



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 229678

Present:

- versus -

CARPIO, J., Chairperson,  
PERALTA,  
PERLAS-BERNABE,  
CAGUIOA, and  
REYES, JR., JJ.

HERMINIO VIBAL, JR. y UAYAN  
@ "PATO," ARNOLD DAVID y  
CRUZ @ "ANOT," CIPRIANO  
REFREA, JR. Y ALMEDA @  
"COBRA," RICARDO H. PINEDA  
@ "PETER," EDWIN R.  
BARQUEROS @ "MARVIN," and  
DANIEL YASON @ "ACE,"

Accused,

HERMINIO VIBAL, JR. y UAYAN @  
"PATO," and ARNOLD DAVID y  
CRUZ @ "ANOT,"

Accused-Appellants.

Promulgated:

20 JUN 2018

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DECISION

PERALTA, J.:

Before the Court is an appeal from the Decision<sup>1</sup> dated February 24, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06206, which affirmed with modification the Judgment<sup>2</sup> dated February 6, 2013 of the Regional Trial Court, Branch 25, Biñan City, Laguna (RTC), finding accused-appellants Herminio Vibal, Jr. y Uayan @ Pato (*Vibal*) and Arnold David y Cruz @ Anot (*David*) guilty beyond reasonable doubt of the two (2) counts

<sup>1</sup> Penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Josep Y. Lopez, concurring; *rollo* pp. 2-25.

<sup>2</sup> Penned by Judge Teodoro N. Solis; CA *rollo* pp. 104-119.

of the complex crime of Direct Assault with Murder in Criminal Case Nos. 17646-B and 17647-B, and one (1) count of Direct Assault with Frustrated Murder in Criminal Case No. 17648-B.

The antecedent facts are as follows:

Vibal and David, together with accused Cipriano Refrea, Jr. y Almeda @ Cobra (*Refrea*), Ricardo H. Pineda @ Peter (*Pineda*), Edwin R. Barqueros @ Marvin (*Barqueros*) and Daniel Yason @ Ace (*Yason*) were charged with two (2) counts of the complex crime of Direct Assault with Murder and one (1) count of Direct Assault with Frustrated Murder in an Information dated July 4, 2007 and two Amended Informations dated March 9, 2009, respectively, the accusatory portion of each reads:

Criminal Case No. 17646-B  
Complex Crime of Direct Assault with Murder

That on or about the 10<sup>th</sup> day of May 2005, in the City of Sta. Rosa, Province of Laguna, 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 and while conveniently being armed with firearms, with intent to kill, did then and there willfully, unlawfully, feloniously attack, assault and shoot Mayor Leon C. Arcillas with the said firearms, knowing fully well that he was a City Mayor of Sta. Rosa City, a person in authority, and while in the performance of his duty as such, thereby inflicting the latter fatal injuries on the head and other parts of his body that caused his instantaneous death to the damage and prejudice of his surviving heirs.

CONTRARY TO LAW.

Criminal Case No. 17647-B  
Complex Crime of Direct Assault with Murder

That on or about the 10<sup>th</sup> day of May 2005, in the City of Sta. Rosa, Province of Laguna, 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 and while conveniently armed with firearms, with intent to kill, did then and there willfully, unlawfully, feloniously attack, assault and shoot Police Officer 2 Erwin B. Rivera with the said firearms, knowing fully well that he was a police officer and an agent of person in authority, and in the performance of his duty as security escort of Mayor Leon C. Arcillas, thereby inflicting him injuries on different parts of his body that caused his instantaneous death to the damage and prejudice of his surviving heirs.

CONTRARY TO LAW.



Criminal Case No. 17648-B  
Complex Crime of Direct Assault with Frustrated Murder

That on or about the 10<sup>th</sup> day of May 2005, in the City of Sta. Rosa, Province of Laguna, 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 and while conveniently armed with firearms, with intent to kill, did then and there willfully, unlawfully, feloniously attack, assault and shoot Police Officer 3 Wilfredo B. Almendras with the said firearms, knowing fully well that he was a police officer and an agent of person in authority, and in the performance of his duty as security escort of Mayor Leon C. Arcillas, thereby inflicting him injuries on different parts of his body, thus accused performs all the acts of execution which would produce the crime as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the accused, that is by timely medical attendance on said Police Officer 3 Wilfredo B. Almendras to his damage and prejudice.

CONTRARY TO LAW.

When arraigned on May 13, 2009, appellants and accused Refrea, pleaded not guilty to the crimes charged. Accused Yason entered a plea of not guilty to the charges during his arraignment on April 6, 2010. Accused Ricardo Pineda and Edwin Barqueros have not been arraigned yet as they are still at-large. Pre-trial with respect to Vibal, David and Refrea was terminated on October 22, 2009. While pre-trial with respect to Yason was terminated on June 22, 2010. Thereafter, joint trials on the merits followed.

