Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

EDUARDO GOLIDAN *y* COTO-ONG, FRANCIS NACIONALES *y* FERNANDEZ, and TEDDY OGSILA *y* TAHIL,
Accused,

EDUARDO GOLIDAN *y* COTO-ONG and FRANCIS NACIONALES *y* FERNANDEZ,
Accused-Appellants.

G.R. No. 205307

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
PERALTA,*
DEL CASTILLO, and
TIJAM, *JJ.*

Promulgated:

JAN 11 2018

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before this Court is an appeal of the April 25, 2012 **Decision**[1] of the Court of Appeals in **CA-G.R. CR.-H.C. No. 02430**, which affirmed with modification the August 18, 1999 **Decision**[2] of the Regional Trial Court (RTC), Branch 61, Baguio City, in **Criminal Case Nos. 13971-R, 13972-R** and **13973-R** finding accused-appellants **Eduardo Golidan (Golidan) and Francis Nacionales (Nacionales),** and their co-accused **Teddy Ogsila (Ogsila)** guilty beyond reasonable doubt of the crimes of rape with homicide, murder, and frustrated murder.

Records show that on September 5, 1995 Assistant City Prosecutor Elmer M. Sagsago filed three separate Informations, approved by City Prosecutor Erdolfo V. Balajadia, before the Regional Trial Court (RTC) of Baguio City against appellants Golidan, Nacionales, Ogsila, and a certain "John Doe," for rape with homicide, murder, and frustrated murder of

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* Per Raffle dated January 8, 2018.

1 *Rollo*, pp. 2-53; penned by Associate Justice Elihu A. Ybañez with Associate Justices Normandie B. Pizarro and Ramon A. Cruz concurring.

2 CA *rollo*, pp. 141-185; penned by Judge Antonio C. Reyes.

Elizabeth Leo, Namuel Aniban, and Cherry Mae Bantiway, respectively. The pertinent portions of said Informations are quoted below:

1. Rape With Homicide

> That on or about the 20th day of January, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, entered the house of ELIZABETH LEO and by means of force, violence and intimidation, that is, by beating her on her head and different parts of her body, did then and there willfully, unlawfully, and feloniously lie and succeeded in having carnal knowledge of said Elizabeth Leo and on the occasion of said forcible carnal knowledge and by reason of the same force and violence applied on the person of Elizabeth Leo, the said Elizabeth Leo suffered intracranial hemorrhage as a result of skull fracture which directly resulted to her death. [3]

2. Murder

> That on or about the 20th day of January, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, by means of treachery and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and hit [NAMUEL] ANIBAN, a one-year old baby boy, with a hard object on his head, thereby inflicting upon the latter: Intracranial hemorrhage as a result of skull fracture which directly caused his death.[4]

3. Frustrated Murder

> That on or about the 20th day of January, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, being then armed with solid object and with intent to kill and by means of treachery, did then and there willfully, unlawfully and feloniously attack, assault and strike with a weapon CHERRY MAE BANTIWAY, a girl ten (10) years of age, thereby inflicting upon the latter severe injuries, which could have caused her death were it not for the timely medical at[t]endance extended to her, thus performing all the acts of execution which could have produced the crime of Murder as a consequence but which nevertheless did not produce it by reason of causes independendent of the will of the accused, that is, the aforesaid timely medical assistance extended to Cherry Mae Bantiway.[5]

In the August 18, 1999 Decision, the RTC quoted the undisputed facts from the People's Memorandum, which we reproduce below:

> Based upon the evidence submitted in Court, both by the Prosecution and by the defense, certain facts and propositions are not disputed and may therefore be considered as admitted. These include the circumstances of the persons of the victim, the time and place of the

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3 Id. at 35.
4 Id. at 36.
5 Id. at 37.

commission of the crime, and those antecedent to the commission of the crime.

Thus, it is undisputed that the deceased Namuel Aniban was the one-year-old son of Jennyline Aniban who is in turn the daughter of Muriel Bantiway. The baby Namuel and his mother Jennyline Aniban live in a house some distance away from that of Muriel Bantiway. Cherry Mae, who was then 8 years old at the time of incident, is a granddaughter of Muriel Bantiway. Cherry Mae had been living with her grandmother since she was 2 years old. Cherry Mae suffers from cerebral palsy which affects her movements which is why her grandmother Muriel Bantiway hires a babysitter to watch over her. At the time of the incident, the baby sitter was one named Elizabeth Leo.

At about 7:30 in the morning of January 20, 1995, Muriel Bantiway left her house and walked to the house of her daughter Jennyline Aniban in order to fetch her grandson Namuel. This was because Jennyline was then studying. She brought the baby Namuel to her residence. At about 8:00 she went to work and left behind inside the house her two grandchildren, the baby Namuel, Cherry Mae, and the baby sitter Elizabeth Leo.

Jennyline Aniban did not however go to school but studied her lessons. At past 10:00, Jennyline Aniban decided to proceed to her mother's house in order to breast feed her baby Namuel. When she entered the house, she went straight to the sala and saw Cherry Mae lying on her side facing the wall of a room. Cherry Mae turned to her and tried to tell her something. It was then she saw, through the transparent curtain separating the bedroom from the sala, the exposed legs of Elizabeth Leo.

She entered the bedroom and saw Elizabeth Leo lying naked on her back. There was blood on the head and vagina of Elizabeth Leo and her nipples were cut. Beside Elizabeth Leo was the baby Namuel who was lying face down. When Jennyline turned him over, she saw his exposed brains and blood oozing from his nose. It was then that she screamed and ran out of the house to call for her husband.

She passed by the house of [appellant] Nacionales, located just 15 meters above the house of Muriel Bantiway. She was screaming and continued running until she found her husband and relayed what she saw. Her husband then ran towards the house of Muriel Bantiway with Jennyline following him. Jennyline was still screaming. When they reached the house, Jennyline continued screaming for help. Two of their neighbors whose houses were some 50 meters away arrived and they were those who called for the police who arrived around 11:00 A.M.

The responding policemen found and recovered a bottle of coke litro and wooden ashtray from the bed where Elizabeth Leo and the baby Namuel were found. Both were stained with blood. Human semen was also found at the tip of the bottle.

Autopsy was conducted on the bodies of Elizabeth Leo and Namuel Aniban. The results of the autopsy on Elizabeth Leo showed that she suffered a total of 13 external injuries on her head and different parts of her body. Of the 13 injuries, it was determined that 10 were fatal. All

> were inflicted by a blunt instrument, such as a bottle of coke litro. The cause of her death was determined to be [I]ntracranial Hemorrhage.
>
> The autopsy further revealed that she was raped as seminal fluid was found inside the vaginal canal and that the one litro Coca-Cola bottle was forcibly jabbed inside her vagina. It was ascertained that the sexual intercourse could have occurred while she was still alive.
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> As for the baby Namuel, he sustained a total of seven external injuries located on the face and head caused possibly by a blunt object or instrument. He died due to Intracranial [H]emorrhage as a result of skull fracture.
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> The child Cherry Mae was rushed to the hospital due to her own injuries. She suffered two external injuries on her head which were fatal. She was confined for 13 days and was discharged on [February] 2, 1995.[6]

EVIDENCE FOR THE PROSECUTION

Jennyline Aniban (Jennyline) testified that at the time of the incident, the babysitter had only been hired for five days. Her mother, Muriel Bantiway (Muriel), would regularly fetch her grandson Namuel from Jennyline's house so that the babysitter could take care of him while Jennyline was in school. Jennyline's house in San Carlos Heights, Baguio City is about 60 meters away from Muriel's house. On the day of the incident, Jennyline thought of going to school but instead decided to study at home. At around 10:00 a.m., she dropped by Muriel's house to check on her son, and that was when she discovered the crime.[7]

Muriel, the grandmother of the victims Namuel and Cherry Mae, corroborated Jennyline's testimony. Muriel testified that before the incident, at around 7:30 in the morning of January 20, 1995, Muriel went to Jennyline's house to fetch her grandson in order for the babysitter, Elizabeth Leo, to take care of him because Jennyline had to attend school. When Muriel left her house for work, she saw four men in front of the house of the appellant Francisco Nacionales (Nacionales), who is her neighbor, with Edgar Loma-ang (Loma-ang), and the other appellant, Teddy Ogsila (Ogsila), who were drinking and laughing. At around noontime, her other grandson Domingo went to her workplace and informed her that Elizabeth Leo had been found dead. She rushed home to discover that her grandson Namuel was also killed. She looked for Cherry Mae and was informed that the child had been brought to the hospital. When asked about the physical condition of Cherry Mae, Muriel answered that Cherry Mae was impaired by polio and could not walk, but had found a way to be mobile by using her right hand to support her body and her legs and buttocks to move forward. Muriel testified that prior to the incident, Cherry Mae could communicate with her through words and utterances. After the tragedy, however, Cherry Mae had to be brought to the Baguio General Hospital where she was

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6 Id. at 142-143.

7 *Rollo*, p. 6.

confined for three weeks, and her condition had considerably changed. Cherry Mae could not move her body because her arms had been twisted, aside from being strangled and hit on the head. Muriel said she did not know the appellants until the police was able to piece together their investigation with the help of Cherry Mae, who was the lone eyewitness to the crimes.

Muriel stated that she witnessed how Cherry Mae identified the persons who had killed and raped Elizabeth Leo, murdered Namuel, and wounded her, on three occasions: February 10, 1995; February 21, 1995; and June 10, 1995. On February 10, 1995, Cherry Mae identified appellants Nacionales and Ogsila at the Baguio Police Station. On June 10, 1995, 13 photographs were presented to Cherry Mae at the Child and Family Services (CFS) and she was able to identify Nacionales, Ogsila, and Golidan. When asked what the appellants did, Cherry Mae answered, pointing to the picture of Golidan, *"paatong auntie"* and then pointing to the picture of Nacionales, *"pakpak bote coke pipit auntie"* and lastly, pointing to the picture of Ogsila, *"pakpak kayo ashtray baby."*[8]

Sharon Flores, a resident of San Carlos Heights, Baguio City, testified that at about 10:00 in the morning of January 20, 1995, appellant Golidan peeped at their door and asked where her husband was. Golidan appeared to be drunk as his eyes were red, and he left after Sharon told him that her husband was not around. Sharon further testified that she heard loud music coming from the house of appellant Nacionales the night before the incident.[9]

Senior Police Officer (SPO) 3 Pablo Undalos (SPO3 Undalos) testified that when Cherry Mae saw appellant Nacionales at the police station on February 10, 1995, Cherry Mae mumbled the word "*uyong*" and pressed her head on her grandmother's abdomen. He observed that Cherry Mae showed fear and hatred against Nacionales. Ogsila was presented to Cherry Mae, and she had the same reaction and mumbled the same word. On February 21, 1995, the date scheduled for the second line-up, Cherry Mae tried to lift her right hand, trembling, and again mumbled the word "*uyong*" upon seeing the pictures of Nacionales and Ogsila.[10]

SPO3 Ray Ekid (SPO3 Ekid) of the Baguio City Police testified that on the same morning after the discovery of the incident, he responded to the incident after he received a call from the base operator. When he investigated the surrounding area, he knocked on the door of Nacionales and asked if the latter had heard any sound or commotion from the Bantiway's residence, and who was with him in the house. Nacionales answered *"wala po kaming naririnig"* and said that his father was with him. SPO3 Ekid testified that he observed that Nacionales smelled of liquor. SPO3 Ekid then

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8 Id. at 9.
9 Id.
10 Id. at 10.

saw Nacionales's father hanging clothes outside. SPO3 Ekid asked Nacionales's father if the latter heard any sound or commotion from his neighborhood and the father answered that he had heard shouts and a cry of a woman earlier.[11]

Dr. Francisco Hernandez, Jr. (Dr. Hernandez), a medical doctor specializing in neuro-surgery and the treatment of injuries or illnesses of the central nervous system, was presented as a prosecution witness regarding the frustrated murder case involving Cherry Mae. Dr. Hernandez testified that Cherry Mae had a glasgou-coma scale of eight, which meant a severe head injury; that he noted a large contusion hematoma in the left occipital area of the child, which could have caused Cherry Mae's death if not properly treated; and that he observed that when he first saw Cherry Mae on January 20, 1995, she was in a fearful state and was non-communicative.[12]

