and saw that there were plenty of people, one of whom was Mayor Carlos, Sr.; that their group stopped to inquire about what happened, and learned that Floro was gunned down; and that he and his group stayed for about five minutes and left.³⁹

Accused-appellant Bulldog was also presented in court and confirmed that he was with Mayor Carlos, Sr. and his wife attending a birthday party near the Celera Elementary School; that they went to the school to check on what happened and learned that Floro was shot; and that they did not stay long and went home to Daraga.⁴⁰

During cross examination, he denied that he was the bodyguard of Mayor Carlos, Sr.; and that he was merely accompanying the latter to help in pushing his vehicle in case the starter failed to work.⁴¹

After trial, the RTC found the accused-appellants guilty beyond reasonable doubt of the crime charged. The *fallo* of its March 30, 2009 Decision provides:

WHEREFORE, premises considered, this Court finds the accused EX-MAYOR CARLOS ESTONILO, SR., MAYOR REINARIO "REY" ESTONILO, EDELBRANDO ESTONILO alias "EDEL ESTONILO," EUTQUIANO ITCOBANES alias "NONONG ITCOBANES," and CALVIN DELA CRUZ alias BULLDOG DELA CRUZ" GUILTY BEYOND REASONABLE DOUBT of the crime of Murder with Direct Assault under Article 248 and Article 148 in relation to Article 48 all of the Revised Penal Code and each of said accused are hereby sentenced to suffer the penalty of imprisonment of twenty (20) years and one (1) day to forty (40) years of reclusion perpetua.

As civil liability pursuant to Article 100 of the Revised Penal Code, the aforesaid sentenced the accused are all hereby ordered to solidarily indemnify the family of the victim Floro Casas in the amount of

³⁷ TSN, September 2, 2008, pp. 3-4.

³⁸ Id. at 6-13.

³⁹ Id. at 17-20.

⁴⁰ Id. at 27-31.

⁴¹ Id. at 32.

Fifty Thousand Pesos (₱50,000.00). Likewise, by way of moral damages, the said accused are furthermore ordered to solidarily pay the said family the amount of One Hundred Thousand Pesos (₱100,000.00).

The accused are, however, credited in the service of their sentence the full time during which they have been denied.

Let this case be archived as against the accused NONOY ESTONILO, TITING BOOC, and GALI ITCOBANES who have warrants of arrest issued against them but still remain at large, pending their arrest/s.

As to the accused ORLANDO TAGALOG MATERDAM ALIAS “NEGRO MATERDAM,” separate trial is necessary considering that he was only recently arrested when the trial of this case as to the other accused was already about to end.⁴²

The RTC gave credence to the eyewitness account of Antipolo and the corroborating testimony of Serapion, who were both present at the school grounds during the shooting incident. The RTC pronounced that the evidence on record showed unity of purpose in the furtherance of a common criminal design, that was the killing of Floro. Accused-appellants Nonoy and Negro were the gunmen, while accused-appellants Edel and Nonong served as backup gunmen. Accused-appellant Bulldog, and accused Gali, Titing and one alias Ace served as lookouts.⁴³

The RTC found accused-appellants Mayor Carlos, Sr. and Rey to have ordered their co-accused to kill Floro based on the testimony of Servando, who was present when the group planned to kill Floro. Thus, the RTC concluded that Ex-Mayor Carlos, Sr. is a principal by inducement. And accused-appellant Rey conspired with his father. In sum, the prosecution was able to establish conspiracy and evident premeditation among all the accused-appellants.⁴⁴

The accused-appellants’ defense of alibi and denial did not withstand the positive identification of the prosecution witnesses. The accused-appellants claimed that they were somewhere else in Placer, Masbate when the shooting took place. However, they were not able to establish the physical improbability of their being in the crime scene at the time of the shooting. The RTC was convinced that the motive for the murder was due to Floro’s support for mayoral candidate Vicente Coterio. Since the victim was a district supervisor of public schools, the RTC convicted the accused-appellants of the complex crime of murder with direct assault.⁴⁵

All five accused-appellants appealed the foregoing RTC decision to the Court of Appeals alleging that the RTC erred in concluding that motive

⁴² CA *rollo*, pp. 62-63.

⁴³ Id. at 60.

⁴⁴ Id. at 61.

