



Republic of the Philippines  
 Supreme Court  
 Manila

SUPREME COURT OF THE PHILIPPINES  
 PUBLIC INFORMATION OFFICE  
**RECEIVED**  
 APR 19 2017  
 BY: LCB  
 TIME: 3:22

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff-Appellee,*

**G.R. No. 214757**

- versus -

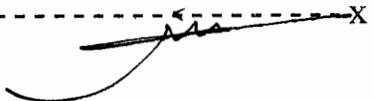
Present:

SERENO, *C.J.*, Chairperson,  
 LEONARDO-DE CASTRO,  
 DEL CASTILLO,  
 PERLAS-BERNABE,\* and  
 CAGUIOA, *JJ.*

**TIRSO SIBBU,**  
*Accused-Appellant.*

Promulgated:  
MAR 29 2017

X ----- X

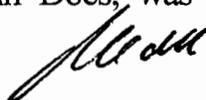


**DECISION**

**DEL CASTILLO, J.:**

This resolves the appeal from the January 6, 2014 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 04127 which affirmed with modification the May 15, 2009 Decision<sup>2</sup> of Branch 11, Regional Trial Court (RTC) of Laoag City finding Tirso Sibbu (appellant) guilty beyond reasonable doubt of attempted murder in Criminal Case No. 11722 and of murder in Criminal Case Nos. 11721, 11723, and 11724.

In Criminal Case No. 11722, appellant, together with Benny Barid (Benny) and John Does, was charged with attempted murder allegedly committed as follows:



\* On official leave.

<sup>1</sup> CA *rollo*, pp. 272-292; penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Isaias P. Dicedican and Michael P. Elbinias.

<sup>2</sup> Records (Criminal Case No. 11721), pp. 459-502; penned by Judge Perla B. Querubin.

That on or about the 6<sup>th</sup> day of December 2004, in Brgy. Elizabeth, Municipality of Marcos, Province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed firearm, conspiring and confederating together and mutually helping one another, with intent to kill and treachery, did then and there willfully, unlawfully, and feloniously shot BRYAN JULIAN y VILLANUEVA, twice but missed, thereby commencing the commission of the crime of Murder directly by overt acts, but did not perform all the acts of execution which should have produced the said crime, by reason of some cause independent of his will, that is, accused are poor shooters, to the damage and prejudice of the above-named victim.

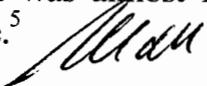
That the crime was committed [in] the dwelling x x x of the victim at nighttime and disguise was employed, with accused Sibbu wearing a bonnet on his face.<sup>3</sup>

In Criminal Case Nos. 11721, 11723 and 11724, and except for the names of the victims and the location of their gunshot wounds, appellant together with Benny and John Does, was charged with murder in three similarly worded Informations<sup>4</sup> allegedly committed as follows:

That on or about the 6<sup>th</sup> day of December 2004, in Brgy. Elizabeth, Municipality of Marcos, Province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed firearm, conspiring and confederating together and mutually helping one another, with intent to kill and treachery, did then and there willfully, unlawfully, and feloniously shot [Trisha May Julian y Villanueva, Ofelia Julian y Bagudan, and Warlito Julian y Agustin], inflicting upon [her/him] gunshot wounds, which caused [her/his] instantaneous death, to the damage and prejudice of the heirs of the above-named victim.

That the crime was committed in the dwelling x x x of the victim at nighttime and disguise was employed, with accused Sibbu wearing a bonnet on his face.

During arraignment held on July 22, 2005, appellant pleaded not guilty to the charges against him. After pre-trial was conducted, trial on the merits followed. On May 31, 2008, appellant's co-accused Benny was arrested. However, his trial was held separately considering that the trial with respect to the appellant was almost finished with the prosecution already presenting rebuttal evidence.<sup>5</sup>



<sup>3</sup> Records (Criminal Case No. 11722), p. 1.

<sup>4</sup> Id. (Criminal Case No. 11721), p. 1, Criminal Case No. 11723, p. 1, Criminal Case No. 11724, p. 1.

<sup>5</sup> Id. (Criminal Case No. 11721), p. 462.

