Republic of the Philippines
Supreme Court
Manila

EN BANC

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

WENCESLAO NELMIDA @ "ESLAO," and RICARDO AJOK @ "PORDOY,"
Accused-Appellants.

G.R. No. 184500

Present:

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES, and
PERLAS-BERNABE, *JJ.*

Promulgated:

SEPTEMBER 11, 2012

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DECISION

PEREZ, *J.*:

The subject of this present appeal is the Decision[1] dated 18 June 2008 of the Court of Appeals in CA-G.R. HC No. 00246, affirming the Decision[2] dated 30 September 2005 of the Regional Trial Court (RTC) of Kapatagan, Lanao del Norte, Branch 21, in Criminal Case No. 21-910, finding herein appellants Wenceslao Nelmida @ "Eslao" (Wenceslao) and Ricardo Ajok @ "Pordoy" (Ricardo) guilty beyond reasonable doubt of double murder with multiple frustrated murder and double attempted murder, thereby sentencing them to suffer the penalty of *reclusion perpetua*. Appellants were likewise ordered to indemnify, jointly and severally, the heirs of each of the deceased victims, *i.e.*, Police Officer 3 Hernando P. Dela Cruz (PO3 Dela Cruz) and Technical Sergeant Ramon Dacoco (T/Sgt. Dacoco), the amount of ₱50,000.00 each as moral damages and ₱50,000.00 each as civil indemnity for the death of each of the said victims. Similarly, appellants were directed to pay, jointly and severally, Mayor Johnny Tawan-tawan the amount of ₱50,000.00 for and as attorney's fees, as well as the costs of the suit.

Appellants and their co-accused Samuel Cutad @ "Sammy" (Samuel), Brigido Abais @ "Bidok" (Brigido), Pedro Serafico @ "Peter" (Pedro), Eduardo Bacong, Sr. (Eduardo, Sr.), Eduardo Bacong, Jr. @ "Junjun" (Eduardo, Jr.), Alejandro Abarquez (Alejandro), Ruben Bartolo @ "Yoyoy Bulhog" (Ruben), Arnel Espanola @ "Toto Ilongo" (Arnel), Alfredo Paninsuro @ "Tambok" (Alfredo), Opao Casinillo (Opao) and other John Does, were charged in an Amended Information[3] dated 3 October 2001 with the crime of double murder with multiple frustrated murder and double attempted murder, the accusatory portion of which reads:

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1 Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren, concurring. *Rollo*, pp. 3-32.

2 Penned by Presiding Judge Jacob T. Malik. CA *rollo*, pp. 74-101.

3 Records, pp. 48-51.

> That on or about the 5th day of June 2001, at SAN MANUEL, Lala, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellants and their co-accused], conspiring, confederating and mutually helping one another, armed with assorted high-powered firearms and hand-grenade, did then and there willfully, unlawfully and feloniously, with treachery, evident premidation (sic), taking advantage of their superiority in strength and in numbers, and with intent to kill, ambush, attack, assault and use personal violence upon the persons of the following, namely[:]
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> 1. [PO3 Dela Cruz], [Philippine National Police (PNP)];
> 2. [T/Sgt. Dacoco], [Philippine Army (PA)];
> 3. [Private First Class (PFC)] Haron Angni, PA;
> 4. [PFC] Gador[4] Tomanto, PA;
> 5. Juanito Ibunalo;
> 6. Mosanif[5] Ameril;
> 7. Macasubar[6] Tandayao;
> 8. Mayor Johnny Tawantawan;[7] and
> 9. Jun Palanas
>
> by then and there firing and shooting them with said high-powered firearms thereby inflicting upon the persons of [PO3 De la Cruz], [T/Sgt. Dacoco], [PFC] Haron Angni, [PFC] Ga[p]or Tomanto, Juanito Ibunalo, M[o]sani[p] Ameril and [Macasuba] Tandayao gunshot wounds which were the direct and immediate cause of the death of [PO3 De la Cruz and T/Sgt. Dacoco] and the serious wounding of said [PFC] Haron Angni, [PFC] Ga[p]or Tomanto, Juanito Ibunalo, Mosani[p] Ameril and [Macasuba] Tandayao that without the medical assistance would have caused their deaths, while Mayor Johnny Tawan[-]tawan and Jun Palanas were not hit.[8]

When arraigned, appellants Wenceslao and Ricardo, assisted by their counsel *de parte*[9] and counsel *de oficio*,[10] respectively; and their co-accused

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4 Both in the Medical Certificate dated 3 January 2003 (*see* Records, p. 272) and in the Transcript of Stenographic Notes dated 13 February 2003, Tomanto's first name appears to be "Gapor" and not "Gador."

5 Sometimes spelled as "Musanip" per his Affidavit-Complaint dated 11 June 2001 (*see* Records, p. 267) and "Mosanip" per Transcript of Stenographic Notes dated 5 February 2003.

6 In the Transcript of Stenographic Notes dated 15 January 2003, Tandayao's first name is "Macasuba" not "Macasubar."

7 Johnny Tawantawan was referred to as Mayor in the Amended Information because at the time the ambush incident happened on 5 June 2001 he was the incumbent Mayor of Salvador, Lanao del Norte, though at the time the Amended Information was filed his term of office has already expired. Also, his surname is spelled as "Tawan-tawan" in most of the documents attached in this case.

8 Records, pp. 48-49.

9 Per Certificate of Arraignment dated 16 April 2002 and RTC Order dated 16 April 2002. Id. at 98 and 101-102.

10 Per Certificate of Arraignment dated 4 June 2002 and RTC Order dated 4 June 2002. Id. at 103 and 106.

Samuel, likewise assisted by counsel *de oficio*,[11] all entered separate pleas of NOT GUILTY to the crime charged. The rest of the accused in this case, however, remained at large. Trial on the merits ensued thereafter.

Meanwhile, or on 21 January 2003, however, the prosecution filed a Motion to Discharge Accused [Samuel] To Be Utilized As State Witness,[12] which the court *a quo* granted in an Order dated 12 February 2003.[13] Also, upon motion of the prosecution, the court *a quo* issued another Order dated 17 March 2003,[14] directing the release of Samuel from detention following his discharge as state witness.

As such, Samuel, together with 13 more witnesses, namely, Macasuba Tandayao (Macasuba), Mosanip Ameril (Mosanip), PFC Gapor Tomanto (PFC Tomanto), Merlina Dela Cruz (Merlina), Senior Police Inspector Renato Salazar (Senior P/Insp. Salazar), PFC Haron Angni (PFC Angni), Senior Police Officer 4 Raul Torres Medrano (SPO4 Medrano), Senior Police Officer 1 Ferdinand Suaring (SPO1 Suaring), Senior Police Officer 2 Ivan Mutia Evasco (SPO2 Evasco), Senior Police Officer 4 Emmie Subingsubing (SPO4 Subingsubing), Juanito Ibunalo (Juanito), Senior Police Officer 3 Tommy Umpa (SPO3 Umpa), and Mayor Johnny Tawan-tawan (Mayor Tawan-tawan), testified for the prosecution.

The factual milieu of this case as culled from the testimonies of the aforesaid prosecution witnesses is as follows:

On 5 June 2001, Mayor Tawan-tawan of Salvador, Lanao del Norte, together with his security escorts composed of some members of the

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11 Id.
12 Id. at 141-144.
13 Id. at 168-170.
14 Id. at 185-186.

Philippine Army, Philippine National Police (PNP) and civilian aides, to wit: (1) T/Sgt. Dacoco; (2) PFC Angni; (3) PFC Tomanto; (4) PO3 Dela Cruz; (5) Juanito; (6) Mosanip; (7) Macasuba; and (8) a certain Jun, respectively, were in Tubod, Lanao del Norte. In the afternoon, the group went home to Salvador, Lanao del Norte, on board the yellow pick-up service vehicle of Mayor Tawan-tawan with Plate No. JRT 818 driven by Juanito. Sitting at the passenger seat of the aforesaid vehicle was Mayor Tawan-tawan while those at the back seat were Mosanip, Jun, and Macasuba, who was sitting immediately behind Juanito. Those seated on a wooden bench installed at the rear (open) portion of the said yellow pick-up service vehicle were PFC Tomanto, PFC Angni, PO3 Dela Cruz and T/Sgt. Dacoco. PFC Tomanto and PFC Angni were sitting beside each other facing the right side of the road while PO3 Dela Cruz and T/Sgt. Dacoco were both seated behind PFC Tomanto and PFC Angni facing the left side of the road.[15]

At around 3:00 p.m. of the same day, appellants, together with their aforenamed co-accused, brought Samuel to a waiting shed in *Purok* 2, San Manuel, Lala, Lanao del Norte, the one located on the left side of the road going to Salvador, Lanao del Norte. Samuel was instructed by appellants and their co-accused to stay in the said waiting shed while they assembled themselves in a diamond position on both sides of the road, which is more or less five (5) meters away from the shed. Then, appellants and their co-accused surreptitiously waited for the vehicle of the group of Mayor Tawan-tawan.[16]

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15 Testimony of Macasuba Tandayao, TSN, 15 January 2003, pp. 6-7 and 14; Testimony of Mosanip Ameril, TSN, 5 February 2003, pp. 10-11 and 20; Testimony of PFC Gapor Tomanto, TSN, 13 February 2003, pp. 3-5 and 17-18; TSN, Testimony of PFC Haron Angni, 30 April 2003, pp. 3-4; Testimony of Juanito Ibunalo, TSN, 4 September 2003, pp. 9-10; Testimony of Mayor Johnny Tawan-tawan, TSN, 27 November 2003, pp. 5 and 10.

16 Testimony of Macasuba Tandayao, id. at 10; Testimony of PFC Gapor Tomanto, id. at 6; Testimony of Samuel Cutad, TSN, 17 March 2003, pp. 15 and 17.

