



Republic of the Philippines
Supreme Court
 Baguio City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 262603
 Plaintiff-appellee,

Present:

CAGUIOA, J., *Chairperson*,
 INTING,
 GAERLAN,
 DIMAAMPAO, and
 SINGH, JJ.

- versus -

Promulgated:

NELSON SIA, JR. y ACULÑA,
 Accused-appellant.

April 15, 2024

x-----*MicD Cabat*-----x

DECISION

INTING, J.:

This resolves the appeal¹ under Rule 122 of the Rules of Court of accused-appellant Nelson Sia, Jr. y Acuña (accused-appellant) seeking a reversal of the Decision² dated March 10, 2021, of the Court of Appeals (CA) in CA-G.R. CR-HC No. 12982. The CA affirmed with modification the Joint Decision³ dated May 8, 2019, of Branch 153, Regional Trial Court (RTC), Taguig City in Criminal Case Nos. 158545-TG and 158546-TG that convicted accused-appellant of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code;⁴ and Attempted Murder, as defined and penalized under the

¹ CA rollo, pp. 139–140, Notice of Appeal.

² *Id.* at 114–126. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Presiding Justice Remedios A. Salazar-Fernando and Associate Justice Walter S. Ong of the First Division, Court of Appeals, Manila.

³ *Id.* at 46–62 and RTC records, pp. 116–132. Penned by Presiding Judge Mariam G. Bien.

⁴ REV. PEN. CODE, art. 248 provides:

art. 248. *Murder.* - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

Revised Penal Code, Article 248 in relation to Article 51.⁵

The Antecedents

In two separate Informations⁶ filed with the RTC and docketed as Criminal Case Nos. 158545-TG and 158546-TG, accused-appellant was charged with Murder and Attempted Murder, respectively. The accusatory portions of the Informations read as follows:

Criminal Case No. 158545-TG

That on or about the 2nd day of December 2015, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with the use of a firearm, with intent to kill, did, then and there willfully, unlawfully and feloniously attack, assault and shot (*sic*) one HECTOR INIAKI LONTOC, JR y MADRIGAL, hitting him on his head, thereby inflicting upon him fatal injuries which caused his instantaneous death, the said killing having been attended by the qualifying circumstance of treachery, which qualify such killing to murder.

CONTRARY TO LAW.⁷

Criminal Case No. 158546-TG

That on or about the 2nd day of December 2015, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill and with the qualifying circumstance of treachery, did, then and there willfully, unlawfully and feloniously shot (*sic*) one JEROME SUMULONG y GAPASIN, hitting him on his left forearm, thereby commencing the commission of the crime of Murder directly by overt acts but failed to perform all the acts of execution which would have produced the crime of murder by reason of cause/s other than his own spontaneous desistance, that is, the injuries suffered by the victim was not fatal.

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
 2. In consideration of a price, reward or promise.
 3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
 4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
 5. With evident premeditation.
 6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim or outraging or scoffing at his person or corpse.
- ⁵ REV. PEN. CODE art. 51. Provides:
art. 51. Penalty to Be Imposed Upon Principals of Attempted Crimes. — The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.
- ⁶ CA *rollo*, pp. 46-47.
- ⁷ RTC records, pp. 1-2.

CONTRARY TO LAW.⁸

Upon arraignment, accused-appellant, who was assisted by counsel, entered a plea of “Not Guilty” to both charges.⁹

Trial followed.¹⁰

Version of the Prosecution

According to the prosecution, on December 1, 2015, at around 11:35 p.m., a certain Jonjon Sia, who was also identified as Nelson or Neil Sia, (Neil Sia)¹¹ went to the Barangay Hall of Barangay Calzada-Tipas, Taguig City; he insisted that the barangay and police officers then present should apprehend two persons riding a motorcycle, who were allegedly carrying a firearm. Police Officer I Eric O. Guzman (PO1 Guzman), a member of the Philippine National Police who was then on duty in Barangay Calzada-Tipas, as well as Barangay Security Force Maximo S. Estacio (Estacio), a barangay officer, attended the complaint of Neil Sia.¹²

Following Neil Sia’s statements, PO1 Guzman, Estacio, and other barangay tanods proceeded to F. Manalo Street, Barangay Calzada-Tipas, to apprehend the individuals who were allegedly carrying a firearm.¹³ There, they saw a motorcycle with two men on-board pass by the area, but the officers were unable to apprehend them.¹⁴ PO1 Guzman and Estacio decided to wait around the area in case the suspected individuals returned.¹⁵ Later, the motorcycle carrying the two individuals returned.¹⁶ PO1 Guzman immediately flagged down the vehicle which, as it turned out, was being driven by Hector Iniaki Lontoc, Jr. (Hector), accompanied by his back rider, Jerome Sumulong (Jerome), the private complainant in Criminal Case No. 158546-TG.¹⁷

Jerome narrated that on December 2, 2015, at around 12:10 a.m., he and Hector were on their way home on board a motorcycle, with Hector as the driver and Jerome as the back rider. As they were traversing F. Manalo Street, Barangay Calzada Tipas, Taguig City, PO1 Guzman, who had his gun pointed at them, flagged them down. This prompted them to stop and raise their hands. PO1 Guzman approached Jerome and Hector and asked them if they were carrying firearms because he received

⁸ *Id.* at 3–4.

⁹ *Id.* at 44–45; CA *rollo* p. 47, RTC records.

¹⁰ RTC records, p. 13.

¹¹ *Id.*, TSN, PO1 Eric O. Guzman, June 27, 2017, p. 12. For clarity, references to “Jonjon Sia” have been converted to “Neil Sia.”

¹² CA *rollo*, pp. 50, 80, and 116–117.

¹³ *Id.* at 48 and 115; RTC records, pp. 13–15 and 17.

¹⁴ CA *rollo*, p. 80.

¹⁵ *Id.*

¹⁶ *Id.* at 51 and 80.

¹⁷ *Id.*

reports that they were armed. Jerome replied that he and Hector were not carrying any firearm, explaining that they were in the area only to retrieve a watch that they pawned.¹⁸ PO1 Guzman then proceeded to frisk Hector and Jerome.¹⁹

During the encounter, PO1 Guzman was in the two o'clock position of Jerome and Hector and was about half an arm length away from them.²⁰ Six to seven barangay tanods were likewise present and surrounded Jerome and Hector.²¹ In the middle of the discussion, five to six gunshots coming from the right back side of PO1 Guzman were suddenly heard.²² Hector immediately slumped down.²³ Jerome thought that Hector was only trying to dodge the bullets, but when he looked closer, he noticed that Hector was already bleeding from the head, with his eye socket open and internal organs leaking out.²⁴ When Jerome tried to assist Hector, he noticed that he was also bleeding from his left forearm, and it was only then that he realized that he also suffered a gunshot wound.²⁵

Jerome asserted that when he looked at the source of the gunfire, he saw accused-appellant hiding near a wall just behind PO1 Guzman, holding a gun, and firing the shots.²⁶ The gun held by accused-appellant was pointed at him and Hector and the shots were directed at them.²⁷ He mentioned that he knew accused-appellant because they lived in the same area; that he and Hector did not have any prior grudge with accused-appellant; and that he did not know why accused-appellant would shoot at them.²⁸

Meanwhile, because of his police training, PO1 Guzman dodged the bullets by turning and getting out of the line of fire.²⁹ When PO1 Guzman turned around to address the assailant, he saw accused-appellant shooting a gun.³⁰ He responded by firing a shot at accused-appellant using his service firearm.³¹ He mentioned that he was about five to six meters away from accused-appellant and that he saw accused-appellant's face because the area was fairly lit by a street light.³²

¹⁸ *Id.* at 48–51, 80–81, and 115; RTC records, pp. 13–14 and 23–24.

¹⁹ RTC records, p. 14.

²⁰ CA *rollo*, pp. 48–49 and 115–116; TSN, Jerome Sumulong, February 7, 2017, pp. 6–7.

²¹ *Id.* at 17; TSN, PO1 Eric O. Guzman, June 27, 2017, p. 12.

²² *Id.* at 81; TSN, Jerome Sumulong, February 7, 2017, p. 7.

²³ *Id.*

²⁴ *Id.* at 48, 81, and 115; RTC records, p. 11.

²⁵ *Id.* at 82; RTC records, p. 18.

²⁶ *Id.* at 48 and 81; RTC records, p. 11.

²⁷ TSN, Jerome Sumulong, February 7, 2017, pp. 8 and 18–20.

²⁸ *Id.* at 20, CA *Rollo* p. 49; TSN, Jerome Sumulong, February 7, 2017.

²⁹ *Id.* at 51, 82, and 116–117.

³⁰ *Id.* at 52–53 and 116.

³¹ *Id.* at 51–52, 82, and 116–117.

³² *Id.* at 52 and 116; TSN, PO1 Eric O. Guzman, June 27, 2017, p. 10.

PO1 Guzman's return fire hit accused-appellant at the abdomen, who then ran away towards a dark area of the barangay.³³ PO1 Guzman gave chase but he was unable to apprehend accused-appellant.³⁴ Later, PO1 Guzman saw a tricycle being driven by Neil Sia with accused-appellant as passenger.³⁵ PO1 Guzman tried to stop Neil Sia from leaving, but the latter was adamant that he had to bring his nephew, the accused-appellant, to the hospital because of an injury.³⁶ Neil Sia then drove away to bring accused-appellant to Rizal Medical Center, where an operation was conducted to remove a bullet from accused-appellant's body.³⁷

Neil Sia thereafter informed the officers of Barangay Calzada-Tipas that he brought accused-appellant to Rizal Medical Center.³⁸ In response, PO1 Guzman followed accused-appellant to Rizal Medical Center, where he arrested accused-appellant after a successful operation.³⁹

Meanwhile, Hector and Jerome were brought to Cruz-Rabe Hospital for medical attention. Hector was pronounced dead, with "gunshot wound to the head" listed as the cause of death in the *Certificate of Death*.⁴⁰ As to Jerome, he was transferred to Rizal Medical Center for further medical attention, where the gunshot wound on his forearm was treated.⁴¹ The Medical Certificate issued to Jerome indicated that the injury he suffered was a "gunshot wound, forearm, left."⁴² Jerome was admitted at Rizal Medical Center for treatment at around 1:30 a.m. of December 2, 2015, and he was discharged on the same day, at 7:30 a.m.⁴³

According to Jerome, he incurred medical expenses in the total amount of PHP 1,942.10, as evidenced by several receipts⁴⁴ for the expenses.⁴⁵ Because his injury required about 30 days to heal,⁴⁶ Jerome could not immediately go to work and lost income of around PHP 10,000.00 to PHP 15,000.00.⁴⁷ Jerome further testified that after the incident, he was always frightened whenever he hears something similar to a gunshot, and that if he were to quantify his emotional suffering, it

³³ CA rollo, pp. 82-82 and 116-117; TSN, PO1 Eric O. Guzman, June 27, 2017, pp. 17-18.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 53-54 and 116-117.

³⁷ *Id.* at 53-54, 83, and 116-117.

³⁸ *Id.* at 95; TSN, Neil Sia, November 6, 2018, p. 8.

³⁹ *Id.* at 82-82 and 116-117.

⁴⁰ *Id.* at 83; RTC records, pp. 16-16A.

⁴¹ *Id.* at 83.

⁴² *Id.* at 59.

⁴³ *Id.* at 83, 48-49, and 115-116; RTC records, p. 20.

⁴⁴ RTC records, pp. 19 and 64-67.

⁴⁵ CA rollo, p. 48.

⁴⁶ RTC records, p. 68.

⁴⁷ CA rollo, p. 49; TSN, Jerome Sumulong, February 7, 2017, pp. 13-14.

would amount to around PHP 250,000.00.⁴⁸

The prosecution presented Jerome and PO1 Guzman as its witnesses.⁴⁹ It also identified Estacio as its witness; however, the defense stipulated on the nature of Estacio's testimony, particularly: (1) that he will corroborate the testimony of PO1 Guzman; and (2) that he can identify his name and signature appearing on the *Pinagsamang Sinumpaang Salaysay ng Pag-aaresto* (Joint Affidavit of Arrest), jointly executed by PO1 Guzman and Estacio.⁵⁰ With the foregoing stipulations, Estacio's testimony was dispensed with.⁵¹

Version of the Accused-Appellant

Accused-appellant denied the allegations against him.⁵² Supposedly, at around 12:00 a.m. of December 2, 2015, he went out of his residence in Barangay Calzada-Tipas after he saw a crowd milling outside.⁵³ As he was walking, he suddenly heard a gunshot and felt pain in his stomach; when he looked at his abdomen, he noticed that he was bleeding.⁵⁴ He then tried to enter his residential compound, but he collapsed nearby.⁵⁵ Neil Sia, his uncle, brought him to Rizal Medical Center for treatment.⁵⁶ Accused-appellant insisted that he had nothing to do with the shooting of Jerome and Hector. He asserted that he did not even know that there was a shooting incident involving them.⁵⁷ He further stated that he did not report his injuries to the police, and that he met police officers at the Rizal Medical Center to arrest him.⁵⁸

Accused-appellant's testimony was corroborated by his uncle, Neil Sia. He averred that on the day of the incident, Jerome and Hector suddenly arrived at the area and caused a disturbance by heckling and challenging him and accused-appellant to a fight.⁵⁹ Neil Sia then called the barangay tanods to respond to the situation, which caused Hector and Jerome to leave the area.⁶⁰ After about two minutes, Hector and Jerome returned and continued to challenge Neil Sia and accused-appellant to a fight.⁶¹ During the time of the alleged shooting incident involving Jerome and Hector, Neil Sia heard only one gunshot and did not

⁴⁸ *Id.*

⁴⁹ *Id.* at 47-54.

⁵⁰ *Id.* at 54 and 78; RTC records, pp. 85-86.

⁵¹ *Id.* at p. 54; RTC records, pp. 85-86.

⁵² TSN, Nelson Sia, Jr., September 11, 2018, p. 3.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 4.

⁵⁶ *Id.* at 4-5.

⁵⁷ CA *rollo*, pp. 54-56 and 117-118.

⁵⁸ TSN, Nelson Sia, Jr., September 11, 2018, pp. 7-10.

⁵⁹ TSN, Neil Sia, November 6, 2018, pp. 4-5.

⁶⁰ *Id.* at 5.

⁶¹ *Id.*

hear any other gunshots.⁶² According to Neil Sia, accused-appellant was merely standing around when he was hit by gunfire.⁶³ He also denied knowledge of any shootout that occurred. He insisted that he is only aware of accused-appellant as the person who suffered an injury from the gunshot that he heard on that day.⁶⁴

The Ruling of the RTC

After due proceedings, the RTC rendered its Joint Decision⁶⁵ finding accused-appellant guilty beyond reasonable doubt of Murder, for the killing of Hector; and Attempted Murder against Jerome. The RTC determined that the testimony of the prosecution witnesses sufficiently established the identity of accused-appellant as the assailant who fired the gunshots, resulting in the death of Hector and injury to Jerome. The RTC further found that the attack was attended with treachery because accused-appellant fired at his victims suddenly and without warning, thereby preventing Hector and Jerome from defending themselves and ensuring that the victims will be harmed by the barrage of gunfire from accused-appellant.