During trial, Refrea died and as a consequence, he was dropped as one of the accused. Meanwhile, Yason's demurrer to evidence was granted by the RTC which resulted to the dismissal of the criminal cases as against the said accused.

*Version of the Prosecution*

The Office of the Solicitor General summarized the evidence for the prosecution in this wise:

On May 10, 2005, at around 8:00 o'clock in the morning, PO3 Wilfredo Almendras, together with PO2 Binmaot and PO2 Erwin Rivera, and two (2) other civilian escorts, was with Mayor Leon Arcillas at the 2<sup>nd</sup> floor of the Municipal City Hall of Sta. Rosa City. The police officers were assigned as security escorts of the Mayor. Mayor Arcillas was then solemnizing marriages. The ceremony ended at around 10:00 o'clock in the morning. The Mayor then proceeded to the Office of the Commission on Audit (COA) located at the same floor. While they were going out of the room where the ceremony was conducted, PO3 Almendras noticed that they were being followed by two (2) young kids. After spending a moment in the COA office, the group then proceeded to the Office of the Mayor. On their way



to said Office, gunshots were fired on them. PO3 Almendras was not able to pull out his gun since there was a rapid fire coming from their front and back. He, PO2 Rivera and the Mayor sustained gunshot wounds. The three (3) fell to the ground. While on the floor, PO3 Almendras heard three (3) more gunshots before he felt dizzy. Thereafter, PO3 Almendras and Mayor Arcillas were brought to the hospital.

At that time, SPO1 Victoriano Peria, received a call from an unknown caller reporting that a shooting incident took place inside the Municipal building.

Upon reaching the municipal hall, he saw Mayor Arcillas bloodied and being carried out by several men and was put inside the vehicle. In the second floor, he saw PO2 Erwin Rivera lying near the door already dead, while the other victim PO3 Almendras was brought to the hospital.

The team searched the whole building of the City Hall for possible apprehension of the culprits, but to no avail. Thus, Regional Director P/Chief Supt. Jesus Versoza created a special investigating task force composed of the NBI, CIDG, Regional Intelligence Unit, SOCO and Laguna Investigation Division to conduct an investigation to ascertain the identity of the assailants.

During the investigation, Cipriano Refrea appeared and told SPO1 Peria that accused-appellants Vibal and David were his companions when the killing transpired. Refrea pointed to them as the gunmen. After knowing from Refrea the identity of accused-appellant Vibal, SPO1 Peria asked his whereabouts. He came to know that accused-appellant Vibal was presently detained at the Trece Martirez. SPO1 Peria, together with the other policemen visited Vibal, and when asked about his participation on the shooting incident, he at first denied his participation, but later on admitted to his participation.

With respect to the identity of accused-appellant David, they came to know that he was detained at GMA, Cavite.

In his investigation, SPO1 Peria was able to ascertain that Vibal, David and Refrea were members of the gang called Royal Blood Gangsta.

Dr. Roy A. Camarillo, the medico-legal officer of the Regional Crime Laboratory at Camp Vicente Lim, Calamba, Laguna, conducted the autopsy of the cadaver[s] of Mayor Arcillas and PO2 Rivera. Based from the medico-legal report, Mayor Arcillas sustained three (3) gunshot wounds, the fatal of which are the 2 gunshots in his head. PO2 Rivera, on the other hand, sustained two (2) gunshot wounds, on the nape and chest, the latter being the fatal one that caused the death of the victim.

PO3 Almendras was examined and found to have fracture at the left forearm and weakness of the right hand.<sup>3</sup>



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<sup>3</sup> *Id.* at 130-132. (Citations omitted)

### *Version of the Defense*

The defense, on the other hand, relates its version of the facts in this manner:

On 10 May 2005 at 10:00 o'clock a.m., accused ARNOLD DAVID was at Tanay, Rizal, where he has been staying since October 2004 as requested by his father because he was accused of murder in a gang war that happened at GMA, Cavite. He was then arrested on 19 December 2006 in connection with a case in GMA, Cavite, where he was brought somewhere blindfolded. On 2 January 2007, SPO1 Peria arrived and showed him photographs of the gang, but he denied he was in these. He denied knowing Cipriano Refrea, Jr. prior to his arrest, knowing only the latter at the police station.

Accused HERMINIO VIBAL, JR. likewise denied participation in the incident that happened on 10 May 2005. He claimed that on that date, at 10:30 o'clock a.m., he was at GMA, Cavite, with his family, including his sister, LORELYN CORONEL, and did not leave until afternoon. In February 2006, he was arrested and detained at the Cavite Provincial Jail in relation to prior cases. In December 2006, SPO1 Peria visited him and asked about the death of Reynaldo Cesar, to which Vibal denied. SPO1 Peria later took Vibal's photograph and left. He was visited again by SPO1 Peria and asked if he had any participation in the death of Mayor Arcillas. Again, Vibal denied. SPO1 Peria once again visited Vibal, this time with PO3 Almendras. The latter asked Vibal if he knew him, but Vibal could not answer as he was sick at the time. He was again photographed. In January 2007, he was again visited by SPO1 Peria and PO3 Almendras, who were now with Cipriano Refrea, Jr. and who was asked to point at Vibal. Another photograph was taken of Vibal. Prior to this meeting, Vibal did not know who Refrea was.<sup>4</sup>

### *The RTC Ruling*

In its Decision, dated February 6, 2013, the RTC found Vibal and David guilty of the crimes charged. The dispositive portion of the said decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused HERMINIO U. VIBAL, JR. y UAYAN and ARNOLD DAVID y CRUZ, guilty beyond reasonable doubt of the complex crime of direct assault with murder (2 counts) and direct assault with frustrated murder. Accordingly, they are hereby sentenced to suffer the penalty as follows:

- 1) In Criminal Case No. 17646-B and 17647-B, reclusion perpetua (two counts). As civil liability, for them to pay jointly the following:
  - 1) P75,000.00 as civil liability *ex-delicto* in each case;
  - 2) P500,000.00 in moral damages to the heirs of the victims in each case;

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<sup>4</sup> *Id.* at 97-98.

- 2) In Criminal Case No. 17648-B, the indeterminate penalty ranging from 14 years of *reclusion temporal*, as minimum to 17 years 4 months and 1 day of *reclusion temporal*, as maximum. As civil liability, accused are ordered to pay the victim the amount of P50,000.00 in moral damages.

On the other hand, the cases against accused Ricardo Pineda and Edwin Barqueros are sent to the archives pending their arrest.

SO ORDERED.<sup>5</sup>

The RTC concluded that all the elements of the offenses charged were satisfactorily proven by the prosecution. It rejected the twin defenses of denial and alibi interposed by appellants in the light of the positive identification of them by prosecution witness PO3 Wilfredo Almendras (*PO3 Almendras*) as the culprits to the dastardly deeds. The RTC added that the manner by which the appellants committed the felonious acts revealed a community of criminal design, and thereby held that conspiracy exists. Lastly, the RTC ruled that evident premeditation and treachery attended the commission of the crimes which qualified the killing of Mayor Leon Arcillas (*Mayor Arcillas*) and PO2 Erwin Rivera (*PO2 Rivera*) to murder.

Not in conformity, Vibal and David appealed the February 6, 2013 RTC Decision before the CA.

### ***The CA Ruling***

On February 24, 2016, the CA rendered its assailed Decision upholding the conviction of Vibal and David for two counts of the complex crime of Direct Assault with Murder in Criminal Case Nos. 17646-B and 17647-B but held that the said appellants are criminally liable only for the complex crime of Direct Assault with Attempted Murder in Criminal Case No. 17648-B, the decretal portion of which states:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Judgment dated February 6, 2013 of the Regional Trial Court, Branch 25, Biñan City, Laguna is AFFIRMED with MODIFICATION in that the dispositive portion thereof is to read as follows:

- (1) In Criminal Case No. 17646-B, accused-appellants Herminio Vibal, Jr. y Uayan @ Pato and Arnold David y Cruz @ Anot are hereby held GUILTY beyond reasonable doubt for the complex crime of direct assault with murder and are sentenced to suffer the penalty of reclusion perpetua without eligibility for parole. Accused-appellants are ordered to pay the heirs of Mayor Leon Arcillas the following amounts: Seventy-Five Thousand Pesos

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<sup>5</sup> *Id.* at 119.



(P75,000.00) as civil indemnity; Seventy-Five Thousand Pesos (P75,000.00) as moral damages; Thirty Thousand Pesos (P30,000.00) as exemplary damages; and Twenty-Five Thousand Pesos (P25,000.00) as temperate damages;

- (2) In Criminal Case No. 17647-B, accused-appellants Herminio Vibal, Jr. y Uayan @ Pato and Arnold David y Cruz @ Anot are hereby held GUILTY beyond reasonable doubt for the complex crime of direct assault with murder and are sentenced to suffer the penalty of reclusion perpetua without eligibility for parole. Accused-appellants are ordered to pay the heirs of PO2 Erwin Rivera the following amounts: Seventy Five Thousand Pesos (P75,000.00) as civil indemnity; Seventy Five Thousand Pesos (P75,000.00) as moral damages; Thirty Thousand Pesos (P30,000.00) as exemplary damages; and Twenty-Five Thousand Pesos (P25,000.00) as temperate damages;
- (3) In Criminal Case No. 17648-B, accused-appellants Herminio Vibal, Jr. y Uayan @ Pato and Arnold David y Cruz @ Anot are hereby held GUILTY beyond reasonable doubt for the complex crime of direct assault with attempted murder and are sentenced to suffer the penalty of imprisonment from six (6) months and one (1) day of prision correccional to ten (10) years and one (1) day of prision mayor. Accused-appellants are ordered to pay private complainant PO2 Wilfredo B. Almendras Forty Thousand Pesos (P40,000.00) as moral damages; and Thirty Thousand Pesos (P30,000.00) as exemplary damages; and
- (4) Accused-appellants Herminio Vibal, Jr. y Uayan @ Pato and Arnold David y Cruz @ Anot are further ordered to pay interest on all damages awarded at the legal rate of six percent (6%) per annum from date of finality of this judgment.

SO ORDERED.<sup>6</sup>

The appellate court held that the credible testimony of PO3 Almendras is sufficient to sustain the conviction of the appellants for the crimes charged. It likewise debunked appellants' denial and alibi declaring that the same were not satisfactorily established and not at all persuasive when pitted against the positive and convincing identification by PO3 Almendras, who has no ill motive to testify falsely against them. According to the CA, the presence of the aggravating circumstance of evident premeditation was not adequately established by the prosecution. Finally, the CA ruled that the appellants should be held liable only for the complex crime of direct assault with attempted murder in Criminal Case No. 17648-B because the prosecution failed to prove that the gunshot wound inflicted upon PO2 Almendras was fatal.

Undaunted, appellants filed the present appeal and posited the same lone assignment of error they previously raised before the CA, to wit:

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<sup>6</sup> Rollo, pp. 23-24.



THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESS' POSITIVE IDENTIFICATION OF THE ACCUSED-APPELLANTS WHEN THE FACTS OF THE CASE SHOW THAT THERE ARE DOUBTS CONCERNING THE ALLEGED POSITIVE IDENTIFICATION.<sup>7</sup>

In the Resolution<sup>8</sup> dated March 29, 2017, the Court directed both parties to submit their supplemental briefs, if they so desire. On May 29, 2017, the accused-appellants filed a Manifestation (In Lieu of Supplemental Brief)<sup>9</sup> averring that they would adopt all their arguments in their Appellant's Brief filed before the CA. On June 27, 2017, the Office of the Solicitor General filed its Manifestation<sup>10</sup> stating that it will no longer file a supplemental brief as its Appellee's Brief had sufficiently ventilated the issues raised.

Accused-appellants principally contend that the CA gravely erred in its over-reliance on the problematic identification provided by prosecution witness/private complainant PO3 Almendras. They insist that PO3 Almendras could not have properly seen and identify the assailants at the time of the shooting incident because after he was shot, he felt dizzy and lost consciousness. Also, they brand Almendras' identification of them as the culprits to be dubious considering that it was only made more than a year after the incident. Appellants argue that their respective defenses of denial and alibi assume significance because the prosecution failed to establish beyond reasonable doubt the identities of the authors of the crime.

Accordingly, the decisive question that begs an answer from the Court is whether the identification of the culprits by eyewitness PO3 Almendras was reliable and positive enough to support the convictions of the appellants.

### ***The Court's Ruling***

After a careful scrutiny of the records and evaluation of the evidence adduced by the parties, the Court finds this appeal to be absolutely without merit.

Every criminal conviction requires the prosecution to prove two things: (1) the fact of the crime, *i.e.*, the presence of all the elements of the crime for which the accused stands charged, and (2) the fact that the accused is the perpetrator of the crime.<sup>11</sup> When a crime is committed, it is the duty of the prosecution to prove the identity of the perpetrator of the crime beyond reasonable doubt for there can be no conviction even if the commission of the

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<sup>7</sup> CA rollo p. 92.

<sup>8</sup> Rollo pp. 34-35.

<sup>9</sup> *Id.* at 36-38.

<sup>10</sup> *Id.* at 47-49.

<sup>11</sup> *People v. Ayola*, 416 Phil. 861, 871 (2001).



crime is established.<sup>12</sup> Apart from showing the existence and commission of a crime, the State has the burden to correctly identify the author of such crime. Both facts must be proved by the State beyond cavil of a doubt on the strength of its evidence and without solace from the weakness of the defense.<sup>13</sup>

Our legal culture demands the presentation of proof beyond reasonable doubt before any person may be convicted of any crime and deprived of his life, liberty or even property. As every crime must be established beyond reasonable doubt, it is also paramount to prove, with the same quantum of evidence, the identity of the culprit. It is basic and elementary that there can be no conviction until and unless an accused has been positively identified.