Dr. Vladimir Villaseñor (Dr. Villaseñor), the Medico-Legal Officer of the Philippine National Police Crime Laboratory who conducted the autopsy on the cadavers of Elizabeth and Namuel, testified that Elizabeth sustained 13 external injuries, all of which were caused by a blunt instrument. There were multiple injuries on the head which caused her death. Her left kidney was likewise ruptured. Dr. Villaseñor also noted an extensive injury on the hymen of the victim which could have been caused by a large object inserted into the hymen, like a one-liter *Coca-Cola* bottle. As there were no previous lacerations, it was confirmed that Elizabeth was still a virgin when she was raped and killed. Regarding Namuel, Dr. Villaseñor noted that the one-year-old victim had seven injuries on the head resulting to fractures in the skull and lacerations of the brain.[13]

Dr. Divina R. Martin Hernandez (Dr. Divina Hernandez), a neurologist, was presented as a prosecution witness to show Cherry Mae's competence to testify in court and on what the latter would be able to recall regarding the incident where she herself was a victim. She said that Cherry Mae was brought to her office by an aunt and a social worker for her to examine Cherry Mae's ability and adequacy to testify in court. Dr. Divina Hernandez said that cerebral palsy is a disease of the brain characterized by non-progressive motor impairment and that persons afflicted with this disease usually walk with an abnormality, but they are fairly intelligent, can perceive and make known their perception. Dr. Divina Hernandez conducted a neurological examination of Cherry Mae consisting of an evaluation of her capacity to talk and to identify common objects, a cerebral function test, an examination of her cranial nerves, and an examination of her motor and sensory system and other cerebral functions. Dr. Divina Hernandez said that "Cherry [Mae] can talk but with much difficulty; she has only the tendency to say the last syllables of words; she could express with very much difficulty (although) it takes her a long time to say the

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11 Id. at 11.
12 CA *rollo*, pp. 153-154.
13 Id. at 154.

words; she can identify common objects in the clinic x x x; she can identify people around her like her social worker and she was able to recognize me."[14] Dr. Hernandez said that Cherry Mae recalled that she had a playmate, a young boy, and remembers that he was hit on the head and described it by saying "*napakpak sa ulo*," which are things and events which a child in Cherry Mae's condition would be incapable of concocting or manipulating.[15]

On February 10, 1995, at the Baguio Police Station, according to Muriel, it was the first time that Cherry Mae identified the appellants Nacionales and Ogsila, when she was made to face them with the other suspects. SPO3 Undalos observed that the 10-year-old victim showed fear and hatred against Nacionales when she was made to face him, and mumbled *"uyong."* When Ogsila was turned to face Cherry Mae, she showed the same reaction, pressed herself against Muriel's abdomen, and mumbled the same word. Loma-ang was also brought in front of Cherry Mae, who showed no reaction.[16]

On February 21, 1995, at the Baguio Police Station, Cherry Mae, for the second time, was asked to identify the people who entered their house on the day of the incident. The police presented five pictures to her, including those of Ogsila, Nacionales, and Loma-ang. Again, Cherry Mae positively identified Ogsila and Nacionales when the police showed their photos to the child. She tried to lift her right hand, trembling, and again mumbled *"uyong."* With respect to the remaining photos including Loma-ang, she showed no reaction.[17]

On June 10, 1995, at the CFS, once again, Cherry Mae was asked by SPO3 Ekid to identify the people who entered their house on January 20, 1995. City Councilor Richard Cariño, a lawyer and member of the Free Legal Assistance Group (FLAG), and Assistant Prosecutor Elizabeth Hernandez, were with him at that time. SPO3 Ekid presented 27 pictures to Cherry Mae, who pointed to the photographs of appellants Golidan, Nacionales, and Ogsila. SPO3 Ekid gathered and shuffled the pictures and when he asked Cherry Mae for the second time, she again pointed to the pictures of the appellants. SPO3 Ekid then showed Cherry Mae 10 pictures and the latter was able to identify the appellants Nacionales, Ogsila, and Golidan.[18]

Jennyline narrated that her niece, lone survivor Cherry Mae Bantiway, pointed at the photographs of appellants Golidan, Nacionales, and Ogsila during the picture line up conducted at the CFS as the ones who entered Muriel's house. At the CFS, Cherry Mae was shown more than 10 pictures

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14 Id. at 155-156.
15 Id.
16 *Rollo*, p. 10.
17 Id.
18 Id. at 11-12.

pasted on a board and she was able to identify the appellants. Jennyline was also present during the line up at the Fiscal's Office.[19]

Atty. Cariño testified that he was present at the CFS on June 10, 1995 to help in the investigation of the case. When he tried to talk to Cherry Mae, it appeared that the child was able to comprehend and communicate audibly, albeit with a little stutter. She was asked the question "*itodom man no sinno ti nangpakpak kinka*" and one of her answers was "*pinakpak na ti ulok*,"[20] while mentioning the names of the victims. The third time she was asked to identify pictures which were pasted on a white board, Cherry Mae again pointed to the appellants.[21]

Assistant City Prosecutor Elmer Sagsago testified on the circumstances of the preliminary investigation he conducted on August 1, 1995. In the presence of appellants' lawyers, a line up consisting of 11 persons was constituted, after which Cherry Mae identified appellants Golidan, Ogsila, and Nacionales. Upon the request of defense counsel, a second line up was made, this time in a different order, and again Cherry Mae identified appellants as the ones who entered their house on January 20, 1995.[22]

Thus, Cherry Mae Bantiway was called to testify in court, but because of her inability to communicate and move her muscles, the RTC ordered the Department of Social Welfare and Development, the Baguio General Hospital, and the Sacred Heart Hospital of the St. Louis University, through their respective psychiatric departments, to provide the RTC with a list of their experts from among whom the parties shall choose someone to assist Cherry Mae in her testimony. From among the names submitted, the prosecution and defense agreed to engage the services of Dr. Marie Sheridan Milan and Dr. Elsie Caducoy of the Baguio General Hospital.[23]

On July 10, 1996, in open court, Cherry Mae identified appellants Ogsila, Nacionales, and Golidan from a line up composed of 10 persons, as the ones who entered their house on January 20, 1995. Cherry Mae pointed to appellant Nacionales as the one who struck her and Elizabeth Leo, and to appellant Ogsila as the one who struck one-year-old Namuel Aniban. When asked who went on top of Elizabeth Leo, Cherry Mae pointed to appellant Golidan.[24]

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19 Id. at 7.
20 CA *rollo*, p. 150.
21 *Rollo*, p. 13.
22 Id.
23 CA *rollo*, p. 156.
24 *Rollo*, p. 16.

EVIDENCE FOR THE DEFENSE:

1. Eduardo Golidan

According to Josephine Golidan, the wife of appellant Golidan, when she, with her two children, left for Tabuk, Kalinga on January 18, 1995, he stayed behind in Baguio to wait for the merchandise they were going to sell in Tabuk. On the following day, as narrated by Julia Golidan, his mother, appellant Golidan helped her tend their store at Lakandula St., Baguio City until January 22, 1995.

Appellant Golidan stated that on January 20, 1995, at about 7:00 in the morning, he left San Carlos Heights to open the stall of his mother. For the entire day, he helped his mother and his aunt Virginia to sell their goods. The same happened until the morning of January 22, 1995, then, he left for Tabuk in the afternoon and arrived on January 23, 1995.

SPO3 Diosdado Danglose (SPO3 Danglose) testified that he was informed by Joel Colcoli (Colcoli) that he had seen a man wearing blood-stained shoes riding a jeepney on January 22, 1995. On January 25, 1995, a certain Sharon Flores told SPO3 Danglose and other police officers that Golidan, who appeared to be drunk, passed by their house looking for her husband. Afterwards, SPO3 Danglose went to the house of the appellant's mother who confirmed that her son had gone to Tabuk to fetch his wife and children. The police officers planned to go to Tabuk to invite Golidan to their office; however, on January 26, 1995, at about 3:00 in the morning, Golidan arrived in Baguio City from Tabuk to get some stocks. He was informed by his sister that he is a suspect in the San Carlos Heights case. At about 6:00 of the same morning, the appellant went to see SPO4 Joseph Supa (SPO4 Supa) together with his wife and mother. They arrived at the police station at 7:00 in the morning. The police officers asked Golidan to remove his shirt and pants and they found no scratches. In the afternoon of the same day, they brought the appellant to the Hospital for possible identification by the lone survivor, Cherry Mae; however, when he was presented in front of the child, she did not respond, just stared at them, and shook her head.[25]

On February 9, 1995, again, Golidan was presented to Cherry Mae at the police station, but the child said *"a-an"* and shook her head.[26]

2. Francis Nacionales

Appellant Nacionales testified that in the evening of January 19, 1995, he was at the Pitstop Restaurant on Assumption Road, Baguio City together with Renato Rosario (Rosario), Angeline Bautista (Bautista), and Edgar Loma-ang (Loma-ang). After an hour, they accompanied Loma-ang to the

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25 Id. at 16-19.

26 Id. at 17.

jeepney stop, then, the three of them went to the house of Nacionales. Bautista and Nacionales talked in the music room until the following morning. On January 20, 1995, at about 6:00 in the morning, Rosario and Bautista went home, then, at around 11:00 a.m., Nacionales was awakened by his stepsister, Natalia Obena, who asked for fare to go to the market. After a while, Loma-ang and Bautista arrived at the house of the appellant and after about ten to fifteen minutes, PO1 Ruben Porte (PO1 Porte) knocked at the door and asked Nacionales and Loma-ang to remove their t-shirts in order to look for scratches and blood stains, but found none. The two of them, with Bautista, went to the house of the Bantiways to see what happened.[27]

On February 9, 1995, at the police station, Nacionales with the other appellants were presented to Cherry Mae but there was no positive identification coming from the latter. In addition, as narrated by Loma-ang, Muriel asked Cherry Mae, *"sino ti nag uyong dita?"* and the latter replied, *"haan."* On the following day, Loma-ang and Nacionales, for another time, was presented to Cherry Mae and again she said, *"haan"* which means *"no."*[28]

Teddy Ogsila

According to the testimony of appellant Ogsila, on January 19, 1995, he spent the evening drinking beer and playing darts with Philip Romero (Romero) and Melvin Gison (Gison) at the Junkyard Bar on Kisad Road, Baguio City. They went home at 10:00 the next morning as confirmed by Gison and corroborated by the appellant's brother, Pablito Ogsila, Jr., who was then working as a waiter in the said Bar.

On January 20, 1995, at about 10:00 in the morning, Jesus Gison, father of Melvin Gison, came knocking at the door of the house of the Ogsilas, looking for his son. Appellant Ogsila offered Jesus Gison a cup of coffee and woke Melvin up. After the Gisons left, Ogsila did his chores while Romero was at the room listening to music. Ogsila said he did not leave their house in the morning of January 20, 1995. On February 8, 1995, he went to San Carlos Heights to get his shoes which Nacionales borrowed.

On February 9 and 10, 1995, Ogsila, with the other appellants and Loma-ang, were presented to the lone survivor at the police station. On both occasions, Cherry Mae did not identify them and uttered the words *"a-an."*[29]

On August 18, 1999, the RTC found appellants guilty beyond reasonable doubt, in a Judgment that contained the following dispositive portion:

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27 Id. at 20. Nacionales's testimony was corroborated by Bautista, Remedios Nacionales, Natalia Obena, and Loma-Ang.

28 Id. at 21-22.

29 Id. at 22-23.

WHEREFORE, judgment is rendered finding the accused Francis Nacionales, Teddy Ogsila, and Eduardo Golidan **GUILTY** of the crimes as charged, and in:

1. Criminal Case No. 13971-R for Rape with Homicide, each is sentenced to suffer the penalty of death and to pay the amount of ₱50,000.00 each as moral damages and ₱75,000.00 each as indemnity to the heirs of the victim Elizabeth Leo;

2. Criminal Case No. 13972-R for Murder, each is sentenced to suffer the penalty of *reclusion perpetua* and each to indemnify the heirs of Namuel Aniban in the amount of ₱100,000.00;

3. Criminal Case No. 13973-R for Frustrated Murder, each is sentenced to suffer an indeterminate penalty of ten (10) years of *prision correccional* to seventeen (17) years and four (4) months of *reclusion temporal* and each to pay the amount of ₱50,000.00 to the victim Cherry Mae Bantiway.

The accused Francis Nacionales, Teddy Ogsila, and Eduardo Golidan are **ORDERED** to be immediately transferred to the National Penitentiary in Muntinlupa City, Metro Manila.[30]

The case went on automatic review to this Court. The accused-appellant Ogsila filed his Brief on September 28, 2000, with the following assignment of errors:

I.

THE COURT A QUO ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION'S PRINCIPAL WITNESSES, NAMELY, CHERRY MAE BANTIWAY, SPO3 RAY EKID, SPO3 PABLO UNDALOS, AND DR. DIVINA R. MARTIN HERNANDEZ – MOST ESPECIALLY CHERRY MAE BANTIWAY, WHO WAS NOT EVEN COMPETENT TO TESTIFY;

II.

THE COURT A QUO CONVICTED ACCUSED OGSILA NOT ON THE BASIS OF THE STRENGTH OF THE PROSECUTION'S EVIDENCE BUT ON THE "WEAKNESS" OF HIS EVIDENCE;

III.

MOST IMPORTANTLY, THE COURT A QUO ERRED IN CONVICTING OGSILA DESPITE THE FACT THAT THE PROSECUTION FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[31]

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30 CA *rollo*, pp. 184-185.

31 Id. at 203.

Nacionales, for his part, alleged the following errors:

I.

THE LOWER COURT ERRED IN NOT HOLDING THAT FRANCIS NACIONALES WAS NOT AT THE SCENE OF THE CRIME ON JANUARY 20, 1995;

II.

THE LOWER COURT ERRED IN NOT HOLDING THAT FRANCIS NACIONALES WAS NOT IDENTIFIED ON SEVERAL OCCASIONS BY THE LONE SURVIVING WITNESS CHERRY MAE BANTIWAY WHEN HE WAS PRESENTED TO HER BY THE POLICE INVESTIGATORS OF BAGUIO CITY;

III.

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT FRANCIS NACIONALES ON THE GROUND OF REASONABLE DOUBT.[32]

Golidan submitted the following assignment of errors on appeal:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSEDS (*sic*) BASED SOLELY ON THE UNCORROBORATED DOUBTFUL TESTIMONY OF A LONE ALLEGED WITNESS WHO, UNDER HER PHYSICAL CONDITION , MAY NOT QUALIFY AS A WITNESS UNDER THE REVISED RULES OF COURT;

II.

THE TRIAL COURT GRAVELY ERRED IN SUMMARILY CONCLUDING THAT EACH OF THE ACCUSED IS GUILTY OF ALL THE CHARGES WHERE THERE IS NO PROOF WHATSOEVER, DIRECT NOR CIRCUMSTANTIAL TO SUPPORT THE ALLEGATION OF CONSPIRACY;

III.

THE TRIAL COURT GRAVELY ERRED IN PROCEEDING TO RENDER A JUDGMENT OF CONVICTION IN THE MIDST OF ITS OWN PRONOUNCEMENTS OF DOUBT AND, IN THE PRESENCE OF INDUBITABLE PROOFS SHOWING THAT THE ACCUSEDS (SIC), ESPECIALLY EDUARDO GOLIDAN ARE INNOCENT;

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32 Id. at 351.

IV.

THE TRIAL COURT GRAVELY ERRED IN NOT ADHERING TO THE TIME HONORED REQUIREMENT (IN CRIMINAL CASES) OF "PROOF BEYOND REASONABLE DOUBT" VIS-À-VIS THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE;

V.

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE FACTS THAT THE RIGHTS OF SUSPECT ACCUSED-APPELLANT EDUARDO GOLIDAN WAS NOT OBSERVED AND THAT, HE WAS NOT ASSISTED BY COUNSEL DURING THE INVESTIGATIONS.[33]

The Office of the Solicitor General (OSG), as the representative of the State on appeal, filed a consolidated brief for the appellee. The OSG argued that there is an existence of conspiracy, which is proven by the common design towards the accomplishment of the same unlawful purpose of the appellants. In this case, the appellants cooperated with each other in such a way as to achieve their criminal plan.

While the appellants invoked Sections 20 and 21 of Rule 130, contending that Cherry Mae is not a competent witness, the OSG countered that the prosecution was able to prove that Cherry Mae was a competent witness through the testimony of Dr. Divina Hernandez. Thus, the prosecution established that Cherry Mae is incapable of telling a lie and could not be influenced by others; that the lone survivor was not capable of concocting events or manipulating facts, as these would entail motive, which is something Cherry Mae could not have due to her condition.

Therefore, the OSG concluded that Cherry Mae was telling the truth when she positively identified the appellants. The OSG claimed that the appellants failed to show that the persons who had supposedly conditioned Cherry Mae's mind had an ulterior motive to pin them down, and so her testimony should be given full weight and credit. The OSG added that the reason why Cherry Mae failed to identify the appellants on January 26, 1995, February 9, 1995 and February 10, 1995 was because the child was still physically and mentally weak from the incident. The period from January 20, 1995 up to the aforementioned dates is not enough to let the victim recover from the injury inflicted by the perpetrators. On said dates, Cherry Mae was still very weak, could hardly move her body, and needed the assistance of her grandmother.[34]

The OSG alleged that the appellants' alibi cannot prevail over their positive identifications made by Cherry Mae because the former failed to adduce sufficient, satisfactory and convincing evidence that it was physically impossible for them to be at the crime scene.

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33 Id. at 417-418.

34 Id. at 537.

On September 21, 2004, this Court transferred the instant case to the Court of Appeals through a resolution, which reads:

> Conformably with the decision promulgated on 7 July 2004 in G.R. Nos. 147678-87, entitled *The People of the Philippines vs. Efren Mateo y Garcia*, modifying the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 and any other rule insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua*, or life imprisonment, as well as the resolution of the Supreme Court *en banc*, dated 19 September 1995, in "Internal Rules of the Supreme Court" in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Article VIII, Section 5 of the Constitution, and allowing an intermediate review by the Court of Appeals before such cases are elevated to this Court, the Court Resolved to **TRANSFER** these cases to the Court of Appeals, for appropriate action and disposition.[35]

On April 25, 2012, the Court of Appeals rendered a decision **affirming** the Judgment of the RTC but with **modifications**. The dispositive portion of the Court of Appeals decision reads:

> **WHEREFORE,** in view of the foregoing premises, the instant appeal is hereby **AFFIRMED** with the following modifications:
>
> 1) In Criminal Case No. 13971-R, each is sentenced to suffer the penalty of *reclusion perpetua* without the benefit of parole. Appellants are ordered to pay, jointly and severally, the amount of Php 75,000.00 as moral damages, Php 100,000.00 as civil indemnity, and Php 50,000.00 as exemplary damages to the heirs of Elizabeth Leo;
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> 2) In Criminal Case No. 13972-R, each is sentenced to suffer the penalty of *reclusion perpetua without the benefit of parole* and to pay jointly and severally the amount of Php 50,000.00 as civil indemnity, Php 50,000.00 as moral damages, and Php 30,000.00 as exemplary damages to the heirs of Namuel Aniban;
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> 3) In Criminal Case No. 13973-R, each is sentenced to suffer an indeterminate sentence of ten (10) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. Appellants are ordered to pay, jointly and severally, Php 40,000.00 as moral damages, Php 30,000.00 as exemplary damages, and Php 25,000.00 as temperate damages to Cherry Mae Bantiway; and
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> 4) Appellants are further ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision.[36]

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35 Id. at 599.

36 *Rollo*, pp. 51-52.

We agree with the ruling and reasoning of the Court of Appeals, subject to modifications of the penalties as provided by the latest jurisprudence, to be discussed below.

The Court of Appeals, at the outset, affirmed that the lone survivor, Cherry Mae Bantiway, is a competent witness although she is suffering from cerebral palsy, citing the rule that any child can be a competent witness if he/she can perceive, and perceiving, can make known his/her perception to others and of relating truthfully facts respecting which he/she is examined. The Court of Appeals held that even if Cherry Mae has cerebral palsy, she can still perceive and make known her perception, as per Dr. Hernandez's explanation in her testimony, which is quoted below:

Q: You said that what you saw in Cherry Mae Bantiway was typical of...?
A: Cerebral palsy, Sir.

Q: Will you please explain to us what kind of a sickness or diseases (sic) is this?
A: Cerebral palsy is a disease of the brain characterized by a non-progressive motor imperment (sic), non-progressive means to say it will not become worst and it is solely focused on the motor system movement, Sir.

x x x x

Q: In other words, Dra. this (sic) patient's (sic) can still perceive and make known their perception?
A: Yes, Sir.

Q: This is brain damage which involves the motor nerves?
A: The motor system, Sir.

Q: And aside from the motor system the brain is functioning?
A: Yes, Sir.

Q: In other words, the damage of the brain is not total?
A: Yes, Sir"

x x x x

"Q: You said that you made this examination, did you find out whether she has the ability to recall the events that happen (sic) in the past?
A: Yes, Sir.

Q: You know you've been told that this particular patient was the victim of violence, is that correct?
A: Yes, Sir.

Q: And in accordance with your examination, did you find out whether she can recall some events which happened when injuries were inflicted on her?

A: I only asked her if she had a playmate and she said she has a playmate a young boy, and where is he now because I did not like to get it from her really like to lead her into a question but I asked her whether she had a playmate and she said yes and where was your playmate now, he's not there anymore and what happen (sic) to him she called her baby "ading" and where is he now she told me that he was hit on the head, Sir.

Q: How did she tell you?
A: She told me "*napakpak sa ulo*" and she even gestured but that's all, I did not like to deal more or other things, Sir.

Q: In other words Dra it was obvious at the time that she could recall some incident that happened?
A: Yes, Sir.

Q: Now this patient Cherry Bantiway Dra in your opinion was she capable of concocting events or manipulating facts considering her mental condition?
A: No, Sir.[37]

The Court of Appeals found no compelling reason to overturn the RTC decision because there is no clear basis that the latter erred in finding that Cherry Mae is a competent witness. The Court of Appeals stressed that the trial judge is in the best position to determine the competence as well as the credibility of Cherry Mae as a witness since the trial judge has the unparalleled opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected in the record. On the allegation that Cherry Mae is mentally retarded as opined by Dr. Francisco Hernandez, the Court of Appeals held that this is insufficient reason to disqualify a witness, for a mental retardate who has the ability to make perceptions known to others can still be a competent witness.

Regarding appellants' allegations that Cherry Mae was not able to identify them in the initial stages of the investigation, the Court of Appeals stated that at the time of these initial confrontations at the hospital and at the police station, Cherry Mae had just survived from the incident where there were brutal killings and where she herself had sustained a fatal wound on her head. As such, the Court of Appeals noted that the condition of the child, being already afflicted with cerebral palsy, was aggravated by the head injuries inflicted on her, not to mention the state of shock and fear she might have been experiencing at that time. Thus, the Court of Appeals considered that the purported non-identification by child of the appellants at the initial stages of the investigation is of no moment and is not fatal to the prosecution's case.[38]

Furthermore, the Court of Appeals held that where there is no evidence to show any improper motive on the part of the prosecution witness

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37 Id. at 29-31.
38 Id. at 32-33.

to testify falsely against the accused or to falsely implicate him/her in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence. In the case at bar, there is no showing that the witnesses for the prosecution had any motive to testify falsely against the appellants.

Anent the issue of conspiracy, the Court of Appeals stated that for collective responsibility to be established, it is not necessary that conspiracy be proven by direct evidence or prior agreement to commit the crime nor is it essential that there be proof of previous agreement to commit a crime. Conspiracy may logically be inferred from acts and circumstances showing the existence of a common design to commit the offense charged. It is sufficient that the malefactors acted in concert pursuant to the same objective. Due to conspiracy, the act of one is the act of all.[39] Furthermore, conspiracy exists when, at the time of the commission of the offense, the malefactors had the same purpose and were united in their action.[40]

The Court of Appeals emphasized that the prohibition against custodial investigation conducted without the assistance of counsel does not extend to a person in a police line up. This particular stage of an investigation where a person is asked to stand in a police line up has been held to be outside the mantle of protection of the right to counsel because it involves a general inquiry into an unsolved crime and is purely investigatory in nature. It has been held that identification without the presence of counsel at a police line up does not preclude the admissibility of in-court identification.

As regards the appellants' defense of alibi, the Court of Appeals reasoned that the same crumbles in the face of the positive identification made by Cherry Mae. For alibi to prosper, it is not enough for the accused to prove that he/she was elsewhere when the crime was committed, but he/she must also demonstrate that it would be physically impossible for him/her to be at the scene of the crime at the time of its commission. In the case at bar, aside from the positive identification made by Cherry Mae, several witnesses saw the appellants in the vicinity of San Carlos Heights, Baguio City in the morning of January 20, 1995. Thus, it goes without saying that **it was <u>not</u> physically impossible for the appellants to be at the scene of the crime.**

We find and so hold that the above pronouncements of the Court of Appeals, which affirm the judgment of the Regional Trial Court, have basis both in fact and in law, and the assailed decision does not contain reversible error, contrary to the appellants' allegations.

As a general rule, this Court upholds factual findings of the RTC when affirmed by the Court of Appeals, as the appreciation of the evidence

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39 Citing *People v. Pacaña,* 398 Phil. 869, 881 (2000).

40 *People v. Hermosa,* 417 Phil. 132, 148 (2001).

adduced by the parties is their primary responsibility. It is, moreover, the province of the lower court to determine the competency of a witness to testify.

In *People v. Magbitang*,[41] we held:

> *Secondly*, Magbitang's contention that CCC, being a child of tender age, was not a competent witness because his testimony was filled with inconsistencies and suffered from improbabilities was unfounded.
>
> Under the *Rules of Court*, a child may be a competent witness, unless the trial court determines upon proper showing that the child's mental maturity is such as to render him incapable of perceiving the facts respecting which he is to be examined and of relating the facts truthfully. The testimony of the child of sound mind with the capacity to perceive and make known the perception can be believed in the absence of any showing of an improper motive to testify. Once it is established that the child fully understands the character and nature of an oath, the testimony is given full credence. x x x. (Citations omitted.)

Regarding the evaluation of a witness's testimony, we have ruled in *People v. Hermosa*[42] in this wise:

> [T]he trial court's evaluation of the testimony of a witness is accorded the highest respect because of its direct opportunity to observe the witnesses on the stand and to determine if they are telling the truth or not. This opportunity enables the trial judge to detect better that thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. Thus, the trial judge's evaluation of the competence and credibility of a witness will not be disturbed on review, unless it is clear from the records that his judgment is erroneous. (Citations omitted.)

In this case, the trial court found sufficient basis to consider the testimony of Cherry Mae Bantiway, unique though it may have been because of her condition, to be valid. The court invited expert witnesses to testify on the nature of cerebral palsy and the capacity of one who has it, specifically Cherry Mae, to perceive events surrounding her and to express them. The trial court was able to see consistency in the child's testimony, specifically in her positive identification of the appellants.

The appellants in *Hermosa* likewise impugned the testimony of the child witness on the ground that she did not immediately tag them as the culprits but the Court held that the failure to immediately reveal the identity of the perpetrator of a felony will not necessarily impair the credibility of a witness.[43]

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41 G.R. No. 175592, June 14, 2016, 793 SCRA 266, 273-274.

42 Supra note 40 at 141-142.

43 Id. at 145.

The *Rule on the Examination of a Child Witness*, A.M. No. 004-07-SC, became effective on December 15, 2000. The first three sections of this Rule provide as follows:

> SECTION 1. *Applicability of the Rule.* — Unless otherwise provided, this Rule shall govern the examination of child witnesses who are victims of crime, accused of a crime, and witnesses to crime. It shall apply in all criminal proceedings and non-criminal proceedings involving child witnesses.
>
> SECTION 2. *Objectives.* — The objectives of this Rule are to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth.
>
> SECTION 3. *Construction of the Rule.* — This Rule shall be liberally construed to uphold the best interests of the child and to promote maximum accommodation of child witnesses without prejudice to the constitutional rights of the accused.

The lower court had already decided this case as of August 18, 1999, so this Rule was not applied during trial. However, we are discussing its relevant provisions because of the flexibility given to the courts in examining child witnesses under this Rule. In fact, under Section 20, the court may allow leading questions in all stages of examination of a child if the same will further the interests of justice. This Court reiterated that the rule was formulated to allow children to give reliable and complete evidence, minimize trauma to children, encourage them to testify in legal proceedings and facilitate the ascertainment of truth.[44]

This Court recently explained the rationale behind this rule in *People v. Esugon*,[45] where it was stated:

> That the witness is a child cannot be the sole reason for disqualification. The dismissiveness with which the testimonies of child witnesses were treated in the past has long been erased. Under the *Rule on Examination of a Child Witness* (A.M. No. 004-07-SC 15 December 2000), every child is now presumed qualified to be a witness. To rebut this presumption, the burden of proof lies on the party challenging the child's competency. Only when substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court will the court, *motu proprio* or on motion of a party, conduct a competency examination of a child.
>
> The assessment of the credibility of witnesses is within the province of the trial court. All questions bearing on the credibility of witnesses are best addressed by the trial court by virtue of its unique position to observe the crucial and often incommunicable evidence of the witnesses' deportment while testifying, something which is denied to the appellate court because of the nature and function of its office. The trial

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44 *People v. Ilogon*, G.R. No. 206294, June 29, 2016, 795 SCRA 201, 211.

45 761 Phil. 300, 311 (2015). *See also People v. Rama*, 403 Phil. 155, 174-175 (2001); *People v. Gajo*, 384 Phil. 347, 356 (2000).

> judge has the unique advantage of actually examining the real and testimonial evidence, particularly the demeanor of the witnesses. Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of any substantial reason to justify the reversal of the trial court's assessment and conclusion, like when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings. The rule is even more stringently applied if the appellate court has concurred with the trial court. (Citations omitted.)

Furthermore, this Court has applied flexibility in the consideration of evidence in child abuse cases. As we observed in *Razon, Jr. v. Tagitis*[46]:

> Section 28 of the Rule on Examination of a Child Witness is expressly recognized as an exception to the hearsay rule. This Rule allows the admission of the hearsay testimony of a child describing any act or attempted act of sexual abuse in any criminal or non-criminal proceeding, subject to certain prerequisites and the right of cross-examination by the adverse party. The admission of the statement is determined by the court in light of specified subjective and objective considerations that provide sufficient indicia of reliability of the child witness. These requisites for admission find their counterpart in the present case under the above-described conditions for the exercise of flexibility in the consideration of evidence, including hearsay evidence, in extrajudicial killings and enforced disappearance cases. (Citations omitted.)

The above pronouncement may also be found in *People v. Santos*,[47] where the Court held:

> The trend in procedural law is to give a wide latitude to the courts in exercising control over the questioning of a child witness. Under Sections 19 to 21 of the Rules on Examination of a Child Witness, child witnesses may testify in a narrative form and *leading questions may be allowed by the trial court in all stages of the examination if the same will further the interest of justice*. It must be borne in mind that the offended party in this case is a *6-year old* minor who was barely *five* when she was sexually assaulted. As a child of such tender years not yet exposed to the ways of the world, she could not have fully understood the enormity of the bestial act committed on her person. Indeed —
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> > Studies show that children, particularly very young children, make the "perfect victims." They naturally follow the authority of adults as the socialization process teaches children that adults are to be respected. The child's age and developmental level will govern how much she comprehends about the abuse and therefore how much it affects her. If the child is too young to understand what has happened to her, the effects will be minimized because she has no comprehension of the consequences. ***Certainly, children have more problems in providing accounts of events because they do not understand everything they experience***. They do not have enough life experiences from

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46 621 Phil. 536, 616-617 (2009).

47 532 Phil. 752, 764 (2006), citing *People v. Gaudia*, 467 Phil. 1025, 1039 (2004).

> which to draw upon in making sense of what they see, hear, taste, smell and feel. ***Moreover, they have a limited vocabulary***. x x x. (Citations omitted.)

We likewise affirm the finding of conspiracy. As the Court of Appeals stated, conspiracy need not be proven by direct evidence, for conspiracy may be inferred from the acts of the accused in accomplishment of a common unlawful design.[48] The Court of Appeals held that there is no doubt that conspiracy was shown in the instant case from the concerted actions of the accused-appellants. The surviving victim testified regarding the specific acts perpetrated by the appellants against her and the other victims, which show a unity of purpose and sentiment, and a concerted effort on the part of the appellants to commit the gruesome crimes.

The defense of denial and alibi, as held by the Court of Appeals, is weak compared to the positive identification of the appellants as the perpetrators.[49] Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[50] Where there is the least possibility of the presence of the accused at the crime scene, the alibi will not hold water.[51] In this matter, the Court has consistently ruled as follows:

> The Court has considered the defense of denial and alibi put up by the accused, but finds them relatively weak and insufficient to overcome the positive and categorical identification of the accused as perpetrators. The rule is that the defense of denial, when unsubstantiated by clear and convincing evidence, is negative and self-serving and merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.[52] (Citations omitted.)

Both the trial court and the Court of Appeals found the defense of denial and alibi to be insufficient to overthrow the prosecution's evidence against the appellants, who failed to prove that it was physically impossible for them to be at the scene of the crime when the incidents occurred.

Applying prevailing jurisprudence which has increased the amount of awards for damages in criminal cases to show not only the Court's, but all of society's outrage over such crimes and wastage of lives,[53] we hereby modify the monetary awards as follows:

1. In Criminal Case No. 13971-R for Rape with Homicide, where the penalty imposed is death but reduced to *reclusion perpetua*, without eligibility for parole, because of Republic Act No. 9346, in addition to the Php100,000.00 civil indemnity awarded by the

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48 *People v. Bermas*, 369 Phil. 191, 232 (1999).
49 *People v. Bagsit*, 456 Phil. 623, 632 (2003).
50 *Esqueda v. People*, 607 Phil. 480, 497 (2009).
51 *Lumanog v. People*, 644 Phil. 296, 404 (2010).
52 *People v. Teñoso*, 637 Phil. 595, 610 (2010).
53 *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331.

Court of Appeals, each accused-appellant is sentenced to pay jointly and severally to the heirs of Elizabeth Leo: the amounts of Php100,000.00 as moral damages and Php100,000.00 as exemplary damages;

2. In Criminal Case No. 13972-R for Murder, each accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay jointly and severally the amounts of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, and Php75,000.00 as exemplary damages plus temperate damages of Php50,000.00 to the heirs of Namuel Aniban; and

3. In Criminal Case No. 13973-R, for Frustrated Murder, each accused-appellant is sentenced to suffer an indeterminate sentence of ten (10) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. Each accused-appellant is ordered to pay, jointly and severally, Php50,000.00 as civil indemnity, and the amounts of Php50,000.00 as moral damages and Php50,000.00 as exemplary damages to Cherry Mae Bantiway.

WHEREFORE, for want of merit, this appeal is **DISMISSED.** The decision of the Court of Appeals dated April 25, 2012 in **CA-G.R. CR-H.C. No. 02430**, which affirmed with modification the August 18, 1999 **Judgment** of the Regional Trial Court (RTC), Branch 61, Baguio City, in **Criminal Case Nos. 13971-R**, **13972-R**, and **13973-R** finding accused-appellants **Eduardo Golidan (Golidan) and Francis Nacionales (Nacionales) GUILTY** beyond reasonable doubt of the crimes of rape with homicide, murder, and frustrated murder, is **AFFIRMED WITH MODIFICATION as to the above-mentioned amount of monetary awards.**

SO ORDERED.

Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

NOEL GIMENEZ TIJAM
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