A few minutes later, Samuel saw the yellow pick-up service vehicle of Mayor Tawan-tawan approaching towards the direction of Salvador, Lanao del Norte. The moment the yellow pick-up service vehicle of Mayor Tawan-tawan passed by the aforesaid waiting shed, appellants and their co-accused opened fire and rained bullets on the vehicle using high-powered firearms. Both Macasuba, who was sitting immediately behind the driver, and PFC Tomanto, who was then sitting on the rear (open) portion of the yellow pick-up service vehicle, saw appellant Wenceslao on the right side of the road firing at them in a squatting position using an M-16 armalite rifle. Macasuba was also able to identify appellants Ricardo, Pedro, Eduardo, Sr., Eduardo, Jr., Brigido and Alfredo as among the ambushers. Mayor Tawan-tawan ordered Juanito to keep on driving to avoid greater casualties. The vehicle stopped upon reaching the army and Civilian Armed Forces Geographical Unit (CAFGU) detachment in Curva, Miagao, Salvador, Lanao del Norte. Mayor Tawan-tawan then asked assistance therefrom.[17]

Immediately after the ambush, appellants and their co-accused ran towards the house of Samuel's aunt located, more or less, 10 meters away from the site of the ambush to get their bags and other stuff. The house of Samuel's aunt was the place where appellants and their co-accused stayed prior to the incident. Samuel followed appellants and their co-accused to the house of his aunt. Thereafter, appellants and their co-accused hurriedly ran towards *Barangay* Lindongan, Municipality of Baroy, Lanao del Norte.[18]

On the occasion of the ambush, two security escorts of Mayor Tawan-tawan, namely, PO3 Dela Cruz and T/Sgt. Dacoco, died, while others

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17 Testimony of Macasuba Tandayao, id. at 7 and 9-11; Testimony of Mosanip Ameril, TSN, 5 February 2003, pp. 11-12 and 17-18; Testimony of PFC Gapor Tomanto, id. at 4-6; Testimony of Samuel Cutad, id. at 8-9 and 16; Testimony of PFC Haron Angni, TSN, 30 April 2003, pp. 4-6; Testimony of Juanito Ibunalo, TSN, 4 September 2003, pp. 14-16; Testimony of Mayor Johnny Tawan-tawan, TSN, 27 November 2003, pp. 5-6.

18 Testimony of Samuel Cutad, id. at 9, 18-19 and 47.

suffered injuries. In particular, Macasuba was slightly hit on the head by shrapnel; Mosanip sustained injury on his shoulder that almost severed his left arm; PFC Tomanto was hit on the right and left sides of his body, on his left leg and knee; PFC Angni was hit on his left shoulder; and Juanito was hit on his right point finger, right head and left hip. Mayor Tawan-tawan and Jun were not injured.[19]

All the victims of the ambush, except Macasuba, were brought to Bontilao Country Clinic in Maranding, Lala, Lanao del Norte, and were later transferred to Mindanao Sanitarium and Hospital in Tibanga, Iligan City. PO3 Dela Cruz, however, died before reaching the hospital while T/Sgt. Dacoco died in the hospital. PFC Tomanto stayed at Mindanao Sanitarium and Hospital for 13 days before he was transferred to Camp Evangelista Hospital in Patag, Cagayan de Oro City, and then in a hospital in Manila and Quezon City. PFC Angni stayed for seven (7) days in Mindanao Sanitarium and Hospital before he was transferred to Camp Evangelista Hospital, where he was confined for one (1) month. PFC Angni was transferred to V. Luna Hospital in Quezon City and was confined therein for two (2) months.[20]

On the other hand, Mayor Tawan-tawan, Macasuba and the members of the CAFGU went back to the site of the ambush but appellants and their co-accused were no longer there. Not long after, SPO4 Medrano, Chief of Police of Salvador Municipal Police Station, Salvador, Lanao del Norte, and his troops arrived. It was while inside the Salvador Municipal Police Station that SPO4 Medrano heard gunfire and he came to know that the group of Mayor Tawan-tawan was ambushed prompting him and his troops to go to

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19 Testimony of Macasuba Tandayao, TSN, 15 January 2003, pp. 8 and 16; Testimony of Mosanip Ameril, TSN, 5 February 2003, p. 11; Testimony of PFC Gapor Tomanto, TSN, 13 February 2003, p. 5; Testimony of PFC Haron Angni, TSN, 30 April 2003, p. 6.

20 Testimony of Mosanip Ameril, id. at 12; Testimony of PFC Gapor Tomanto, TSN, 13 February 2003, p. 7; Testimony of PFC Haron Angni, TSN, 30 April 2003, pp. 6-7; Testimony of Juanito Ibunalo, TSN, 4 September 2003, pp. 10 and 16.

the scene of the crime. Mayor Tawan-tawan informed SPO4 Medrano that appellant Wenceslao was one of those responsible for the ambush. SPO4 Medrano and his troops, then, conducted an investigation during which he noticed Samuel at the scene of the crime. Upon interrogation Samuel denied any involvement in the ambush. Even so, SPO4 Medrano still found Samuel suspicious, hence, he and his fellow police officers arrested him and turned him over to a certain SPO4 Micabalo, Chief of Police of Lala, Lanao del Norte. Samuel was then brought to Lala Municipal Jail in Lanao del Norte. Subsequently, SPO4 Medrano, together with the members of the CAFGU, PNP and the rest of the troops who were at the scene of the crime, found a trail of footprints believed to be from the culprits. They conducted a hot pursuit operation towards *Barangay* Lindongan, Municipality of Baroy, Lanao del Norte, where appellants and their co-accused were believed to have fled. They were able to recover an M-16 armalite rifle caliber 5.26 concealed near a *nipa* hut. SPO4 Medrano then sent a Spot Report and a follow-up report about the ambush. He did not, however, reveal the identity of appellant Wenceslao so that with a warrant of arrest, appellant Wenceslao could be arrested at the earliest possible time. SPO4 Medrano also informed the provincial headquarters about the incident through a radio message.[21]

The following day, or on 6 June 2001, Samuel informed SPO1 Suaring, member of PNP Lala Municipal Police, Lala, Lanao del Norte, that there were electrical supplies and radio antenna in San Manuel, Lala, Lanao del Norte, left by the malefactors. SPO1 Suaring, together with Samuel, Senior P/Insp. Salazar, SPO4 Subingsubing and a certain SPO4 Sumaylo, proceeded to San Manuel, Lala, Lanao del Norte, where they found the materials near the National Irrigation Administration (NIA) canal, which is

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[21] Testimony of Samuel Cutad, TSN, 17 March 2003, p. 23; Testimony of SPO4 Raul Torres Medrano, id. at 4-7, 11-16 and 22.

30 meters away from the house of Samuel's aunt. These were photographed.[22]

Later, SPO2 Evasco, who was assigned at Lala Police Station, received a call from *Barangay Kagawad* Renato Senahon (*Brgy. Kgwd.* Senahon) that a black backpack was found in Mount Curay-curay, Rebe, Lala, Lanao del Norte, which is two (2) kilometers away from the highway. Immediately, SPO2 Evasco and *Brgy. Kgwd.* Senahon went to the location. Upon inspection, they recovered from the backpack an army camouflage with name cloth, one Garand pouch and one fragmentation grenade *cacao* type. SPO2 Evasco then brought these to the police station in Maranding, Lala, Lanao del Norte, and turned it over to Senior P/Insp. Salazar.[23]

On 8 June 2001, Samuel executed his sworn statement identifying appellants and their co-accused as the persons responsible for the ambush of Mayor Tawan-tawan and his companions. Samuel was, thereafter, incarcerated at the Bureau of Jail Management and Penology (BJMP) in Tubod, Lanao del Norte.[24]

On 29 August 2001, or more than two (2) months after the ambush, appellant Wenceslao was arrested while he was in Katipa, Lopez Jaena, Misamis Occidental. Appellant Ricardo, on the other hand, was arrested on 20 December 2001 while working in *Puting Bato* in Sapad, Lanao del Norte. It was Senior P/Insp. Salazar who effected the arrest of the appellants.[25]

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22 Testimony of SPO1 Ferdinand Suaring, TSN, 14 August 2003, pp. 3-8.

23 Testimony of SPO2 Ivan Mutia Evasco, TSN, 14 August 2003, pp. 9-15.

24 Testimony of Samuel Cutad, TSN, 17 March 2003, pp. 31-44; Testimony of Senior P/Insp. Renato Salazar, TSN, 26 March 2003, p. 8.

25 Testimony of Senior P/Insp. Salazar, id. at 3-5; Testimony of Wenceslao Nelmida, TSN, 24 November 2004, p. 11; Testimony of Ricardo Ajok, TSN, 15 September 2004, p. 6.

Appellants denied having any involvement in the ambush. Appellant Wenceslao presented as witnesses Armida Nelmida (Armida), Jeffrey Paninsuro (Jeffrey), Luzviminda Apolinares (Luzviminda), Rudy Alegado (Rudy), Sergeant Teofanis Garsuta (Sgt. Garsuta) and Master Sergeant Pio Cudilla (M/Sgt. Cudilla). Appellant Ricardo, on the other hand, did not present any witness other than himself.

Appellant Wenceslao testified that on 5 June 2001, he was in their house with his family. At around 1:00 p.m., he went outside their house to clean the pigsty and feed the pigs. Then, at around 2:30 p.m., Jacob Pepito, Rudy and a certain Romy, who is a military personnel, arrived to get a copy of the election returns of the 15 May 2001 elections upon the orders of Tanny Pepito, a gubernatorial candidate. He told them that he has no copy of the returns. He then advised them to get it to Atty. Aldoni Umpa (Atty. Umpa) who has a copy. At that time, he, Jacob Pepito and Romy were outside the house while his wife and nieces were just eight (8) to 10 meters away from them. After 10 minutes, his visitors left.[26] Suddenly, appellant Wenceslao heard gunfire coming from the direction of the house of Mayor Tawan-tawan. His nephew, Jeffrey, approached and informed him that Mayor Tawan-tawan and the latter's group were ambushed. After about one (1) or two (2) minutes, he again heard gunfire. This time the bullets were already hitting the roof and walls of their house. He then instructed Jeffrey, who is also a CAFGU member, to report the said incident and to ask help from the members of the Philippine Army stationed at Camp Allere, Salvador, Lanao del Norte.[27]

When Jeffrey left, appellant Wenceslao stayed at their house. He did not know where his wife and the rest of the women, who were in their house,

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[26] Testimony of Wenceslao Nelmida, id. at 2-6 and 12; Testimony of Wenceslao Nelmida, TSN, 4 January 2005, p. 5.

[27] Testimony of Wenceslao Nelmida, TSN, 24 November 2004, p. 7.

went after the gunburst. After more or less 15 minutes, he walked barefooted and unarmed towards Camp Allere. There he saw M/Sgt. Cudilla and he informed the former regarding the incident happened in their house. Not long after, a certain Captain Esmeralda (Capt. Esmeralda), Commanding Officer of Bravo Company of the Philippine Army, arrived. He also approached and informed Capt. Esmeralda about the incident in their house. Capt. Esmeralda then ordered his men to board the *samba* and a six-by-six truck to fetch appellant Wenceslao's wife and relatives in Poblacion, Salvador, Lanao del Norte. A six-by-six truck returned to Camp Allere carrying appellant Wenceslao's wife and relatives.[28]

On the evening of 5 June 2001, appellant Wenceslao, together with his wife and daughter, slept in his father's house located, more or less, 100 meters away from Camp Allere and stayed there for five (5) days. Appellant Wenceslao's wife then requested for transfer to their son's house in Kolambugan, Lanao del Norte, as she could no longer sleep because of what happened at their house. Thus, they went to their son's house in Kolambugan, Lanao del Norte, and stayed there for eight (8) days. During that period of time, he did not hear of any case filed against him. No policemen even bothered to arrest him. His wife, however, was still afraid, so they left the house of their son and moved to Katipa, Lopez Jaena, Misamis Occidental. They stayed there until he was arrested on 29 August 2001.[29]

Appellant Wenceslao, however, disclosed that it would only take, more or less, a 15 minute-vehicle ride from his residence in Poblacion, Salvador, Lanao del Norte, to the site of the ambush in San Manuel, Lala, Lanao del Norte. Also, from his house to Camp Allere it would only take,

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[28] Testimony of Wenceslao Nelmida, id. at 8-10.

[29] Testimony of Wenceslao Nelmida, id. at 10-11; Testimony of Wenceslao Nelmida, TSN, 4 January 2005, pp. 6-8.

more or less, 5 minute-vehicle ride. Appellant Wenceslao also admitted that he ran for the vice-mayoralty position in Salvador, Lanao del Norte, against Rodolfo Oban during the 2001 elections. Way back in the 1998 elections, he ran for mayoralty position in the same locality against Mayor Tawan-tawan but he lost. On both occasions, he and Mayor Tawan-tawan were no longer in the same political party. Similarly, during the term of Mayor Tawan-tawan in 1998, appellant Wenceslao revealed that he and his son were charged with illegal possession of firearm.[30]

Other defense witnesses, namely, Armida, Jeffrey and Luzviminda, who are appellant Wenceslao's wife, nephew and niece, respectively, corroborated appellant Wenceslao's testimony on all material points. They all denied that appellant Wenceslao has something to do with the ambush of Mayor Tawan-tawan and his group. Nonetheless, Armida admitted that there is a road connecting San Manuel, Lala, Lanao del Norte, to Salvador, Lanao del Norte. There are also vehicles for hire plying the route of Salvador, Lanao del Norte, to San Manuel, Lala, Lanao del Norte, and *vice-versa*.[31]

Another defense witness, Rudy, corroborated appellant Wenceslao's testimony with respect to the fact that on 5 June 2001, he, together with Jacob Pepito and a certain member of the army intelligence group, went to the house of appellant Wenceslao to get the election returns. However, he could not recall anything unusual that happened while he was in the house of appellant Wenceslao. They left the house of appellant Wenceslao at around 2:45 p.m. Still, no unusual incident happened thereafter. Rudy similarly revealed that he did not go inside the house of appellant Wenceslao but

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30 Testimony of Wenceslao Nelmida, id. at 4; Testimony of Wenceslao Nelmida, id. at 4 and 13; Court of Appeals Decision dated 18 June 2008. *Rollo,* pp. 25-26.

31 Testimony of Armida Nelmida, TSN, 26 May 2004, pp. 2-10; Testimony of Jeffrey Paninsuro, TSN, 9 June 2004, pp. 2-14; Testimony of Luzviminda Apolinares, TSN, 7 July 2004, pp. 2-8.

merely waited for Jacob Pepito and a member of the army intelligence group inside their vehicle parked at a distance of, more or less, three (3) meters from the house of appellant Wenceslao. As such, he did not hear the subject of the conversation between appellant Wenceslao, Jacob Pepito and a member of the army intelligence group.[32]

Sgt. Garsuta, who also testified for the defense, stated that in the afternoon of 5 June 2001, while he was at the legislative hall in Pigcarangan, Tubod, Lanao del Norte, to secure the canvass of the elections, they received a radio call from M/Sgt. Cudilla informing them that Mayor Tawan-tawan was ambushed and the house of appellant Wenceslao was strafed. Thereafter, Capt. Esmeralda called them to board a six-by-six truck and to proceed to Salvador, Lanao del Norte. As they passed by San Manuel, Lala, Lanao del Norte, they stopped to get some information from the police officers therein. They proceeded to Camp Allere in Salvador, Lanao del Norte. They arrived at Camp Allere at around 4:30 p.m. to 4:35 p.m. and there he saw appellant Wenceslao waiting and talking to 1st Sgt. Codilla. Appellant Wenceslao then requested that his family and some personal effects be taken from his house. Thus, Capt. Esmeralda ordered them to board a six-by-six truck and to proceed to appellant Wenceslao's house. Upon reaching the house of appellant Wenceslao, nobody was there. Suddenly, appellant Wenceslao's wife came out from the nearby house. Then they ordered her to board a six-by-six truck after taking some personal belongings of appellant Wenceslao in the latter's house.[33]

M/Sgt. Cudilla alleged that at around, more or less, 3:00 p.m. of 5 June 2001, while he was at their command post at Camp Allere, Salvador, Lanao del Norte, his detachment commander, a certain T/Sgt. Quijano,

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32 Testimony of Rudy Alegado, TSN, 4 August 2004, pp. 2-17.
33 Testimony of Sgt. Teofanis Garsuta, TSN, 11 August 2004, pp. 2-6, 11.

called and informed him through radio that an ambush incident happened in his area of responsibility, *i.e.*, Curva Miagao, Salvador, Lanao del Norte. He advised T/Sgt. Quijano to verify the incident. M/Sgt. Cudilla then called Capt. Esmeralda to inform the latter about the said ambush incident. He, thereafter, prepared a perimeter defense in the camp. In the second call of T/Sgt. Quijano, the latter told him that Mayor Tawan-tawan was ambushed. After about 15 minutes, M/Sgt. Cudilla heard gunbursts from Poblacion, Salvador, Lanao del Norte. Later, more or less, 10 civilians arrived at Camp Allere.

M/Sgt. Cudilla further confirmed that on 5 June 2001, also at around 3:00 p.m., he saw appellant Wenceslao at the back of the stage inside Camp Allere near Km. Post one. Appellant Wenceslao then informed him of the strafing incident in his house. When their commanding officer arrived, appellant Wenceslao approached the former. Thereafter, a platoon was organized heading towards Poblacion, Salvador, Lanao del Norte.[34]

Appellant Ricardo, for his part, maintained that on 5 June 2001, he was also in his house in *Purok* 5, Poblacion, Salvador, Lanao del Norte, attending to his wife and children because his wife had just given birth in April 2001. In the afternoon thereof, he heard a gunburst somewhere in Poblacion, Salvador, Lanao del Norte, followed by some commotion in the street. Later, his brother, Joji Ajok, arrived and informed him that appellant Wenceslao was shot in his house.[35]

Appellant Ricardo also confirmed that on the early evening of 5 June 2001, he and his family transferred to the house of his parents-in-law at Camp Allere, Salvador, Lanao del Norte. He so decided when he heard

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[34] Testimony of M/Sgt. Pio Cudilla, TSN, 8 September 2004, pp. 2-10.
[35] Testimony of Ricardo Ajok, TSN, 15 September 2004, pp. 2-4.

rumors that the supporters of Atty. Umpa, the political rival of Mayor Tawan-tawan in the 2001 local elections, were being persecuted. Being one of Atty. Umpa's supporters, he got scared, prompting him to bring his family to Camp Allere. They stayed there until the following morning and then he left alone for Ozamis City, Misamis Occidental, and stayed there for three (3) months. Thereafter, he moved to *Puting Bato* in Sapad, Lanao del Norte, where he worked in the farm of his friend. He stayed there until he was arrested on 20 December 2001.[36]

Nevertheless, appellant Ricardo divulged that there was never an instance that Atty. Umpa was harassed or intimidated by the group of Mayor Tawan-tawan. He claimed that only Atty. Umpa's supporters were harassed. He also revealed that prior to the ambush incident, there was never an instance that he was threatened by the group of Mayor Tawan-tawan. He just presumed that Atty. Umpa's supporters were being harassed by the people of Mayor Tawan-tawan because others were already harassed.[37]

Finding the testimonies of the prosecution witnesses, most of whom were victims of the ambush, to be credible, categorical, straightforward, spontaneous and consistent, coupled with their positive identification of the appellants as among the perpetrators of the crime and their lack of ill-motive to falsely testify against them, *vis-à-vis* the defense of denial and *alibi* proffered by the latter, the trial court rendered its Decision on 30 September 2005 finding appellants guilty beyond reasonable doubt of double murder with multiple frustrated murder and double attempted murder and imposing upon them the penalty of *reclusion perpetua*. The dispositive portion of the aforesaid trial court's Decision states:

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36 Testimony of Ricardo Ajok, id. at 4-6.