⁴⁵ Id. at 61-62.

was duly established, in appreciating the prosecution evidence and disregarding the salient points of the defense evidence, and in convicting the accused.⁴⁶

In its May 12, 2011 Decision, the Court of Appeals affirmed with modification the RTC decision.⁴⁷ The dispositive part thereof reads:

WHEREFORE, in light of the foregoing, the instant appealed is denied. The Decision dated 30 March 2009 of the Regional Trial Court of Manila, Branch 45 is hereby **AFFIRMED with modification** in that the penalty imposed upon accused-appellants shall simply be *reclusion perpetua* with its accessory penalties and that the award of civil indemnity is increased to Seventy[-]Five Thousand Pesos (₱75,000.00).⁴⁸

The Court of Appeals sustained the findings of fact and conclusions of law of the RTC considering that the RTC had observed and monitored at close range the conduct, behavior and deportment of the witnesses as they testified. The Court of Appeals corrected the penalty imposed, and explained that *reclusion perpetua* is an indivisible penalty which should be imposed without specifying the duration.

On June 29, 2011, the accused-appellants moved for reconsideration,⁴⁹ which the Court of Appeals denied in its November 8, 2011 Resolution.⁵⁰ Unsatisfied, the accused-appellants appealed their case before this Court.⁵¹

This Court's Ruling

The accused-appellants pray for the reversal of the judgment of conviction in the criminal case on the following assignment of errors: the RTC and the Court of Appeals erred in (1) giving credence and weight to the prosecution evidence, (2) finding that there was conspiracy among the accused-appellants, and (3) finding the accused-appellants guilty beyond reasonable doubt based on the prosecution evidence.

In essence, the defense disagrees with the disposition of the Court of Appeals affirming their conviction for murder with direct assault on the ground that some of the testimonies of the prosecution witnesses constitute circumstantial evidence, and that the prosecution was not able to prove their guilt beyond reasonable doubt.

The appeal fails.

⁴⁶ Id. at 81.

⁴⁷ Id. at 161-174.

⁴⁸ Id. at 174.

⁴⁹ Id. at 197-203.

⁵⁰ Id. at 250-251.

⁵¹ Id. at 253.

After a review of the record of the case, this Court sustains the conviction of the accused-appellants for murder with direct assault.

The age-old rule is that the task of assigning values to the testimonies of witnesses on the witness stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is, thus, no surprise that findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify.⁵²

This Court had nevertheless carefully scrutinized the records but found no indication that the trial and the appellate courts overlooked or failed to appreciate facts that, if considered, would change the outcome of this case. The trial court and the appellate court did not err in giving credence to the testimonies of the prosecution witnesses, particularly of Antipolo who was an eyewitness to the crime.

Antipolo's testimony did not suffer from any serious and material inconsistency that could possibly detract from his credibility. He identified the accused-appellant Nonoy and accused Negro as those who fired at Floro about seven times, while accused-appellants Edel and Nonong were on standby also holding their firearms. He also witnessed accused Gali shouting to the gunmen to stop and escape. He narrated that after all the accused left, Mayor Carlos, Sr., Rey and Materdam arrived aboard the mayor's vehicle. He also heard Mayor Carlos said "leave it because it's already dead." From his direct and straightforward testimony, there is no doubt as to the identity of the culprits.

To successfully prosecute the crime of murder, the following elements must be established:⁵³ (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide.⁵⁴

In this case, the prosecution was able to clearly establish that (1) Floro was killed; (2) Ex-Mayor Carlos, Sr., Rey, Edel, Nonong, and Calvin were five of the nine perpetrators who killed him; (3) the killing was attended by the qualifying circumstance of evident premeditation as testified to by prosecution eyewitnesses, Servando and Antipolo, as well as treachery as below discussed; and (4) the killing of Floro was neither parricide nor infanticide.

⁵² *People v. Malolot*, G.R. No. 174063, March 14, 2008, 548 SCRA 676, 688.

⁵³ Revised Penal Code, Article 248.

⁵⁴ *People v. Gabrino*, G.R. No. 189981, March 9, 2011, 645 SCRA 187, 196, citing *People v. De la Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 746.

Of the four elements, the second and third elements are essentially contested by the defense. The Court finds that the prosecution unquestionably established these two elements.