With the qualifying circumstance of treachery, the RTC concluded that accused-appellant was criminally liable for Murder for the death of Hector. As to his criminal liability for the injuries suffered by Jerome, the RTC explained that accused-appellant may only be held liable for Attempted Murder because Jerome's injury was not fatal, having suffered a single gunshot wound at his left forearm. For the actual damages due Jerome, the RTC limited it only to the amount of PHP 1,942.10, being the amount that was duly supported by receipts. The RTC thus rendered a verdict of guilt against accused-appellant, *viz.*:

WHEREFORE, premises considered, this court hereby finds, as follows:

1. In Criminal Case No. 158545, the Court finds accused Nelson Sia, Jr. y Acuña **GUILTY** beyond reasonable doubt of the crime of murder defined under Article 248 of the Revised Penal Code, attended by the aggravating circumstance of treachery, and hereby sentences him to suffer the penalty of *reclusion perpetua*. He is **ORDERED** to **PAY** the heirs of Hector Iniaki Lontoc, Jr. y Madrigal, the following amounts; (a) ₱100,000.00 as civil indemnity; (b) ₱100,000.00 as moral damages; and (c) ₱100,000.00 as exemplary damages; and (d) ₱50,000.00 as temperate damages.

⁶² *Id.* at 6–7. TSN, Neil Sia, November 6, 2018.

⁶³ *Id.* at 6.

⁶⁴ *Id.* at 6–8; CA *rollo* pp. 54–56 and 117–118.

⁶⁵ CA *rollo*, pp. 46–62 and RTC records, pp. 116–132.

2. In Criminal Case No. [158546], the Court finds accused Nelson Sia, Jr. y Acuña **GUILTY** beyond reasonable doubt of the lesser offense of Attempted Murder defined and penalized under Article 248 in relation to Article 51 of the Revised Penal Code, attended by the aggravating circumstance of treachery, and sentences him to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) days of *prision mayor*, as maximum. He is **ORDERED** to **PAY** moral damages in the amount of P50,000.00, civil indemnity of P50,000.00 and exemplary damages of P50,000.00, and the amount of Php1,942.10.as actual damages to private complainant Jerome Sumulong y Gapasin.

SO ORDERED.⁶⁶ (Emphasis in the original)

The Ruling of the CA

Aggrieved, accused-appellant appealed⁶⁷ to the CA, which was docketed as CA-G.R. CR-HC No. 12982. Accused-appellant insisted that the prosecution's evidence was insufficient to support a judgment of conviction. He questioned the credibility of the prosecution witnesses and asserted that his right to be informed of the charges against him was violated because the factual circumstance of treachery was not properly alleged in the Informations.⁶⁸

The People, through the Office of the Solicitor General (OSG), opposed the appeal and sought its dismissal. It argued that the evidence against accused-appellant was sufficient to prove his guilt beyond reasonable doubt. It further asserted that any objection to the sufficiency of the Informations has been waived by accused-appellant.⁶⁹

After due proceedings, the CA rendered its Decision⁷⁰ dated March 10, 2021, wherein it affirmed the RTC Decision with modification. The CA determined that the prosecution's evidence sufficiently identified accused-appellant as the assailant because, contrary to the allegations of accused-appellant, the area where the incident occurred was fairly lit by a street light. The CA further ruled that the Informations sufficiently averred treachery as a qualifying circumstance and that, in any case, any objection to the sufficiency of the Informations has been waived by the accused-appellant because he entered his plea without first filing a motion to quash or bill of particulars. It also agreed with the RTC that the attack upon the victims was attended with treachery because

⁶⁶ *Id.* at 61–62.

⁶⁷ *Id.* at 10–11, Notice of Appeal.

⁶⁸ *See* Appellant's Brief, *id.* at 25–44.

⁶⁹ *See* Appellee's Brief, *id.* at 73–98

⁷⁰ *Id.* at 114–126.

accused-appellant fired the shots suddenly and without warning, thereby preventing the victims from defending themselves.

However, citing *People v. Jugueta*,⁷¹ the CA held that the RTC Joint Decision must be modified by decreasing the award of moral and exemplary damages from PHP 100,000.00 to PHP 75,000.00. As to Criminal Case No. 158546-TG, the CA modified the RTC Joint Decision by imposing an award of PHP 50,000.00 as temperate damages *in lieu* of actual damages. The *fallo* of the CA Decision reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The *Assailed Joint Decision* dated May 8, 2019 of the Regional Trial Court, Branch 153, Taguig City, in Criminal Case Nos. 158545-TG and 158546-TG, is **MODIFIED**, in that:

- (1) In Criminal Case No. 158545-TG, appellant Nelson Sia, Jr. y Acuña is found **GUILTY** beyond reasonable doubt of **MURDER** and is sentenced to suffer the penalty of *reclusion perpetua*. He is **ORDERED** to **PAY** the heirs of Hector Iniaki Lontoc, Jr., Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages; and
- (2) In Criminal Case No. 158546-TG, appellant Nelson Sia, Jr. y Acuña is found **GUILTY** of **ATTEMPTED MURDER** and is hereby **SENTENCED** to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. He is ordered to **PAY** Jerome Sumulong, Twenty-Five Thousand Pesos (₱25,000.00) as civil indemnity, Twenty-Five Thousand Pesos (₱25,000.00) as moral damages, Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. The award of actual damages is **DELETED**.

Interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this *Decision* until fully paid.

SO ORDERED.⁷² (Emphasis in the original)

Thus, the present appeal⁷³ before the Court.

⁷¹ 783 Phil. 806 (2016).

⁷² *CArrollo*, pp. 124–126.

⁷³ *Id.* at 139–140, Notice of Appeal.

Accused-Appellant's Arguments

In his Appellant's Brief,⁷⁴ accused-appellant argues that: (1) the prosecution witnesses could not have properly identified the assailant during the shooting because the attack happened during midnight, where it was dark; (2) his acquittal is proper because the facts constituting the qualifying circumstance of treachery were not alleged in the Informations filed with the RTC; (3) treachery was not adequately proven by the prosecution because it did not establish that the alleged mode of the attack was consciously adopted by accused-appellant to perpetrate the crimes charged and prevent the purported victims from defending themselves; (4) any allegation of treachery is negated because the attack was committed in the presence of police and barangay officers, who could have aided or defended the supposed victims; and (5) there was no intent to kill Jerome because the injury that he suffered was minor and there was insufficient evidence proving that he was specifically targeted by the accused-appellant.

Plaintiff-Appellee's Arguments

In its Appellee's Brief,⁷⁵ the OSG prays for the denial of the appeal and argues that: (1) the prosecution's witnesses positively identified the accused-appellant as the assailant and they were in a position to do so because the area was fairly lit by a street light; (2) accused-appellant is deemed to have waived any objection to the sufficiency of the Informations because he did not file any motion to quash before he entered his plea in the subject criminal cases; and (3) there was treachery because the attack was so sudden that Jerome and Hector had no opportunity to flee or defend themselves.

Issues

The issues before the Court are whether the CA erred in finding that: (1) the shooter could be identified by the prosecution witnesses at the *locus criminis*; (2) accused-appellant may be convicted of Murder and Attempted Murder even though the Informations did not contain factual averments on treachery; (3) the attack upon the victims was attended by treachery; and (4) there was intent to kill when Jerome was fired at.

⁷⁴ *Id.* at 25-44.

⁷⁵ *Id.* at 73-98.

The Ruling of the Court

The appeal is denied for lack of merit. However, the award of damages by the CA in Criminal Case No. 158546-TG must be modified to make it conform to law and jurisprudence.

I. The courts a quo correctly relied upon the testimony of the prosecution witnesses in finding that accused-appellant is the perpetrator of the crimes.

There is no merit to accused-appellant's allegation that the prosecution witnesses could not have identified him as the assailant because it was dark when the incident occurred early morning of December 2, 2015. To the contrary, the prosecution witnesses were able to positively identify accused-appellant as the perpetrator of the crimes charged because the scene of the crime was fairly lit by a street light, as pointed out by the courts *a quo*.

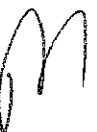
The Court agrees with the RTC and the CA that the street light was sufficient to produce favorable conditions for visibility and the identification of accused-appellant as the perpetrator of the crimes. Indeed, illumination from a street light, lamp post, kerosene or wick lamp, moonlight, starlight, flashlight, torch, and lighting from a nearby establishment, have all been deemed sufficient for visibility and identification of the accused as the perpetrator of the crime charged against him or her.⁷⁶

Pertinently, the Court has held that when the conditions of visibility are favorable and the witness does not appear to foster any ill motive against the accused, his or her testimony as to the manner of the commission of the crime and the identity of the perpetrator must be accepted.⁷⁷

In the case at bench, the prosecution witnesses have not been shown to harbor any malice or ill will against accused-appellant. Verily, Jerome testified that he did not have any prior quarrel with accused-appellant and he did not even know why accused-appellant shot him and Hector. Significantly, accused-appellant has not provided any evidence showing that Jerome harbored ill feelings against him or that he had reason to lie under oath regarding the identity of the shooter.

⁷⁶ *People v. Estrada*, 440 Phil. 317 (2002); *People v. Manijas*, 440 Phil. 425 (2002); *People v. Salcedo*, 660 Phil. 545 (2011); *People v. Paran*, 882 Phil. 683 (2020).

⁷⁷ *People v. Paran*, *id.* at 700.



As to PO1 Guzman, he was a police officer on duty when the shooting incident occurred; meanwhile, Estacio, whose testimony was stipulated upon as corroborative of PO1 Guzman, was a barangay officer who was also on duty on that day. As public officers who enjoy the presumption of regularity in the performance of their official duties, the testimony of PO1 Guzman and Estacio must be given full faith and credence, moreso when accused-appellant has not produced proof that they fabricated the charges or bore improper motives other than the desire to accomplish their mission as law enforcers.⁷⁸

Accused-appellant attempts to discredit the prosecution's averment that the crime scene was "fairly lit" because based on Jerome's and PO1 Guzman's statements, the police officer followed accused-appellant to a "dark area."⁷⁹ Supposedly, this was an admission by the prosecution that the area was dark, which means that it was impossible for the prosecution witnesses to see who the shooter was.

Accused-appellant's argument is misleading. The statement of the prosecution witnesses concerning the "dark area" did not pertain to the place where the shooting occurred; instead, it referred to the area where accused-appellant proceeded after he was shot in the abdomen by PO1 Guzman and tried to flee from the latter.

Thus, there is no inconsistency in the testimony of the prosecution witnesses because the area where PO1 Guzman chased accused-appellant is separate from the place where the shooting occurred. The fact that other areas of the community had no lighting did not mean that the *locus criminis* was equally deprived of illumination. To the contrary, as earlier discussed, the prosecution witnesses categorically testified that the scene of the crime was fairly lit by a street light, which was sufficient to produce conditions of visibility for the witnesses to see accused-appellant as the assailant.

II. *Accused-Appellant has waived any objection to the sufficiency of the allegations in the Informations.*

There is likewise no merit to accused-appellant's argument that his acquittal for Murder and Attempted Murder is proper because the Informations did not contain factual averments on treachery.

⁷⁸ See *Rieta v. People*, 479 Phil. 943 (2004); *People v. Bacus*, 411 Phil. 632 (2001); *People v. Librando*, 390 Phil. 543 (2000); *People v. Sotto*, 341 Phil. 184 (1997); *People v. Marcos*, 263 Phil. 853 (1990); *People v. Baysa*, 254 Phil. 729 (1989).

⁷⁹ TSN, Jerome Sumulong, February 7, 2017, p. 21; TSN, PO1 Eric O. Guzman, June 27, 2017, pp. 17-18.

In *People v. Solar*,⁸⁰ the Court held that an information where treachery is alleged to exist must “have *factual averments* on how the person charged had deliberately employed means, methods or forms in the execution of the act that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make” to be considered sufficient. It is not enough for the information to state that the killing was attended “with treachery” because such statement is a mere legal conclusion and not a factual averment.

However, in *Solar*, the Court clarified that objections against alleged defects in the sufficiency of the information may be waived by the accused by voluntarily entering his or her plea without first filing either a motion for bill of particulars under Section 9,⁸¹ Rule 116 of the Rules of Court; or a motion to quash under Section 3(e)⁸² in relation to Section 9,⁸³ Rule 117 of the Rules of Court, on the ground that the information does not conform substantially to the form prescribed, particularly, by Sections 6⁸⁴ and 9,⁸⁵ Rule 110 of the Rules of Court.

The reason for the rule is simple: under Section 4,⁸⁶ Rule 117 of the Rules of Court, defects in the form or sufficiency of the allegations

⁸⁰ 858 Phil. 884 (2019).

⁸¹ Section 9. *Bill of particulars*. — The accused may, before arraignment, move for a bill of particulars to enable him properly to plead and to prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired.

⁸² Section 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

.....
(e) That it does not conform substantially to the prescribed form;
.....

⁸³ Section 9. *Failure to move to quash or to allege any ground therefor*. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

⁸⁴ Section 6. *Sufficiency of complaint or information*. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. When an offense is committed by more than one person, all of them shall be included in the complaint or information.

⁸⁵ Section 9. *Cause of the accusation*. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

⁸⁶ Section 4. *Amendment of the complaint or information*. — If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

in the information are generally curable by amendment.⁸⁷ Hence, when a motion to quash an information is filed because the facts charged therein do not constitute an offense or it does not conform to the prescribed form on the required factual averments, the trial court *must* deny the motion and grant the prosecution the opportunity to correct the defect and file an amended information.⁸⁸ It is only when “the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment” that the motion to quash may be granted.⁸⁹ This procedure prevents undue delays and unnecessary appeals based on technical grounds.⁹⁰

Thus, objections as to matters of form or substance in the information *cannot be made for the first time on appeal*; instead, if the accused fails to avail himself or herself of the appropriate remedies against the supposed failure of the information to allege the cause and nature of the accusations against him before entering a plea, the accused is deemed to have waived any objections thereto and is conclusively presumed to have understood the felonious acts imputed against him or her.⁹¹

In the case at bar, the Court agrees with the OSG that accused-appellant has waived any objection to the sufficiency of the Informations because he did not file a motion to quash or a motion for a bill of particulars before he entered his plea. Thus, consistent with *Solar*, accused-appellant is deemed to have sufficiently understood the nature and cause of the accusations against him, as stated in the Informations.⁹² Perforce, any belated objection as to the sufficiency of the Informations raised for the first time on appeal will no longer be entertained.

III. Treachery attended the execution of the crimes charged against accused-appellant.

Accused-appellant asserts that the prosecution failed to prove that the commission of the crimes charged is qualified by treachery. The

⁸⁷ See *Lazaro v. People*, G.R. No. 230018, June 23, 2021.

⁸⁸ *Id.*

⁸⁹ RULES OF COURT, Rule 117, sec 4.

⁹⁰ *Lazaro v. People*, *supra* note 87.

⁹¹ *People v. Solar*, *supra* note 80, and *People v. Lira*, G.R. No. 235991, March 18, 2021.

