



Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

JUL 31 2017

THIRD DIVISION

NESTOR GUELOS, RODRIGO  
GUELOS, GIL CARANDANG and  
SPO2 ALFREDO CARANDANG y  
PRESCILLA,

Petitioners,

- versus -

PEOPLE OF THE PHILIPPINES,  
Respondent.

G.R. No. 177000

Present:

VELASCO, JR., J.,  
*Chairperson,*  
BERSAMIN,  
REYES,  
JARDELEZA, and  
TIJAM, JJ.

Promulgated:

June 19, 2017

*Wilfredo V. Lapitan*

X-----X

DECISION

REYES, J.:

Before this Court is a petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> dated November 17, 2006 of the Court of Appeals (CA) in CA-G.R. CR No. 27021, affirming *in toto* the conviction of Nestor Guelos (Nestor), Rodrigo Guelos (Rodrigo), Gil Carandang (Gil) and Senior Police Officer 2 Alfredo Carandang y Prescilla (Alfredo) (petitioners) rendered by the Regional Trial Court (RTC) of Tanauan City, Batangas, Branch 83 in its Decision<sup>3</sup> dated January 24, 2003 in Criminal Cases Nos. P-204 and P-205. The CA Resolution<sup>4</sup> dated March 6, 2007 denied the motion for reconsideration thereof.

<sup>1</sup> *Rollo*, pp. 11-39.

<sup>2</sup> Penned by Associate Justice Andres B. Reyes Jr., with Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan Castillo concurring; *id.* at 42-59.

<sup>3</sup> Rendered by Judge Voltaire V. Rosales; *id.* at 76-85.

<sup>4</sup> *Id.* at 62.

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### The Facts

On December 5, 1995, two separate Informations<sup>5</sup> were filed with the RTC against the petitioners for Direct Assault Upon an Agent of a Person in Authority with Homicide, defined and penalized under Articles 148 and 249, in relation to Article 48, of the Revised Penal Code (RPC). The accusatory portions of the two Informations state:

#### Criminal Case No. P-204

That on or about the 4<sup>th</sup> day of June, 1995, at about 5:00 o'clock in the afternoon, at Barangay Boot, Municipality of Tanauan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, acting in common accord and mutually helping one another, [Nestor] while armed with an Armalite Rifle, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said firearm one SPO2 Estelito Andaya, a bonafide member of the Philippine National Police assigned at Tanauan Police Station, while engaged in the performance of his official duties as peace officer, and while the latter is being held from the back by [Gil] and other companions, whose identities and whereabouts are still unknown, thereby hitting and inflicting upon the said SPO2 Estelito Andaya gunshot wounds on his body which caused his instantaneous death.

Contrary to law.<sup>6</sup>

#### Criminal Case No. P-205

That on or about the 4<sup>th</sup> day of June, 1995, at about 5:00 o'clock in the afternoon, at Barangay Boot, Municipality of Tanauan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, acting in common accord and mutually helping each other, [Nestor] while armed with an Armalite Rifle, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said firearm, one P/Chief Inspector Rolando M. Camacho, a bonafide member of the Philippine National Police and concurrently the Chief of Police of Tanauan, Batangas, while engaged in the performance of his official duties as peace officer, and while the latter is being held at the back including his two arms by [Alfredo] and the barrel of his armalite rifle is being held by [Rodrigo], thereby hitting and inflicting upon the said P/Chief Inspector Rolando M. Camacho gunshot wounds on his head which caused his instantaneous death.

Contrary to law.<sup>7</sup>

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<sup>5</sup> Id. at 72-73, 74-75.

<sup>6</sup> Id. at 72-73.

<sup>7</sup> Id. at 74-75.

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The petitioners pleaded not guilty to the foregoing charges. Thereafter, the joint trial of the two cases ensued. The prosecution and the defense presented their respective versions of the case.<sup>8</sup>

The prosecution presented the following witnesses: PO2 Edgardo Carandang (PO2 Carandang), Alex Malabanan, PO2 Pastor Platon Castillo, Ruel Ramos, Ricardo Jordan, SPO1 Anacleto Garcia (SPO1 Garcia), Dr. Olga Bausa, Rowena Rios, Police Inspector Lorna Tria, Dr. Hermogenes Corachea, PO3 Eugenio Llarina, Marilou Reyes Camacho and Teodora Torres Andaya.<sup>9</sup>

On the other hand, the defense presented: Cancio Angulo (Angulo), Juana Precilla and herein petitioners Nestor, Alfredo and Rodrigo as its witnesses.

The version of the prosecution is as follows:

In the morning of June 4, 1995, Police Chief Inspector Rolando M. Camacho (P/C Insp. Camacho), SPO2 Estelito Andaya (SPO2 Andaya), PO2 Carandang and SPO1 Garcia set off for Sitio Mahabang Buhangin in Tanauan, Batangas to conduct their routine as peace officers of the area. It was already 10:00 a.m. when they left Tanauan Police Station on board a patrol car driven by SPO1 Garcia. While they were in Barangay Gonzales waiting for a boat that would bring them to Sitio Mahabang Buhangin, they heard successive gunshots apparently coming from Barangay Boot. P/C Insp. Camacho then decided to proceed to Barangay Boot to check and to apprehend those who were illegally discharging their firearms. Upon arrival at the place, they were invited for lunch in the house of Angulo. Thereafter, they stayed at the house of the incumbent Barangay Captain, Rafael Gonzales.<sup>10</sup>

At around 2:45 p.m., P/C Insp. Camacho instructed SPO2 Andaya and PO2 Carandang to join the religious procession to monitor those who will indiscriminately fire guns. As they were moving on with the procession, they heard successive gunshots, which they determined to have emanated from the backyard of Silveria Guelos (Silveria). They went back to the house of the Barangay Captain to report to P/C Insp. Camacho what they found out. Acting upon their report, P/C Insp. Camacho decided to go with them to the place of Silveria. In going to the house, they rode a passenger jeepney in order to conceal their purpose. SPO1 Garcia drove their patrol car and followed them.<sup>11</sup>

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<sup>8</sup> Id. at 77.

<sup>9</sup> Id. at 46.

<sup>10</sup> Id. at 46-47.

<sup>11</sup> Id. at 47, 79-80.

Upon reaching the place of Silveria who let them in, P/C Insp. Camacho, PO2 Carandang and SPO2 Andaya then proceeded to the back of the house where they saw around 15 persons drinking liquor. They also noticed empty shells of armalite rifle scattered on the ground. P/C Insp. Camacho then introduced himself as the Chief of Tanauan Police Station and told the group that he and his men were verifying who fired the shots. Someone from the group of drinking men asked him: "Who are you going to pick-up here?" Before P/C Insp. Camacho was able to respond to the taunting question, PO2 Carandang pointed to him the "empty shells" near the comfort room located at the right side from where the group was drinking. Consequently, P/C Insp. Camacho instructed him to collect the scattered empty shells.<sup>12</sup>

When PO2 Carandang was about to follow P/C Insp. Camacho's orders, the former noticed a person, whom he identified as Nestor, wearing a white *sando* and blue walking shorts stand up. While PO2 Carandang was collecting the empty shells, somebody hit him on his nape which caused him to drop his armalite. When he tried to retrieve his firearm, someone hit his hand.<sup>13</sup>

As he was trying to stand up, he saw Alfredo tightly holding (*yapos-yapos*) P/C Insp. Camacho from behind while Rodrigo grabbed the former's baby armalite. As soon as PO2 Carandang was able to stand up, he was hit by Nestor on his left jaw, even as he received a blow to his left eye. Thereafter, as P/C Insp. Camacho was in a helpless and defenseless position, he was shot by Nestor causing him to fall to the ground and later die.<sup>14</sup>

While PO2 Carandang was retreating, he saw SPO2 Andaya being tightly held by the neck by Gil. He then saw Nestor shoot at SPO2 Andaya, who then fell to the ground and died.<sup>15</sup>

PO2 Carandang retreated and started to run but Nestor went after him and shot at him. It was at this juncture when SPO1 Garcia arrived at the scene and returned fire at Nestor, hitting the latter with three out of six shots.<sup>16</sup>

For the defense, petitioners Nestor, Alfredo and Rodrigo took the witness stand and denied the accusations. They narrated a different story.<sup>17</sup>

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<sup>12</sup> Id. at 77-78.

<sup>13</sup> Id. at 78.

<sup>14</sup> Id. at 48.

<sup>15</sup> Id.

<sup>16</sup> Id. at 78.

<sup>17</sup> Id. at 49.

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Nestor testified that at around 3:00 p.m. on June 4, 1995, he was inside the house of his mother when he heard several gunshots. He told his children to lie flat on the floor until it stopped. Thereafter, he went out of the house and saw four persons lying on the ground; he identified two of them as Gil and Alfredo. He also saw an old man standing nearby and asked the latter what happened, but the old man did not reply. Just when he heard that people were rushing towards his mother's house, the old man asked him to pick up the gun laying on the ground. He followed and picked up the same with the intention of surrendering it to a police officer but as he was on his way towards the gate, SPO1 Garcia shot him instead. He was hit three times: on his stomach, his left side, and on his left hand.<sup>18</sup>

Alfredo, on the other hand, testified that as they were drinking, P/C Insp. Camacho together with two other police officers came. They entered one after the other but P/C Insp. Camacho came in first. They were wearing civilian clothes, although he noticed that P/C Insp. Camacho was also wearing a vest where extra ammunition-magazines were kept. P/C Insp. Camacho was armed with a baby-arnalite, while his companions were carrying M-16 rifles. The police officers asked who among them fired a gun to which somebody answered, "We do not know who fired the shot." At this point, Alfredo introduced himself as a fellow-member of the Philippine National Police (PNP); he even saluted P/C Insp. Camacho, but the latter merely ignored the former. Instead, P/C Insp. Camacho pointed the nozzle of his baby arnalite at Alfredo's stomach and used it to lift his t-shirt, as the former asked the latter if he had a gun. Alfredo answered that he had none. While P/C Insp. Camacho was frisking three other men, Rodrigo approached him to ask if he can be of help to the former. P/C Insp. Camacho did not answer Rodrigo's query. Rather, while he was in "port-hand position," P/C Insp. Camacho pushed Rodrigo with his firearm; the latter was out-balanced and fell on his back. While P/C Insp. Camacho was pushing Rodrigo with the use of the nozzle of his "arnalite rifle", the latter swiped the said firearm as he told the former, "*Baka pumutok iyan.*" Thereupon, the firearm of P/C Insp. Camacho fired; a bullet hit Alfredo's thigh. Thereafter, the latter lost consciousness and awakened only when being transported to a nearby hospital.<sup>19</sup>

Rodrigo testified that in the afternoon of June 4, 1995, he was watching a religious procession in front of the gate of his parents' house when P/C Insp. Camacho and two others, all in civilian clothes and each bearing a long firearm, entered the premises of his parents' house. The group went directly to the area where people were drinking liquor. P/C Insp. Camacho introduced himself as the Chief of Police of Tanauan, and asked who among them fired a gun. He poked his gun at the people there and then

<sup>18</sup> TSN, August 28, 2001, pp. 3-9.

<sup>19</sup> TSN, August 31, 2000, pp. 9-15.

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started frisking some of them. Alfredo stood up and introduced himself as a fellow-member of the PNP, to which P/C Insp. Camacho responded by poking his gun at the former, asking him if he had a gun. Answering "none," Alfredo pulled-up his t-shirt to show he had no gun. His t-shirt was lifted by P/C Insp. Camacho with the nozzle of his gun. Rodrigo approached P/C Insp. Camacho and offered to assist the latter, but instead, P/C Insp. Camacho pointed the gun at his face. Rodrigo swayed the gun away from his face, but he was, in turn, pushed back by P/C Insp. Camacho with the use of the barrel of the same gun causing him to fall to the ground. Then he heard several gunshots, so he covered his head with his hands. When the gunshots stopped, he saw two persons lying, one by his left side and the other, by his right. He then ran for help but on his way out of the premises, he saw a wounded person whom he offered to help. The wounded person ignored him and continued to walk towards a jeepney. Rodrigo proceeded to approach a Barangay *Tanod* and asked him to report the incident to the Barangay Captain. Soon thereafter, the Barangay Captain arrived; police officers from Tanauan also came and Rodrigo was invited to the Police Station for investigation.<sup>20</sup>

On January 24, 2003, the RTC issued a Joint Decision,<sup>21</sup> the dispositive portion of which reads:

WHEREFORE, in Criminal Case No. P-204, this Court finds accused [NESTOR] and [GIL] GUILTY BEYOND REASONABLE DOUBT of Direct Assault Upon an Agent of a Person in Authority with Homicide, defined and penalized under Articles 148 and 249, in relation to Article 48, of the [RPC], for killing [SPO2 Andaya], and hereby sentences each of the accused to suffer the penalty of eleven (11) years of prison correccional maximum, as minimum, up to eighteen (18) years of reclusion temporal maximum, as maximum, and a fine of One Thousand Pesos (Php1,000.00). The accused are directed to pay the heirs of victim [SPO2 Andaya] an indemnity of Fifty Thousand Pesos (Php50,000.00), actual damages in the amount of One Million Pesos (Php1,000,000.00), and moral damages of Fifty Thousand Pesos (Php50,000.00).