For the second element, the prosecution presented pieces of evidence which when joined together point to the accused-appellants as the offenders. Foremost, there is motive to kill Floro. It was Floro's support for Vicente Cotero, who was Rey's opponent for the position of mayor in Placer, Masbate. Second, the prosecution was able to establish that the accused-appellants planned to kill Floro on two separate occasions. The prosecution witness, Servando, was present in Mayor Carlos, Sr.'s house when they were plotting to kill Floro. He also heard Mayor Carlos, Sr. say "*ipatumba si Floro Casas.*" Third, Antipolo was an eyewitness to the killing. His testimony was corroborated by another witness, Serapion, who testified having seen the accused-appellants leaving the school a few minutes after he heard the gunshots. Serapion also recounted having heard one of them said "mission accomplished sir," after which, Mayor Carlos, Sr. ordered them to leave.

Essentially, the prosecution evidence consists of both direct evidence and circumstantial evidence. The testimony of the eyewitness Antipolo is direct evidence of the commission of the crime.

Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference.⁵⁵ It consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.⁵⁶ Here, the circumstantial evidence consists of the testimonies of Servando and Serapion. Servando was present when Mayor Carlos, Sr. ordered his men to kill Floro. Whether this order was executed can be answered by relating it to Antipolo's eyewitness account as well as Serapion's testimony.

As for the third element of qualifying circumstance, the prosecution witness, Servando, testified that he was present on the two occasions when the accused-appellants were planning to kill Floro. His categorical and straightforward narration proves the existence of evident premeditation.

Treachery also attended the killing of Floro. For treachery to be present, two elements must concur: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. In

⁵⁵ *People v. Uy*, G.R. No. 174660, May 30, 2011, 649 SCRA 236, 251.

⁵⁶ *People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 504.

this case, accused-appellant Nonoy and accused Negro successively fired at Floro about seven times – and the victim sustained 13 gunshot wounds all found to have been inflicted at close range giving the latter no chance at all to evade the attack and defend himself from the unexpected onslaught. Accused-appellants Edel and Nonong were on standby also holding their firearms to insure the success of their “mission” without risk to themselves; and three others served as lookouts. Hence, there is no denying that their collective acts point to a clear case of treachery.

Defense of denial and alibi

The twin defenses of denial and alibi raised by the accused-appellants must fail in light of the positive identification made by Antipolo and Serapion. Alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused as in this case. It is also axiomatic that positive testimony prevails over negative testimony.⁵⁷ The accused-appellants’ alibis that they were at different places at the time of the shooting are negative and self-serving and cannot be given more evidentiary value vis-à-vis the affirmative testimony of credible witnesses. The accused-appellants, the victim, and the prosecution witnesses reside in the same municipality and are, therefore, familiar with one another. More so, that the two principal accused in this case are prominent political figures. Therefore, the prosecution witnesses could not have been mistaken on the accused-appellants’ identity including those who remained at large.

Further, it has been held that for the defense of alibi to prosper, the accused must prove the following: (i) that he was present at another place at the time of the perpetration of the crime; and (ii) that it was physically impossible for him to be at the scene of the crime during its commission. Physical impossibility involves the distance and the facility of access between the crime scene and the location of the accused when the crime was committed; the accused must demonstrate that he was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.⁵⁸ Here, the accused-appellants utterly failed to satisfy the above-quoted requirements. In fact, Mayor Carlos, Sr. and his other co-accused, except for Nonong, admitted that they were near the school before the incident and at the school minutes after the killing took place. Certainly, the distance was not too far as to preclude the presence of accused-appellants at the school, and/or for them to slip away from where they were supposed to be, unnoticed.

Penalties

On the offense committed by accused-appellants, the RTC correctly concluded that they should be held accountable for the complex crime of

⁵⁷ *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 802-803.

⁵⁸ *People v. Ramos*, G.R. No. 190340, July 24, 2013, 702 SCRA 204, 217.

direct assault with murder. There are two modes of committing *atentados contra la autoridad o sus agentes* under Article 148 of the Revised Penal Code. Accused-appellants committed the second form of assault, the elements of which are that there must be an attack, use of force, or serious intimidation or resistance upon a person in authority or his agent; the assault was made when the said person was performing his duties or on the occasion of such performance; and the accused knew that the victim is a person in authority or his agent, that is, that the accused must have the intention to offend, injure or assault the offended party as a person in authority or an agent of a person in authority.