37 Testimony of Ricardo Ajok, TSN, 13 October 2004, pp. 3 and 5.

> WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered **finding [herein appellants Wenceslao and Ricardo] GUILTY beyond reasonable doubt of the crime of double murder with multiple frustrated murder and double attempted murder, and the Court hereby sentences them to suffer the indivisible prison term of *reclusion perpetua***; to pay, jointly and severally, the heirs of the late [PO3 Dela Cruz] the amount of ₱50,000.00 as moral damages and another sum of ₱50,000.00 for and by way of civil indemnity ***ex delicto***; to pay, jointly and severally, the heirs of the late [T/Sgt. Dacoco] the sum of ₱50,000.00 as moral damages plus ₱50,000.00 for and by way of civil indemnity ***ex delicto***; and to pay, jointly and severally, Ex-Mayor Johnny Tawantawan the amount of ₱50,000.00 for and as attorney's fees, and the costs of suit.
>
> The Armalite rifle with defaced serial number, the hand grenade and the [G]arand pouch are hereby ordered turned-over to the Firearm and Explosive Unit of the PNP Headquarters, Pigcarangan, Tubod, Lanao del Norte, for proper disposition as authorized by law.
>
> The full period of the preventive imprisonment of the [appellants] shall be credited to them and deducted from their prison term provided they comply with the requirements of Article 29 of the Revised Penal Code. [Appellant Wenceslao] was arrested on 29 August 2001 and detained since then up to the present. While [appellant Ricardo] was arrested on 20 December 2001 and detained since then up to the present.
>
> Let the records of this case be sent to the archive files without prejudice on the part of the prosecution to prosecute the case against the other accused who remain at-large, as soon as said accused are apprehended.[38] [Emphasis supplied].

Unperturbed, appellants separately appealed the aforesaid trial court's Decision to the Court of Appeals *via* Notice of Appeal,[39] and, thereafter, submitted their respective appeal briefs.

In his brief, appellant Wenceslao assigned the following errors:

> I.
>
> THE TRIAL COURT ERRED IN DECLARING THAT THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE CREDIBLE AND NOT ORCHESTRATED LIES INTENDED TO FALSELY IMPUTE THE CRIMINAL LIABILITY TO [APPELLANT WENCESLAO][;]

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38 CA *rollo*, pp. 100-101.

39 Records, pp. 463 and 465.

II.
THE TRIAL COURT ERRED IN DECLARING THAT THE INCONSISTENCIES OF PROSECUTION WITNESSES ARE HONEST INCONSISTENCIES ON MINOR AND TRIVIAL POINTS[;]

III.
THE TRIAL COURT ERRED IN RULING THAT [APPELLANTS WENCESLAO AND RICARDO] FAILED TO CAST ILL-MOTIVE ON THE PART OF PROSECUTION WITNESSES AND THAT THESE WITNESSES HAD NO IMPROPER AND NEFARIOUS MOTIVE IN TESTIFYING AGAINST THE [APPELLANTS][;]

IV.
THE TRIAL COURT FAILED TO APPRECIATE THE TESTIMONY OF THE MILITARY MEN WHO ARE NEUTRAL, IMPARTIAL AND OBJECTIVE WITNESSES[;]

V.
THE TRIAL COURT ERRED IN RULING THAT [APPELLANT WENCESLAO] ABSCONDED AND IN IMPUTING MALICE ON THE ACT OF [APPELLANT WENCESLAO] IN TEMPORARILY LEAVING HIS RESIDENCE[;]

VI.
THE LOWER COURT ERRED IN CONVICTING [APPELLANT WENCESLAO] OF THE CRIME CHARGED BASED ON TESTIMONIES WHICH ARE OF DOUBTFUL VERACITY[;]

VII.
THE TRIAL COURT ERRED IN NOT APPRECIATING THE DEFENSE OF [APPELLANT WENCESLAO] BASED ON JURISPRUDENCE WHICH ARE NOT APPLICABLE IN THE CASE AT BAR[.][40]

While appellant Ricardo, in his brief, raised this lone assignment of error:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING [APPELLANT RICARDO] DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[41]

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40 CA *rollo*, pp. 15-16.

41 Id. at 110.

On 18 June 2008, the Court of Appeals rendered its now assailed Decision affirming appellants' conviction of the crime charged. The Court of Appeals held that the evidence on record disclosed that the alleged inconsistencies pointed to by appellant Wenceslao refer only to minor matters. The same did not damage the credibility of the prosecution witnesses, particularly that of PFC Tomanto, PFC Angni, Juanito and Mayor Tawan-tawan. Honest inconsistencies on minor and trivial points serve to strengthen rather than destroy the credibility of a witness to a crime. Moreover, since the prosecution witnesses positively identified appellants in open court as among the perpetrators of the ambush, the same must prevail over the alleged inconsistencies, as well as the defense of denial and *alibi* interposed by the appellants. Denial is a negative and self-serving assertion that cannot overcome the victim's affirmative, categorical and convincing testimony. In the same way, for *alibi* to prosper, it must be established by positive, clear and satisfactory proof that it was impossible for the accused to be at the scene of the crime at the time of its commission and not merely assert that he was somewhere else. As in the present case, the trial court took judicial notice of the distance of seven (7) kilometers between Salvador, Lanao del Norte, where appellants reside, and San Manuel, Lala, Lanao del Norte, where the ambush incident took place. Appellants, therefore, could not successfully invoke *alibi* as a defense because it was not physically impossible for them to have been at the scene of the crime.[42] The Court of Appeals then decreed as follows:

> **WHEREFORE**, in the light of the foregoing, the separate **APPEALS** are **DENIED**, and the appealed *Decision* is hereby **AFFIRMED**.[43]

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42 *Rollo*, pp. 28-31.

43 Id. at 31.

Still undaunted, appellants elevated the aforesaid Decision of the Court of Appeals to this Court *via* Notice of Appeal.

In a Resolution[44] dated 19 November 2008, the Court required the parties to simultaneously submit their respective supplemental briefs, if they so desire. In lieu thereof, the Office of the Solicitor General filed a Manifestation[45] stating that it will no longer file a supplement to its Consolidated Appellee's Brief[46] dated 14 December 2006 there being no transactions, occurrences or events which have happened since the appellate court's Decision was rendered.

Appellants, on the other hand, filed their separate Supplemental Briefs,[47] which were a mere rehash of the arguments already discussed in their respective Appellant's Briefs[48] submitted before the appellate court. In his Supplemental Brief, appellant Wenceslao reiterates that: *the trial court and the Court of Appeals committed reversible errors when they decided a question of substance which is not in accord with established facts and the applicable laws.*[49] He, once again, enumerated the following errors committed by the appellate court, thus:

> I.
>
> The court *a quo* and the Court of Appeals gravely erred when they ruled that the inconsistencies committed by the prosecution witnesses are on minor and trivial points when these inconsistencies are indicative of the innocence of [appellant Wenceslao][;]
>
> II.
>
> The trial court and the Court of Appeals failed to consider as indicative of innocence of [appellant Wenceslao] the fact that the authorities did not include in the police report the name of [appellant Wenceslao] and did not

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44 Id. at 39-40.
45 Id. at 48-50.
46 CA *rollo*, pp. 176-201.
47 *Rollo*, pp. 55-60 and 62-116.
48 CA *rollo*, pp. 10-72 and 108-122.
49 *Rollo*, p. 71.

> arrest him immediately after the ambush, or within a couple of months from the date of the ambush[;]
>
> III.
> The trial court and the Court of Appeals committed reversible error when they deliberately refused or failed to consider and appreciate the testimonies of the military officers who are neutral, impartial, and objective witnesses[;]
>
> IV.
> Both the trial court and the Court of Appeals miserably failed to consider the evidence for the defense despite the clear and unmistakable proof of their honesty and integrity[;]
>
> V.
> The trial court and the Court of Appeals clearly and deliberately [misinterpreted] the facts and [misapplied] the laws regarding "flight" as an alleged indication of guilt[;]
>
> VI.
> The trial court and the Court of Appeals convicted [appellant Wenceslao] based on jurisprudence on "*alibi*" which are not applicable in the case at bar[50] [Emphasis and italicized omitted].

Appellant Wenceslao contends that a thorough perusal of the testimonies of the prosecution witnesses would show these are tainted with glaring inconsistencies, which are badges of lies and dishonesty, thus, casting doubts on their credibility.

The inconsistencies referred to by appellant Wenceslao are as follows: (1) whether PFC Tomanto and PFC Angni were already with Mayor Tawan-tawan from Salvador, Lanao del Norte, to Tubod, Lanao del Norte, and *vice-versa*, or they merely hitched a ride in Mayor Tawan-tawan's vehicle on their way home to Salvador, Lanao del Norte; (2) if so, the place where PFC Tomanto and PFC Angni hitched a ride in Mayor Tawan-tawan's vehicle; (3) the officer from whom PFC Tomanto and PFC Angni got permission in order to go home to Salvador, Lanao del Norte; (4) PFC Angni allegedly knew appellant Wenceslao prior to the ambush incident on 5 June 2001 and

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[50] Id. at 71-72.

he even saw appellant Wenceslao as among the perpetrators of the ambush, yet, he did not mention the name of the former in his affidavit; (5) Mayor Tawan-tawan should have mentioned the name of appellant Wenceslao as one of those responsible in the ambush incident when he reported the same to SPO4 Medrano; (6) SPO4 Medrano should have included the name of appellant Wenceslao in the Spot Reports he transmitted to the Provincial Police Office of the PNP and should have immediately caused his arrest if he truly participated in the ambush incident; (7) it would no longer be necessary to discharge Samuel and to make him as state witness if the victims of the ambush incident, indeed, saw the perpetrators of the crime; and (8) if appellant Wenceslao was one of the ambushers, Samuel would not have failed to mention the former in his sworn statement.

Appellant Wenceslao believes that the afore-enumerated inconsistencies only proved that he has no participation in the ambush of Mayor Tawan-tawan and his companions. The declaration of his innocence is thus called for.

Appellant Wenceslao further imputes ill-motive and malice on the testimonies of the prosecution witnesses in testifying against him. The motive was to remove him, being the only non-Muslim leader, in the Municipality of Salvador, Lanao del Norte, who has the courage to challenge the reign of Mayor Tawan-tawan and his clan. It was also an act of revenge against him for opposing Mayor Tawan-tawan during the 1998 elections. As to Samuel's motive, appellant Wenceslao claims that it was for self-preservation, freedom, leniency and some other consideration. Evidently, after Samuel's testimony, the latter was released from jail.