⁹² See CONS. art. III, sec. 14(2), which states:

Sec. 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, *to be informed of the nature and cause of the accusation against him*, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Italics supplied)

Court disagrees with accused-appellant and sustains the finding of the courts *a quo* on the existence of treachery in the present case.

As provided in Article 14 of the Revised Penal Code,⁹³ treachery may qualify a crime if the following elements exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.⁹⁴ “The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim,” depriving the latter of any chance to defend himself or herself or to repel the aggression, and thereby ensuring the crime’s commission without danger or risk of personal injury to the offender resulting from the acts of the person attacked.⁹⁵ In treachery, there must be clear and convincing evidence on how the aggression was made, how it began, and how it developed.⁹⁶

Both elements of treachery have been sufficiently proven by the prosecution, as discussed below.

A. *The mode of attack upon the victims ensured the commission of the crimes charged without risk to accused-appellant by depriving them of any opportunity to defend themselves*

Accused-appellant insists that the first element of treachery is lacking because, allegedly, the prosecution did not sufficiently prove that the mode of executing the crimes charged gave no chance to Hector and Jerome to defend themselves. Supposedly, there cannot be any treachery because Jerome and Hector were in the presence of PO1 Guzman, Estacio, and other tanods, at the time of the incident, and the law enforcers could have given aid to the victims or defended them from any attack.

The Court disagrees with accused-appellant.

Article 14 of the Revised Penal Code states that there is treachery “when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend

⁹³ REV. PEN. CODE, art. 14 states that “[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.”

⁹⁴ *People v. Solar*, *supra* note 80.

⁹⁵ *Id.* see also *People v. Lacao*, 158 Phil. 304 (1974), *United States v. Lansañgan*, 27 Phil. 474 (1914), and *United States v. Paraiso*, 17 Phil. 142 (1910).

⁹⁶ *People v. Enriquez, Jr.*, 854 Phil. 609 (2019).

directly and specially to ensure its execution, without risk to himself arising *from the defense which the offended party might make.*" The law clearly refers to a defense that may be made by the offended party, *not any other person.*

Because the law limits the definition of treachery to defense or retaliation by the offended party, the Court has appreciated the presence of treachery even in crimes committed in a heavily populated area,⁹⁷ or even if the victim was in the presence of several companions during the attack.⁹⁸ In these cases, the Court determined that the presence of other persons at the *locus criminis* was not at all significant because the *defense or retaliation "must come from the victim, not from anyone else."*⁹⁹

The Court is aware of its prior rulings in *People v. Nemeria*¹⁰⁰ and *People v. Germina*,¹⁰¹ wherein it determined that treachery was not present, noting the presence of other people at the area who could have lent moral and physical support to the victims during the attack.

To avoid confusion to the bench and bar, it is proper for the Court to clarify its disquisition in *Germina* and *Nemeria* in relation to treachery. In both cases, the victims were aware of the impending attack from the accused and had the opportunity to flee or defend themselves against the assault. Particularly, in *Nemeria*, although the victim was attacked with a *bolo* from behind in an area where other people were present, he was able to call out for aid before he died, shouting that someone was about to ambush him. The Court thus ruled that there was no treachery because the victim was aware that the accused was about to assault him with a *bolo*, which gave the victim the opportunity to defend himself or flee.

As to *Germina*, the accused therein first had a verbal spat with the relatives of the victim concerning a quarrel that occurred between the victim and accused's brother. When the accused saw the victim, he drew out his gun, prompting the victim and his relatives to scamper away. However, the victim stumbled on a street hump and fell to the ground face down, which afforded the accused the opportunity to catch up with the victim and shoot him at the back, while the victim's relatives were nearby and could have lent aid to the victim. The Court emphasized in *Germina* that treachery was inconsistent with the trial court's factual finding that the accused acted out of passion and in the heat of anger, arising from the altercation that occurred earlier between his brother and the victim.

⁹⁷ *People v. Costelo*, 375 Phil. 381 (1999).

⁹⁸ *People v. Bayotas*, 401 Phil. 837 (2000).

⁹⁹ *People v. Costelo*, *supra*.

¹⁰⁰ 312 Phil. 531 (1995).

¹⁰¹ 352 Phil. 754 (1998).

Thus, the Court in *Germina* and *Nemeria* determined that treachery was non-existent because the victims were aware of the impending attack, not simply because other people were present who could have come to the aid of the victims. Essentially, the victims in both cases had the opportunity to defend themselves or flee from the accused, thereby negating treachery. The accused in *Germina* also reacted in the heat of anger, which contradicts any finding of treachery, for the latter requires the accused to adopt the mode of the execution of the crime consciously and deliberately, not merely react at the spur of the moment.

In contrast to *Germina* and *Nemeria*, the Court, in *People v. Costelo*¹⁰² appreciated the presence of treachery notwithstanding the fact that the murder was committed in a densely populated area in Taguig City because the attack was so sudden that the victim was deprived of any chance to defend herself or escape. The accused in *Costelo* specifically waited for the victim to pass by a residential compound when they, without warning, ambushed and stabbed the victim in her neck and face. Although the victim tried to free herself from one of the accused, the other accused held her by the shoulder and continued to stab her, whereupon the victim fell to the ground, after which the accused continued to stab her repeatedly while she was lying prostrate, resulting in her death.

The Court finds that *Costelo*, not *Germina* or *Nemeria*, is the case law that conforms to the definition of treachery in Article 14 of Revised Penal Code. By statute, only the defense that may be made by the offended party is material to a finding of treachery. Otherwise said, treachery will be appreciated even if the crime was committed in the presence of other persons who could lend aid or defense to the offended party so long as the victim was deprived of the opportunity to defend himself or herself or retaliate against the accused.

Applying *Costelo*, the Court agrees with the courts *a quo* that treachery attended the execution of the crimes charged, considering that Hector and Jerome were caught by surprise by the hail of gunshots from accused-appellant and prevented the victims from defending themselves against the assault. The presence of law enforcers during the attack against Hector and Jerome cannot, by itself, negate treachery, because the circumstances show that the execution of the crimes ensured their commission without risk of personal injury to accused-appellant arising from the acts of the victims to defend themselves.

¹⁰² *Supra* note 97.

It must also be underscored that in several cases, the Court has ruled that there is treachery if the assailant suddenly appears from an area obscured from the immediate view of the victims, and then shoots at them without warning.¹⁰³ These circumstances are present in the case at bar.

Verily, the records bear that the mode of attack upon Hector and Jerome was sudden and without warning, which caught the victims by surprise and did not afford them any opportunity to defend themselves. Based on the account of the prosecution witnesses, the victims were in the middle of a discussion with the law enforcers when they were abruptly shot at by accused-appellant, who suddenly emerged from behind PO1 Guzman. The barrage of fire was so swift and sudden that Hector died instantaneously from the gunshot wound to his head, while Jerome did not even immediately discern his injury until he saw his own blood dripping from his forearm. The victims also suffered injuries in *quick succession*, which indicates that the attack was swift, sudden, and treacherous.¹⁰⁴

B. Accused-Appellant consciously and deliberately adopted the mode of the execution of the crimes charged against him

Accused-appellant further insists that the second element of treachery does not exist because, allegedly, there was no evidence that he deliberate or consciously adopted the mode of attack to ensure the commission of the crimes charged. Supposedly, there cannot be any treachery given that the prosecution failed to prove that he specifically targeted Hector and Jerome.

The argument lacks merit.