***Version of the Prosecution***

Bryan Julian (Bryan), the private complainant in Criminal Case No. 11722 and a common witness to all the cases, testified that between 6:30 and 7:00 p.m. of December 6, 2004, he was with his three-year old daughter, Trisha May Julian (Trisha), the victim in Criminal Case No. 11721; his mother Ofelia Julian (Ofelia), the victim in Criminal Case No. 11723; and his father, Warlito Julian (Warlito), the victim in Criminal Case No. 11724 in the *azotea* of his parents' house in *Barangay* Elizabeth, Marcos, Ilocos Norte when he saw from a distance of about five meters a person in camouflage uniform with a long firearm slung across his chest and a black bonnet over his head. When the armed man inched closer to the house, he tried to fix his bonnet thereby providing Bryan the opportunity to see his face; Bryan had a clear look at the armed man because there were Christmas lights hanging from the roof of their porch. Bryan recognized the armed man as the appellant.<sup>6</sup> Bryan also saw two men in crouching position at a distance of three meters away from the appellant. Fearing the worst, Bryan shouted a warning to his family. Appellant then fired upon them killing Trisha, Ofelia and Warlito.

Bryan ran inside the house where he saw his brother, Warlito Julian, Jr. (Warlito Jr.) coming out of the bathroom. Bryan then proceeded to the pigpen at the back of the house to hide.

Another prosecution witness, Eddie Bayudan (Eddie), testified that on December 6, 2004, he was by a well near his house when he heard gunshots coming from the house of Warlito and Ofelia. When he turned towards the direction of the gunshots, he saw a man about five meters away wearing a black bonnet and a long-sleeved camouflage uniform and holding a long firearm. He also saw another man crouching on the ground whom he recognized as the accused Benny. Eddie went inside his house for his and his family's safety. Afterwards, he heard Bryan shouting for help. When he went out to investigate, he saw the dead bodies of Warlito, Ofelia, and Trisha.

Warlito Jr. also testified that he heard gunshots coming from outside their house. When he went out of the bathroom, Bryan told him that appellant gunned down their parents and his niece. In his cross-examination, Warlito, Jr. claimed to have seen the appellant shooting at the porch of their house.<sup>7</sup>

Police Superintendent Benjamin M. Lusad (P/Supt. Lusad), chief of the provincial intelligence and investigation branch of Ilocos Norte, testified that at 7:00 a.m. of December 7, 2004, he conducted an investigation and an ocular

<sup>6</sup> TSN, January 24, 2006, pp. 17-19.

<sup>7</sup> TSN, July 4, 2006, p. 52.

inspection at the crime scene. He found bloodstains on the floor of the porch, the cadavers of the victims laid side by side in the sala, and bullet holes in the cemented portion at the front of the house below the window grill.<sup>8</sup> During his interview with Bryan, the latter pointed to appellant as the gunman.<sup>9</sup>

SPO1 Eugenio Navarro (SPO1 Navarro) also testified that he went to the crime scene together with Senior Police Inspector Arnold Dada, PO2 Danny Ballesteros, and SPO1 Lester Daoang, where they found 13 spent shells and slugs of a caliber .30 carbine. Police Superintendent Philip Camti Pucay who conducted the ballistic examination confirmed that the recovered shells and slugs were fired from a caliber .30 carbine.

### *Version of the Defense*

The appellant interposed the defense of denial and alibi.

Appellant's father-in-law, Eladio Ruiz (Eladio), testified that on December 6, 2004, appellant did not leave their house because they had a visitor, Elpidio Alay (Elpidio); moreover, appellant tended to his child. Eladio stated that the distance between his house and Warlito's is approximately two kilometers and that it would take an hour to negotiate the distance by foot.<sup>10</sup>

Eufrecina Ruiz (Eufrecina), mother-in-law of the appellant, also testified that appellant had been living with them for two years before he was arrested.<sup>11</sup> She narrated that on December 6, 2004, appellant did not leave their house the whole night as he was tending to his sick child. She also claimed that they had a visitor who delivered firewood. Eufrecina alleged that appellant did not own any firearm and that he did not know Benny.

Elpidio testified that on December 6, 2004, he went to the house of Eladio to deliver a wooden divider.<sup>12</sup> He arrived at around 6:00 p.m. and left at 7:00 a.m. the following day. Elpidio stated that the appellant did not leave the house that night and that appellant was inside the house when he heard explosions.

Appellant denied the charges against him. He testified that on December 6, 2004, he never left the house of his in-laws because he was taking care of his sick son. He claimed to have heard the explosions but thought that those were sounds

<sup>8</sup> TSN, March 9, 2007, p. 36.