Appellant Wenceslao maintains that he was not at the ambush site on 5 June 2001 as can be gleaned from the testimonies of M/Sgt. Cudilla and Sgt. Garsuta.

Lastly, appellant Wenceslao argues that his flight was not an indication of guilt. He justified his temporary absence from his residence by stating that it was because of the traumatic experience of his wife, who had no peace of mind since their house was riddled with bullets by lawless elements without any cause.

With all the foregoing, the resolution of this appeal hinges primarily on the determination of credibility of the testimonies of the prosecution witnesses.

Time and again, this Court held that when the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.[51] Moreover, credibility, to state what is axiomatic, is the sole province of the trial court. In the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, the trial court's findings on the matter of credibility of witnesses will not be disturbed on appeal.[52] A careful perusal of the records of this case revealed that none of these circumstances is attendant herein.

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51 *People v. Barde*, G.R. No. 183094, 22 September 2010, 631 SCRA 187, 208-209.
52 *People v. Bondoy*, G.R. No. 79089, 18 May 1993, 222 SCRA 216, 229.

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

In the present case, most of the prosecution witnesses, *i.e.*, Macasuba, Mosanip, PFC Tomanto, PFC Angni, Juanito and Mayor Tawan-tawan, were victims of the 5 June 2001 ambush incident. As such, they actually witnessed what exactly happened on that fateful day, especially Macasuba and PFC Angni, who vividly saw appellant Wenceslao on the right side of the road and in a squatting position firing at them with his M-16 armalite rifle. Macasuba and PFC Angni, having seated behind the driver and on the rear (open) portion of the yellow pick-up service vehicle, respectively, both facing the right side of the road, were in such a position to see without any obstruction how appellant Wenceslao rained bullets on their vehicle with his M-16 armalite rifle while they were traversing the road of San Manuel, Lala, Lanao del Norte, on their way home to Salvador, Lanao del Norte. Macasuba was also able to identify appellant Ricardo, Pedro, Eduardo, Sr., Eduardo, Jr., Brigido and Alfredo as among the perpetrators of the ambush.

It bears stressing that the ambush happened at around 3:00 p.m., in broad daylight, such that it would not be impossible for Macasuba and PFC Angni to have seen and identified their assailants, particularly appellant Wenceslao, who was once chief of Civilian Home Defense Force (CHDF), then municipal councilor and twice elected vice-mayor of Salvador, Lanao del Norte, *i.e.*, 1992 and 1995 elections, and appellant Ricardo, who is a resident of Poblacion, Salvador, Lanao del Norte.[53]

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[53] Testimony of Macasuba Tandayao, TSN, 15 January 2003, p. 5; Testimony of Ricardo Ajok, TSN, 15 September 2004, p. 2.

The aforesaid assertions of Macasuba and PFC Angni were equally confirmed by Samuel, an accused-turned-state-witness, who, in his testimony before the open court, narrated how appellants and their co-accused, Pedro, Eduardo, Sr., Eduardo, Jr., Brigido, Alfredo, Alejandro, Ruben, Arnel, and Opao, brought him in the waiting shed in *Purok* 2, San Manuel, Lala, Lanao del Norte; assembled themselves in a diamond position on both sides of the road; surreptitiously waited for the vehicle boarded by Mayor Tawan-tawan and his group; and executed the ambush from the moment the vehicle boarded by Mayor Tawan-tawan and his group passed by the aforesaid waiting shed.

Samuel was in an advantageous position to substantiate the identities of the appellants and their co-accused as the perpetrators of the ambush because he was near the scene of the crime, *i.e.*, merely five (5) meters away therefrom. This is aside from the fact that appellants and their co-accused were the very same people who brought him to the site of the ambush. Appellants and their co-accused likewise stayed for a long period of time in the house of Samuel's aunt prior to the ambush incident and Samuel is very well-acquainted with these people for he himself resided therein.[54]

Given the foregoing, it is beyond any cavil of doubt that prosecution witnesses, Macasuba, PFC Angni and Samuel, have firmly established the identities of appellants as the perpetrators of the ambush. In addition, their testimonies on who and how the crime was committed were characterized by the trial court as simple and candid. Even their answers to questions were simple, straightforward and categorical. Such simplicity and candidness in their testimonies only prove that they were telling the truth, thus, strengthening their credibility as witnesses.

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54 Testimony of Samuel Cutad, TSN, 17 March 2003, pp. 9 and 12.

Now, as regards the inconsistencies pointed out by appellant Wenceslao that allegedly cast doubt on the credibility of the prosecution witnesses, this Court finds them frivolous, trivial, minor, irrelevant and have nothing to do with the essential elements of the crime charged, *i.e.*, double murder with multiple frustrated murder and double attempted murder. In the same manner, they do not detract from the fact that Mayor Tawan-tawan and his group, which includes PFC Tomanto and PFC Angni, were ambushed by appellants and their co-accused on 5 June 2001 while on board the yellow pick-up service vehicle as it passed by the waiting shed in *Purok* 2, San Manuel, Lala, Lanao del Norte. And, said ambush resulted in the death of PO3 Dela Cruz and T/Sgt. Dacoco and injuries to Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito.

It is axiomatic that slight variations in the testimony of a witness as to minor details or collateral matters do not affect his or her credibility as these variations are in fact indicative of truth and show that the witness was not coached to fabricate or dissemble. **An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction**.[55]

Similarly, PFC Angni and Samuel's failure to name appellant Wenceslao in their affidavits/sworn statements as one of the ambushers does not necessarily render their testimonies implausible and unworthy of belief.

Inconsistencies between the sworn statement and direct testimony given in open court do not necessarily discredit the witness. An affidavit, being taken *ex-parte*, is oftentimes incomplete and is generally regarded as inferior to the testimony of the witness in open court. Judicial notice can be taken of the fact that testimonies given during trial are much more exact and

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[55] *People v. Ignas*, 458 Phil. 965, 988 (2003).

elaborate than those stated in sworn statements, which are usually incomplete and inaccurate for a variety of reasons. More so, because of the partial and innocent suggestions, or for want of specific inquiries. In addition, an extrajudicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement, hence, omissions and misunderstandings by the writer are not infrequent. Indeed, the prosecution witnesses' direct and categorical declarations on the witness stand are superior to their extrajudicial statements.[56] Similarly, the failure of a witness to immediately disclose the name of the culprit does not necessarily impair his or her credibility.[57]

A meticulous perusal of Samuel's sworn statement reveals that he categorically mentioned therein the name of appellant Wenceslao as one of the ambushers. In his sworn statement, Samuel specifically stated that during the ambush, he saw appellant Wenceslao at the other side of the road, just a few meters away from the bridge, who, at that time armed with an M-16 rifle, was likewise firing towards the group of Mayor Tawan-tawan.[58] Above all, both PFC Angni and Samuel positively identified appellant Wenceslao in open court as one of those responsible for the ambush of Mayor Tawan-tawan and his group.[59] Such open court declaration is much stronger than their affidavits/sworn statements.

Mayor Tawan-tawan's failure to disclose to SPO4 Medrano the name of appellant Wenceslao as one of those responsible in the ambush and SPO4 Medrano's failure to include the name of appellant Wenceslao in the Spot Reports he transmitted to the Provincial Police Office of the PNP would not inure to appellant Wenceslao's benefit.

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56 *People v. Astudillo,* 449 Phil. 778, 790-791 (2003).
57 *People v. Vasquez,* G.R. No. 123939, 28 May 2004, 430 SCRA 52, 66.
58 Sworn Statement of Samuel Cutad. Records, p. 13.
59 Testimony of PFC Haron Angni, TSN, 30 April 2003, p. 5; Testimony of Samuel Cutad, TSN, 17 March 2003, p. 4.

As can be gleaned from the transcript of stenographic notes, when Mayor Tawan-tawan and SPO4 Medrano met at the scene of the crime, the former immediately told the latter that appellant Wenceslao was one of the ambushers.[60] This belied the claim of appellant Wenceslao that Mayor Tawan-tawan did not tell SPO4 Medrano that he (appellant Wenceslao) was among the ambushers. Also, SPO4 Medrano provided an explanation[61] for his failure to state in his Spot Reports the name of appellant Wenceslao as one of the ambushers. And, even granting that his explanation would not have been satisfactory, still, SPO4 Medrano's failure to mention appellant Wenceslao's name in his Spot Reports was not fatal to the cause of the prosecution. More especially because appellant Wenceslao was positively identified by the prosecution witnesses as one of the perpetrators of the crime.

Even the discharge of Samuel to become state witness does not negate the fact that prosecution witnesses, Macasuba and PFC Angni, indeed, saw appellants as among the perpetrators of the crime. To note, appellants were not the only persons accused of the crime; they were many including Pedro, Eduardo, Sr., Eduardo, Jr., Brigido, Alfredo, Alejandro, Ruben, Arnel, and Opao. In order to give justice to the victims of the ambush, especially those who have died by reason thereof, all persons responsible therefor must be penalized. Since Samuel knew all those who have participated in the ambush incident, his testimony as to the other accused in this case is material to strengthen the case of the prosecution against them. Unfortunately, the other accused in this case remained at large until now.

As aptly observed by the trial court, thus:

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60 Testimony of SPO4 Raul Torres Medrano, TSN, 17 July 2003, pp. 4 and 17.

61 SPO4 Medrano did not reveal the identity of appellant Wenceslao so that if warrant of arrest would be issued against him, he could be arrested at the earliest possible time (Testimony of SPO4 Raul Torres Medrano, TSN, 17 July 2003, p. 11).

> x x x The Court is convinced without equivocation on the veracity of the testimonies of the prosecution eyewitnesses who are all in one pointing to [herein appellant Wenceslao] as one of those who participated in the ambush, and on the veracity of the testimonies of the two prosecution eyewitnesses – [Macasuba and Samuel] – to the effect that [appellant Ricardo] was among the people who perpetrated the said ambush.
>
> The testimonies of these witnesses were simple and candid. The simplicity and candidness of their testimonies only prove that they were telling the truth. Their answers to questions were simple, straightforward and categorical; spontaneous, frank and consistent. Thus, a witness who testifies categorically, spontaneously, frankly and consistently is a credible witness.[62]

Appellant Wenceslao's allegations of ill-motive and malice on the part of prosecution witnesses, including Samuel, have no leg to stand on.