The Court has determined the presence of the second element of treachery when the accused deliberately hid themselves from behind an object or structure before the attack,¹⁰⁵ when they placed themselves at a safe distance away from the victims before shooting them,¹⁰⁶ or when they

¹⁰³ See *People v. Oandasan, Jr.*, 787 Phil. 139 (2016), where treachery was appreciated because the accused suddenly appeared from the back of dump truck, walked towards the victims, fired a gun at them without warning, and shot the victims in quick succession; *People v. Llobera*, 765 Phil. 897 (2015), where it was held that the accused committed the crime with treachery because he blindsided the victim when he suddenly emerged from behind a structure to shoot at the victim; *People v. Lacaden*, 620 Phil. 807 (2009), where the finding of treachery was based on the fact that the accused surreptitiously and unexpectedly emerged from the fields and came out in the middle of the road to shoot at the victim, who was walking along the road and died on the spot by reason of the sudden attack; *People v. Flora*, 389 Phil. 601 (2000), where the killings were qualified by treachery because the victims were shot suddenly while they were in the middle of merriment and dancing.

¹⁰⁴ *People v. Oandasan, Jr.*, *id.*

¹⁰⁵ *People v. Terana*, 160 Phil. 1047 (1975); *People v. Llobera*, *supra*.

¹⁰⁶ *People v. De Vera, Sr.*, 367 Phil. 344 (1999).

concealed the gunshots behind the noise and merriment of a New Year celebration.¹⁰⁷

Here, treachery is present because accused-appellant was *hiding* near a wall behind PO1 Guzman when he attacked the victims, as testified on by Jerome, *viz.*:

05. T: Anu pa ang mga suunod (*sic*) na nangyari, kong meron man?

S: Na kami ay tinanung ng pulis kung may dala kaming baril sa katawan, kaya itinaas ko ang aking dalawang kamay at nagsalita ng “Sir wala po kaming dala kahit anu man po sa katawan..” At sa puntong iyon, ay bigla na lang akong may nakarinig (*sic*) na sunod sunod na putok ng baril na nang galing sa likuran ng pulis na sumisita sa amin. Nakita ko itong si Alyas Jr. [accused-appellant] na *nakakubli malapit sa isang pader at nakapwesto sa likuran ng pulis na sumita sa amin*, ang may hawak ng baril at namumutok sa amin.¹⁰⁸

Further, as stated by PO1 Guzman, accused-appellant was about five to six meters away from the police officer and the victims. Evidently, accused-appellant concealed himself from a wall and positioned himself at a safe distance away from his victims, which both indicate that he consciously and deliberately adopted the mode of attack to ensure the commission of the crimes charged without risk of injury from any defense that the victims may make.

In addition, the records support the conclusion that accused-appellant targeted the victims. Verily, Jerome categorically testified that he saw the accused-appellant pointing the gun at him and Hector.¹⁰⁹ PO1 Guzman similarly testified that the gun was pointed towards the area where he and the victims were located.¹¹⁰ Notably, other law enforcers were present at the scene of the crime, yet Jerome was adamant that he saw accused-appellant pointing the gun at him and Hector.

Certainly, the evidence on record establishing the relative positions of accused-appellant, PO1 Guzman, Hector, and Jerome from each other at the time of the attack reveals that the latter two were the intended victims. Particularly, based on the account of the prosecution witnesses, PO1 Guzman was at the 2:00 o'clock position of the victims and an arm length away from them; meanwhile, at the time of the attack, accused-appellant fired shots from the right-backside area of PO1 Guzman, at

¹⁰⁷ *Id.* See also *People v. Flora*, *supra* note 103.

¹⁰⁸ RTC records, p. 11. Sworn Statement of Jerome Sumulong.

¹⁰⁹ TSN, Jerome Sumulong, February 7, 2017, pp. 8 and 18–20.

¹¹⁰ TSN, Eric O. Guzman, June 27, 2017, p. 16.

about five to six meters away from the police officer.

Based on the foregoing, at the time of the attack, *PO1 Guzman was nearer to accused-appellant and at his line of fire*, yet the police officer was unharmed. If PO1 Guzman or the other tanods were the target and not the victims, accused-appellant would have directed the shots at him at the very first instance, yet only Jerome and Hector were injured. Meanwhile, PO1 Guzman, Estacio, and the other barangay tanods were unscathed. Pertinently, the fact that other persons were left unharmed although they were along the line of fire was taken by the Court as an indicator that the intended victim and sole target of the accused was the person who died or who was injured from the gunshots.¹¹¹

Even assuming *arguendo* that Jerome and Hector were not the intended victims but any of the other persons then present at the scene of the crime, Article 4 of the Revised Penal Code provides that criminal liability shall be incurred by “any person committing a felony (*delito*) although the wrongful act done be different from that which he intended.” Thus, in several cases, the Court determined that the killing or injury may still be qualified by treachery even if the person who was actually injured was not the intended victim, either because of mistake in the person of the victim (*error in personae*) or mistake in the blow (*aberratio ictus*).¹¹² Simply, treachery may still be appreciated even if the actual victims are different from the intended victims of the accused.¹¹³

Indeed, it matters not that Hector and Jerome were the ultimate victims of accused-appellant even though they were not the intended victims. Because accused-appellant aimed his gun and fired shots at a person then present at the *locus criminis* in a sudden and swift manner, without affording the target any opportunity to defend himself or herself, and resultantly, Hector died instantaneously while Jerome was injured, accused-appellant must bear the consequences of his action and be made liable for Murder and Attempted Murder, respectively, as qualified by the circumstance of treachery.

IV. The courts a quo correctly ruled that accused-appellant must be held liable for Attempted Murder against Jerome

Accused-appellant further insists that he cannot be found guilty of Attempted Murder against Jerome because, allegedly, intent to kill was

¹¹¹ *People v. Herbias*, 333 Phil. 422 (1996).

¹¹² *People v. Plateros*, 172 Phil. 695 (1978); *People v. Sabalones*, 356 Phil. 255 (1998); *People v. Flora*, *supra* note 103; *People v. Bendecio*, 882 Phil. 649 (2020); *People v. Guerrero*, G.R. No. 252282, August 17, 2022 [Notice], *citing People v. Bendecio, id.*

¹¹³ *People v. Guerrero, id.*, *citing People v. Bendecio, id.*

not established, given that the injury suffered by Jerome was minor. He repeats that the prosecution's evidence failed to establish that he targeted Jerome, which allegedly precludes any finding of any intent to kill Jerome. This argument is unavailing.

It is settled that intent to kill may be proven by: (1) the means used by the malefactor; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactor before, at the time, or immediately after the killing of the victim; (4) the circumstances under which the crime was committed; and (5) the motives of the accused.¹¹⁴ The use of a *deadly weapon*, such as a gun, is evidence of intent to kill.¹¹⁵ *Continuously firing a gun* at the victim likewise shows intent to kill.¹¹⁶

Here, accused-appellant used a deadly weapon, i.e., a gun, to execute the crimes charged against him. Further, he repeatedly fired five to six shots at his victims. Hector even instantaneously died from the gunshot wound to the head caused by accused-appellant. All these circumstances establish accused-appellant's intent to kill Jerome. The fact that Jerome suffered only a minor injury is immaterial as this does not negate intent to kill on the part of accused-appellant, but merely demonstrates that the latter missed his shots, thereby failing to consummate the crime of Murder against Jerome.¹¹⁷

In any case, pursuant to Article 4 of the Revised Penal Code, intent to kill may still be appreciated even if the actual victims are different from the intended victims of accused-appellant, either because of mistake in the person of the victim (*error in personae*) or mistake in the blow (*aberratio ictus*).¹¹⁸ Surely, there is intent to kill as long as the circumstances show its existence, even if the actual victim is not the one intended by the accused.¹¹⁹ The same principle applies to the charge against accused-appellant for the Attempted Murder of Jerome.

