



Republic of the Philippines
 Supreme Court
 Manila

W. E. Lopez
 Justice
 Third Division
 August 1, 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 192790

Present:

VELASCO, JR., J., *Chairperson,*
 PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

- versus -

Promulgated:

YOLANDO LIBRE alias "Nonoy,"
 Accused-Appellant.

August 1, 2016

X-----*Angelita A. Gacutan*-----X

DECISION

PERALTA, J.:

Before this Court is an appeal via Rule 45 from the Decision dated April 27, 2010 of the Court of Appeals in CA-G.R. CR-HC No. 00089-MIN¹, affirming *in toto* the Decision dated January 18, 2000 of the Regional Trial Court (RTC), Panabo, Davao, Branch 34, convicting appellant Yolando Libre of murder and frustrated murder.

On February 9, 1995, four (4) Informations were filed, accusing accused-appellant Yolando Libre *alias* "Nonoy" and accused Albino Caman and Flora Encabo Vda. de Lumidas of murder and frustrated murder. The Informations alleged –

¹ Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Leoncia R. Dimagiba and Angelita A. Gacutan, concurring; *rollo*, pp. 4-24.

AV

Criminal Case No. 95-21 for Murder²

That on or about November 25, 1994, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another, with treachery and evident premeditation, with intent to kill, armed with a Garand rifle and a revolver, did then and there wilfully (sic), unlawfully and feloniously attack, assault and shoot one Rodel Barte, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.

Criminal Case No. 95-22 for Murder³

That on or about November 25, 1994, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, with intent to kill, armed with a Garand rifle and a revolver, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Joselito Barte, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.

Criminal Case No. 95-23 for Frustrated Murder⁴

That on or about November 25, 1994, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, with intent to kill, armed with a Garand rifle and a revolver, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Ruben Barte, thereby inflicting upon him wounds which would have caused his death, thus the accused performed all the acts of execution which would have produced the crime of murder, as a consequence but which, nevertheless, did not produce it by reasons of causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Ruben Barte, and further causing actual, moral and compensatory damages to the offended party.

CONTRARY TO LAW.



² CA rollo, p. 9.

³ Id. at 10.

⁴ Id. at 11.

Criminal Case No. 95-25 for Frustrated Murder⁵

That on or about November 25, 1994, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, with intent to kill, armed with a Garand rifle and a revolver, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Renante Barte, thereby inflicting upon him wounds which would have caused his death, thus the accused performed all the acts of execution which would have produced the crime of murder, as a consequence but which, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Renante Barte, and further causing actual, moral and compensatory damages to the offended party.

CONTRARY TO LAW.

On February 16, 1996, upon arraignment, all three (3) accused pleaded not guilty. Joint trial ensued.

On January 7, 1997, however, during the pendency of these cases, accused Albino Caman while attempting to escape, was shot by provincial prison guards which resulted in his death. Consequently, on January 21, 1997, by reason of his death, the criminal cases against him were dismissed.⁶

The facts are as follows:

In the evening of November 25, 1994, prosecution witness Lucy Sabando (*Lucy*), together with her husband, Edwin, and their child, were visited in their home by three (3) persons, whom she later identified as accused Albino Caman (*Caman*), a member of the Citizen's Armed Forces Geographical Unit (*CAFGU*), accused-appellant Yolando Libre (*Libre*), and accused Flora Encabo (*Encabo*). The three accused told her that they were confused as to the direction of the house of Ruben Barte (*Ruben*), who was known to be a member of the New People's Army (*NPA*). They suddenly pushed the door of her house and ordered them to accompany them to Ruben's house. She noticed that each of them was carrying a firearm. One was a long firearm and the rest were short firearms. Her husband, while carrying their child, was the one who led the group to Ruben's house which was about two (2) kilometers away. Since they were not carrying any lamp, it took them about thirty minutes to reach their destination. In the meantime,

⁵ *Id.* at 12.

⁶ *Id.* at 26.

while they were walking, accused ordered Lucy to call out Ruben when they reach the latter's house and ask for medicine for her child.⁷

When they reached Ruben's house, Lucy called out asking for medicine for her supposed sick child. Ruben, while holding a lamp, went out of his house to see who was calling.⁸ It was then that one of the male accused rushed towards Ruben. Lucy later testified that the one who was carrying a short firearm was the one who rushed towards Ruben. She likewise testified that immediately after the accused and Ruben started "pulling" each other, she grabbed her husband and ran away. When they were about 250 meters away, she heard several gunshots.

Ruben testified that at about 9 o'clock in the evening of November 25, 1994, while he was inside their house together with his wife and children, he heard a woman's voice asking for medicine for a sick child. He recognized the voice to be that of Lucy. When he opened the door, he was suddenly attacked by accused Caman who was then carrying a gun which he thought was an M-14. He likewise saw accused-appellant Libre bringing a .38 caliber handgun. Caman then shot him at the back and thereafter began firing at his family who were then sleeping. The strafing lasted for about 30 minutes.⁹ Meanwhile, immediately after Caman shot Ruben, the latter took cover near their house post and was able to crawl out of the house and escape. While escaping, he heard one of the accused saying "*Buhi pa ba na?*" (Is he still alive") and the other one answered: "*Mabuhi pay pino pa sa bugas.*" (an idiom to mean that no one could survive with the strafing).¹⁰ He then went to the house of SPO4 Ernesto Evangelista, which was about a half kilometer away. He told SPO4 Evangelista that they were strafed. He thereafter fell unconscious and was later taken to Tagum for treatment of his injuries.

Ruben likewise testified that he did not know the motive of the attack but he testified that he had previous incident with Yolando Libre who challenged him to a fight with a bolo. He likewise testified that *albeit* he did not know Albino Caman, he knew that the latter was a member of the CAFGU and used to rove around their place. He also knew that Albino Caman and Yolando Libre were *compadres*.¹¹

SPO4 Ernesto Evangelista testified that at about 9 o'clock in the evening of November 25, 1995, he was awakened by Ruben who informed him that his house was strafed by unidentified persons. While his house was

⁷ TSN, April 10, 1996, pp. 16-17.

⁸ *Id.* at 17.

⁹ TSN, November 18, 1996, pp. 5-7.

¹⁰ *Id.* at 8.

¹¹ TSN (Cross-examination of Ruben Barte), November 18, 1996, pp. 22-25.



only a half kilometer away from Ruben's, he did not hear the gunfire as he was asleep. He noticed that Ruben was hit and bloody. He then called the police station and requested assistance to investigate the incident. At about 10 o'clock that night, the PNP Group, consisting of about ten police officers, led by the chief of Police, Elmer Royo, went to the crime scene. There they discovered that Juanita had one gunshot wound and several of the children were also hit. They noticed that the house was hit by several bullets and a number of empty shells of Garand rifle and .38 caliber revolver were recovered in the premises. Thereafter, they brought Juanita and the wounded children to the Davao Medical Hospital.¹²

Among the seven children, three (3) were shot. Renante Barte, who was then thirteen (13) years old, was shot in his left buttock and was confined at the Davao Regional Hospital for five (5) days and was recommended by the medical officer for medical attendance for 30-45 days barring complications. Joselito Barte, who was then eleven (11) years old, was pronounced dead on arrival and the cause of death was: "*Hemorrhagic shock sec. to gunshot wound at the right inguinal point of entrance towards the right buttocks point of exit.*" Rodel Barte, who was then 1 year and 3 months old, was likewise hit and the medical finding was: "*gunshot wound buttock, bilateral with massive tissue loss*" and the medical operation performed was a "*wide excision of gunshot buttocks proximal diverting loop colostomy.*" He died four (4) days after he was confined in the Davao Regional Hospital.

Juanita Barte testified that when her husband went outside to answer Lucy's call for help, she suddenly heard gunshots and learned that Ruben was hit. She then started crying and shouted: "*Do not shoot us because we have children*" but the firing still continued. So she gathered her children and embraced them all. She later identified accused Albino Caman, Yolando Libre, and Flora Encabo as the assailants. She could see their faces because of the lamp which was carried by Ruben. She was wounded on her right leg and right elbow.

For the defense, Flora testified that accused-appellant Libre was her common-law husband and they started living together in 1993. She likewise testified that she did not know Albino Caman and that she only met him in the evening of November 25, 1994. At about 9 o'clock in the evening, Caman allegedly went to their house and asked her husband the directions to the house of Ruben. Her husband allegedly did not want to accompany Caman as it was already dark. Caman got mad, and with "blazing" eyes, poked his gun at Libre and forced them to go out and accompany him to Ruben's house. She knew the Bartes by name and face and she also knew where their house was. While they were walking, they were allegedly

¹² TSN, April 10, 1996, pp. 5-6.



pushed by Caman and were allegedly told not to tell anyone including the police. She likewise testified that they did not stop at Ruben's house but instead passed by it as they were allegedly afraid at what Caman might do to Ruben and to them. Then, Caman asked them what place they were in already, and she answered that she did not know. When Caman turned to his left, he saw a lighted house and ordered Flora to wake the people inside. It turned out to be Lucy Sabando's house. As she refused Caman's orders, the latter himself woke the people inside the house and asked for the direction of Ruben Barte's house. Lucy Sabando then woke her husband, who told Caman that he will guide them to Barte's house. Together with Lucy and her husband, they turned back to where they came from to proceed to Ruben's house. She further testified that they could not run as Caman was allegedly holding her shoulder while his gun was pointed at her husband. She further testified that she and her husband ran to the cogon area when the commotion started and it was there that she heard the gunshots.

Yolando Libre, for his part, denied having any participations in the strafing. He testified that he knew Albino Caman as a member of the CAFGU and he used to see him wearing a "fatigue" uniform and fully packed with firearms. He was not close to Albino Caman and did not have any previous conversation with him. He testified that at around 9 o'clock in the evening of November 25, 1994, Albino Caman went to their house and asked for the directions of Ruben Barte's house. Albino Caman allegedly smelled of liquor and had reddish eyes. Yolando Libre knew Ruben's house, however, he refused to accompany Albino as it was already dark. This seemed to infuriate Albino Caman who then cocked his rifle and poked it at him while commanding them to accompany him to Ruben's house. Libre testified that he intentionally misled Albino Caman and so they were able to proceed to the house of Lucy and Edwin Sabando instead and it was already the latter who led them to Ruben Barte's house. Yolando Libre testified that he was familiar with Barte's house as he always passed by it when gathering firewood. He however denied having a grudge against him.

On January 18, 2000, the court *a quo* rendered its Decision,¹³ to wit:

Wherefore, the Court sentences the accused Yolando Libre, to suffer the following penalties.

In Crim. Case No. 95-21, he is sentenced to suffer the penalty of reclusion perpetua and is ordered to pay the heirs of Rodel Barte the sum of ₱50,000.00 for indemnity *ex delicto* and ₱50,000.00 for moral damages and ₱50,000.00 for exemplary damages.

In Crim Case No. 95-22, he is sentenced to suffer the penalty of reclusion perpetua and is directed to pay the heirs of Joselito Barte the

¹³ CA rollo, pp. 23-47.



sum of ₱50,000.00 as indemnity ex delicto, moral damages of ₱50,000.00 and exemplary [damages] of ₱50,000.00.

In Crim. Case No. 95-23, he is sentenced to suffer the penalty of imprisonment from 10 years and 8 months to 20 years and to pay Ruben Barte the sum of ₱20,000.00 as indemnity ex delicto, ₱10,000.00 moral damages and ₱10,000.00 as exemplary damages.

In Crim. Case No. 95-25, he is sentenced to suffer the penalty of imprisonment from 10 years and 8 months to 20 years and to pay Renante Barte the sum of ₱20,000.00 as indemnity ex delicto, ₱10,000.00, [as] moral damages and ₱10,000.00 as exemplary damages.

In all of these cases, he shall also suffer all the accessory penalties provided for by law. He should be credited with the period of his detention pending termination of these cases.

The accused, Flora Encabo, is acquitted in Crim. Cases [No.] 95-21, 95-22, 95-23 and 95-25 for want of proof beyond reasonable doubt as to her.

SO ORDERED.

Accused-appellant Libre appealed before the Court of Appeals.

On April 27, 2010, in its disputed Decision, the Court of Appeals dismissed the appeal for lack of merit and the appealed decision of the trial court was affirmed *in toto*.

Hence, this appeal, with the following issues:

I

THE LOWER COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT YOLANDO LIBRE GUILTY BEYOND REASONABLE DOUBT DESPITE THE INSUFFICIENCY OF EVIDENCE AGAINST HIM AND THAT THE EVIDENCE IS WANTING AS TO HIS ALLEGED CONSPIRACY WITH HIS CO-ACCUSED.

II

THE LOWER COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANT DESPITE THE CONTRADICTORY TESTIMONIES OF THE PROSECUTION WITNESSES.

III

ASSUMING THAT ACCUSED-APPELLANT CONSPIRED WITH CAMAN IN PERPETRATING THE CRIME, THE LOWER COURT GRAVELY ERRED IN APPRECIATING AGAINST ACCUSED-APPELLANT THE CIRCUMSTANCES OF TREACHERY, EVIDENT PREMEDITATION, NIGHTTIME, AND ABUSE OF SUPERIOR STRENGTH.



Appellant claims that the trial court erred in relying on the prosecution witnesses' identification of the perpetrators considering that the affidavits of the witnesses were inconsistent on their identities.

The appeal has no merit.

Time and again, this Court held that when the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. Moreover, credibility, to state what is axiomatic, is the sole province of the trial court. In the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, as in this case, the trial court's findings on the matter of credibility of witnesses will not be disturbed on appeal.¹⁴

The affirmance by the Court of Appeals of the factual findings of the trial court places this case under the rule that factual findings are final and conclusive and may not be reviewed on appeal to this Court. No reason has been given by appellant to deviate from the factual findings arrived at by the trial court as affirmed by the Court of Appeals.¹⁵

Given the foregoing, there is no doubt that prosecution witnesses, Lucy Sabando, Ruben Barte and Juanita Barte, have sufficiently established the identities of appellants as the perpetrators of the strafing incident. It should be noted that two of the prosecution witnesses, *i.e.*, Ruben and Juanita were victims of the strafing. Ruben and Juanita clearly saw the perpetrators with their firearms as there was illumination coming from the lamp carried by Ruben. To wit:

Cross-examination of Ruben Barte by Atty. Evangelio:

Q You said sometime in November 25, 1994 at around 9:30 P.M. there was a person calling your name, is that correct?

A Yes Ma'am.

Q Was that a voice of a woman or a male?

A A woman.

¹⁴ *People v. Nelmidia*, 694 Phil. 529, 556 (2012). (Citations omitted)

¹⁵ *Id.* at 556-557.



Q And that was the voice of Sabando?

A Yes Ma'am.

Q What is your encounter of Sabando, you are familiar with her voice?

A Because we were just living near.

Q You mean your house are near each other?

A Yes Ma'am.

Q You said you recognize the voice of Lucy Sabando but you did not see her face at that time.

A I know her voice and after that I took the lamp to see her face.

Q And now the lamp you use is a small lamp.

A Yes Ma'am.

Q Lucy Sabando has several companion that time.

A Yes Ma'am.

Q How many are they?

A They were five (5).

Q Do you recognize the faces of those persons.

A Yes Ma'am.

Q And the basis of your seeing the faces is the small lamp?

A Yes Ma'am.

Q But outside your house it was dark.

A Yes Ma'am.

Q Your distance from Lucy Sabando is about 10 to 20 meters.

A Yes Ma'am.

Q What about the other person also 20 meters.

A About 10 meters.

Q And the only way that you recognize was the small lamp.

A When I raised the lamp I recognized their faces.

Q But yet you are still 10 meters away from them.

A We are also near each other like this.

Q You said that several persons were pulling you, is that correct?

A Yes Ma'am.

Q How many are they.

A Three (3) of them.

Q And you were already holding a lamp?

A Yes Ma'am.

Q They were pulling you while you were holding a lamp.

A Yes Ma'am.



Q At the same time your wife also pulling you.

A Yes Ma'am.

Q You still holding the lamp?

A It was already put off.

Q The light was put off before you have seen their faces.

Pros. Gonzales:

Misleading the testimony is – he recognized their faces when the light was already off.

Atty. Evangelio:

Yes, you Honor I withdraw the question.

Q You said that you were being pulled by three (3) persons while your wife was also pulling you, and you were successfully pulled by your wife.

A Yes Ma'am.

Q You already recognize the uniform of the person and not their faces.

A I know the uniform.

Q But the face you are not familiar.

A I know them before.

x x x x

Q How did you know that Caman and Libre are compadres?

A They are close to each other and compadres.

Q You said you are neighbors with Caman and Libre, is that correct?

A This Caman and Libre is about 3 meters.

Q And yet you considered as neighbors.

A That the two (2) men are far and only Lucy is my neighbor.

Q You mean to tell us you saw these persons of that incident on November 25, 1994.

A I saw them several times.

Q Tell us in what occasion?

A This Albino is a Cafgu and used to robe.

Q And he used to robe to your place.

A Yes always.

x x x x

Q Tell us your relationship with Caman purely an acquaintance.

A We are not close with each other.

Q But you have no disagreement or arguments with each other.

A None.



Q How about Libre do you have an argument?

A We have a grudge with Libre.

Q And it happens when?

A It was long ago.

x x x¹⁶

Lucy, on cross-examination, testified that while she did not see the faces of the perpetrators who went to their house, she confirmed that the perpetrators were two (2) men and recognized a voice belonging to a woman.¹⁷ Lucy testified that Caman and Libre were each carrying a firearm, a long and short one, respectively.¹⁸ Such testimony coincides with Ruben Barte's testimony that Albino Caman was carrying an M-14 rifle, while Yolando Libre carried a .38 caliber handgun.¹⁹ It was likewise established that the police officers found that Ruben Barte's house was hit by several bullets and discovered empty shells of both a Garand rifle and a .38 caliber handgun within the premises, thereby indicating that both guns were fired.

Jurisprudence tells us that where there is no evidence that the witnesses of the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit. In the present case, no imputation of improper motive on the part of the prosecution witnesses was ever made by appellant.²⁰

There is no reason to doubt Ruben and Juanita Barte's identification of the accused considering that: *first*, Ruben was carrying a lamp when he went out of their house to answer Lucy's call;²¹ *second*, He recognized their faces as there was just a distance of 10 meters between Ruben Barte and the perpetrators;²² *third*, Ruben saw that it was Caman who pulled and shot him at the back and then strafed his house;²³ *fourth*, Ruben likewise saw Libre holding a .38 caliber gun; and, above all, Ruben Barte and Juanita Barte positively identified both Caman and Libre in open court as one of those responsible for the strafing of their house.²⁴ Such open court declaration is much stronger than their affidavits/sworn statements.²⁵

¹⁶ TSN, November 18, 1996, pp. 16-18; 24, 25.

¹⁷ TSN, April 10, 1996, p. 20.

¹⁸ *Id.* at 16.

¹⁹ TSN, November 18, 1996, pp. 6-7.

²⁰ *People v. Dadao, et al.*, 725 Phil. 298, 310-311 (2014).

²¹ TSN, November 18, 1996, p. 17.

²² *Id.*

²³ *Id.* at 6.

²⁴ TSN (Direct Examination of Juanita Barte), March 17, 1997, pp. 5-6; TSN (Direct Examination of Ruben Barte), November 18, 1996.

²⁵ TSN (Direct Examination of Ruben Barte), November 18, 1996, pp. 4-5.

Again, the prosecution witnesses were not only the victims but also the parents of the deceased victims. Being the aggrieved parties, they all desire justice for what had happened to them; thus, it is unnatural for them to falsely accuse someone other than the real culprits. Otherwise stated, it is very unlikely for these prosecution witnesses to implicate an innocent person to the crime. It has been correctly observed that the natural interest of witnesses, who are relatives of the victims, more so, being victims themselves, in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for otherwise, the culprits would gain immunity.²⁶

The positive assertions of prosecution witnesses and the negative averments of the accused, the former undisputedly deserve more credence and are entitled to greater evidentiary weight.²⁷ Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, eyewitnesses can remember with a high degree of reliability the identity of the criminals at any given time. Hence, as in this case, the proximity and attention afforded the witnesses, coupled with the relative illumination of the surrounding area, bolster the credibility of identification of the accused-appellants.²⁸

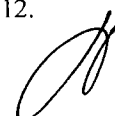
Libre's claim that he was not one of the perpetrators considering that he and his wife allegedly left the scene of the crime as soon as they heard gunshots has no ground to stand on. For alibi to prosper, it is not enough to prove that appellant was somewhere else when the crime was committed; he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. Denial, like alibi, as an exonerating justification, is inherently weak and if uncorroborated regresses to blatant impotence. Like alibi, it also constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.

In this case, the defense failed to establish that it was physically impossible for Libre to have been at the scene of the crime at the time of its commission. In fact, Libre testified that he came along with Caman about the same time of the crime, *albeit* on gun-point, but claimed to flee with his wife as soon as gunshots started. Thus, from Libre's testimony, he was within the vicinity of Barte's house about the same time that the crime was committed. To reiterate, for the defense of alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration

²⁶ *People v. Nelmidia*, *supra* note 14, at 562-563. (Citation omitted)

²⁷ *People v. Sumilhig*, G.R. No. 178115, July 28, 2014, 731 SCRA 102, 112.

²⁸ *People v. Piedad*, 441 Phil. 818, 833 (2002).



of the crime, and (b) that it was physically impossible for him to be at the scene of the crime. These, the defense failed to do.

Furthermore, such claim of Libre that they fled as soon as Caman started firing his gun is very easy to concoct in view of Caman's death²⁹ since the latter can no longer belie his allegation. It must be noted, however, that there were empty shells of .38 caliber revolver and empty shells of garand rifle recovered in the surrounding of the premises where the crime was committed. It could then be inferred that there were at least two (2) guns used in the shooting. It is hard, therefore, to imagine that there was just one perpetrator holding a .38 caliber revolver and a Garand rifle. Thus, Libre's defense of denial and alibi cannot prevail over the witnesses' positive identification of him as one of the perpetrators.

We likewise affirm the findings of both the RTC and the CA that treachery and evident premeditation attended the killing.

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. Otherwise stated, an unexpected and sudden attack which renders the victim unable and unprepared to put up a defense is the essence of treachery.

In this case, the records show that the attack was well-planned and the series of events that transpired clearly established conspiracy among them. *First*, the perpetrators undoubtedly acted in concert as they went to the house of Ruben together, each with his own firearms; *Second*, the perpetrators used Lucy Sabando and her child to trick Ruben and ensure that he will come out of the house clueless to their presence; *Third*, after a moment of struggling, Caman immediately shot Ruben Barte at the back; *Fourth*, perpetrators simultaneously strafed Barte's house for a long period to ensure that those inside the house are likewise killed; *Fifth*, despite Juanita Barte's plea to stop shooting as there were children with them, the shooting continued thus manifesting clear intent to kill; and *Sixth*, when they ceased firing, they rested at the same time and fled together. The suddenness and unexpectedness of the assault deprived the victims of an opportunity to resist it or offer any defense of their persons. The victims were unaware that they would be attacked by accused with a hail of bullets from their firearms. In fact, they were already in bed when Lucy Sabando called for help which

²⁹ Caman died on January 7, 1997.



prompted Ruben Barte to come out of the house. Hence, the subsequent shooting was deliberate, unexpected, swift and sudden which foreclosed any escape, resistance or defense coming from the victims.

Likewise, the prosecution sufficiently established the attending circumstance of evident premeditation. To prove this aggravating circumstance, the prosecution must show the following: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender clung to his determination; and (3) a lapse of time, between the determination to commit the crime and the execution thereof, sufficient to allow the offender to reflect upon the consequences of his act. The fact that they asked Lucy Sabando to lead them to Barte's house, and on a 2-kilometer walk, showed their determination to commit the crime and clung to it all the time they were on the way to Barte's house.

Thus, treachery and evident premeditation attended the commission of the crime, qualifying the killing of Barte's children as murder.³⁰ The court, therefore, affirms the decision of the trial court and the appellate court, in convicting accused-appellant of two (2) separate crimes of murder for the death of Rodel Barte and Joselito Barte. Likewise, accused-appellant is liable for two (2) separate crimes of frustrated murder, the victims Ruben Barte and Renante Barte having survived their wounds due to the timely medical intervention. Had it not been for said medical intervention, Ruben Barte and Renante Barte could have died.

Penalty

Under Article 248 of the Revised Penal Code, the penalty for the crime of murder is *reclusion perpetua* to death.³¹ With both penalties being indivisible and there being no aggravating circumstance other than the qualifying circumstances of treachery and evident premeditation, the lower of the two penalties, which is *reclusion perpetua*, was properly imposed on

³⁰ 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:

1. 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.

2. In consideration of a price, reward, or promise.

3. 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.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation..

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

³¹ *Id.*

the accused-appellant for each count of murder. However, Libre is not eligible for parole under the provisions of the Indeterminate Sentence Law.³²

As to the frustrated murders, the penalty lesser by one degree shall be imposed on appellant. Thus, the penalty that must be imposed is *reclusion temporal* for each count of frustrated murder. Applying the Indeterminate Sentence Law and in the absence of modifying circumstances other than the qualifying circumstance of treachery and evident premeditation, the maximum penalty shall be taken from the medium period of *reclusion temporal*, which has a range of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree which is *prision mayor* in any of its periods, the range of which is from six (6) years, one (1) day to twelve (12) years. The prison term imposed on appellant must, therefore, be modified to six (6) years and one (1) day of *prision mayor* minimum as the minimum penalty to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium as the maximum penalty for each count of frustrated murder.

On a final note, we could have imposed higher penalties and increased the amount of damages if the prosecution has alleged in the Informations the aggravating circumstance of dwelling, considering that the victims were inside their dwelling when the crimes were committed. Having failed to allege the aggravating circumstance of dwelling – an ordinary aggravating circumstance and proven during the trial, the same could not be appreciated to impose higher penalties and increase the amount of damages. Prosecutors are, therefore, enjoined to be more careful and prudent in determining the modifying circumstances that attend the commission of the crimes and in properly alleging the same in the Informations that they file before the courts to better serve the ends of justice.

Awards of Damages

For the two (2) counts of murder, the Court awards to the heirs of the victims; ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages. For the two (2) counts of frustrated murder, the Court awards ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages for each victim.³³

Moreover, while records do not show that the prosecution was able to prove the amount actually expended for medical, burial and funeral expenses, prevailing jurisprudence nonetheless allows the Court to award temperate damages to the victims' heirs as it cannot be denied that they

³² Act No. 4103 (As Amended by Act No. 4225 and Republic Act No. 4203 [June 19, 1965]).

³³ *People v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.



suffered pecuniary loss due to the crime committed.³⁴ In conformity with *People v. Ireneo Jugueta*,³⁵ the Court, however, deems it proper to increase the award of temperate damages from ₱25,000.00 to ₱50,000.00 for uniformity and to further provide aid and financial assistance to the victims.

All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Judgment until fully paid.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00089-MIN, which affirmed the Decision of the Regional Trial Court of Panabo, Davao, Branch 34, finding appellant Yolando Libre alias “Nonoy” **GUILTY** beyond reasonable doubt of two (2) counts of murder and two (2) counts of frustrated murder, is **AFFIRMED** with **MODIFICATIONS**, as follows:

For the murders of Rodel Barte and Joselito Barte :

(1) Appellant Yolando Libre is sentenced to suffer the prison term of *reclusion perpetua* for each count of murder;

(2) Appellant Yolando Libre is **ORDERED** to **PAY** the heirs of the victims the amount of ₱75,000.00 as civil indemnity for the death of each victim; moral damages in the amount of ₱75,000.00 each, exemplary damages in the amount of ₱75,000.00 each, and ₱50,000.00 as temperate damages, in lieu of actual damages.

For the frustrated murders of Ruben Barte and Renante Barte:

(1) Appellant Yolando Libre is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor* minimum, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium, as maximum, for each count of frustrated murder; and

(2) Appellant Yolando Libre is **ORDERED** to **PAY** civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱50,000.00, exemplary damages in the amount of ₱50,000.00, and ₱50,000.00 as temperate damages, in lieu of actual damages, to each of the victims.

All damages awarded shall earn interest at the legal rate of six percent (6%) *per annum* from finality of this Judgment until fully paid.

³⁴ *People v. Eugene Samuya*, G.R. No. 213214, April 20, 2015.

³⁵ *Supra* note 33.



Let a copy of this Decision be furnished the Department of Justice for its information and appropriate action.

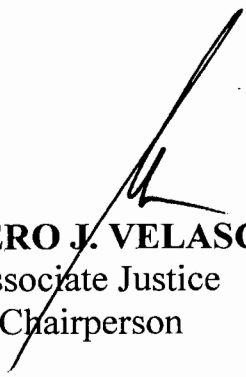
Costs against the appellant.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



JOSE PORTUGAL PEREZ
Associate Justice



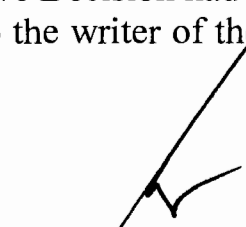
BIENVENIDO L. REYES
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest 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.



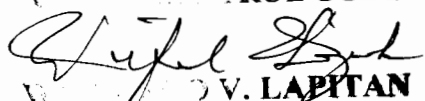
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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

TRUE COPY

W. L. LAPITAN
Division Clerk of Court
Third Division
AUG 23 2016