In Criminal Case No. P-205, the Court finds accused [NESTOR], [RODRIGO] and [ALFREDO] GUILTY BEYOND REASONABLE DOUBT of Direct Assault Upon an Agent of a Person in Authority with Homicide, defined and penalized under Articles 148 and 249, in relation to Article 48, of the [RPC], for killing [P/C Insp. Camacho], and hereby sentences each of the accused to suffer the penalty of eleven (11) years of prison correccional maximum, as minimum, up to eighteen (18) years of reclusion temporal maximum, as maximum, and to pay a fine of One Thousand Pesos (Php1,000.00) each. The accused are directed to pay the heirs of victim [P/C Insp. Camacho] an indemnity of Fifty Thousand Pesos (Php50,000.00), actual damages in the amount of One Million Six Hundred Thousand Pesos (Php1,600,000.00), and moral damages of Fifty Thousand Pesos (Php50,000.00).

<sup>20</sup> TSN, February 13, 2001, pp. 4-14.

<sup>21</sup> *Rollo*, pp. 76-85.

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SO ORDERED.<sup>22</sup>

The RTC found that between the conflicting versions of the parties, that of the prosecution is more credible; the positive declarations of the police officers who testified for the prosecution, particularly that of eyewitness PO2 Carandang, were not impeached.<sup>23</sup> Further, the RTC did not find any reason for any of the prosecution witnesses to falsely testify against the accused. The trial court observed that said witnesses, with special reference to PO2 Carandang, testified in a straightforward manner and showed signs of candor, as compared to the accused, who were smart-alecky and did not sound truthful.<sup>24</sup> The petitioners appealed to the CA.

On November 17, 2006, the CA affirmed *in toto* the petitioners' conviction in its Decision<sup>25</sup> as follows:

**WHEREFORE**, the Decision appealed from is hereby **AFFIRMED** *in toto*.

**SO ORDERED.**<sup>26</sup>

Hence, this petition for review with the following assignment of errors:

A. THE CA GRAVELY ERRED IN RELYING ON THE UNSUBSTANTIATED TESTIMONY OF THE ALLEGED EYEWITNESS PO2 CARANDANG AND HOLDING THE PETITIONERS GUILTY OF THE CRIME CHARGED.

B. THE CA ERRED IN AFFIRMING *IN TOTO* THE JUDGMENT OF THE LOWER COURT NOTWITHSTANDING THE GLARING INSUFFICIENCY OF EVIDENCE TO WARRANT THE CONVICTION OF THE PETITIONERS.

C. THE CA GRAVELY ERRED IN HOLDING THAT THERE IS CONSPIRACY BETWEEN THE PETITIONERS DESPITE FAILURE OF THE PROSECUTION TO PROVE THE SAME.<sup>27</sup>

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<sup>22</sup> Id. at 85.

<sup>23</sup> Id. at 83.

<sup>24</sup> Id. at 84.

<sup>25</sup> Id. at 42-59.

<sup>26</sup> Id. at 59.

<sup>27</sup> Id. at 21.

Forthwith, the petitioners fault the CA for affirming their conviction, contending that the testimonies of the prosecution witnesses were uncorroborated by evidence sufficient to establish the petitioners' guilt beyond reasonable doubt. Specifically, the petitioners allege the following, to wit:

1. There is no direct assault of a person in authority to speak of because the group of P/C Insp. Camacho was not in the performance of their duties. The prosecution failed to present the alleged mission order supporting the intelligence operation conducted by P/C Insp. Camacho and his men in Barangay Boot. Further, while the police officers were in civilian attire (shorts, slippers and t-shirts) to go undercover, they were carrying rifles that were not concealed;<sup>28</sup>
2. The injuries suffered by PO2 Carandang, as a result of the assault upon his person while he was in the act of collecting the empty bullet shells, are also unsupported by evidence. The trial court simply took the testimony of PO2 Carandang as the "biblical truth;"<sup>29</sup> and
3. The narration of PO2 Carandang on how P/C Insp. Camacho and SPO2 Andaya were killed cannot stand the test of logic. He could not have possibly witnessed the entire event at the precise moment that he was also assaulted and injured.<sup>30</sup>

Notably, in their Reply,<sup>31</sup> the petitioners incorporated a motion for new trial based on alleged new and material evidence impugning the credibility of PO2 Carandang. They averred that in the case for Direct Assault with Attempted Homicide which PO2 Carandang also filed against Nestor, docketed as Criminal Case No. 95-401 and pending before the Municipal Trial Court (MTC) of Tanauan, Batangas, his testimony therein given from October 10, 2007 to July 30, 2008 was different from his testimony in the case at bar.<sup>32</sup>

### **Ruling of the Court**

It is clear that the petitioners basically raise only questions of fact. Nonetheless, the Court gave due course to the instant petition due to the following reasons:

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<sup>28</sup> Id. at 25-26.

<sup>29</sup> Id. at 26-27.

<sup>30</sup> Id. at 27-28.

<sup>31</sup> Id. at 206-227.

<sup>32</sup> Id. at 211-221.



Firstly, pursuant to the settled rule that in a criminal case an appeal throws the whole case open for review,<sup>33</sup> the Court, however, finds that this case actually presents a question of law; specifically, on whether or not the constitutional right of the accused to be informed of the nature and cause of the accusation against them was properly observed.

Secondly, the petitioners, in the Reply, invite the Court's attention to the subsequent testimony of PO2 Carandang in the later case filed against Nestor. The petitioners assert that said testimony should be considered as new and material evidence which thereby makes the findings of the trial court in the instant case as manifestly mistaken, absurd or impossible. Thus, the petitioners moved for a new trial on the ground of alleged newly discovered evidence without, however, necessarily withdrawing their petition.

At the outset, the petitioners' motion for new trial is denied.

Clearly, the Rules of Court proscribe the availment of the remedy of new trial on the ground of newly discovered evidence at this stage of appeal. Section 1 of Rule 121 states:

At any time before a judgment of conviction becomes final, the court may, on motion of the accused or at its own instance but with the consent of the accused, grant a new trial or reconsideration.

Under Section 14 of Rule 124, a motion for new trial on the ground of newly discovered evidence may be filed at any time after the appeal from the lower court has been perfected and before the judgment of the CA convicting the appellant becomes final. Further, Rule 45, Section 1 clearly provides that a motion for new trial is not among the remedies which may be entertained together with a petition for appeal on *certiorari*.

More importantly, the alleged newly discovered evidence is not worthy of the Court's consideration.

The petitioners allege that in the MTC proceedings, PO2 Carandang failed to positively identify who actually hit him and/or the persons involved in the killing of P/C Insp. Camacho and SPO2 Andaya which is a complete turn-around from his testimony in the case at bar where he positively identified the petitioners as the perpetrators. At any rate, aside from this alleged glaring inconsistency of PO2 Carandang's testimony, said subsequent testimony is marred by inconsistencies in itself. For instance, in his cross-examination on May 14, 2008, he stated that when he came to his

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<sup>33</sup> *People v. Tambis*, 582 Phil. 339, 344 (2008).

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full consciousness after being unconscious or dizzy for about two minutes, he saw P/C Insp. Camacho and SPO2 Andaya lying down; then, during his re-cross examination on July 30, 2008, he stated that when he regained consciousness after being unconscious or dizzy for about five minutes, he did not see where P/C Insp. Camacho or his other teammates were. Still, on numerous occasions, he failed to categorically answer questions as he could not recall. Considering the value of PO2 Carandang's testimony, he being the only eyewitness to the said fateful event, there would have been no sufficient evidence to prove the guilt of the petitioners.<sup>34</sup>

However, the Court cannot agree with the petitioners' contention that the testimony of PO2 Carandang before the MTC effectively cast doubt upon his previous testimony or makes it a falsity. The MTC testimony was given after 10 years from the time PO2 Carandang testified in the case at bar. Considering the length of time that had elapsed and the frailty of human memory, the Court gives more credence to PO2 Carandang's testimony in the instant case which was given after a year and 10 months from the incident testified upon. In fact, the drama of the fateful incident appeared so fresh to PO2 Carandang that in the course of his direct examination on April 22, 1997 and while he was demonstrating how Alfredo embraced P/C Insp. Camacho, he became 'emotional' when asked about the next thing that happened to P/C Insp. Camacho.<sup>35</sup>

Jurisprudence dictates that even if a witness says that what he had previously declared is false and that what he now says is true is not sufficient ground to render the previous testimony as false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement not that a previous statement is presumed to be false merely because a witness now says that the same is not true. Indeed, it is a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind. Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses.<sup>36</sup>

Thus, the Court finds no reason to give merit to the petitioners' contentions of alleged new evidence.

In *Sison v. People of the Philippines*,<sup>37</sup> the Court has held that:

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<sup>34</sup> *Rollo*, pp. 211-221.

<sup>35</sup> TSN, April 22, 1997, pp. 11-12.

<sup>36</sup> *Firaza v. People*, 547 Phil. 572, 584 (2007).

<sup>37</sup> 682 Phil. 608 (2012).

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[W]hen the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case. The trial judge enjoys the advantage of observing the witness' deportment and manner of testifying, x x x all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if such witness were telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the [CA].<sup>38</sup>

For this reason alone, the petition must fail.

However, the Court cannot totally affirm the rulings of the courts below. As forthwith stated, an appeal in a criminal case opens the entire case for review; the Court can correct errors unassigned in the appeal. The Court finds that the Informations in this case failed to allege all the elements which constitute the crime charged.

The petitioners are being charged with the complex crime of Direct Assault Upon an Agent of a Person in Authority with Homicide, defined and penalized under Articles 148 and 249, in relation to Article 48, of the RPC.

The RPC provides:

Art. 148. *Direct assaults.* — Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purpose enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of *prision correccional* in its medium and maximum periods and a fine not exceeding ₱1,000.00 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present, the penalty of *prision correccional* in its minimum period and a fine not exceeding ₱500.00 pesos shall be imposed.

Art. 249. *Homicide.* — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

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<sup>38</sup> Id. at 622, citing *People v. Espino, Jr.*, 577 Phil. 546, 562-563 (2008).

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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.

While the elements constituting the crime of Homicide were properly alleged in the two Informations and were duly established in the trial, the said Informations, however, failed to allege all the elements constitutive of the applicable form of direct assault. To be more specific, the Informations do not allege that the offenders/petitioners knew that the ones they were assaulting were agents of a person in authority, in the exercise of their duty.

Direct assault, a crime against public order, may be committed in two ways: *first*, by “any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition”; and *second*, by any person or persons who, without a public uprising, “shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance.”<sup>39</sup> (Citation omitted)

Indubitably, the instant case falls under the second form of direct assault. The following elements must be present, to wit:

1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance;
2. That the person assaulted is a person in authority or his agent;
3. That at the time of the assault, the person in authority or his agent (a) is engaged in the actual performance of official duties, or (b) is assaulted by reason of the past performance of official duties;
4. **That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties;** and
5. That there is no public uprising.

In the instant case, the Informations<sup>40</sup> alleged the following, to wit:

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<sup>39</sup> *People v. Recto*, 419 Phil. 674, 689-690 (2001).

<sup>40</sup> *Rollo*, pp. 72-73, 74-75.

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1. That on or about the 4<sup>th</sup> day of June 1995, at about 5:00 p.m., in Barangay Boot, Municipality of Tanauan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, acting in common accord and mutually helping one another, Nestor while armed with an armalite rifle, with intent to kill and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearm the victims, SPO2 Andaya/P/C Insp. Camacho;
2. That the said victims are bona fide members of the PNP assigned at Tanauan Police Station, and one of them was the current Chief of Police of Tanauan, Batangas; and
3. That at the time of the incident, they were engaged in the performance of their official duties.

In the course of the trial, the evidence presented sufficiently established the foregoing allegations including the fact that the petitioners came to know that the victims were agents of a person in authority, as the latter introduced themselves to be members of the PNP.

Nevertheless, the establishment of the fact that the petitioners came to know that the victims were agents of a person in authority cannot cure the lack of allegation in the Informations that such fact was known to the accused which renders the same defective. In addition, neither can this fact be considered as a generic aggravating circumstance under paragraph 3 of Article 14 of the RPC for *acts committed with insult or in disregard of the respect due the offended party on account of his rank* to justify the imposition of an increased penalty against the petitioners.

As the Court held in *People v. Rodil*:<sup>41</sup>

While the evidence definitely demonstrated that appellant knew because the victim, who was in civilian clothing, told him that he was an agent of a person in authority, he cannot be convicted of the complex crime of homicide with assault upon an agent of a person in authority, for the simple reason that the information does not allege the fact that the accused then knew that, before or at the time of the assault, the victim was an agent of a person in authority. The information simply alleges that appellant did "attack and stab PC Lt. Guillermo Masana while the latter was in the performance of his official duties,..." Such an allegation cannot be an adequate substitute for the essential averment to justify a conviction of the complex crime, which necessarily requires the imposition of the maximum period of the penalty prescribed for the graver

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<sup>41</sup> 196 Phil. 79 (1981).

offense. Like a qualifying circumstance, such knowledge must be expressly and specifically averred in the information; otherwise, in the absence of such allegation, the required knowledge, like a qualifying circumstance, although proven, would only be appreciated as a generic aggravating circumstance. Applying this principle, the attack on the victim, who was known to the appellant as a peace officer, could be considered only as aggravating, being “in contempt of/or with insult to public authorities” (Par. [2], Art. XIV of the [RPC], or as an “insult or in disregard of the respect due the offended party on account of his rank,...”(Par. 3, Art. XIV, [RPC]).

It is essential that the accused must have knowledge that the person attacked was a person in authority or his agent in the exercise of his duties, because the accused must have the intention to offend, injure, or assault the offended party as a person in authority or agent of a person in authority.<sup>42</sup>

“The Constitution mandates that the accused, in all criminal prosecutions, shall enjoy the right to be informed of the nature and cause of the accusation against him. From this fundamental precept proceeds the rule that the accused may be convicted only of the crime with which he is charged.”<sup>43</sup> This right is accorded by the Constitution so that the accused can prepare an adequate defense against the charge against him. Convicting him of a ground not alleged while he is concentrating on his defense against the ground alleged would plainly be unfair and underhanded.<sup>44</sup> It must be noted that said constitutional right is implemented by the process of arraignment<sup>45</sup> in which the allegations in the document charging an offense is read and made known to the accused. Accordingly, a Complaint or Information which does not contain all the elements constituting the crime charged cannot serve as a means by which said constitutional requirement is satisfied. Corollarily, the fact that all the elements of the crime were duly proven in trial cannot cure the defect of a Complaint or Information to serve its constitutional purpose.

Pursuant to the said constitutional precept, the 2000 Revised Rules of Criminal Procedure requires that every element of the offense must be alleged in the complaint or information so as to enable the accused to suitably prepare his defense. **Corollarily, qualifying circumstances or generic aggravating circumstances will not be appreciated by the Court unless alleged in the Information.** This requirement is now laid down in Sections 8 and 9 of Rule 110, to wit:

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<sup>42</sup> Id. at 99-100.

<sup>43</sup> *Navarrete v. People*, 542 Phil. 496, 504 (2007).

<sup>44</sup> *People v. Mendigurin*, 456 Phil. 328, 344 (2003).

<sup>45</sup> *See Lumanlaw v. Judge Peralta, Jr.*, 517 Phil. 588, 597 (2006).

SEC. 8. *Designation of the offense.* - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and **specify its qualifying and aggravating circumstances.** If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

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

The 2000 Revised Rules of Criminal Procedure explicitly mandates that qualifying and aggravating circumstances must be stated in ordinary and concise language in the complaint or information. When the law or rules specify certain circumstances that can aggravate an offense or that would attach to such offense a greater penalty than that ordinarily prescribed, such circumstances must be both alleged and proven in order to justify the imposition of the increased penalty.<sup>46</sup> Due to such requirement being *pro reo*, the Court has authorized its retroactive application in favor of even those charged with felonies committed prior to December 1, 2000 (*i.e.*, the date of the effectivity of the 2000 Revised Rules of Criminal Procedure that embodied the requirement).<sup>47</sup>

In *People v. Flores, Jr.*,<sup>48</sup> as reiterated in the more recent cases of *People v. Pangilinan*<sup>49</sup> and *People v. Dadulla*,<sup>50</sup> the Court ruled that the constitutional right of the accused to be informed of the nature and cause of the accusation against him cannot be waived for reasons of public policy. Hence, it is imperative that the complaint or information filed against the accused be complete to meet its objectives. As such, an indictment *must fully state the elements of the specific offense* alleged to have been committed. For an accused cannot be convicted of an offense, even if duly proven, unless it is alleged or necessarily included in the complaint or information.<sup>51</sup> In other words, the complaint must contain a specific allegation of every fact and circumstance necessary to constitute the crime charged, **the accused being presumed to have no independent knowledge of the facts that constitute the offense.**<sup>52</sup> Under Section 9 of Rule 117 of the 2000 Revised Rules on Criminal Procedure, **an accused's failure to raise an objection to the insufficiency or defect in the information would not amount to a waiver of any objection based on said ground or**

<sup>46</sup> *People v. Corral*, 446 Phil. 652, 667-668 (2003).

<sup>47</sup> *People v. Dadulla*, 657 Phil. 442, 451 (2011).

<sup>48</sup> 442 Phil. 561 (2002).

<sup>49</sup> 676 Phil. 16 (2011).

<sup>50</sup> 657 Phil. 442 (2011).

<sup>51</sup> *People v. Flores, Jr.*, supra note 48, at 569-570.

<sup>52</sup> *Id.* at 572.

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**irregularity.**

Section 9 of Rule 117 of the 2000 Revised Rules on Criminal procedure reads:

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

Indeed, the foregoing provision provides that if an accused fails to assert all the grounds available to him under Section 3 of Rule 117 in his motion to quash, or if he, altogether, fails to file a motion a quash – any objection based on the ground or grounds he failed to raise through a motion to quash shall be deemed waived, except the following, thus:

SEC. 3. *Grounds.* - x x x:

- (a) **That the facts charged do not constitute an offense;**
- (b) That the court trying the case has no jurisdiction over the offense charged;  
x x x x
- (g) That the criminal action or liability has been extinguished;  
[and]  
x x x x
- (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

Therefore, the petitioners can only be convicted of the crime of Homicide instead of the complex crime of Direct Assault Upon an Agent of a Person in Authority with Homicide due to the simple reason that the Informations do not sufficiently charge the latter.

[T]he real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information . . . it is not the technical name given by the Fiscal appearing in the title of the information that determines the character of the crime but the facts alleged in the body of the Information.<sup>53</sup>

<sup>53</sup> *Velasco v. Sandiganbayan, et al.*, 704 Phil. 302, 314 (2013), citing *Pilapil v. Sandiganbayan*, 293 Phil. 368, 378 (1993).



Nevertheless, by reason of the fact that the presence of the aggravating circumstance of *acts committed with insult or in disregard of the respect due the offended party on account of his rank* was proven in the course of the trial, exemplary damages should be awarded in each case in addition to such other damages that were already awarded by the courts below. Exemplary damages are justified regardless of whether or not the generic or qualifying aggravating circumstances are alleged in the information. The grant in this regard should be in the sum of ₱30,000.00.<sup>54</sup> In the case of *People v. Catubig*,<sup>55</sup> the Court elucidated on the nature of exemplary damages, thus:

Also known as “punitive” or “vindictive” damages, **exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.** x x x In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant – associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud – that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages **that may be awarded against a person to punish him for his outrageous conduct.** In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.<sup>56</sup> (Citations omitted and emphasis ours)

Accordingly, since the petitioners are all found to be principally liable for the crimes committed as conspiracy was duly proven, exemplary damages in the amount of ₱30,000.00 should be awarded against each of them.

**WHEREFORE**, the judgment is hereby **AFFIRMED** with **MODIFICATION**. Petitioners Nestor Guelos, Rodrigo Guelos, Gil Carandang and SPO2 Alfredo Carandang y Prescilla are hereby found **GUILTY** of Homicide and sentenced to an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of *prision mayor*, as minimum, to FOURTEEN (14) YEARS and ONE (1) DAY of *reclusion temporal*, as maximum. The fine of ₱1,000.00 is **DELETED**. In addition to the amount of damages and civil indemnity that were already awarded by the courts below to the respective heirs of Police Chief Inspector Rolando Camacho and Senior Police Officer 2 Estelito Andaya, each of the petitioners are also directed to pay the amount of ₱30,000.00 as exemplary damages to each of the victims.

<sup>54</sup> *People v. Reyes*, 714 Phil. 300, 309-310 (2013).

<sup>55</sup> 416 Phil. 102 (2001).


<sup>56</sup> *Id.* at 118-119.

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**SO ORDERED.**

  
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**FRANCIS H. JARDELEZA**  
Associate Justice

  
**NOEL GIMENEZ TIJAM**  
Associate Justice

**ATTESTATION**

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

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

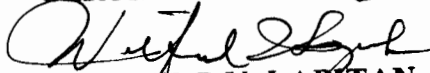
**CERTIFICATION**

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



**MARIA LOURDES P. A. SERENO**  
Chief Justice

**CERTIFIED TRUE COPY**



**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division

JUL 31 2017