In the case at bench, the RTC and the CA were one in declaring that the identification of appellants Vibal and David as the gunmen based on the recognition of PO3 Almendras was clear, worthy of credence and has met the requirements of moral certainty. The Court agrees, and finds no cogent reason to disturb this conclusion of the RTC as affirmed by the CA.

The cause of the prosecution draws its strength on the positive identification by PO3 Almendras, pinpointing to appellants Vibal and David as the perpetrators of the gruesome killing of Mayor Arcillas and PO2 Rivera and who inflicted gunshot wounds upon him. PO3 Almendras vividly recounted before the RTC the appellants' respective positions and participation in the shooting incident, having been able to witness closely how they committed the crime, more so because the crime happened in the morning when conditions of visibility are very much favorable. He had a close and unobstructed view of the incident and was able to take a good glimpse and recognize the faces of the gunmen as the same two young males he saw earlier in the day following his group. Hailed to the witness stand, PO3 Almendras stuck to the essentials of his story, and without any hesitation, pointed to Vibal and David as the two culprits, which thus eliminated any possibility of mistaken identification. Jurisprudence recognizes that victims of crime have a penchant for seeing the faces and features of their attackers, and remembering them.<sup>14</sup>

The following testimony of PO3 Almendras shows beyond cavil that he saw the faces of the appellants as the two young males who followed them from the room where Mayor Arcillas solemnized the mass wedding, and who later open fired at them:

Q: What time did the solemnization of the marriages end?

A: At 10:00 o'clock sir.

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<sup>12</sup> *People v. Sinco*, 406 Phil. 1, 12 (2001).

<sup>13</sup> *People v. Limpangog*, 444 Phil 691, 709 (2003).

<sup>14</sup> *Vergara v. People*, 425 Phil. 124, 133 (2002).

Q: After the solemnization of marriages did you observe anything unusual?

A: There was sir. When we were going out, I observed that there were 2 young kids (2 bata) following us.

Q: Did you recognize those 2 kids?

A: Yes, sir.<sup>15</sup>

x x x x

Q: From the COA office where you stayed for a while, where did you go?

A: We were about to go to the office of the Mayor. (Papunta sa office ni mayor.)

Q: As you were going to the Office of the Mayor was there anything unusual that happened?

A: There was sir.

Q: What was that?

A: Suddenly I heard gunshots.

Q: What happened when you heard gunshots?

A: I was about to pull out my gun but there was a rapid fire so I was not able to draw my gun.

Q: In relation to where you were at that time, where did the gunshots come from?

A: In front and at the back sir.

Q: To whom?

A: I was the one who was shot first and the other bodyguard was shot next.

Q: Who was that person?

A: Erwin Rivera sir.

Q: You stated earlier that the shot came in front and behind whom?

A: Because we were walking together at that time and the shot came in front and back.

Q: Together with whom?

A: Mayor Leon C. Arcillas, Erwin Rivera and me sir.

Q: Where was then the Mayor at the time when you heard the gunshots?

A: He was in between me and Erwin Rivera.

Q: What did you notice after hearing the gunshots with respect to the Mayor?

A: "Nagbagsakan na kami." (We three fell down)

x x x x

Q: Who fired the shots if you know?

A: The two kids sir, the 2 young male(s).



Q: Who are these 2 kids that fired the shot in relation to the 2 kids you noticed earlier when you were going out of the room where the Mayor solemnized marriages?

A: Arnold David and Herminigildo Vibal.<sup>16</sup>

x x x x

Q: If you will see these persons again, will you be able to identify them?

A: Yes, sir.

Q: Would you kindly look inside the court room and tell us if they are present inside the court room?

A: Yes, sir.

Q: Will you kindly point to them?


x x x x

Interpreter

The two accused identified to by the witness, when asked of their names, answered Arnold David and Herminigildo Vibal.<sup>17</sup>

Verily, PO3 Almendras had seen the faces of Vibal and David when they committed the crimes on that fateful morning of May 10, 2005, albeit brief, but enough for him to remember how they look like. Experience dictates that precisely because of the startling acts of violence committed right before their eyes, eyewitnesses can recall with a high degree of reliability the identities of the criminals and how at any given time the crime has been committed by them.<sup>18</sup> It is important to note that PO3 Almendras identified Vibal and David as the gunmen without any presumptions or suggestions from the police or the court at the trial.

This Court fails to discern any improper motive which could have impelled PO3 Almendras to maliciously impute to appellants such serious crimes and hence, his testimony is worthy of evidentiary weight. Further, as an actual victim, PO3 Almedras is naturally interested in vindicating the outrageous wrong done to his person. His natural interest in securing the conviction of the perpetrators would strongly deter him from implicating persons other than the real culprits. Otherwise, the latter could escape with impunity the strong and just arm of the law. Absent any evidence showing any reason or motive for prosecution witness to perjure, the logical conclusion is that no such improper motive exists, and that his testimony is entitled to full faith and credit.<sup>19</sup>



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<sup>16</sup> *Id.* at 19-23.

<sup>17</sup> *Id.* at 46-47.

<sup>18</sup> *People v. Gallego*, 453 Phil. 825, 855 (2003).

<sup>19</sup> *People v. Lucero*, 659 Phil. 518, 540 (2011).

Vibal and David are clutching at straws in insisting that PO3 Almedras' identification of them as the gunmen is improbable and should not have been accorded credence since it was made only after the lapse of more than a year from the time the shooting incident occurred. A perusal of the records would readily disclose that no unreasonable delay can be attributed to PO3 Almedras. We quote with approval the observation of the CA on this score:

Appellants' attempt to discredit the testimony of private complainant by pointing out that there was a delay of one (1) year before he identified appellants as the gunmen is of no moment. As correctly pointed out by the Office of the Solicitor General, private complainant was not in a position to identify who shot him and killed Mayor Leon Arcillas and PO2 Erwin Rivera immediately after the incident. Private complainant was rushed to the hospital because of gunshot wounds and was confined for around a month. Moreover, the investigation took a long time and appellants were not immediately apprehended. Private complainant, however, asserted that he remembers the faces of the shooters and was, in fact, able to identify both appellants when he finally saw them.<sup>20</sup>

Having ascertained that herein appellants are the gunmen, the Court shall now proceed to the determination of their criminal liabilities.

The courts a quo are correct in ruling that appellants are liable for the complex crime of Direct Assault with Murder in Criminal Case Nos. 17646-B and 17647-B. Direct assault, a crime against public order, may be committed in two ways: *first*, by "any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition;" and *second*, by any person or persons who, without a public uprising, "shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance."<sup>21</sup>

Appellants committed the second form of assault, the elements of which are: 1) that there must be an attack, use of force, or serious intimidation or resistance upon a person in authority or his agent; 2) the assault was made when the said person was performing his duties or on the occasion of such performance; and 3) the accused knew that the victim is a person in authority or his agent, that is, that the accused must have the intention to offend, injure or assault the offended party as a person in authority or an agent of a person in authority.<sup>22</sup>

Here, Mayor Arcillas was a duly elected mayor of Sta. Rosa, Laguna and thus, was a person in authority while PO2 Rivera and PO3 Almendras

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<sup>20</sup> Rollo, p. 18.

<sup>21</sup> Article 148, Revised Penal Code.

<sup>22</sup> *People v. Ex-Mayor Estonilo, Sr., et al.*, 745 Phi. 331, 355 (2014).

were agents of a person in authority. There is no dispute that all of the three victims were in the performance of their official duties at the time of the shooting incident. Mayor Arcillas was inside the Sta. Rosa City Hall officiating a mass wedding, and thereafter, while he was walking along the hallway from the COA office to his office, he was shot and killed. Victim PO2 Rivera and private complainant PO3 Almendras were likewise performing their duty of protecting and guarding Mayor Arcillas at the time of the shooting incident. Appellants' conduct of attacking the victims inside the Sta. Rosa City Hall clearly showed their criminal intent to assault and injure the agents of the law.

When the assault results in the killing of an agent or of a person in authority for that matter, there arises the complex crime of Direct Assault with murder or homicide.<sup>23</sup> Here, treachery qualified the killing of Mayor Arcillas and PO2 Rivera to murder. Treachery also attended the shooting of PO3 Almendras. There is treachery when the following essential elements are present, *viz.*: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.<sup>24</sup> The essence of treachery lies in the suddenness of the attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring the commission of the offense without risk to the offender arising from the defense which the offended party might make.<sup>25</sup>

In the case at bench, the shooting was deliberate and without a warning, done in a swift and unexpected manner. Mayor Arcillas, PO2 Rivera and PO3 Almendras were absolutely unaware of the imminent deadly assaults, and were for that reason in no position to defend themselves or to repel their assailants. Vibal and David, who were armed with guns, suddenly appeared in front and at the back of Mayor Arcillas, PO2 Rivera and PO3 Almendras and shot the three victims. The gunshots that came from the front of the victims were fired by Vibal, while those that came from behind them were fired by David.<sup>26</sup> Said manner of attack clearly revealed appellants' deliberate design to thereby ensure the accomplishment of their purpose to kill or injure the three victims without any possibility of their escape or of any retaliation from them.