The records are bereft of any evidence to substantiate the claim of appellant Wenceslao that the motive of the prosecution witnesses in testifying against him was to remove him as the only non-Muslim leader in the Municipality of Salvador, Lanao del Norte, and that it was an act of revenge for opposing Mayor Tawan-tawan during the 1998 elections. Appellant Wenceslao failed to present an iota of evidence to support his aforesaid allegations. As properly stated by the Court of Appeals, "[m]ere allegation or claim is not proof. Each party must prove his own affirmative allegation." Also, it must be emphasized that during the 1998 elections, it was Mayor Tawan-tawan who won the mayoralty position. It is, therefore, highly implausible for Mayor Tawan-tawan, who emerged as the victor, to take revenge against the losing candidate, appellant Wenceslao. As such, appellant Wenceslao failed to prove any ill-motive on the part of the prosecution witnesses. It is settled that where the defense fails to prove that witnesses are moved by improper motives, the presumption is that they were

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62 CA *rollo*, p. 94.

not so moved and their testimonies are therefore entitled to full weight and credit.[63]

To repeat, most of the prosecution witnesses are victims of the ambush. Being the aggrieved parties, they all desire justice for what had happened to them, thus, it is unnatural for them to falsely accuse someone other than the real culprits. Otherwise stated, it is very unlikely for these prosecution witnesses to implicate an innocent person to the crime. It has been correctly observed that the natural interest of witnesses, who are relatives of the victims, more so, the victims themselves, in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for otherwise, the culprits would gain immunity.[64]

Contrary to appellant Wenceslao's assertion, this Court is convince that his and appellant Ricardo's flight from the scene of the crime immediately after the ambush is an evidence of their guilt. It is noteworthy that after the ambush incident, appellant Wenceslao immediately left his residence and moved to his father's house, then to his son's house in Kolambugan, Lanao del Norte, and lastly to Katipa, Lopez Jaena, Misamis Occidental, where he was arrested. Appellant Ricardo did the same thing. From his residence in Poblacion, Salvador, Lanao del Norte, he transferred to his parents-in-law's house, then he left alone for Ozamis City, Misamis Occidental, and thereafter, moved to *Puting Bato* in Sapad, Lanao del Norte, until he was arrested on 20 December 2001. If appellants were truly innocent of the crime charged, they would not go into hiding rather they would face their accusers to clear their names. Courts go by the biblical

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63 *People v. Emoy*, 395 Phil. 371, 384 (2000).
64 *People v. Reynes*, 423 Phil. 363, 382 (2001).

truism that "the wicked flee when no man pursueth but the righteous are as bold as a lion."[65]

Appellants' respective explanations regarding their flight fail to persuade this Court. It bears emphasis that after the alleged strafing of appellant Wenceslao's house, all he did is to move from one place to another instead of having it investigated by the authorities. Until now, the alleged strafing of his house remains a mystery. If that strafing incident truly happened, he would be much eager to know who caused it in order to penalize the author thereof. Appellant Ricardo, on the other hand, was allegedly afraid of being persecuted for being one of the supporters of Mayor Tawan-tawan's political rival. His fear, however, was more imaginary than real. The aforesaid claim of appellant Ricardo was uncorroborated, hence, cannot be given any considerable weight.

In light of the clear, positive and straightforward testimonies of prosecution witnesses, coupled with their positive identification of appellants as among the perpetrators of the ambush, appellants' defense of denial and *alibi* cannot prosper.

As this Court has oft pronounced, both denial and *alibi* are inherently weak defenses which cannot prevail over the positive and credible testimonies of the prosecution witnesses that appellants committed the crime.[66] For *alibi* to prosper, the requirements of time and place must be strictly met. It is not enough to prove that appellants were somewhere else when the crime happened. They must also demonstrate by clear and convincing evidence that it was physically impossible for them to have been

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65 *People v. Cañedo*, 390 Phil. 379, 396 (2000).
66 *People v. Veloso*, 386 Phil. 815, 825 (2000).

at the scene of the crime at the approximate time of its commission.[67] Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.[68] A mere denial, like *alibi*, is inherently a weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[69]

In this case, both appellants claimed that they were just in their respective houses in Poblacion, Salvador, Lanao del Norte, when the ambush incident happened and they have no involvement whatsoever in the commission thereof.

To corroborate appellant Wenceslao's testimony, the defense presented Armida, Jeffrey and Luzviminda, who are appellant Wenceslao's wife, nephew and niece, respectively. This Court, however, cannot give credence to the testimonies of these defense witnesses. Being appellant Wenceslao's relatives, their testimonies are rendered suspect because the former's relationship to them makes it likely that they would freely perjure themselves for his sake. The defense of *alibi* may not prosper if it is established mainly by the appellant himself and his relatives, and not by credible persons.[70] This Court further quote with conformity the observation made by the trial court, *viz*:

> FURTHER, the testimonies of the above-named witnesses for [herein appellant Wenceslao] were shattered by the testimony of [Rudy], another witness for [appellant Wenceslao], who categorically told the Court that during the time he and his companions Jacob Pepito and a certain Romy were in the house of [appellant Wenceslao] in the afternoon of 5 June 2001, **there was no unusual incident that took place**, **as well**

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67 *People v. Lacatan*, 356 Phil. 510, 521 (1998).
68 *People v. Barde*, supra note 51 at 211.
69 *People v. Arofo,* 430 Phil. 475, 484-485 (2002).
70 *People v. Maceda*, 405 Phil. 698, 711 (2001).

> **as no unusual incident that happened when they left the house of [appellant Wenceslao] at about 2:45 in the afternoon**.
>
> The foregoing testimony of [Rudy] clearly imparts that the visit of [Rudy] and his companions to the house of [appellant Wenceslao], if any, happened on another date. This will be so because if [appellant Wenceslao] and his closely related witnesses are telling the truth that Jacob Pepito, [Rudy] and Romy were in the house of [appellant Wenceslao] talking about the said election returns during that fateful afternoon, **then definitely, [Rudy] should have had known of the ambush incident, said incident being spreaded throughout or shall we say, "the talk of the town" that afternoon of 5 June 2001**.
>
> **If the ambush incident occurred on the day [Rudy] and his companions visited [appellant Wenceslao], then, no doubt that [Rudy] will tell the Court about it. But his testimony was otherwise**.[71] [Emphasis supplied].

In the same breath, appellant Ricardo's defense of denial and *alibi* cannot be given any evidentiary value as it was unsubstantiated. Appellant Ricardo never presented any witness to support his claim that he was simply inside their house attending to his wife and children during the time that the ambush incident happened. This Court reiterates that mere denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law. Between the categorical and positive assertions of the prosecution witnesses and the negative averments of the accused which are uncorroborated by reliable and independent evidence, the former indisputably deserve more credence and are entitled to greater evidentiary weight.[72]

Withal, it was not physically impossible for the appellants to be at the scene of the crime in the afternoon of 5 June 2001. As observed by the trial court and the appellate court, Poblacion, Salvador, Lanao del Norte, where both appellants' reside, is only about seven (7) kilometers away from San Manuel, Lala, Lanao del Norte, where the ambush took place.[73]

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71 CA *rollo*, pp. 96-97.
72 *People v. Hilet*, 450 Phil. 481, 490-491 (2003).
73 *Rollo*, p. 31.

All told, this Court affirms the findings of the trial court and the appellate court that, indeed, appellants were among the perpetrators of the ambush against Mayor Tawan-tawan and his group. Prosecution witnesses' categorical, positive and straightforward testimonies, coupled with their positive identification of appellants as among the perpetrators of the crime, prevail over appellants' defense of bare denial and *alibi*.

As to the crime committed. The trial court, as well as the appellate court, convicted appellants of double murder with multiple frustrated murder and double attempted murder. **This Court believes, however, that appellants should be convicted not of a complex crime but of separate crimes of two (2) counts of murder and seven (7) counts of attempted murder** as the killing and wounding of the victims in this case were not the result of a single act but of several acts of the appellants, thus, making Article 48 of the Revised Penal Code inapplicable.

Appellants and their co-accused simultaneous act of riddling the vehicle boarded by Mayor Tawan-tawan and his group with bullets discharged from their firearms when the said vehicle passed by San Manuel, Lala, Lanao del Norte, resulted in the death of two security escorts of Mayor Tawan-tawan, *i.e.*, PO3 Dela Cruz and T/Sgt. Dacoco.

Article 248 of the Revised Penal Code 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**:
>
> 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.
>
> x x x x

5. With evident premeditation. [Emphasis supplied].

Treachery, which was alleged in the Information, attended the commission of the crime. Time and again, this Court, in a *plethora* of cases, has consistently held that there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof, which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make. There are two (2) conditions that must concur for treachery to exist, to wit: (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted. **"The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape."**[74]

The deadly successive shots of the appellants and their co-accused did not allow the hapless victims, *i.e.*, PO3 Dela Cruz and T/Sgt. Dacoco, any opportunity to put up a decent defense. The attack was executed by appellants and their-co-accused in such a vicious manner as to make the defense virtually impossible. Under the circumstances, **it is very apparent that appellants had murder in their hearts when they waylaid their unwary victims.**[75] **Thus, as to the death of PO3 Dela Cruz and T/Sgt. Dacoco, appellants should be held liable for murder**.

The aggravating circumstance of abuse of superior strength, however, cannot be appreciated as it is deemed absorbed in treachery.[76]

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74 *People v. Barde*, supra note 51 at 215.
75 *People v. Sanidad*, 450 Phil. 449, 462-463 (2003).
76 *People v. Cawaling,* 355 Phil. 1, 42 (1998).

Since the prosecution failed to prove the attending circumstance of evident premeditation, the circumstance cannot likewise be appreciated. To prove this aggravating circumstance, the prosecution must show the following: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender clung to his determination; and (3) a lapse of time, between the determination to commit the crime and the execution thereof, sufficient to allow the offender to reflect upon the consequences of his act.[77] None of these elements could be gathered from the evidence on record.