As to the elements of an attempted felony, under the Revised Penal Code, Article 6 there is an attempt "when the offender commences the commission of a felony directly by overt acts and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance."

In the case at bar, as correctly pointed out by the courts *a quo*, the

¹¹⁴ *Anisco v. People*, 890 Phil. 772, 783 (2020).

¹¹⁵ *Id.*; *People v. Bendecio*, *supra* note 112.

¹¹⁶ *Escamilla v. People*, 705 Phil. 188 (2013).

¹¹⁷ *People v. Bendecio*, *supra* note 112; *Belleza v. People*, G.R. No. 246358 [Notice], July 10, 2019; *Saludar v. People*, G.R. No. 253938, July 13, 2022 [Notice].

¹¹⁸ *People v. Bendecio*, *supra* note 112 at 661; *People v. Gemoya*, 396 Phil. 213, 223 (2000).

¹¹⁹ *Id.*

elements¹²⁰ of attempted murder against Jerome are present, given that: (1) accused-appellant commenced the commission of murder by suddenly and without warning, shooting at Jerome, thereby insuring the commission of the crime without risk of personal injury to himself by any defense that may be raised by the victim; (2) Jerome did not die from the attack because his injury was non-fatal, being only to his left forearm, such that accused-appellant was not able to perform all the acts of execution which would have produced the felony of Murder; and (3) Jerome lived not because accused-appellant spontaneously desisted from the attack but due to cause or accident independent of accused-appellant's own volition. Certainly, "[i]f the evidence fails to convince the court that the wound sustained would have caused the victim's death without timely medical attention, the accused should be convicted of attempted murder[.]"¹²¹

In view of the foregoing, the Court sustains the uniform findings of the courts *a quo* that accused-appellant is guilty of Attempted Murder against Jerome.

V. *The award of temperate damages to Jerome must be reduced to make it conform to law and jurisprudence*

As to the penalties imposed by the CA against accused-appellant for Murder¹²² and Attempted Murder,¹²³ the Court finds them to be correct and in accordance with law and jurisprudence, *except* as to the award of temperate damages to Jerome in the amount of PHP 50,000.00. Although the error on the award of temperate damages to Jerome is unassigned, the Court finds it proper to rectify it to make it conform to law and jurisprudence.¹²⁴

¹²⁰ See *Fantastico v. Malicse, Sr.*, 750 Phil. 120 (2015), where the elements of an attempted felony were enumerated, as follows: (1) The offender commences the commission of the felony directly by overt acts; (2) he or she does not perform all the acts of execution which should produce the felony; (3) the offender's act be not stopped by his or her own spontaneous desistance; and (4) the non-performance of all acts of execution was due to cause or accident other than his or her spontaneous desistance.

¹²¹ See *People v. Labiaga*, 714 Phil. 77 (2013).

¹²² See *People v. Macasa*, G.R. No. 232575, February 20, 2019[Notice], where the accused, who was found guilty beyond reasonable doubt of Murder, was sentenced to suffer the penalty of imprisonment of *reclusion perpetua*, and to pay the heirs of the victim the amounts of Seventy-Five Thousand Pesos (PHP 75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (PHP 75,000.00) as moral damages, Seventy-Five Thousand Pesos (PHP 75,000.00) as exemplary damages, and Fifty Thousand Pesos (PHP 50,000.00) as temperate damages.

¹²³ See *People v. Pajamustan*, G.R. No. 205375, May 14, 2021[Notice], wherein the Court explained that the penalty for Attempted Murder is *prision mayor* and that by applying the Indeterminate Sentence Law, the minimum term of imprisonment should be pegged within the period of *prision correctional*. The award of the amounts of Twenty-Five Thousand Pesos (PHP 25,000.00) as civil indemnity, Twenty-Five Thousand Pesos (PHP 25,000.00) as moral damages, and Twenty-Five Thousand Pesos (PHP 25,000.00) as exemplary damages was likewise proper.

¹²⁴ See *People v. Lira*, *supra*, where the Court explained that even unassigned errors in appeals from a criminal case may be corrected because the appeal throws the entire case wide open for review, "confers [upon] the appellate court full jurisdiction over the case and renders such court competent

Under Article 2224 of the Civil Code, temperate damages “may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.” When the court is convinced that there has been loss, though not proven with certainty, the judge is empowered to calculate moderate damages, rather than let the complainant suffer without redress from the defendant's wrongful act.¹²⁵ The allowance of temperate damages when actual damages were not adequately proven is ultimately a rule drawn from equity, the principle affording relief to those definitely injured who are unable to prove how definite the injury.¹²⁶

In *Jugueta*, the Court held that temperate damages in the amount of PHP 50,000.00 may be awarded in *consummated* homicide or murder cases “when no evidence of burial and funeral expenses is presented in the trial court.” However, *Jugueta* does not provide a standard amount of temperate damages that may be awarded when the homicide or murder committed by the accused is only at the attempted or frustrated stage. Jurisprudentially, temperate damages to victims of attempted homicide or murder have been pegged at PHP 50,000.00,¹²⁷ PHP 25,000.000,¹²⁸ and PHP 20,000.00.¹²⁹

It must be stressed that the standard temperate damages in *Jugueta* pertain to *burial and funeral expenses* suffered following the victim's death. As such, the resulting compensation for expenses in consummated homicide or murder cases, *being of the same nature*, may be standardized by the Court, as it did in *Jugueta*.

However, in attempted or frustrated homicide or murder cases, the actual damages suffered by the victim that need to be compensated, from the nature of the case, would necessarily differ and will have to be decided on a case-to-case basis. Instead of burial and funeral expenses, the victim of an attempted or frustrated homicide or murder would have suffered loss due to hospitalization or medical expenses,¹³⁰ as well as

to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.”

¹²⁵ *Government Service Insurance System v. Spouses Labung-Deang*, 417 Phil. 662 (2001).

¹²⁶ *Equitable PCI Bank v. Tan*, 642 Phil. 657 (2010).

¹²⁷ *People v. Prado*, 792 Phil. 827 (2016); *People v. De Asis*, G.R. No. 258767, July 3, 2023[Notice].

¹²⁸ *Pascual v. People*, 890 Phil. 1130 (2020); *People v. Pascua*, G.R. No. 233745, May 10, 2021 [Notice]; *People v. Fullante*, G.R. No. 238905, December 1, 2021; *People v. Pilen*, G.R. No. 254875, February 13, 2023.

¹²⁹ *Patulin v. People*, G.R. No. 251155, March 16, 2022 [Notice].

¹³⁰ See *Epifanio v. People*, 552 Phil. 620 (2007); *Peñaranda v. People*, G.R. No. 214426, December 2, 2021; *Patulin v. People*, *id.*; G.R. No. 251155, March 16, 2022[Notice].

loss of earning capacity¹³¹ while he or she was incapacitated due to his or her injuries. The damages suffered would depend on the nature and number of the wounds, the extent and severity of the injury, the number of days that the victim was hospitalized, and the amount of income that the victim lost while he or she was incapacitated from his or her injuries.

In this regard, case law provides that temperate damages for *hospitalization and medical needs* may be based on the expenses claimed to have been incurred by the victim, though not proven by receipts.¹³² In a case where the victim was hospitalized after he was hacked in several parts of his body with a samurai, the amount of PHP 10,000.00 as temperate damages was awarded.¹³³ In another case where the victim was bludgeoned in the head with a lead pipe, the temperate damages awarded was PHP 20,000.00.¹³⁴ In a case decided in 2007, the Court awarded temperate damages in the amount of PHP 6,000.00 to the victim who was confined in the hospital for three weeks after he was stabbed at the back.¹³⁵

In other cases where temperate damages are awarded as *indemnity for loss of earning capacity* and where the claimant failed to produce documentary evidence to prove the claim, the damages awarded took into consideration the nature of the victim's employment.¹³⁶ Thus, temperate damages to compensate for loss of earning capacity was pegged at PHP 100,000.00 for the victims who were seafarers and pharmacists,¹³⁷ PHP 200,000.00 for the victim who operated a jeepney and managed a *sari-sari* store,¹³⁸ PHP 300,000.00 for a self-employed tailor,¹³⁹ PHP 500,000.00 for a senior chief officer of a government office,¹⁴⁰ and PHP 1,000,000.00 for a practicing lawyer.¹⁴¹

Pertinently, the Court, in *People v. Angeles*,¹⁴² clarified that courts must not award temperate damages *higher* than the amount of pecuniary loss that the victim himself claimed to have suffered. In *Angeles*, the

¹³¹ In *Imperial v. Heirs of Spouses Bayaban*, 841 Phil. 53 (2018), the Court ruled that temperate damages may be awarded if the victim claimed loss of income while recovering from an injury caused by the accused, but was unable to duly prove it with sufficient evidence.

¹³² *Epifanio v. People*, *supra*; 552 Phil. 620 (2007); *Peñaranda v. People*, *supra* note 130; G.R. No. 214426, [December 2, 2021; *Patulin v. People*, *supra* note 129. G.R. No. 251155, March 16, 2022[Notice].

¹³³ *Peñaranda v. People*, *supra* note 130.

¹³⁴ *Patulin v. People*, *supra*.

¹³⁵ *Epifanio v. People*, *supra*.

¹³⁶ *People v. Villa*, G.R. No. 256468, October 11, 2023.

¹³⁷ In *Imperial v. Heirs of Spouses Bayaban*, *supra*, the Court ruled that temperate damages may be awarded if the victim claimed loss of income while recovering from an injury caused by the accused, but was unable to duly prove it with sufficient evidence.

¹³⁸ *People v. Villa*, *supra*.

¹³⁹ *Tan v. OMC Carriers, Inc.*, 654 Phil. 443 (2011).

¹⁴⁰ *Victory Liner, Inc. v. Gammad*, 486 Phil. 574 (2004).

¹⁴¹ *People v. Salahuddin*, 778 Phil. 529 (2016).

¹⁴² *People v. Angeles*, 859 Phil. 652 (2019).

victim of an attempted murder insisted that he suffered a pecuniary loss in the amount of only PHP 7,032.00, no more, no less; as such, the Court determined that it would be unjust to make the accused liable for temperate damages in the amount of PHP 25,000.00, an amount that was higher than the pecuniary loss actually suffered by the victim. Indeed, the rule is that “one is entitled to an adequate compensation only for such pecuniary loss suffered by him,”¹⁴³ for an award of damages is not intended to enrich the complainant at the expense of the losing party.¹⁴⁴

From the foregoing, the award of temperate damages to Jerome must consider the amount of hospital and medical expenses that he claimed to have incurred. It must also consider the income that Jerome lost when he was incapacitated and recovering from his injury, which will depend on the nature of his gainful employment. Further, the Court must be guided by Article 2225 of the Civil Code, which states that “[t]emperate damages must be reasonable under the circumstances.” In addition, following *Angeles*, the Court cannot award temperate damages to Jerome in amount that is unreasonably higher than the pecuniary loss that he claims to have suffered.

Here, as stated by Jerome himself, he suffered pecuniary losses for medical expenses and lost income. The records show that Jerome was treated for his injury, though he was discharged from the hospital on the same day. However, as proof of the medical expenses, he only produced receipts in the amount of PHP 1,942.10. He also claims to have lost income in the amount of around PHP 10,000.00 to PHP 15,000.00, which was, however, unsupported by evidence.¹⁴⁵ Notably, Jerome did not disclose his source of income and his basis for stating that he lost earnings in the amount that he claimed.

Given the situation, the courts find it proper and reasonable to *reduce* the award of temperate damages to Jerome from PHP 50,000.00 to PHP 5,000.00, for the medical expenses that he incurred, and PHP 15,000.00, for the income that he lost while recovering from his forearm injury, or a total amount of PHP 20,000.00. The reduced award is more reasonable and commensurate to the pecuniary loss that Jerome claims to have suffered by reason of the crime committed by accused-appellant.

ACCORDINGLY, the appeal is **DENIED** for lack of merit. The Decision dated March 10, 2021, of the Court of Appeals in CA-G.R. CR-HC No. 12982 is hereby **AFFIRMED** with **MODIFICATION**, in that:

¹⁴³ CIVIL CODE, art. 2199 states that “[e]xcept as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.”

¹⁴⁴ *Spouses Ong v. Court of Appeals*, 361 Phil. 338 (1999).

¹⁴⁵ CA *rollo*, pp. 48–49.

- (1) In Criminal Case No. 158545-TG, accused-appellant Nelson Sia, Jr. y Acuña is found **GUILTY** beyond reasonable doubt of **MURDER** and is sentenced to suffer the penalty of *reclusion perpetua*. He is ordered to **PAY** the heirs of Hector Iniaki Lontoc, Jr., Seventy-Five Thousand Pesos (PHP 75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (PHP 75,000.00) as moral damages, Seventy-Five Thousand Pesos (PHP 75,000.00) as exemplary damages, and Fifty Thousand Pesos (PHP 50,000.00) as temperate damages; and
- (2) In Criminal Case No. 158546-TG, accused-appellant Nelson Sia, Jr. y Acuña is found **GUILTY** of **ATTEMPTED MURDER** and is hereby **SENTENCED** to suffer an indeterminate penalty of four years, two months and one day of *prision correccional*, as minimum, to eight years and one day of *prision mayor*, as maximum. He is ordered to **PAY** Jerome Sumulong, Twenty-Five Thousand Pesos (PHP 25,000.00) as civil indemnity, Twenty-Five Thousand Pesos (PHP 25,000.00) as moral damages, Twenty-Five Thousand Pesos (PHP 25,000.00) as exemplary damages, and Twenty Thousand Pesos (PHP 20,000.00) as temperate damages.

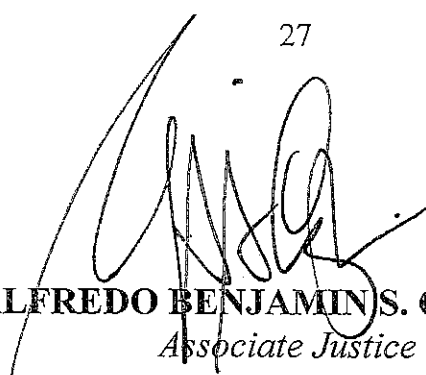
The period of preventive detention of accused-appellant Nelson Sia, Jr. y Acuña shall be deducted from his sentence.

All damages awarded shall be subject to 6% interest per annum from the finality of this Decision until fully paid.


SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



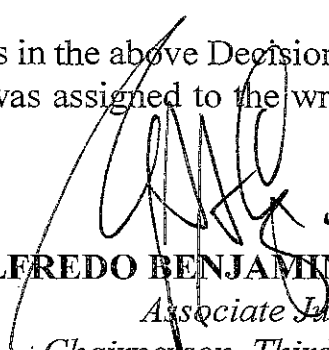
JAPAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

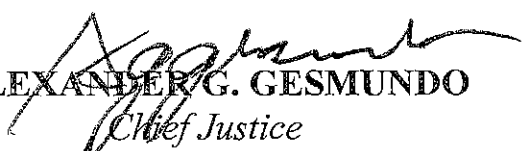
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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



ALEXANDER G. GESMUNDO
Chief Justice