<sup>9</sup> Id. at 37.

<sup>10</sup> TSN, November 9, 2007, p. 76.

<sup>11</sup> TSN, January 4, 2008, p. 87.

<sup>12</sup> TSN, January 25, 2008, p. 97-105.



of firecrackers since it was nearing Christmas.<sup>13</sup> Appellant denied having any misunderstanding with the Julian family, or knowing Bryan and Benny personally, or possessing camouflage clothing.

### ***Ruling of the Regional Trial Court***

On May 15, 2009, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of murder in Criminal Case Nos. 11721, 11723, and 11724, and of attempted murder in Criminal Case No. 11722. The RTC gave credence to Bryan's positive identification of appellant as the person who shot at him and killed his daughter, mother and father. On the other hand, the RTC found appellant's defense of denial and alibi weak.

The dispositive part of the RTC's Decision reads:

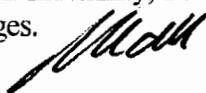
WHEREFORE, judgment is hereby rendered as follows:

1) In Criminal Case No. 11721, accused TIRSO SIBBU is hereby declared GUILTY BEYOND REASONABLE DOUBT of the crime of murder. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Further, he is hereby ORDERED to pay the heirs of Trisha Mae Julian y Villanueva the [amounts] of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages;

2) In Criminal Case No. 11722, accused TIRSO SIBBU is hereby declared GUILTY BEYOND REASONABLE DOUBT of the crime of attempted murder. He is hereby sentenced to suffer the penalty of SIX (6) YEARS of prision correccional as minimum to TEN (10) YEARS of prision mayor as maximum.

3) In Criminal Case No. 11723, accused TIRSO SIBBU is hereby declared GUILTY BEYOND REASONABLE DOUBT of the crime of murder. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Further, he is hereby ORDERED to pay the heirs of Ofelia Julian y Bayudan the [amounts] of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages; and

4) In Criminal Case No. 11724, accused TIRSO SIBBU is hereby declared GUILTY BEYOND REASONABLE DOUBT of the crime of murder. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Further, he is hereby ORDERED to pay the heirs of Warlito Julian y Agustin the [amounts] of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.



---

<sup>13</sup> TSN, April 29, 2008, p. 71.

In Criminal Case Nos. 11721, 11723 and 11724, accused TISO SIBBU is hereby ordered to pay the heirs of Trisha Mae Julian y Villanueva; Ofelia Julian y Bayudan; and Warlito Julian y Agustin the amount of ₱55,602.00 as actual damages.

SO ORDERED.<sup>14</sup>

Aggrieved by the RTC's Decision, appellant appealed to the CA.

### ***Ruling of the Court of Appeals***

On January 6, 2014, the CA affirmed the RTC's Decision with modification as follows:

WHEREFORE, in light of the foregoing discussion, the appeal is DISMISSED. The Decision dated May 15, 2009, issued by the Regional Trial Court, Branch 11, Laoag City in Criminal Case Nos. 11721, 11722, 11723 and 11724, is AFFIRMED with MODIFICATION, as follows:

1. In Criminal Case No. 11721, appellant Tirso Sibbu is hereby declared Guilty beyond reasonable doubt of the crime of murder. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Further, he is hereby ordered to pay the heirs of Trisha May Julian y Villanueva the [amounts] of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages, with interest at the legal rate of 6% percent from the finality of this judgment until fully paid;
2. In Criminal Case No. 11723, appellant Tirso Sibbu is hereby declared Guilty beyond reasonable doubt of the crime of murder. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Further, he is hereby ordered to pay the heirs of Ofelia Julian y Bayudan the [amounts] of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages, with interest at the legal rate of 6% percent from the finality of this judgment until fully paid; and
3. In Criminal Case No. 11724, appellant Tirso Sibbu is hereby declared Guilty beyond reasonable doubt of the crime of murder. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Further, he is hereby ordered to pay the heirs of Ofelia Julian y Bayudan the [amounts] of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages, with interest at the legal rate of 6% percent from the finality of this judgment until fully paid.

<sup>14</sup> Records (Criminal Case No. 11721), pp. 501-502.

No costs.

SO ORDERED.<sup>15</sup>

Dissatisfied with the CA's Decision, appellant elevated his case to this Court. On February 9, 2015, the Court issued a Resolution requiring the parties to submit their respective Supplemental Briefs. However, the appellant opted not to file a supplemental brief since he had exhaustively discussed his arguments before the CA. The Office of the Solicitor General also manifested that there was no longer any need to file a supplemental brief since the appellant did not raise any new issue in his appeal before this Court.<sup>16</sup>

### Issues

The main issue raised in the Appellant's Brief concerns Bryan's identification of the appellant as the assailant. The appellant contends that the trial court erred in (1) giving undue credence to the testimony of the alleged eyewitness Bryan; and (2) in finding him guilty beyond reasonable doubt as charged because the prosecution failed to overthrow the constitutional presumption of innocence in his favor.<sup>17</sup> Further, appellant argues that the aggravating circumstances of treachery, dwelling, and use of disguise were not sufficiently established.

### Our Ruling

The appeal is unmeritorious.

We uphold the findings of the RTC, which were affirmed by the CA, that Bryan positively identified appellant as the person who shot at him and killed Warlito, Ofelia, and Trisha. We have consistently ruled that factual findings of trial courts, especially when affirmed by the appellate court, are entitled to respect and generally should not be disturbed on appeal unless certain substantial facts were overlooked which, if considered, may affect the outcome of the case. After due consideration of the records of the case and the evidence adduced, the Court finds that the RTC and the CA did not err in their appreciation of the facts and evidence.

We find that Bryan was able to identify the appellant as the assailant in the shooting incident; there is no reason to doubt his positive testimony. As aptly

---

<sup>15</sup> CA rollo, pp. 291-292.

<sup>16</sup> Rollo, pp. 30-38.

<sup>17</sup> CA rollo, p. 161.



observed by the RTC, Bryan's narration of how he was able to recognize the appellant was credible and convincing, to wit:

q You said somebody [shot] at you, your father, your mother, and your daughter while you were at the azotea of the house of your father on December 6, 2004. Did you see the person who shot at you, your father, your mother, and your daughter?

a Yes, ma'am.

x x x x

q How far was [the gunman] when you saw him at the west side?

a Around five (5) meters away, ma'am.

q What was his position at the time you first saw him?

a He was at this position, ma'am. (Witness is showing as if a gun was slung on his neck) Then I told my family, "Somebody would shoot us, let us all run and hide," and then he shot [at] me twice, ma'am.

x x x x

q How about [his] face x x x, can you x x x describe [it] to us?

a When he came near us he fixed his bonnet which covered one eye only that is why I recognized him; and even though his face was covered with [a] bonnet, I could still recognize him because I usually mingled with him, ma'am.

x x x x

q You said you were able to recognize his face because you were familiar with him. Who was that person whom you recognized?

a Tirso Sibbu, ma'am.

q If this Tirso Sibbu is inside the courtroom today, would you be able to recognize him?

a Yes, ma'am.

q Kindly look around the courtroom and point to us if he is inside the courtroom?

a (Witness is pointing to a man wearing a black T-shirt with blue denim pants who when asked his name answered Tirso Sibbu)

q You said you were able to recognize the face of this man Tirso Sibbu because you are familiar with him? Can you tell us why you were familiar with him? What were the circumstances where you mingled with him?

a He was a jueteng collector and he came to our place three (3) times a day to get the bets, ma'am.

x x x x

q Considering, Mr. Witness, that it was already x x x 6:30 [to] 7:00 in the evening, how were you able to see the face of Tirso Sibbu?

a There was a light in front of the azotea, ma'am.

- q What was the light in your azotea you are referring to?  
a Christmas lights that were not blinking, ma'am.<sup>18</sup>

x x x x

- q Now, Mr. Witness, how far [was the accused when you first noticed his presence]?  
a More or less 5 meters, sir.

x x x x

- q By the way, that was the first time [you noticed the presence of] the accused. Was that in the same place you saw him fire his gun?  
a He came nearer, sir.

x x x x

- q Now, Mr. Witness, [how did you recognize the accused]?  
a He fixed his bonnet [his] face was partly covered, sir.

- q x x x That bonnet x x x covered the face, is that correct?  
a Only one eye was covered so he fixed it sir.

- q And the whole face was covered except one eye, is that what you want to impress the Honorable Court?  
a The hole that was meant for his left eye went at his right eye so he stretched the bonnet and his face was uncovered that is why I recognized him, sir.

- q You said that his face was uncovered, are you referring, to the whole face that was uncovered?  
a Because of the stretching, the eyes and the nose were uncovered, sir.<sup>19</sup>

From Bryan's testimony above, it is clear that he was only five meters away from the appellant when the shooting incident happened. While the appellant was seen wearing a bonnet over his head, Bryan was able to get a glimpse of appellant's face when the latter fixed his bonnet. In addition, Christmas lights hanging from the roof of the porch provided illumination enabling Bryan to identify the appellant. Moreover, Bryan is familiar with the appellant's built, height, and body movements. As correctly pointed out by the CA:

It is equally of common knowledge that the eyes readily [adjust] to the surrounding darkness even if one stands in a lighted area, and the distance of five meters is not an impossible or improbable way as to preclude identification. Besides, Bryan's identification did not solely rely on facial recognition but also from appellant's body built and height, and the way he walked and moved, all

<sup>18</sup> TSN, November 29, 2005, pp. 5-7.

<sup>19</sup> TSN, January 24, 2006, pp. 15-18.



proper standards of identification as corroborated in the testimony of an experienced police officer and PMA graduate Police Superintendent Benjamin M. Lusad, chief of the provincial intelligence and investigation unit of Ilocos Norte.<sup>20</sup>

Based on the foregoing, the Court is convinced that the RTC and the CA were correct in holding that Bryan positively identified the appellant as the person who shot at him and killed Warlito, Ofelia, and Trisha.

Appellant also questions the RTC's appreciation of the aggravating circumstances of treachery, dwelling, and use of disguise. Citing *People v. Catbagan*,<sup>21</sup> appellant argues that "[t]reachery cannot be considered when there is no evidence that the accused had resolved to commit the crime prior to the moment of the killing; or that the death of the victim was the result of premeditation, calculation, or reflection."

We disagree. Treachery was correctly appreciated as qualifying circumstance in the instant case.

Treachery is present "when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."<sup>22</sup>

The case of *Catbagan* has an entirely different factual context with the case at bar. In *Catbagan*, the accused was a police officer who investigated reported gunshots during an election gun ban in the residence of one of the victims. Prior to the shooting, *Catbagan* had no intention of killing anyone. It just so happened that during a heated exchange, *Catbagan* drew his firearm and shot the victims. In this case however, before the shooting incident, appellant was seen with a gun slung over his neck and a bonnet covered his face to conceal his identity. It is clear that appellant's purpose is to harm and kill his victims.

In this case, the evidence on record reveals that at the time of the shooting incident, Warlito, Ofelia, Trisha, and Bryan were at the porch of their house totally unaware of the impending attack. In addition, they were all unarmed thus unable to mount a defense in the event of an attack. On the other hand, appellant and his cohorts were armed. They also surreptitiously approached the residence of the victims. Appellant, in particular, wore camouflage uniform to avoid detection. Although Bryan was able to warn his family about the impending attack, it was

<sup>20</sup> CA rollo, p. 287.

<sup>21</sup> 467 Phil. 1044, 1081-1082 (2004).

<sup>22</sup> REVISED PENAL CODE, Article 14, paragraph 16.

too late for the victims to scamper for safety or to defend themselves. At the time Bryan became aware of appellant's presence, the latter was already in the vicinity of about five meters. In fine, appellant employed deliberate means to ensure the accomplishment of his purpose of killing his victims with minimal risk to his safety. There can be no other conclusion than that the appellant's attack was treacherous.

With regard to the aggravating circumstance of dwelling, the trial court correctly held:

In the instant cases, the victims were at their azotea in their house when accused Tirso Sibbu fired shots at them. Tirso Sibbu was outside the house of the victims. Under these circumstances, the aggravating circumstance of dwelling can be appreciated against Tirso Sibbu. Thus, the Supreme Court ruled:

x x x x

The aggravating circumstance of dwelling should be taken into account. Although the triggerman fired the shot from outside the house, his victim was inside. For this circumstance to be considered it is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense; it is enough that the victim was attacked inside his own house, although the assailant may have devised means to perpetrate the assault from without x x x.<sup>23</sup>

The use of disguise was likewise correctly appreciated as an aggravating circumstance in this case. Bryan testified that the appellant covered his face with a bonnet during the shooting incident. There could be no other possible purpose for wearing a bonnet over appellant's face but to conceal his identity, especially since Bryan and appellant live in the same *barangay* and are familiar with each other.<sup>24</sup>

As for the defense put up by the appellant that he was inside the house of his in-laws during the shooting, the Court is unconvinced by his denial and alibi. Aside from being the weakest of all defenses, appellant was not able to establish that it was physically impossible for him to be at the scene of the crime at the time the shooting incident happened. We have consistently ruled that "for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence."<sup>25</sup>



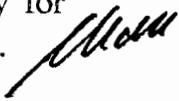
<sup>23</sup> Records (Criminal Case No. 11721), p. 498.

<sup>24</sup> TSN, November 29, 2005, p. 7.

<sup>25</sup> *People v. Garchitorena*, 614 Phil. 66, 89 (2009), citing *People v. Desalisa*, 451 Phil. 869 (2003).

In this case, the crime was committed in the residence of the victims which is located within the same *barangay* where appellant resides. In fact, appellant's father-in-law testified that the distance between the crime scene and his house is "more or less 1 kilometer,"<sup>26</sup> or two kilometers as he later amended and that said distance could be traversed in one hour by foot.<sup>27</sup> Verily, appellant's alibi must fail for failure to show that it was physically impossible for him to be at the crime scene or its immediate vicinity at the time of its commission.

The Court also upholds appellant's conviction for attempted murder. Appellant commenced the commission of murder through overt acts such as firing his firearm at the residence of the victims but did not perform all the acts of execution which should produce murder by reason of some cause other than his own spontaneous desistance. Appellant simply missed his target; he failed to perform all the acts of execution to kill Bryan. Appellant is therefore guilty of attempted murder. Unfortunately, Warlito, Ofelia and Trisha had to bear the brunt of appellant's firearm.

All told, appellant was correctly convicted of three counts of murder considering the qualifying circumstance of treachery and one count of attempted murder. Since two aggravating circumstances of dwelling and use of disguise attended the commission of the crime of murder, appellant should be sentenced to death in accordance with Article 63<sup>28</sup> of the Revised Penal Code. Under Article 248<sup>29</sup> of the Revised Penal Code, murder is punishable by *reclusion perpetua* to death. Thus under Article 63, the higher penalty should be imposed. However, because of the passage of Republic Act No. 9346, or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, the imposition of death penalty is now prohibited. The law provides that in lieu of the death penalty, the penalty of *reclusion perpetua* shall be imposed with no eligibility for parole. Accordingly, appellant should suffer the penalty of *reclusion perpetua* without eligibility for parole in lieu of the death penalty in Criminal Case Nos. 11721, 11723, 11724. 

<sup>26</sup> TSN, October 9, 2007, p. 56.

<sup>27</sup> TSN, November 9, 2007, p. 76.

<sup>28</sup> Art. 63. x x x

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:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

x x x x

<sup>29</sup> Article 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

In *People v. Jugueta*,<sup>30</sup> the Court held that:

x x x [F]or crimes where the imposable penalty is death in view of the attendance of an ordinary aggravating circumstance but due to the prohibition to impose the death penalty, the actual penalty imposed is reclusion perpetua, the latest jurisprudence pegs the amount of ₱100,000.00 as civil indemnity and ₱100,000.00 as moral damages. For the qualifying aggravating circumstance and/or the ordinary aggravating circumstances present, the amount of ₱100,000.00 is awarded as exemplary damages aside from civil indemnity and moral damages. Regardless of the attendance of qualifying aggravating circumstance, the exemplary damages shall be fixed at ₱100,000.00. x x x

x x x x

Aside from those discussed earlier, the Court also awards temperate damages in certain cases. x x x Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved. In this case, the Court now increases the amount to be awarded as temperate damages to ₱50,000.00.

x x x x

In summary:

I. For those crimes like, Murder, Parricide, Serious Intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties:

1.1 Where the penalty imposed is death but reduced to *reclusion perpetua* because of RA 9364:

- a. Civil indemnity – ₱100,000.00
- b. Moral damages – ₱100,000.00
- c. Exemplary damages – ₱100,000.00

1.2 Where the crime committed was not consummated:

- a. Frustrated:
  - i. Civil indemnity – ₱75,000.00
  - ii. Moral damages – ₱75,000.00
  - iii. Exemplary damages – ₱75,000.00
- b. Attempted:
  - i. Civil indemnity – ₱50,000.00
  - ii. Moral damages – ₱50,000.00
  - iii. Exemplary damages – ₱50,000.00

<sup>30</sup> G.R. No. 202124, April 5, 2016.

Hence, in Criminal Case Nos. 11721, 11723, and 11724 where the appellant was convicted of murder, the crime being attended by the qualifying circumstance of treachery and by the aggravating circumstances of dwelling and disguise, we further modify the awards of civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each for each case. Moreover, since the award of actual damages in the amount of ₱55,602.00 pertained to all three cases, the same should be modified to ₱50,000.00 for each case.

In Criminal Case No. 11722 for attempted murder, the RTC as affirmed by the CA imposed the penalty of six (6) years of *prision correccional* as minimum to ten (10) years as *prision mayor* as maximum.

In *People v. Jugueta*,<sup>31</sup> the Court *en banc* held as follows:

In view of the attendant ordinary aggravating circumstance, the Court must modify the penalties imposed on appellant. Murder is punishable by *reclusion perpetua* to death, thus, with an ordinary aggravating circumstance of dwelling, the imposable penalty is death for each of two (2) counts of murder. However, pursuant to Republic Act (RA) No. 9346, proscribing the imposition of the death penalty, the penalty to be imposed on appellant should be *reclusion perpetua* for each of the two (2) counts of murder without eligibility for parole. **With regard to the four (4) counts of attempted murder, the penalty prescribed for each count is *prision mayor*. With one ordinary aggravating circumstance, the penalty should be imposed in its maximum period, Applying the Indeterminate Sentence Law, the maximum penalty should be from two (10) years and one (1) day to twelve (12) years of *prision mayor*, while the minimum shall be taken from the penalty next lower in degree, i.e., *prision correccional*, in any of its periods, or anywhere from six (6) months and one (1) day to six (6) years. This Court finds it apt to impose on appellant the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as minimum, for each of the four (4) counts of attempted murder. (Emphasis supplied)**

Applying the foregoing, the proper imposable penalty for attempted murder, and considering the attendant aggravating circumstances of dwelling and disguise, is four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum. In addition, appellant is liable to pay civil indemnity, moral damages, and exemplary damages at ₱50,000.00 each. Finally, these monetary awards shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

**WHEREFORE**, the January 6, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04127 is **AFFIRMED** with **FURTHER**

<sup>31</sup> *Id.*

**MODIFICATIONS** as follows:

1. In Criminal Case No. 11721, appellant Tirso Sibbu is hereby declared guilty beyond reasonable doubt of the crime of Murder. He is sentenced to suffer the penalty of *reclusion perpetua* with no eligibility for parole. Further, he is ordered to pay the heirs of Trisha May Julian y Villanueva the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00, as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as temperate damages, all with interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.
2. In Criminal Case No. 11723, appellant Tirso Sibbu is hereby declared guilty beyond reasonable doubt of the crime of Murder. He is sentenced to suffer the penalty of *reclusion perpetua* with no eligibility for parole. Further, he is ordered to pay the heirs of Ofelia Julian y Bayudan the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as temperate damages, all with interest at the rate of 6% *per annum* from date of finality of this Decision until fully paid.
3. In Criminal Case No. 11724, appellant Tirso Sibbu is hereby declared guilty beyond reasonable doubt of the crime of Murder. He is sentenced to suffer the penalty of *reclusion perpetua* with no eligibility for parole. Further, he is ordered to pay the heirs of Warlito Julian, Sr. y Agustin the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as temperate damages, all with interest at the rate of 6% *per annum* from date of finality of this Decision until fully paid.
4. In Criminal Case No. 11722, appellant Tirso Sibbu is hereby declared guilty beyond reasonable doubt of attempted murder and is sentenced to suffer the penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum. Further, he is ordered to pay Bryan Julian y Villanueva civil indemnity, moral damages, and exemplary damages each in the amount of ₱50,000.00, with interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

**SO ORDERED.**

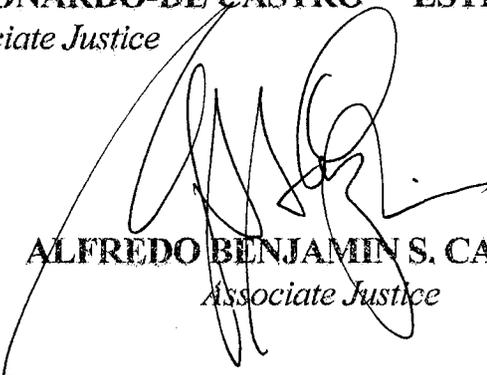
  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

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

  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*

(On official leave)  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

**CERTIFICATION**

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

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