Conspiracy is very much evident from the actuations of the appellants. They were synchronized in their approach to shoot Mayor Arcillas and his group. The concerted efforts of the appellants were performed with closeness and coordination, indicating a single criminal impulse – to kill the victims. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when

<sup>23</sup> *People v. Abalos*, 328 Phil. 24, 36 (1996).

<sup>24</sup> *People v. Villarico, Sr., et al.*, 662 Phil. 399, 422 (2011).

<sup>25</sup> *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003.

<sup>26</sup> CA rollo, p. 61.

these point to a joint purpose and design, concerted action and community of interest.<sup>27</sup> The ascertainment of who among appellants actually hit, killed and/or caused injury to the victims already becomes immaterial. Where conspiracy has been adequately proven, as in the present case, all the conspirators are liable as co-principals regardless of the extent and character of their participation because, in contemplation of law, the act of one is the act of all.<sup>28</sup>

The Court affirms the conclusion of the CA that the appellants should be held criminally liable for the complex crime of Direct Assault with Attempted Murder in Criminal Case No. 17648-B. It is well-settled that when the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal wounds but did not die because of timely medical assistance, the crime committed is frustrated murder or frustrated homicide depending on whether or not any of the qualifying circumstances under Article 249 of the Revised Penal Code are present.<sup>29</sup> But, if the wounds sustained by the victim in such a case were not fatal or mortal, then the crime committed is only attempted murder or attempted homicide.<sup>30</sup>

Here, the use of firearms and the manner of the commission of the crime by the appellants unmistakably show that they intended to kill PO3 Almendras and that treachery was present. However, no evidence was adduced to show that the nature of gunshot wounds sustained by PO3 Almendras was sufficient to cause the latter's death without timely medical intervention. We note that the attending physician of PO3 Almendras was not called to the witness stand to testify on the gravity or character of the gunshot wounds inflicted on the said victim. Also, no evidence was introduced to prove that PO3 Almendras would have died from his gunshot wounds without timely medical attendance. Where there is nothing in the evidence to show that the wound would be fatal if not medically attended to, the character of the wound is doubtful; hence, the doubt should be resolved in favor of the accused and the crime committed by him may be declared as attempted, not frustrated, murder.<sup>31</sup>

The Court agrees with the CA that the modifying circumstance of evident premeditation did not attend the commission of the offenses. Here, the records are bereft of any proof, direct or circumstantial, tending to show a plan or preparation to kill by appellants Vibal and David as well as when they meditated and reflected upon their decision to kill or/injure the three victims and the intervening time that elapsed before this plan was carried out. Accordingly, the circumstance of evident premeditation cannot be presumed against appellants. To qualify a killing to murder, the circumstances invoked

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<sup>27</sup> *People v. De la Rosa, Jr.*, 395 Phil. 643, 659 (2000).

<sup>28</sup> *People v. Drew*, 422 Phil. 614, 628 (2001).

<sup>29</sup> *People v. Costales*, 424 Phil. 321, 334 (2002).

<sup>30</sup> *People v. Castillo*, 426 Phil. 752, 768 (2002).

<sup>31</sup> *Epifanio v. People*, 552 Phil. 620, 631 (2007).



must be proven as indubitably as the killing itself and cannot be deduced from mere supposition.<sup>32</sup>

Appellants simply raise denial, which is inherently weak and cannot prevail over the positive identification made by prosecution witness PO3 Almendras that they were the gunmen. Moreover, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness,<sup>33</sup> as in this case. Appellants' defense of alibi is likewise unavailing. In order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.<sup>34</sup> Appellants miserably failed to discharge this burden. Besides, the prosecution was able to present a photograph taken by prosecution witness Mercedita De Jesus, the official photographer during the solemnization of the mass wedding, prior to the shooting incident which showed appellant Vibal at the background. Said picture proves that Vibal was at the Sta. Rosa City Hall on May 10, 2005 which thus effectively belied his claim that he was at his residence in GMA, Cavite on that day.

When the offense is a complex crime, the penalty for which is that for the graver offense, to be imposed in the maximum period.<sup>35</sup> For the complex crime of Direct Assault with Murder in Criminal Case Nos. 17646-B and 17647-B, the graver offense is Murder. Article 248 of the Revised Penal Code (RPC) provides for the penalty of *reclusion perpetua* to death for the felony of murder; thus, the imposable penalty should have been death. However, considering that the imposition of death penalty has been prohibited by Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines"; the penalty of *reclusion perpetua* should be imposed upon appellants. In addition, the qualification "without eligibility for parole" should be affixed to qualify *reclusion perpetua* pursuant to A.M. No. 15-08-02-SC. Thus, the CA has properly imposed upon appellants the penalty of *reclusion perpetua* without eligibility for parole.

In Criminal Case No. 17648-B for the complex crime of Direct Assault with Attempted Murder, the penalty to be imposed on appellants should be that for Attempted Murder, which is the more serious crime. The penalty for Attempted Murder is two degrees lower than that prescribed for the consummated felony under Article 51 of the RPC. Accordingly, the imposable penalty is *prision mayor*. Applying the Indeterminate Sentence Law, the minimum shall be taken from the penalty next lower in degree, *i.e.*, *prision correccional*, in any of its periods, or anywhere from six (6) months and one (1) day to six (6) years while the maximum penalty should be from ten (10)

<sup>32</sup> *People v. Baltar, Jr.*, 401 Phil. 1, 14 (2000).

<sup>33</sup> *People v. Calonge*, 637 Phil. 435, 455 (2010).

<sup>34</sup> *People v. Abella*, 624 Phil. 18, 36 (2010).

<sup>35</sup> Article 48, Revised Penal Code.

years and one (1) day to twelve (12) years of *prision mayor*, the maximum period of the imposable penalty. This Court deems it proper to impose on the appellants the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum.

Coming now to the pecuniary liabilities, the Court finds that the award of civil indemnity, moral damages and exemplary damages in Criminal Case Nos. 17646-B and 17647-B should be increased to ₱100,000.00 each, while the award of temperate damages should likewise be increased to ₱50,000.00 being consistent with our pronouncement in *People v. Jugueta*.<sup>36</sup> In Criminal Case No. 17648-B, the Court finds it apt to award civil indemnity, in addition to moral damages and exemplary damages, the amount of which should all be fixed at ₱50,000.00 each in line with existing jurisprudence.<sup>37</sup> Further, six percent (6%) interest *per annum* shall be imposed on all damages awarded to be reckoned from the date of the finality of this judgment until fully paid.<sup>38</sup>

**WHEREFORE**, the appeal is **DISMISSED**. The Decision of the Court of Appeals, dated February 24, 2016 in CA-G.R. CR-HC No. 06206 is hereby **AFFIRMED** with **MODIFICATIONS** as follows:

- 1.) In Criminal Case No. 17646-B, accused-appellants Herminio Vibal, Jr. y Uayan @ Pato and Arnold David y Cruz @ Anot are found guilty beyond reasonable doubt of the complex crime of Direct Assault with Murder. Accordingly, each is sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole. Further, they are ordered to pay, jointly and severally, the heirs of Mayor Leon Arcillas the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages and ₱50,000.00 as temperate damages.
- 2.) In Criminal Case No. 17647-B, accused-appellants Herminio Vibal, Jr. y Uayan @ Pato and Arnold David y Cruz @ Anot are found guilty beyond reasonable doubt of the complex crime of Direct Assault with Murder. Accordingly, each is sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole. Further, they are ordered to pay, jointly and severally, the heirs of PO2 Erwin Rivera the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages and ₱50,000.00 as temperate damages.
- 3.) In Criminal Case No. 17648-B, accused-appellants Herminio Vibal, Jr. y Uayan @ Pato and Arnold David y Cruz @ Anot are

<sup>36</sup> 783 Phil. 806 (2016).

<sup>37</sup> *People v. Jugueta, supra*.

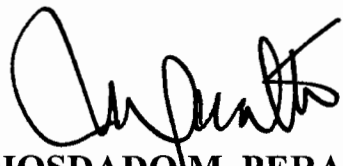
<sup>38</sup> *People v. Romobio*, G.R. No. 227705, October 11, 2017.



found guilty beyond reasonable doubt of the complex crime of Direct Assault with Attempted Murder. Accordingly, each is sentenced to suffer the penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum. Further, they are ordered to pay, jointly and severally, the private complainant Wilfredo B. Almendras the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages.

4.) Accused-appellants Herminio Vibal, Jr. y Uyan @ Pato and Arnold David y Cruz @ Anot are also **ORDERED to PAY** interest at the rate of six percent (6%) *per annum* from the time of finality of this Decision until fully paid, to be imposed on the civil indemnity, moral damages, exemplary damages and temperate damages.


**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

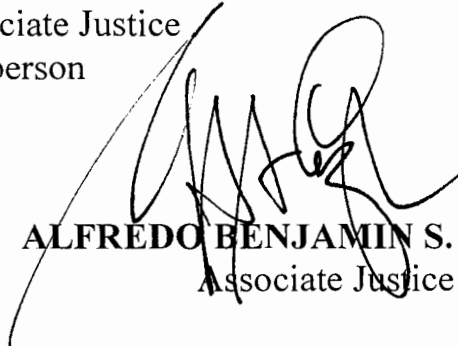
**WE CONCUR:**



**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ANDRES B. REYES, JR.**  
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.



**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, Republic  
Act No. 296, The Judiciary  
Act of 1948, as amended)