In this case, Floro was the duly appointed District Supervisor of Public Schools, Placer, Masbate, thus, was a person in authority. But contrary to the statement of the RTC that there was direct assault just because Floro was a person in authority, this Court clarifies that the finding of direct assault is based on the fact that the attack or assault on Floro was, in reality, made by reason of the performance of his duty as the District Supervisor.

When the assault results in the killing of that agent or of a person in authority for that matter, there arises the complex crime of direct assault with murder or homicide.

The offense is a complex crime, the penalty for which is that for the graver offense, to be imposed in the maximum period. Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of *reclusion perpetua* to death for the felony of murder; thus, the impossible penalty should have been death. Plus the fact that there exists an aggravating circumstance, pursuant to Article 63, paragraph 2 of the Revised Penal Code, the proper penalty is death. But the imposition of death penalty has been prohibited by Republic Act No. 9346, entitled “An Act Prohibiting the Imposition of Death Penalty in the Philippines”; thus, the RTC, as affirmed by the Court of Appeals, properly imposed upon accused-appellants the penalty of *reclusion perpetua*.

The Proper Indemnities

As to the proper monetary awards impossible for the crime charged, modifications must be made herein. The award of ₱100,000.00 each as civil indemnity and moral damages is proper to conform with current jurisprudence.⁵⁹

Further, when a crime is committed with an aggravating circumstance either as qualifying or generic, an award of exemplary damages is justified

⁵⁹ *People v. Sanchez*, G.R. No. 188610, June 29, 2010, 622 SCRA 548, 569.

under Article 2230⁶⁰ of the New Civil Code. Thus, conformably with the above, the legal heirs of the victim are also entitled to an award of exemplary damages⁶¹ in the amount of ₱100,000.00.

Lastly, an interest at the rate of six percent (6%) per annum shall be imposed on all the damages awarded, to earn from the date of the finality of this judgment until fully paid, in line with prevailing jurisprudence.⁶²

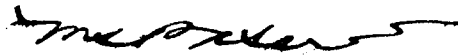
At this point, notice must be made that on January 28, 2014, the Superintendent, New Bilibid Prison informed this Court of the death of accused-appellant Ex-Mayor Carlos, Sr. on January 9, 2013. In view thereof, the case against deceased Ex-Mayor Carlos, Sr. is hereby ordered dismissed.

WHEREFORE, premises considered, the Court of Appeals Decision dated May 12, 2011 in CA-G.R. CR.-H.C. No. 04142, affirming the Decision dated March 30, 2009, promulgated by the Regional Trial Court of Manila, Branch 45, in Criminal Case No. 05-238607, finding accused-appellants REINARIO “REY” ESTONILO, EDELBRANDO “EDEL” ESTONILO, EUTIQUIANO “NONONG” ITCOBANES, and CALVIN “BULLDOG” DELA CRUZ **GUILTY** beyond reasonable doubt of Murder with Direct Assault, is hereby **AFFIRMED with MODIFICATIONS**, the award of civil indemnity and moral damages is increased to ₱100,000.00 each, in addition to ₱100,000.00 as exemplary damages, and the imposition of 6% thereon as legal interest upon finality of this Court’s Decision.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

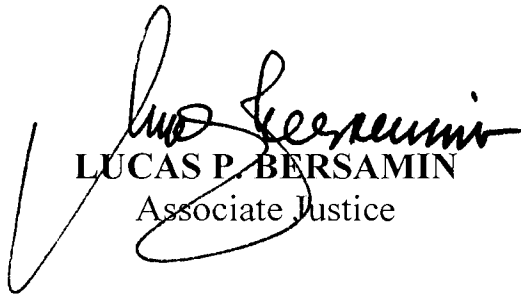
WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

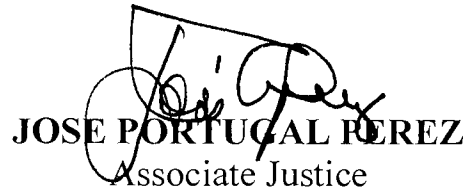
⁶⁰ Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

⁶¹ *People v. Cabungan*, G.R. No. 189355, January 23, 2013, 689 SCRA 236, 249.


⁶² *People v. Domingo*, 599 Phil. 589, 611 (2009).



LUCAS P. BERSAMIN
Associate Justice




JOSE PORTUGAL PEREZ
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice