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MISAELO DOMINGO C. BATTUNG III  
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Third Division

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Republic of the Philippines  
Supreme Court  
Manila  
THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES  
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PEOPLE OF THE PHILIPPINES, G.R. No. 226486  
Plaintiff-Appellee,

Present:

-versus-

LEONEN, J., *Chairperson*,  
GESMUNDO,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

GLECERIO PITULAN y  
BRIONES,  
Accused-Appellant.

Promulgated:  
January 22, 2020  
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DECISION

LEONEN, J.:

In homicide, the prosecution's failure to present the weapon is not fatal to its case. An eyewitness' credible testimony on the fact of the crime and the assailant's identity is sufficient to prove the *corpus delicti*. Moreover, the prosecution's failure to conduct paraffin and ballistic testing has no effect on the evidentiary value of an eyewitness' positive identification of the accused as the assailant. The accused's bare denial, on its own, cannot outweigh the eyewitness' positive identification.

This Court resolves the Notice of Appeal<sup>1</sup> assailing the Decision<sup>2</sup> of the Court of Appeals, which affirmed the Regional Trial Court Decision<sup>3</sup>

<sup>1</sup> *Rollo*, pp. 20-23.

<sup>2</sup> *Id.* at 2-19. The Decision dated August 12, 2015 and docketed as CA-G.R. CR-HC No. 06017 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Ricardo R. Rosario and Eduardo B. Peralta, Jr. of the Sixteenth Division, Court of Appeals, Manila.

<sup>3</sup> *CA rollo*, pp. 51-66. The decision dated January 21, 2013 and docketed as Criminal Case Nos. Q-03-116802 to 116804 was penned by Acting Presiding Judge Maria Filomena D. Singh.

finding Glicerio Pitulan y Briones (Pitulan) guilty beyond reasonable doubt of the complex crime of direct assault with murder.

Three (3) Informations were filed against Pitulan for direct assault with murder of Police Officer 1 Aldy Monteroso (PO1 Monteroso), direct assault with attempted murder of Police Officer 1 Alberto Cirilo Dionisio (PO1 Dionisio), and direct assault with frustrated murder of PO1 Benito De Vera (PO1 De Vera). The Informations read:


Criminal Case No. Q-03-116802  
against Glicerio Pitulan y Briones  
for Direct Assault with Murder

“That on or about the 20<sup>th</sup> day of April, 2003 in Quezon City, Philippines, the said accused, conspiring, confederating with Eufemio Pitulan, Sergs Pitulan, Edward Pitulan, Felomino Pitulan and Augusto Torres, who were killed during the shootout with the apprehending police officers, and with another person whose name, identity and whereabouts has (*sic*) not yet been ascertained, and mutually helping each other, did then and there wilfully, unlawfully and feloniously with treachery, evident premeditation, and taking advantage of superior strength, attack, assault and employ personal violence upon the person of PO1 ALDY MONTEROSO y BELTRAN, a bonafide member of the PNP CPDO, assigned at Police Station 3, Talipapa Police Station, this City, and therefore an agent of a person in authority who was then engaged in the performance of his official duties, and the accused knew him to be such, by then and there shooting him, with intent to kill, with the use of a .38 cal. revolver, hitting him on the chest, thereby inflicting upon him fatal injury which was the direct cause of his death, to the damage and prejudice of the heirs of said PO1 Aldy B. Monteroso.

CONTRARY TO LAW.”

Criminal Case No. Q-03-116803  
against Glicerio Pitulan y Briones  
for Direct Assault with Attempted Murder

That on or about the 20<sup>th</sup> day of April, 2003 in Quezon City, Philippines, the said accused, conspiring, confederating with Eufemio Pitulan, Sergs Pitulan, Edward Pitulan, Felomino Pitulan and Augusto Torres, who were killed during the shootout with the apprehending police officers, and with another person whose name, identity and whereabouts has (*sic*) not yet been ascertained, and mutually helping each other, did then and there wilfully, unlawfully and feloniously with treachery, evident premeditation, and taking advantage of superior strength, commence the commission of the crime of Murder directly by overt acts upon the person of one PO1 ALBERTO CIRILO DIONISIO y DELA CRUZ, a bonafide member of the PNP, CPDO, assigned at Police Station 3, Talipapa Police Station, this City, and therefore an agent of a person in authority who was then engaged in the performance of his official duties, and the accused knew him to be such, by then and there shooting him, with intent to kill, with the use of a .38 cal. [r]evolver, but said accused was not able to perform all the acts of execution which should produce the crime of Murder by reason of some cause or accident other than his own



spontaneous desistance, to the damage and prejudice of the said PO1 Alberto Cirilo Dionisio y Dela Cruz.

CONTRARY TO LAW.”

Criminal Case No. Q-05-133382  
against Glycerio Pitulan y Briones  
For Direct Assault with Frustrated Murder

“That on or about the 20<sup>th</sup> day of April, 2003 in Quezon City, Philippines, the said accused, conspiring, confederating with Eufemio Pitulan, Sergs Pitulan, Edward Pitulan, Felomino Pitulan and Augusto Torres, who were killed during the shootout with the apprehending police officers, and with another person whose name, identity and whereabouts has (*sic*) not yet been ascertained, and mutually helping each other, did then and there wilfully, unlawfully and feloniously with treachery, evident premeditation, and taking advantage of superior strength, attack, assault and employ personal violence upon the person of (*sic*) commence the commission of the crime of Murder directly by overt acts upon the person of one PO1 BENITO DE VERA y JOPSON, a bonafide member of the PNP, CPDO, assigned at Police Station 3, Talipapa Police Station, this City, and therefore an agent of a person in authority who was then engaged in the performance of his official duties, and the accused knew him to be such, by then and there shooting him, with intent to kill, with the use of a .38 cal. [r]evolver, hitting him on the different parts of his body, thereby inflicting upon him fatal injuries, the offender performing all the acts of execution which would produce death as a consequence but which nevertheless did not produce it by reason of some causes independent of the will of the perpetrator, to the damage and prejudice of the said PO1 Benito De Veyra (*sic*) y Jopson.

CONTRARY TO LAW.”<sup>4</sup>

Pitulan was arraigned on all the charges, to which he pleaded not guilty. Trial thus ensued.<sup>5</sup>

For its part, the prosecution presented PO1 De Vera, PO1 Dionisio, and Police Officer 3 Eric Cortez (PO3 Cortez) as witnesses. The parties stipulated on the testimonies of the prosecution’s other witnesses, the case investigator and the medico-legal officer.<sup>6</sup>

From their testimonies, the prosecution alleged that on April 20, 2003, the group of PO1 De Vera, PO1 Dionisio, and PO1 Monteroso responded to a report that of a group of armed men aboard a Hyundai van was acting suspiciously along General Avenue, Barangay Bahay Toro, Project 8, Quezon City. Thus, the officers, in complete uniform, rode their police mobile patrol to the reported location.<sup>7</sup>

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<sup>4</sup> Id. at 51–53.

<sup>5</sup> Id. at 53.

<sup>6</sup> Id.

<sup>7</sup> Id. at 81.

On their way to General Avenue, the officers saw a van, with plate no. PVY-701, matching the description of the vehicle they were looking for. They ordered the van to halt, but it gave chase instead, until the officers overtook and blocked its path along Road 20.<sup>8</sup>

The officers ordered the riders to step out of the vehicle. When all but the driver complied, PO1 Monteroso opened the door opposite the driver's side to check on him. However, as soon as he did so, the driver—who was later identified as Pitulan—shot him thrice on the chest.<sup>9</sup>

Simultaneously, the other van passengers, later identified as Eufemio Pitulan, Sergs Pitulan, Edward Pitulan, Felomino Pitulan, and Augusto Torres, wrestled with PO1 De Vera and PO1 Dionisio.<sup>10</sup> One (1) of them was able to get PO1 Monteroso's gun and fired at PO1 De Vera, injuring him in the shootout.<sup>11</sup>

Pitulan then attempted to escape, but on his way, he encountered PO3 Cortez and his team who was responding to a radio message of the gun battle.<sup>12</sup>

PO3 Cortez's team ordered the van to stop and attempted to approach the van. However, its driver, whom he later identified as Pitulan, opened fire at their patrol car. The officers fired back and, in the shootout that ensued, hit the van's left tire. The van hit an island at the intersection of Visayas Avenue and Congressional Avenue.<sup>13</sup>

The other van passengers turned out dead in the shootout,<sup>14</sup> leaving Pitulan to surrender to the police. Once PO3 Cortez and his team arrested him, they brought Pitulan to the East Avenue Medical Center for treatment.<sup>15</sup> The officers were able to recover from him a .38 cal. revolver, four (4) live ammunitions, and two (2) empty shells.<sup>16</sup>

Pitulan solely testified for the defense. He alleged that on April 20, 2003, he was with his four (4) brothers on a Besta van driven by a certain Rudy Pagador. Pitulan fell asleep on the road, only to be awakened later on by successive gunfire, from which he sustained wounds that caused him to

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<sup>8</sup> Id. at 56–57 and 104.

<sup>9</sup> Id. at 81.

<sup>10</sup> Id.

<sup>11</sup> Id. at 105.

<sup>12</sup> Id. at 112–113.

<sup>13</sup> Id. at 82.

<sup>14</sup> Id. at 51–53.

<sup>15</sup> Id. at 106.

<sup>16</sup> Id.

fall unconscious on the floor of the van. He later woke up in a hospital, where he was told that his brothers were all dead.<sup>17</sup>

In its January 21, 2013 Decision,<sup>18</sup> the Regional Trial Court convicted Pitulan of the complex crime of direct assault with murder. It found no dispute that Pitulan was in the van during the shootout, save for his denial that he participated as driver and shooter.<sup>19</sup> It gave credence to the eyewitness account of PO1 De Vera over Pitulan's bare denial.<sup>20</sup>

In ruling that treachery attended PO1 Monteroso's killing, the trial court noted that PO1 Monteroso was shot thrice after opening the door opposite the driver's side, leaving him no opportunity to defend himself.<sup>21</sup> Moreover, since the officer was killed during the performance of his duties, Pitulan was convicted of the complex crime of direct assault with murder.<sup>22</sup>

As for the other charges, the trial court found no conspiracy among the van's passengers who were involved in the shootout. Hence, it acquitted Pitulan of direct assault with attempted murder and direct assault with frustrated murder against PO1 Dionisio and PO1 De Vera, respectively.<sup>23</sup>

The Regional Trial Court imposed the penalty of *reclusion perpetua* for the complex crime of direct assault with murder. Pitulan was ordered to pay the heirs of PO1 Monteroso ₱75,000.00 as civil indemnity *ex delicto*, moral damages of ₱50,000.00, exemplary damages of ₱30,000.00, and temperate damages of ₱30,000.00, and costs of suit. The dispositive portion of the Decision read:

WHEREFORE, judgment is hereby rendered finding the accused Glicerio Pitulan y Briones in Criminal Case No. Q-03-116802 GUILTY beyond reasonable doubt of the crime of Direct Assault with Murder and he is hereby sentenced to suffer the penalty of *reclusion perpetua*.

Accused Glicerio Pitulan y Briones is hereby further ordered to pay the heirs of PO1 Aldy Monteroso y Beltran the following amounts:

- 1) Php75,000.00 as civil indemnity;
- 2) Php50,000.00 as moral damages;
- 3) Php30,000.00 as exemplary damages;
- 4) Php30,000.00 as temperate damages; and
- 5) costs of suit.

In Criminal Case No. Q-03-116803 and Criminal Case No. Q-03-116804, judgment is hereby rendered ACQUITTING the accused Glicerio

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<sup>17</sup> Id. at 45.

<sup>18</sup> Id. at 51-66.

<sup>19</sup> Id. at 55.

<sup>20</sup> Id. at 55-60.

<sup>21</sup> Id. at 61.

<sup>22</sup> Id.

<sup>23</sup> Id. at 62-64.

Pitulan y Briones of the offenses of Direct Assault with Attempted Murder and Direct Assault with Frustrated Murder, for lack of evidence.

SO ORDERED.<sup>24</sup>

Pitulan appealed his case. However, the Court of Appeals, in its August 12, 2015 Decision,<sup>25</sup> affirmed his conviction. It found the police officers' testimonies clear that it was Pitulan who fired successive shots at PO1 Monteroso, the same one who drove off only to be arrested by PO3 Cortez's team.<sup>26</sup> It also affirmed the trial court's findings that the killing of PO1 Monteroso was attended with treachery, qualifying the complex crime to direct assault with murder.<sup>27</sup>

The Court of Appeals dismissed Pitulan's contention that in failing to present the gun and conduct paraffin and ballistic testing, the prosecution failed to prove his guilt beyond reasonable doubt.<sup>28</sup> It held that paraffin testing is extremely unreliable for not being conclusive as to whether the nitrates came from the discharge of a firearm.<sup>29</sup> Moreover, it stated that the lack of ballistic testing does not affect the evidentiary value of an eyewitness' positive identification of the assailant, as in this case.<sup>30</sup>

On September 18, 2015, Pitulan filed his Notice of Appeal.<sup>31</sup> The Court of Appeals, having given due course to his appeal, elevated the case records to this Court.<sup>32</sup>

This Court later required the parties to file their supplemental briefs.<sup>33</sup> However, both accused-appellant and plaintiff-appellee People of the Philippines, through the Office of the Solicitor General, manifested that they would no longer do so. Instead, they would adopt their Briefs filed before the Court of Appeals.<sup>34</sup>

In his Brief,<sup>35</sup> accused-appellant alleges that the lower courts erred in convicting him of direct assault with murder despite the prosecution failing to establish his identity as PO1 Monteroso's assailant.<sup>36</sup>

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<sup>24</sup> Id.

<sup>25</sup> Id. at 107-118.

<sup>26</sup> Id. at 113-114.

<sup>27</sup> Id. at 114-115.

<sup>28</sup> Id. at 115-116.

<sup>29</sup> Id. at 116.

<sup>30</sup> Id. citing *People v. Casanghay*, 440 Phil. 317 (2002) [Per J. Corona, Third Division].

<sup>31</sup> Id. at 128-131.

<sup>32</sup> *Rollo*, pp. 1 and 24.

<sup>33</sup> Id. at 26-27.

<sup>34</sup> Id. at 50-51.

<sup>35</sup> *CA rollo*, pp. 38-50.

<sup>36</sup> Id. at 46-47.

Expounding on this, accused-appellant claims that PO1 De Vera's eyewitness account should not have been given credence, as he was behind the police mobile during the shootout and, thus, could not have seen the driver who shot PO1 Monteroso. He also insists that the prosecution's failure to conduct ballistic and paraffin testing was fatal, as the officers failed to determine whether he really fired any gun. He also faults the prosecution for failing to present the gun used in the shooting.<sup>37</sup>

On the other hand, plaintiff-appellee argues in its Brief<sup>38</sup> that PO1 De Vera's testimony was clear and unequivocal, successfully establishing accused-appellant's identity as the assailant. Contrary to accused-appellant's claim, the officer had directly witnessed the shooting because the back of the police mobile was positioned in front of the van.<sup>39</sup>

Moreover, plaintiff-appellee, citing *People v. Fernandez*,<sup>40</sup> asserts that the presentation of the murder weapon is not indispensable "when the accused has positively been identified."<sup>41</sup> Finally, it points out that this Court has rendered both paraffin and ballistic testing inconclusive, citing *People v. De Guzman*<sup>42</sup> and *Lumanog v. People*.<sup>43</sup>

The issues for this Court's resolution are as follows:

First, whether or not the prosecution's failure to conduct paraffin and ballistic testing was fatal in proving the guilt of accused-appellant Glycerio Pitulan y Briones; and

Second, whether or not accused-appellant was correctly convicted of the complex crime of direct assault with murder.

This Court sustains accused-appellant's conviction only for the complex crime of direct assault with homicide.

The determination of witnesses' credibility is left to the trial courts, which have the unique opportunity to observe their conduct in court. The trial courts' findings are generally binding on this Court and will not be overturned without a showing of any fact or circumstance that was overlooked, misunderstood, or misapplied, which may change the results of

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<sup>37</sup> Id. at 47.

<sup>38</sup> Id. at 75-95.

<sup>39</sup> Id. at 89-90.

<sup>40</sup> 434 Phil. 224 (2002) [Per J. Quisumbing, Second Division].

<sup>41</sup> CA *rollo*, p. 92.

<sup>42</sup> 320 Phil. 158 (1995) [Per J. Puno, Second Division].

<sup>43</sup> 644 Phil. 296 (2010) [Per J. Villarama, Jr., En Banc].

a case. If these findings are affirmed by the Court of Appeals, then all the more will this Court be stringent in applying the rule.<sup>44</sup>

Moreover, denial is an inherently weak defense. Absent any clear and convincing evidence, bare denial will not outweigh an affirmative testimony from a credible witness.<sup>45</sup> Without “any showing of ill motive on the part of the eyewitness testifying on the matter, a categorical, consistent and positive identification of the accused prevails over denial and alibi.”<sup>46</sup>

In this case, accused-appellant assailed his conviction allegedly based on compelling doubt that he was the assailant. However, based on PO1 De Vera’s testimony, both the Regional Trial Court and the Court of Appeals found that of the van’s passengers, only accused-appellant did not alight when ordered to do so. As he was the only one in the van, no other person could have shot PO1 Monteroso from inside. PO1 De Vera testified:

Q: (Prosecutor Luis Maceren)

Mr. Witness, you said that you responded to a shootout. When was this when you responded to a shootout?

A: (PO1 Benito De Vera, Jr.)

Responded to an alarm, sir.

Q:

Alright, responded to an alarm, when was that?

A:

April 20, 2003, sir.

Q:

You mentioned that you responded to an alarm, what was that alarm about?

A:

A Hyundai van was parked with persons inside the van and some were outside the van with ‘*may nakabukol*’ and looking suspiciously, sir.

Q:

No[w], Mr. Witness, when you received this alarm, what did you and Mobile Patrol QC 15 do?

A:

We proceeded to the place, sir.

Q:

By the way, Mr. Witness, you mentioned that your Mobile Patrol QC 15 is a marked vehicle, could you tell us what was the attire of the group including yourself at the time that you were in the performance of your duty as a member of the mobile group?

<sup>44</sup> *People v. Gerola*, 813 Phil. 1055, 1064 (2017) [Per J. Caguioa, First Division] citing *People v. Gahi*, 727 Phil. 642 (2014) [Per J. Leonardo-De Castro, First Division].

<sup>45</sup> *People v. Buclao*, 736 Phil. 325, 339 (2014) [Per J. Leonen, Third Division] citing *People v. Alvero*, 386 Phil. 181 (2000) [Per Curiam, En Banc].

<sup>46</sup> *People v. Magallanes*, 457 Phil. 234, 257 (2003) [Per Curiam, En Banc] citing *People v. Villaver*, 422 Phil. 207 (2001) [Per J. Vitug, Third Division] and *People v. Basquez*, 418 Phil.426 (2001) [Per J. Panganiban, Third Division].



A:  
We were in complete uniform, sir.

Q:  
You said that you, together with your fellow officers proceeded to or responded to this alarm, where did you proceed to?

A:  
General Avenue near Road 20, sir.

Q:  
Were you able to arrive at this area?

A:  
No, sir because we met the van.

Q:  
Where did you encounter or meet the van?

A:  
Along Road 20, sir.

Q:  
Now, when you saw the van along Road 20, what happened then?

A:  
We chased the van and we asked them to pull over but they did not stop, sir.

Q:  
You said that you chased the van and asked them to pull over, how did you ask them to pull over?

A:  
We sounded the siren, sir.

Q:  
You said that they did not stop, what did you do?

A:  
Our driver overtook the van, sir.

Q:  
After over taking (*sic*) the van, what happened then?

A:  
They were forced to stop, sir.

Q:  
Where were they forced to stop, what particular place where (*sic*) they forced to stop?

A:  
Along Road 20 in front of House No. 126, sir.

Q:  
Where is this Road 20, what city is it located, Mr. Witness?

A:  
Brgy. Bahay Toro, Project 8, Quezon City.

Q:  
Now, Mr. witness, after you said that your driver was able to stop, what happened when you were able to stop them?

A:  
We ordered them to get off the van, sir.

Q:

Where were you when this order for them to alight from the van was made?

A:

We also alighted from the Mobile Patrol car, sir.

Q:

Let us go directly to you, Mr. witness. Where were you then standing at that time when they were being asked to alight from their van?

A:

I was behind our Mobile Patrol car, sir.

Q:

What happened when . . . who in particular who was ordering the occupants of the van to alight?

A:

All of us, sir shouting [at] them to alight from the van.

Q:

Then what happened?

A:

Some alighted but some remained inside the van, sir.

Q:

When some of the occupants [in that] van alighted, what happened then, while others remained inside the van, what happened then?

A:

We asked those who remain inside the van to also alight from the van, sir.

Q:

When you were asking them to . . . those who remain inside to alight, what happened then?

A:

The rest alighted except for one, sir.

Q:

When this one person did not alight from the van, what happened next?

A:

We ordered them to raise their hands, sir.

Q:

What happened when you asked them to raise their hands?

A:

They didn't raise their hands, sir.

Q:

What did PO1 Alvin (*sic*) Monteroso do when you said one of the person (*sic*) did not alight from the van?

A:

He opened the door of the van on the right sir.

Q:

By the way, Mr. Witness, where was this person who did not alight from the van seated?

A:

At the driver's seat, sir.

①

Q:  
You said that PO1 Alvin (*sic*) Monteroso opened the van on the right, what do you mean on the right?

A:  
The door on the right side opposite the driver, sir.

Q:  
What happened then when Officer Monteroso opened the said door?

A:  
That's when he was shot at, sir.

Q:  
What happened to Officer Monteroso when he was shot at?

A:  
What I saw was when he was shot at he stepped back and started turning around (*nagpaikot-ikot*), sir.

Q:  
Who shot at Officer Monteroso?

A:  
That person, sir.

Interpreter:  
Witness pointing to a person seated inside the court room when ask (*sic*) to identify himself [f] he gave his name as Glecerio Pitulan.

Q:  
After Officer Monteroso was shot, what happened then?

A:  
"Kinuyog niya kami", his gun was taken from them [him], sir.

Q:  
You said "kinuyog," what do you mean by "kinuyog," Mr. Witness?

A:  
He was attacked and his gun was taken from him, sir.

Q:  
Who attacked him?

A:  
The companions of Pitulan, sir.<sup>47</sup>

Moreover, PO3 Cortez testified that the driver of the van whom they arrested was none other than accused-appellant himself. PO3 Cortez stated:

TSN dated March 21, 2006.  
PO3 Eric Cortez

Prosecutor Andres

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<sup>47</sup> CA rollo, pp. 55-60, TSN dated September 16, 2004 as cited by the Regional Trial Court.

Q: So after receiving that radio message from your radio operator regarding that gun battle and after you were directed to proceed to Road 20, Project 8, Quezon City, what did you and your companions do, if any?

A: We proceeded and while we were approaching Mindanao Avenue we received a radio message coming from CPD-Pre[c]inct 3 regarding the description of the vehicle.

....

Q: And while you were already approaching the target area, what transpired there?

A: While we were approaching Congressional Avenue at the time, we spotted the said vehicle, Hyundai van, so we got close to it and after that we ordered the driver to stop, sir.

Q: After ordering the driver of that Hyundai van with Plate No. PVT-701 as you said to stop, what is the reaction of the driver, if any to your order?

A: The driver fired [at] our mobile patrol car C-172, sir.

Q: So, after your group was fired upon, what were (*sic*) you and your companions do, if any?

A: We retaliated, and shot the rear left wheel of the said van, Sir.

Q: After hitting the rear left wheel as you said of the Hyundai van, what happened next, if any?

A: The Hyundai van hit an island near the stop light at the intersection of Visayas Avenue and Congressional Avenue.

Q: After the said Hyundai van hit the island near the stop light at the intersection of Visayas Avenue and Congressional Avenue, what else happened, if any?

A: We ordered the driver of the van to surrender. When we were approaching to (*sic*) the said vehicle with maximum precaution, the driver of the said van surrendered peacefully and we confiscated to (*sic*) his possession and control a .38 revolver sir.<sup>48</sup>

As the trial court aptly noted, there is no dispute as to where accused-appellant was at the time of the incident. He categorically admitted during trial that he was inside the van when the shootout happened:

There is no dispute that there was a gun battle between the group of the police officers-complainants and the group of the accused. The accused himself admitted this, in addition to the fact that he and his companions (his four brothers and one Rudy Pagador and Augusto Torres) were on board a blue Hyundai Besta/Grace Van, qualifying his statement only by asserting that he was not driving the said van and he was asleep when he woke up to the sound of gunfire, but he never shot at anybody and he lost consciousness, waking up much later already confined in a hospital.<sup>49</sup>

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<sup>48</sup> Id. at 112-113.

<sup>49</sup> Id. at 55, TSNs of accused-appellant.

To this, accused-appellant only denied his involvement in the shooting and claimed that he was knocked unconscious from the wounds he allegedly sustained. This bare denial, without substantial evidence, cannot controvert the clear and positive identification of PO1 De Vera that he saw accused-appellant shoot PO1 Monteroso.

Accused-appellant further assailed his conviction on the ground that the prosecution failed not only to present the gun in evidence, but also to conduct paraffin and ballistic testing—ultimately failing to prove that it was he who shot PO1 Monteroso dead.

These defenses fail. The lower courts correctly convicted accused-appellant for the killing of PO1 Monteroso.

In *People v. Tunicao*,<sup>50</sup> this Court held that the presentation of the murder weapon is not indispensable to prove the *corpus delicti*, as its physical existence is not an element of murder. To prove the *corpus delicti*, the prosecution only needs to show that: “(a) a certain result has been established . . . and (b) some person is criminally responsible for it.”<sup>51</sup>

Here, the prosecution was able to fulfill the twin requirements and prove the *corpus delicti*. First, it offered in evidence PO1 Monteroso’s death certificate<sup>52</sup> showing the cause of his death as “hemorrhagic shock secondary to a gunshot wound to the chest.”<sup>53</sup> Second, it established the identity of the shooter through the clear and positive testimony of PO1 De Vera, a credible eyewitness. Even without the gun, there is no dispute that the prosecution sufficiently established the *corpus delicti*.

Likewise, the Court of Appeals is correct in ruling that paraffin and ballistic testing are not indispensable to prove accused-appellant’s guilt. In *De Guzman*,<sup>54</sup> this Court discussed that paraffin testing is conclusive only as to the presence of nitrate particles in a person, but not as to its source, such as from firing a gun. By itself, paraffin testing only indicates a possibility, not infallibility, that a person has fired a gun:

In a recent case, we reiterated the rule that paraffin test is inconclusive. We held: “Scientific experts concur in the view that the paraffin test has . . . proved extremely unreliable in use. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be established from this test alone that the source of the nitrates or nitrites was the discharge of firearm. The person may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives,

<sup>50</sup> 624 Phil. 345 (2010) [Per J. Abad, Second Division].

<sup>51</sup> Id. at 351 citing *People v. Cabodoc*, 331 Phil. 449, 509–510 (1996) [Per J. Davide, Jr., Third Division].

<sup>52</sup> CA rollo, p. 14, Index of Exhibits, Exhibit “I” to “I-2” of the Prosecution.

<sup>53</sup> Id. at 55.

<sup>54</sup> 320 Phil. 158 (1995) [Per J. Puno, Second Division].

fireworks, fertilizers, pharmaceuticals, and leguminous plants such as peas, beans, and alfalfa (*sic*). A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco.” The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun, since nitrates are also admittedly found in substances other than gunpowder.<sup>55</sup> (Citations omitted)

Similarly, ballistic testing establishes only a likelihood that a bullet was fired from a specific weapon. By itself, it is not enough to prove when the weapon was fired and who fired the weapon. In *Lumanog*,<sup>56</sup> this Court held that ballistic testing, along with the presentation of the weapon and bullets used, are indispensable if there is no credible eyewitness to the shooting. To sustain a conviction, it is sufficient that the *corpus delicti* is established and the eyewitness, through a credible testimony, identifies the accused as the assailant. This Court held:

As this Court held in *Velasco v. People* —

As regards the failure of the police to present a ballistic report on the seven spent shells recovered from the crime scene, the same does not constitute suppression of evidence. A ballistic report serves only as a guide for the courts in considering the ultimate facts of the case. It would be indispensable if there are no credible eyewitnesses to the crime inasmuch as it is corroborative in nature. **The presentation of weapons or the slugs and bullets used and ballistic examination are not prerequisites for conviction.** The *corpus delicti* and the positive identification of accused-appellant as the perpetrator of the crime are more than enough to sustain his conviction. Even without a ballistic report, the positive identification by prosecution witnesses is more than sufficient to prove accused’s guilt beyond reasonable doubt. In the instant case, **since the identity of the assailant has been sufficiently established, a ballistic report on the slugs can be dispensed with in proving petitioner’s guilt beyond reasonable doubt.**<sup>57</sup> (Emphasis in the original)

Finally, in *People v. Casanghay*,<sup>58</sup> this Court ruled that the absence of paraffin and ballistic testing is not fatal to the prosecution’s case. It has no effect on the evidentiary value of an eyewitness testimony positively identifying the accused as the assailant:

The absence of a ballistic examination comparing the bullets fired from the fatal gun with the deformed slug recovered at the scene of the

<sup>55</sup> Id. at 169–170.

<sup>56</sup> 644 Phil. 296 (2010) [Per J. Villarama, Jr., En Banc].

<sup>57</sup> Id. at 403.

<sup>58</sup> 440 Phil. 317 (2002) [Per J. Corona, Third Division].

crime cannot nullify the evidentiary value of the positive identification of the appellant by prosecution eyewitnesses. Likewise, the failure of the police to conduct a paraffin test on the appellant is not fatal to the case of the prosecution. Scientific experts agree that the paraffin test is extremely unreliable. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be established from this test alone that the source of the nitrates or nitrites is the discharge of a firearm.<sup>59</sup> (Citation omitted)

With the identity of accused-appellant as PO1 Monteroso's assailant established, the only issue left is whether he was properly convicted of direct assault with murder.

Every conviction requires that the prosecution prove: (1) the identity of the accused; and (2) the fact of the crime. The second requirement is fulfilled when all the elements of the crime charged are present.<sup>60</sup>

Article 148 of the Revised Penal Code provides:

Article 148. Direct assaults. — 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, 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 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 pesos shall be imposed.

Direct assault may be carried out in two (2) modes: (1) through committing an act equivalent to rebellion or sedition, but without public uprising; and (2) through employing force and resisting any person in authority while engaged in the performance of duties. The elements of the second mode of direct assault are as follows:

Appellants committed the second form of assault, the elements of which are: 1) that there must be an attack, use of force, or serious intimidation or resistance upon a person in authority or his agent; 2) the assault was made when the said person was performing his duties or on the occasion of such performance; and 3) the accused knew that the victim is a person in authority or his agent, that is, that the accused must have the intention to offend, injure or assault the offended party as a person in authority or an agent of a person in authority.<sup>61</sup> (Citation omitted)

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<sup>59</sup> Id. at 329.

<sup>60</sup> *People v. Vibal*, G.R. No. 229678, June 20, 2018, 867 SCRA 370, 387 [Per J. Peralta, Second Division].

<sup>61</sup> Id. at 392.

In this case, accused-appellant was identified as the driver of the van and the shooter who attacked and killed PO1 Monteroso. When the shooting happened, PO1 Monteroso and his team were responding to a report of a suspicious group of men aboard a van. He was also in complete uniform and aboard a police mobile.<sup>62</sup> When accused-appellant shot PO1 Monteroso, he knew that he was a person of authority in the exercise of official duties. Thus, all the elements of direct assault are present.

In *People v. Vibal*,<sup>63</sup> this Court held that when the assault leads to the death of an agent or a person in authority, the resulting offense is the complex crime of direct assault with murder or homicide.

The lower courts convicted accused-appellant of direct assault with murder. This Court modifies the conviction to the complex crime of direct assault with homicide, there being no treachery which qualified the killing of PO1 Monteroso to murder.

The essence of treachery is “in the suddenness of the attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself [or herself] and thereby ensuring the commission of the offense without risk to the offender arising from the defense which the offended party might make.”<sup>64</sup>

For treachery to qualify the killing to murder, the following elements must be proven: “(1) that at the time of the attack, the victim was not in a position to defend himself [or herself], and (2) that the offender consciously adopted the particular means, method or form of attack employed by him [or her].”<sup>65</sup>

The prosecution was not able to establish the existence of treachery here. After the chase, PO1 De Vera’s team ordered the van’s passengers to alight and raise their hands. Because the driver, accused-appellant, refused to heed the order, PO1 Monteroso approached the vehicle to accost him. PO1 Monteroso was a fully armed and trained police officer; his training and police work would have prepared him for the possible hostilities that a person impending arrest may commit. The previous car chase and accused-appellant’s refusal to heed police order should have warned him of a possible violent behavior to evade arrest.

Thus, it is not possible that PO1 Monteroso was in no position to defend himself at the time of the attack. This Court has held that when a police officer had been forewarned of brewing violence, he or she could not

<sup>62</sup> CA rollo, pp. 56–58.

<sup>63</sup> G.R. No. 229678, June 20, 2018, 867 SCRA 370, 393 [Per J. Peralta, Second Division] citing *People v. Abalos*, 328 Phil. 24, 36 (1996) [Per J. Regalado, Second Division].

<sup>64</sup> Id. at 393–394 citing *People v. Escote, Jr.*, 448 Phil. 749 (2003) [Per J. Callejo, En Banc].

<sup>65</sup> *People v. Ordon*, 818 Phil. 670, 681 (2017) [Per J. Leonen, Third Division] citing *People v. Abadies*, 469 Phil. 132, 105 (2002) [Per J. Callejo, Sr., Second Division].



have been completely taken by surprise by the attack. In such instance, therefore, treachery could not have attended the killing.<sup>66</sup>

Here, without the first element of treachery, the killing of PO1 Monteroso cannot be qualified to murder. Accused-appellant is, therefore, guilty of the complex crime of direct assault with homicide.

Article 48 of the Revised Penal Code requires that the penalty for a complex crime is the maximum penalty of the graver offense. The penalty for homicide is *reclusion temporal* while the penalty for direct assault is *prision correccional*. Thus, the proper penalty to be imposed for the complex crime of direct assault with homicide is *reclusion temporal*, subject to the Indeterminate Sentence Law.

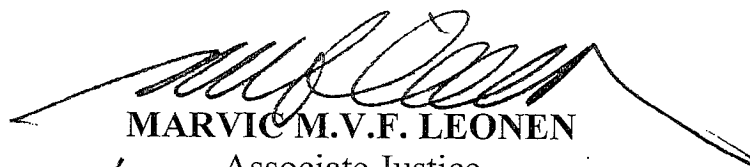
Pursuant to *People v. Jugueta*,<sup>67</sup> the civil indemnity awarded to the heirs of PO1 Monteroso should be decreased to ₱50,000.00, moral damages retained at ₱50,000.00, and temperate damages increased to ₱50,000.00. There being no aggravating or qualifying circumstance proven during trial, the award of exemplary damages should be deleted.

**WHEREFORE**, the findings of fact and conclusions of law of the Court of Appeals are **PARTIALLY REVERSED**. The assailed August 12, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06017 is **MODIFIED**. Accused-appellant Glicerio Pitulan y Briones is found **GUILTY** of the complex crime of direct assault with homicide. He is sentenced to an indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

Accused-appellant is ordered to pay the heirs of Police Officer 1 Aldy Monteroso civil indemnity, moral damages, and temperate damages worth ₱50,000.00 each.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.<sup>68</sup>

**SO ORDERED.**

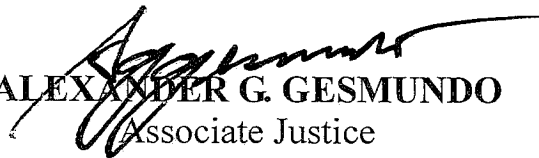
  
**MARVIC M.V.F. LEONEN**  
Associate Justice

<sup>66</sup> *People v. Feliciano*, 418 Phil. 88, 105 (2001) [Per J. Quisumbing, En Banc].

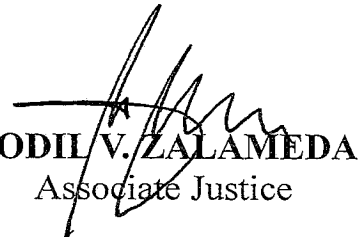
<sup>67</sup> 783 Phil. 806 (2016) [Per J. Peralta, En Banc].


<sup>68</sup> *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

WE CONCUR:

  
**ALEXANDER G. GESMUNDO**  
 Associate Justice


  
**ROSMARID D. CARANDANG**  
 Associate Justice

  
**RODIL V. ZALAMEDA**  
 Associate Justice

  
**SAMUEL H. GAERLAN**  
 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.

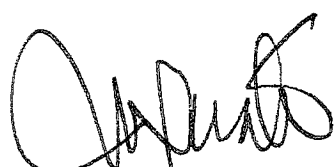
  
**MARVIC M.V.F. LEONEN**  
 Associate Justice  
 Chairperson

**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.

**CERTIFIED TRUE COPY**

*Misa DC Batt*  
**MISAEEL DOMINGO C. BATTUNG III**  
 Division Clerk of Court  
 Third Division

  
**DIOSDADO M. PERALTA**  
 Chief Justice

JUL 09 2020