As regards the victims Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito, although they were injured during the ambush and were all hospitalized, except for Macasuba, it was not mentioned that their injuries and wounds were mortal or fatal such that without the timely medical assistance accorded to them, they would have died.[78] However, it does not necessarily follow that the crimes committed against the aforenamed victims were simply less serious physical injuries. Also, even though Mayor Tawan-tawan and Jun did not sustain any injury during the ambush, it does not mean that no crime has been committed against them. The latter were just fortunate enough not to have sustained any injury on the occasion thereof. **Since appellants were motivated by the same intent to kill, thus, as to Macasuba, Mosanip, PFC Tomanto, PFC Angni, Juanito, Mayor Tawan-tawan and Jun, appellants should be held guilty of attempted murder**.

What brings this case out of the ordinary is the issue of applicability of Article 48 of the Revised Penal Code. Its resolution would determine whether the conviction of appellants must be for the separate crimes of two

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77 Id.

78 As evidenced by the Medical Certificates issued to Mosanip Ameril, PFC Gapor Tomanto, PFC Haron Angni and Juanito Ibunalo. Records, pp. 268-273.

(2) counts of murder and seven (7) counts of attempted murder or of the complex crime of double murder with multiple frustrated murder and double attempted murder.

The concept of a complex crime is defined in Article 48 of the Revised Penal Code which explicitly states that:[79]

> ART. 48. *Penalty for complex crimes.* – When **a single act constitutes two or more grave or less grave felonies**, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. [Emphasis supplied].

In a complex crime, two or more crimes are actually committed, however, in the eyes of the law and in the conscience of the offender they constitute only one crime, thus, only one penalty is imposed. There are two kinds of complex crime. The **first is known as compound crime**, or when a single act constitutes two or more grave or less grave felonies while **the other is known as complex crime proper**, or when an offense is a necessary means for committing the other. The classic example of the first kind is when a single bullet results in the death of two or more persons. A different rule governs where separate and distinct acts result in a number killed. **Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes**.[80]

Evidently, there is in this case no complex crime proper. And the circumstances present in this case do not fit exactly the description of a compound crime.

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79 *People v. Bermas,* 369 Phil. 191, 237 (1999).

80 *People v. Gaffud, Jr.*, G.R. No. 168050, 19 September 2008, 566 SCRA 76, 88; *People v. Orias,* G.R. No. 186539, 29 June 2010, 622 SCRA 417, 435.

From its factual backdrop, it can easily be gleaned that the killing and wounding of the victims were not the result of a single discharge of firearms by the appellants and their co-accused. To note, appellants and their co-accused opened fire and rained bullets on the vehicle boarded by Mayor Tawan-tawan and his group. As a result, two security escorts died while five (5) of them were wounded and injured. The victims sustained gunshot wounds in different parts of their bodies. Therefrom, it cannot be gainsaid that more than one bullet had hit the victims. Moreover, more than one gunman fired at the vehicle of the victims. As held in *People v. Valdez*,[81] each act by each gunman pulling the trigger of their respective firearms, aiming each particular moment at different persons constitute distinct and individual acts which cannot give rise to a complex crime.[82]

Obviously, appellants and their co-accused performed not only a single act but several individual and distinct acts in the commission of the crime. Thus, Article 48 of the Revised Penal Code would not apply for it speaks only of a "single act."

There are, however, several rulings which applied Article 48 of the Revised Penal Code despite the fact that several acts were performed by several accused in the commission of the crime resulting to the death and/or injuries to their victims.

In ***People v. Lawas***,[83] the members of the Home Guard, upon order of their leader, Lawas, simultaneously and successively fired at several victims. As a result, 50 persons died. It was there held that the **killing was the result of a single impulse as there was no intent on the part of the accused to fire at each and every victim separately and distinctly from each other.**

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81 364 Phil. 259 (1999).
82 Id. at 278.
83 97 Phil. 975 (1955).

If the act or acts complained of resulted from a single criminal impulse, it constitutes a single offense. However, "single criminal impulse" was not the only consideration in applying Article 48 of the Revised Penal Code in the said case because there was therein no evidence at all showing the identity or number of persons killed by each accused. There was also **no conspiracy** to perpetuate the killing, **thus, collective criminal responsibility could not be imputed upon the accused**. **Since it was impossible to ascertain the number of persons killed by each of them, this Court was "forced" to find all the accused guilty of only one offense of multiple homicide instead of holding each of them responsible for 50 deaths**.[84]

Significantly, there was no conspiracy in *People v. Lawas.* However, as this Court held in *People v. Remollino,*[85] the *Lawas* doctrine is more of an exception than the general rule.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and then decide to commit it. It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once established, each and every one of the conspirators is made criminally liable for the crime actually committed by any one of them. In the absence of any direct proof, the agreement to commit a crime may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of interest. **As such, it does not matter who inflicted the mortal wound, as each of the actors**

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84 Campanilla, *The Revised Penal Code* (Book One) 2007, pp. 916-917 citing *People v. Mision*, G.R. No. 63480, 26 February 1991, 194 SCRA 432, 444-445; *People v. Orias*, supra note 80 at 435-436 citing *People v. Hon. Pineda*, 127 Phil. 150, 155-156 (1967).

85 109 Phil. 607 (1960).

incurs the same criminal liability, because the act of one is the act of all.[86]

The Information filed against appellants and their co-accused alleged conspiracy, among others. Although the trial court did not directly state that a conspiracy existed, such may be inferred from the concerted actions of the appellants and their co-accused, to wit: (1) appellants and their co-accused brought Samuel to a waiting shed located on the left side of the road where the yellow pick-up service vehicle boarded by Mayor Tawan-tawan and his group would pass; (2) appellants and their co-accused, thereafter, assembled themselves on both sides of the road and surreptitiously waited for the aforesaid yellow pick-up service vehicle; (3) the moment the yellow pick-up service vehicle passed by the waiting shed, appellants and their co-accused opened fire and rained bullets thereon resulting in the killing and wounding of the victims; (4) immediately, appellants and their co-accused ran towards the house of Samuel's aunt to get their bags and other stuff; (5) Samuel followed appellants and their co-accused; and (6) appellants and their co-accused fled.

Conspiracy is very much evident from the afore-enumerated actuations of the appellants and their co-accused. Clearly, their acts were coordinated. They were synchronized in their approach to riddle with bullets the vehicle boarded by Mayor Tawan-tawan and his group. They were motivated by a single criminal impulse ─ to kill the victims. Indubitably, conspiracy is implied when the accused persons had a common purpose and were united in its execution. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility.[87]

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86 *People v. Orias*, supra note 80 at 433.

87 Id. at 434.

With the presence of conspiracy in the case at bench, appellants and their co-accused had assumed joint criminal responsibility ─ the act of one is the act of all. The ascertainment of who among them actually hit, killed and/or caused injury to the victims already becomes immaterial. Collective responsibility replaced individual responsibility. The *Lawas* doctrine, premised on the impossibility of determining who killed whom, cannot, to repeat, be applied.

Interestingly, in *People v. De los Santos*,[88] *People v. Abella*,[89] *People v. Garcia*[90] and *People v. Pincalin*,[91] this Court also applied Article 48 of the Revised Penal Code even though several acts were performed by the accused **and** conspiracy attended the commission of the crime.

In *People v. De los Santos*,[92] a prison riot occurred for two consecutive days inside the national penitentiary between the members of two gangs, *i.e.*, *Sigue-Sigue Sputnik* and *Oxo*. As a result, nine (9) inmates were killed. Fourteen (14) inmates were then convicted for the crime of multiple murder. The existence of conspiracy in the commission of the crime was duly proven. There was, however, no discussion why the accused were convicted of a complex crime instead of separate crimes.

In a similar case of *People v. Abella*,[93] involving the massacre of certain prisoners in the Davao Penal Colony and a reprise of a similar riot that occurred in the national penitentiary on 16 February 1958 (subject of *De los Santos*), all the accused were also convicted for the complex crime of multiple murder and multiple frustrated murder. Conspiracy likewise

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88 122 Phil. 55 (1965).
89 181 Phil. 285 (1979).
90 185 Phil. 362 (1980).
91 190 Phil. 117 (1981).
92 Supra note 88.
93 Supra note 89.

attended the commission of the crime. This Court applied the ruling in *De los Santos* and elucidated that the ruling in the said case is predicated on the theory that "when for the **attainment of a single purpose** which constitutes an offense, **various acts are executed, such acts must be considered only as one offense,**" **a complex one**. The *Lawas* doctrine was equally applied although conspiracy had been duly proven. This Court then stated that **where a conspiracy animates several persons with a single purpose** "**their individual acts in pursuance of that purpose are looked upon as a single act – the act of execution – giving rise to a complex offense**. The felonious agreement produces a sole and solidary liability: each confederate forms but a part of a single being."[94]

People v. Garcia[95] and *People v. Pincalin*[96] have the same factual background as *De los Santos* and *Abella*. They were the third and fourth cases, respectively, of prison riots resulting to the killing of convicts by fellow convicts while inside the national penitentiary. In *Garcia*, the accused were convicted for the complex crime of multiple murder and double attempted murder, while in *Pincalin* the accused were convicted for the complex crime of double murder and frustrated murder. In both cases, this Court found conspiracy to have attended the commission of the crime.

In applying Article 48 of the Revised Penal Code in *Garcia* and *Pincalin*, this Court, gave the same justification as in *Abella:* that both cases were covered by the rule that "**when for the attainment of a single purpose, which constitutes an offense various acts are executed, such acts must be considered as only one offense, a complex one**." Correspondingly, "**where a conspiracy animates several persons with a single purpose, their individual acts done in pursuance of that purpose**

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94 Id. at 311-313. (Emphasis supplied).
95 Supra note 90.
96 Supra note 91.

are looked upon as a single act, the act of execution, giving rise to a complex offense. Various acts committed under one criminal impulse may constitute a single complex offense.[97]

We however found no intention by this Court to establish as doctrine, contrary to *Lawas,* that Article 48 is applicable even in cases where several acts were performed by the accused **and** conspiracy attended the commission of the crime. In *Pincalin*, this Court has already clarified that: [n]onetheless, this Court further held that "in other cases where several killings on the same occasion were perpetrated, but not involving prisoners, a different rule may be applied, that is to say, the killings would be treated as separate offenses, as opined by Mr. Justice Makasiar and as held in some decided cases."[98]

De los Santos, *Abella*, *Garcia* and *Pincalin*, therefore, were exceptions to the general rule stated in Article 48 which exceptions were drawn by the peculiar circumstance of the cases.

It may be mentioned that in *People v. Sanidad*,[99] this Court, once again, applied Article 48 of the Revised Penal Code although the circumstances of the case were not the same as in *Lawas*, *De los Santos*, *Abella*, *Garcia* and *Pincalin*, where this Court departed from the general rule.

In *Sanidad*, suddenly and without a warning, several accused unleashed a volley of shots at the jeepney boarded by the victims. Miraculously, all passengers, except Rolando Tugadi (Rolando), survived

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97 *People v. Garcia*, supra note 90 at 369-370 (emphasis supplied); *People v. Pincalin*, supra note 91 at 125. (Emphasis supplied)

98 *People v. Pincalin*, id. at 126. (Emphasis supplied)

99 Supra note 75.

the ambush and suffered only minor injuries. Conspiracy attended the commission of the crime. Accused were convicted for the complex crime of murder and multiple attempted murder. We there held that the case comes within the purview of Article 48 of the Revised Penal Code. Citing *Lawas* and *Abella*, it was pronounced that although several independent acts were performed by the accused, it was not possible to determine who among them actually killed Rolando; and that there was no evidence that the accused intended to fire at each and every one of the victims separately and distinctly from each other. On the premise that the evidence clearly shows a single criminal impulse to kill Marlon Tugadi's group as a whole, we repeated that where a conspiracy animates several persons with a single purpose, their individual acts done in pursuance of that purpose are looked upon as a single act, the act of execution, giving rise to a single complex offense.[100]

The reliance in *Sanidad,* on *Lawas* and *Abella* is incorrect.

The application of the *Abella* doctrine, has already been clarified in *Pincalin*, thus: where several killings on the same occasion were perpetrated, but not involving prisoners, a different rule may be applied, that is to say, the killings would be treated as separate offenses. Since in *Sanidad*, the killings did not involve prisoners or it was not a case of prisoners killing fellow prisoners. As such, *Abella* would not apply.

To repeat, in *Lawas*, this Court was merely forced to apply Article 48 of the Revised Penal Code because of the impossibility of ascertaining the number of persons killed by each accused. Since conspiracy was not proven therein, joint criminal responsibility could not be attributed to the accused. Each accused could not be held liable for separate crimes because of lack of

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[100] Id. at 463-464.

clear evidence showing the number of persons actually killed by each of them.

Proven conspiracy could have overcome the difficulty.

Our repeated ruling is that in conspiracy, the act of one is the act of all. It is as though each one performed the act of each one of the conspirators. Each one is criminally responsible for each one of the deaths and injuries of the several victims. The severalty of the acts prevents the application of Article 48. The applicability of Article 48 depends upon the singularity of the act, thus the definitional phrase "a single act constitutes two or more grave or less grave felonies." This is not an original reading of the law. In *People v. Hon. Pineda*,[101] the Court already recognized the "deeply rooted *x x x* doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes." As we observed in *People v. Tabaco,*[102] clarifying the applicability of Article 48 of the [Revised Penal Code], [this Court] further stated in [*Hon.*] *Pineda* that "to apply the first half of Article 48, *x x x* there must be singularity of criminal act; singularity of criminal impulse is not written into the law."[103]

With all the foregoing, this Court holds appellants liable for the separate crimes of two (2) counts of murder and seven (7) counts of attempted murder.

As to penalty. Under Article 248 of the Revised Penal Code, the penalty imposed for the crime of murder is *reclusion perpetua* to death. There being neither aggravating nor mitigating circumstance, the penalty to

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101 Supra note 84 at 154.
102 336 Phil. 771 (1997).
103 Id. at 802-803 citing *People v. Hon. Pineda*, supra note 84 at 154-155.

be imposed upon appellants is *reclusion perpetua* for each count, pursuant to paragraph 2, Article 63[104] of the Revised Penal Code.[105]

Appellants are also guilty of seven (7) counts of attempted murder. The penalty prescribed by law for murder, *i.e.*, *reclusion perpetua* to death, should be reduced by two degrees, conformably to Article 51[106] of the Revised Penal Code. Under paragraph 2, Article 61,[107] in relation to Article 71 of the Revised Penal Code, such a penalty is *prision mayor*. There being neither mitigating nor aggravating circumstance, the same should be imposed in its medium period pursuant to paragraph 1, Article 64[108] of the Revised Penal Code.[109] Applying the Indeterminate Sentence Law in the case of attempted murder, the maximum shall be taken from the medium period of *prision mayor*, which is 8 years and 1 day to 10 years, while the

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104 **ART. 63**. *Rules for the application of indivisible penalties*. – In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

105 *People v. Molina*, G.R. No. 184173, 13 March 2009, 581 SCRA 519, 540.

106 **ART. 51**. *Penalty to be imposed upon principals of attempted crime*. – 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.

107 **ART. 61**. *Rules for graduating penalties*. – For the purpose of graduating the penalties which, according to the provisions of articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

x x x x

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

108 **ART. 64**. Rules for the application of penalties which contain three periods. – In cases in which the penalties prescribed by law contain three periods, whether it be single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

109 *People v. Molina*, supra note 105 at 541.

minimum shall be taken from the penalty next lower in degree, *i.e.*, *prision correccional*, in any of its periods, the range of which is 6 months and 1 day to 6 years. This Court, therefore, imposed upon the appellants the indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum, for each count of attempted murder.

As to damages. When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[110]

Article 2206 of the Civil Code provides that when death occurs as a result of a crime, the heirs of the deceased are entitled to be indemnified for the death of the victim without need of any evidence or proof thereof. Moral damages like civil indemnity, is also mandatory upon the finding of the fact of murder.[111] Therefore, the trial court and the appellate court properly awarded civil indemnity in the amount of ₱50,000.00 and moral damages also in the amount of ₱50,000.00 to the heirs of each deceased victims.

Article 2230 of the Civil Code states that exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances. In this case, treachery may no longer be considered as an aggravating circumstance since it was already taken as a qualifying circumstance in the murder, and abuse of superior strength which would otherwise warrant the award of exemplary damages was already absorbed in the treachery.[112] However, in *People v. Combate*,[113] this Court still awards

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110 Id. at 542.
111 *People v. Barde*, supra note 51 at 220.
112 *People v. Elijorde*, 365 Phil. 640, 652-653 (1999).
113 G.R.No.189301, 15 December 2010, 638 SCRA 797.

exemplary damages despite the lack of any aggravating circumstance to deter similar conduct and to serve as an example for public good. Thus, to deter future similar transgressions, the Court finds that an award of ₱30,000.00 as exemplary damages in favor of the heirs of each deceased victims is proper.[114] The said amount is in conformity with this Court's ruling in *People v. Gutierrez*.[115]

Actual damages cannot be awarded for failure to present the receipts covering the expenditures for the wake, coffin, burial and other expenses for the death of the victims. In lieu thereof, temperate damages may be recovered where it has been shown that the victim's family suffered some pecuniary loss but the amount thereof cannot be proved with certainty as provided for under Article 2224 of the Civil Code.[116] In this case, it cannot be denied that the heirs of the deceased victims suffered pecuniary loss although the exact amount was not proved with certainty. Thus, this Court similarly awards ₱25,000.00 as temperate damages to the heirs of each deceased victims.[117]

The surviving victims, Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito, are also entitled to moral, temperate and exemplary damages.

Ordinary human experience and common sense dictate that the wounds inflicted upon the aforesaid victims would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injuries.[118] It is

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114 *People v. Buban*, G.R. No. 170471, 11 May 2007, 523 SCRA 118, 134.
115 G.R. No. 188602, 4 February 2010, 611 SCRA 633, 647.
116 *People v. Barde*, supra note 51 at 220-221.
117 *People v. Montemayor*, 452 Phil. 283, 306-307 (2003); *People v. Molina*, supra note 105 at 542-543.
118 *People v. Barde*, supra note 51 at 221.

only justifiable to grant them moral damages in the amount of ₱40,000.00 each in conformity with this Court's ruling in *People v. Mokammad*.[119]

The award of ₱25,000.00 each as temperate damages to Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito is also in order. It is beyond doubt that these victims were hospitalized and spent money for their medication. As to Macasuba, although he was not confined in a hospital, it cannot be gainsaid that he also spent for the treatment of the minor injuries he sustained by reason of the ambush. However, they all failed to present any receipt therefor. Nevertheless, it could not be denied that they suffered pecuniary loss; thus, it is only prudent to award temperate damages in the amount of ₱25,000.00 to each of them.

The award of exemplary damages is also in order. Thus, Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito are awarded exemplary damages in the amount of ₱30,000.00 to conform to current jurisprudence.[120]

This Court likewise affirms the award of ₱50,000.00 for and as attorney's fees, as well as costs of the suit, in favor of Mayor Tawan-tawan.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. HC No. 00246 dated 18 June 2008 is hereby **MODIFIED**, as follows: (1) appellants are found guilty beyond reasonable doubt of two (2) counts of murder thereby imposing upon them the penalty of *reclusion perpetua* for each count; (2) appellants are also found guilty beyond reasonable doubt of seven (7) counts of attempted murder thereby imposing upon them the indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 10 years of *prision mayor*, as

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119 G.R. No. 180594, 19 August 2009, 596 SCRA 497, 513.

120 *People v. Barde*, supra note 51 at 222.

maximum, for each count; (3) other than the civil indemnity and moral damages already awarded by the trial court and the appellate court, appellants are further ordered to pay, jointly and severally, exemplary and temperate damages in the amount of ₱30,000.00 and ₱25,000.00, respectively, to the heirs of each deceased victims; and (4) appellants are also directed to pay, jointly and severally, Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito the amount of ₱40,000.00 each as moral damages, ₱25,000.00 each as temperate damages and ₱30,000.00 each as exemplary damages.

Costs against appellants.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice