Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

JERSON DASMARIÑAS y GONZALES,
Accused-Appellant.

G.R. No. 203986

Present:

VELASCO, JR., *J., Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

October 4, 2017

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DECISION

BERSAMIN, *J.*:

The failure of the information supposedly charging murder to aver the factual basis for the attendant circumstance of treachery forbids the appreciation of the circumstance as qualifying the killing; hence, the accused can only be found guilty of homicide. To merely state in the information that treachery was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law.

The Case

Under review is the decision promulgated on May 28, 2012,[1] whereby the Court of Appeals (CA) affirmed with modification in CA-G.R. CR-HC No. 04865 the judgment rendered on January 10, 2011 in Criminal Case No. 08-0168 by the Regional Trial Court, Branch 255, in Las Piñas

[1] *Rollo*, pp. 2-32; penned by Associate Justice Celia C. Librea-Leagogo, with the concurrence of Associate Justice Elihu A. Ybañez and Associate Justice Angelita A. Gacutan.

City (RTC) finding accused Jerson Dasmariñas and Nino Polo guilty of murder as charged.[2]

Antecedents

The Office of the City Prosecutor of Las Piñas charged Dasmariñas and Polo with murder, the accusatory portion of the information dated January 25, 2008 being as follows:

> That on or about the 16th day of June 2007, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding each other without justifiable motive, with intent to kill and with treachery, abuse of superior strength, and evident premiditation (sic), did then and there knowingly, unlawfully and feloniously attack, assault and use personal violence upon one **PO2 MARLON N. ANOYA** , by then and there shooting him twice on his head, thereby inflicting upon the latter mortal wound which directly caused her (sic) death.
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> The killing of the aforesaid victim is qualified by the circumstances of treachery, abuse of superior strength and evident premiditation (sic).
>
> CONTRARY TO LAW.[3]

Polo, when arraigned on April 1, 2008, entered a plea of *not guilty*. Dasmariñas also entered his plea of *not guilty* on April 24, 2008.[4]

The Prosecution presented Aries Perias; the victim's widow, Lourdes Anoya; SPO1 Roland Abraham; and Dr. Voltaire Nulud as its witnesses-in-chief. On the other hand, the Defense relied on Erica Camille Pascua and Dasmariñas himself. On rebuttal, the Prosecution called Asst. City Prosecutor Benthom Paul Azares, while the Defense recalled Dasmariñas on sur-rebuttal.[5]

The CA adopted the RTC's summation of the versions and evidence of the parties, to wit:

> 1. Mr. Perias
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> Mr. Perias, a sign art vendor, disclosed that in June 2007 he used to sell corn in front of Narra Beerhouse. He recalled that last 16 June 2007, at around 2:00 in the morning, he was beside the Sabnarra

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2 CA *rollo*, pp. 49-67; penned by Acting Presiding Judge Elizabeth Yu-Guray.
3 Id. at 67-A.
4 Id. at 105.
5 Id. at 51-57.

Beerhouse along Naga Road, Las Pinas City which is near his residence. According to him, he saw victim PO2 Marlon Anoya who is known to him as he frequents (sic) the said place. As far as he knows, the said victim was already drunk when he was in front of the beerhouse. At the time, there were other people most of whom were guest relations officers (GROs). The victim left the place on board a motorcycle but he returned after around 15 minutes. While the victim was standing in front of the beerhouse still drunk 2 men came from his right side and shot him. He recognized one of the men as accused Dasmariñas while the other person was then wearing a cap. The assailants then rode a jeep towards Zapote after shooting the victim. It was clarified by him that the victim was approached at the back and shot on his head. To him it was accused Dasmariñas who shot the victim using a 9 mm gun. Also, the victim was shot twice at the back of the head and on the right side of his face. He recalled that the victim fell down after being shot and his gun was being (sic) taken by the companion of the accused Dasmariñas. It was recalled by him that the companion of the accused Dasmariñas was about 5'8" or 5'9" tall. The victim was then brought by him and Capt. Alex Nase to the hospital but he was declared dead on arrival. When he went to the San Juan City Jail he then saw the accused. Later on, it was Police Officer Abraham who brought him to the Quezon City Jail where he identified accused Dasmariñas and pointed to him as the suspect while behind a tinted glass. xxx

On cross-examination he mentioned that he first saw accused Dasmariñas during the time of the incident last 16 June 2007. At the time, he does not know the name of the said accused. He told the police about what he witnessed on the said date. As such, there was a cartographic sketch of the accused Dasmariñas. Also, the description he gave was that of the accused whom he described as about 5'6" tall, fair complexioned and has short hair or semi-bald. He admitted that only accused Dasmariñas was presented to him at the Quezon City Jail. While he was brought to the San Juan City jail in August 2007. It was only in December 2007 that he executed his statement as he was afraid to give one. However, his conscience bothered him so he executed a statement before police officer Abraham in the presence of the wife of the victim. He recalled that he was about 2 meters away from the crime scene and the black colored gun was fired with the barrel pointing towards him. x x x[6]

Private complainant Anoya

In her testimony private complainant Anoya alleged that she is the wife of victim PO2 Marlon Anoya per the marriage certificate that she presented. According to her, the victim is already dead and he was shot last 16 June 2007 at Pulang Lupa, Las Pinas City. She mentioned that at around 2:30 in the morning of said date, a text message was received by her from her cousin, Christopher Kanalis. At that time, she was told that her husband was at the Las Pinas City District Hospital. As she did not believe the news, her cousin and her father went to their house around 4:00 in the morning. When she was given the cellular phone and wallet of her husband she then believed that the latter was already dead. On account thereof, she lost

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[6] Id. at 107-108.

consciousness and eventually went to the Funeraria Filipinas together with her relatives. She saw her husband with gunshot wounds on his head. While the wake of the victim was at Funeraria Filipinas he was buried in Leyte last 27 June 2007. The remains of her husband were brought to Leyte via Cebu Pacific after 3 days of wake at said funeral parlor. She spent about ₱3,600.00 in transporting the remains of her husband. Also, the sum of ₱38,000.00 in expenses was incurred by them at the Funeraria Filipinas. The 9 days wake at Leyte also cost them about ₱56,712.00. With respect to the said expenses, she identified a summary that she prepared and the receipts on the above transportation and funeral expenses. She mentioned that her husband was a police officer in Manila earning about ₱14,000 a month. At the time of his death the victim was 33 years old. However, they did not have children at the time of his death. She felt sad about the killing of her husband and has not yet recovered from his death. To her, no amount can equal the pain she suffered due to the untimely demise of her husband. Still, she asks (sic) the payment of ₱100,000.00 in damages for the death of the victim. She insisted that the accused shot her husband as narrated by Mr. Perias. It was explained by him that Mr. Perias became known to her after he was pointed to by the police investigator as a witness to the incident.

When cross-examined, she admitted that the circumstances of her husband's death were only relayed to her. Also, the names of the accused were known to her from the investigator and the witness, Mr. Perias.[7]

The parties stipulated on the testimonies of SPO1 Abraham and Dr. Nulud, which the trial court also summarized as follows:

SPO1 Abraham

In his stipulated testimony, it was determined that SPO1 Abraham was the police officer who investigated the complaint of private complainant Anoya regarding the death of her husband PO2 Marlon Anoya pursuant to the account given by Mr. Perias. As such, he prepared an Investigation Report dated 14 December 2007. However, it was admitted that he has no personal knowledge about the shooting incident and the information that he obtained were only relayed to him by some other person.[8]

Dr. Nulud

With his stipulated testimony it was shown that Dr. Nulud that he was the one who conducted an autopsy on the body of victim PO2 Marlon Anoya that resulted in Medico Legal Report No. N-308-07 being prepared by him. Likewise, he prepared anatomical sketches and other documents regarding the autopsy that he did. Still, he did not witness the incident resulting in the death of the victim. xxx"[9]

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7 Id. at 108-109.
8 Id. at 109.
9 Id.

Accused Dasmariñas

Accused Dasmariñas denied killing victim PO2 Marlon Anoya together with accused Polo. According to him, at around 9:00 in the evening last 15 June 2007 he was at the house of his live-in partner Erica Camille Pascua at Vicencio Street, Barangay Sta. Lucia, San Juan. At that time, he came from the house of his mother Anna Gonzales in San Juan where he was looking after his other siblings. He then slept around 10:00 in the evening last 15 June 2007 and woke about 5:00 in the morning of 16 June 2007 since his live-in partner was going to her school at Dominican College, San Juan. After bringing his live-in partner to school he went back to the house of his mother to look after his siblings as his mother had to go to work as laundrywoman. He learned about the herein case when police officers went to his house last 29 June 2007. However, he alleged that he was arrested in connection with another case since a warrant was issued against him for robbery. He recalled being brought to the Molave Detention Center in Quezon City and Las Pinas police authorities then took him to their station. It was only then that he learned that he has a murder case filed against him. He met other accused Polo in court. As far as he was concerned, there was no preliminary investigation regarding the herein case and no witness was presented against him. Also, he was not charged before for murder and there is no reason why the instant case should be filed against him.

On cross-examination, he mentioned that he has been a prisoner at the Quezon City Jail since 25 July 2007. He denied his signatures in the minutes of the preliminary investigation before the Office of the City Prosecutor of Las Pinas last 9 January 2008. It was insisted by him that he had nothing to do with herein case as he was present at the place when the supposed killing of the victim happened. He could not recall when he was brought to the Quezon City Jail. Instead, he pointed out that he was detained at the San Juan, Molave Detention Center and Quezon City Jail. Mr. Perias then appeared at the Quezon City Jail whom he did not know at that time. To him, he saw Mr. Perias only at the courtroom and he has no knowledge why he would testify against him. Again, he pointed out that he met accused Polo only in court. What he knows is that accused Polo is a resident of Mandaluyong City and he is detained thereat. It was reiterated by him that he was arrested by virtue of warrant of arrest for robbery filed against him which is still pending. He confirmed that another case for homicide was filed against him."[10]

Ms. Pascua

When she testified Ms. Pascua confirmed that accused Dasmariñas is her live-in partner. They live together with her parents' house inside a compound. On the night of 15 June 2007 she alleged that she was with accused Dasmariñas, 2 of her aunts Ria Salvador and Sally Salvador and her grandfather Carlos Salvador. She recalled that they then slept at around 10:30 in the evening and she woke up at around 6:00 in the morning the following day. It was the accused who woke her up and they then ate breakfast. It was pointed out by

[10] Id. at 109-110.

her that the accused brought her to her school at around 8:00 in the morning. As far as she knows, the accused usually goes home to their house to attend to his siblings at Barangay Rivera, San Juan which was only a ride away from their house. The mother of the accused who is a laundrywoman usually leaves their house so the accused has to attend to his siblings. Her classes then end by 3:00 in the afternoon so she is fetched by the accused. She denied that the accused went to Las Pinas in the evening of 15 June 2007 as their gate was closed in the evening. Her grandfather usually holds the key to their gate which is quite high. x x x

During her cross-examination, she mentioned that she was told that she will testify as a witness by the accused. As such she was not reluctant in testifying for the accused. She insisted that in 2007 she was already in college and her classes were held from 8:00 in the morning up to 3:00 in the afternoon. It was the accused who would bring her to school and then fetch her later. The accused was not then working at that time and he used to be employed with Mcdonald's restaurant for about 3 to 4 months. She alleged that Mr. Perias and accused Polo are not known to her. As far as she was concerned they slept at around 10:00 in the evening last 15 June 2007. Before testifying she was told about the case against the accused in Las Pinas City. Still, she did not execute a statement regarding what she testified on although she has a handwritten statement that she prepared last 19 April 2009. The said statement was executed by her after being asked by the counsel for the accused.[11]

The Prosecution presented Asst. City Prosecutor Azares as a rebuttal witness, and his testimony was summed up by the RTC, to wit:

Prosecutor Azares

Prosecutor Azares testified that he was the one who conducted a preliminary investigation regarding the case against accused Dasmariñas. With respect thereto, he recalled sending out subpoenas. As such said accused appeared during the scheduled investigation per the minutes for the same. He remembered the accused waiving his right to submit a counter-affidavit. xxx

On cross-examination, he confirmed that there was no minutes involving accused Polo as he did not appear at the scheduled investigation. Also, no more subpoena was issued to accused Polo since the subpoena earlier sent to him was returned. As such, there was no preliminary investigation conducted on accused Polo.[12]

The Defense presented Dasmariñas on sur-rebuttal, and his testimony was encapsulated by the RTC thusly:

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11 Id. at 110-111.
12 Id. at 111.

Accused Dasmariñas

> Accused Dasmariñas insisted that he did not receive a subpoena from Prosecutor Azares for a preliminary investigation last 09 January 2008. Also, he was not yet detained at the Quezon City Jail at that time and was still free. The signature appearing in the subject minutes was denied by him as his. He then presented his Certificate of Detention dated 12 October 2009 showing that he was detained on 25 July 2007. x x x[13]

After trial, the RTC rendered its judgment dated January 10, 2011,[14] finding and pronouncing Dasmariñas guilty of murder but acquitting Polo, disposing:

> WHEREFORE, the foregoing considered, the Court finds accused Jerson Dasmariñas GUILTY beyond reasonable doubt of the crime of murder for shooting to death victim PO2 Marlon Anoya and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, as well as to suffer the accessory penalties provided for by law.
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> Likewise, accused Dasmariñas is hereby ordered to pay complainant Ms. Lourdes Anoya the following sums, thus:
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> ₱98,393.70 as actual compensatory damages;
> ₱50,000.00 as indemnity for the death of the herein victim;
> ₱100,000.00 as moral damages; and
> ₱100,000.00 as exemplary damages.
>
> With respect to accused Nino Polo, the Court finds him NOT GUILTY of the crime of murder for which he was herein charged. As such, he is hereby ACQUITTED of the instant case as his guilt was not proven beyond reasonable doubt.
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> With costs de officio as against accused Dasmariñas.
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> SO ORDERED.

On appeal, Dasmariñas submitted that:

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> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHEN HIS *OUT-OF-COURT* IDENTIFICATION WAS TAINTED WITH GRAVE INFIRMITIES

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13 Id.

14 Id. at 120-121.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[15]

On May 28, 2012,[16] the CA affirmed the conviction with modification by declaring that Dasmariñas would not be eligible for parole, and by revising the civil liability, to wit:

> WHEREFORE, premises considered, the appeal is **DENIED**. The Judgment dated 10 January 2011 of the Regional Trial Court, National Capital Judicial Region, Branch 255, Las Pinas City in Criminal Case No. 08-0168 finding accused-appellant Jerson Dasmariñas y Gonzales guilty beyond reasonable doubt of the crime of murder under Article 245 of the Revised Penal Code, and sentencing him to suffer the penalty of imprisonment of reclusion perpetua is hereby **AFFIRMED** with **MODIFICATION** in that the accused-appellant, **in addition to his penalty**, is **NOT** eligible for parole and he is further ordered to indemnify the heirs of the victim 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) Php43,231.70 as actual damages; (5) Php2,498,724.20 as loss of earning capacity; and (6) interest on **all** damages awarded at that rate of 6% per annum from the date of finality of this judgment.
>
> SO ORDERED.[17]

Hence, this appeal, with Dasmariñas insisting on his innocence. It is noted that he and the Office of the Solicitor General (OSG) have adopted and reiterated their respective briefs filed in the CA.

Ruling of the Court

The appeal lacks merit, but the Court holds that the conviction of Dasmariñas for murder cannot be upheld. He is properly liable only for homicide.

In its assailed decision, the CA noted the arguments posited by Dasmariñas, and the response to the arguments by the OSG, as follows:

> Accused-appellant contends, *inter alia*, that: the procedure conducted by the police officers in identifying the perpetrator of the crime is seriously flawed and gravely violated his right to due process, as it denied him his right to a fair trial to the extent that his in-court

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15 Id. at 86.
16 *Rollo*, pp. 3-32.
17 Id. at 31-32.

> identification proceeded from and was influenced by impermissible suggestions; beforehand, the police officers have already fixed in the mind of the witness Perias that accused-appellant was the assailant; the procedure of bringing a suspect alone to the witness, for the purpose of identification, is seriously flawed; only accused-appellant was brought before Perias for possible identification of the perpetrator; the narration of Perias failed the totality of circumstances test; Perias described the height of assailant as about 5'6 to 5'7" but accused-appellant is only 5'4"; Perias' position at the time of the incident does not demonstrate, with moral certainty, that he had an opportunity to view the face of the assailant; Perias identified accused-appellant only on 25 July 2007, thus, there was a sufficient lapse of time from the time the crime occurred up to the time of accused-appellant's purported identification; and the police investigators also suggested the identity of accused-appellant when it was only he who was showed to Perias.
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> Plaintiff-appellee counters, *inter alia*, that: the prosecution had proven to a moral certainty accused-appellant's guilt for the crime of murder, thus his conviction is in order; Perias saw accused-appellant at close range, shoot PO2 Anoya; accused-appellant was facing Perias at the time of the shooting and the latter had an unobstructed view of accused-appellant's face at such short distance of only two (2) meters; accused-appellant failed to impute any sinister motive on the part of Perias why he would falsely testify against him; the out-of-court identification of accused-appellant bolsters the prosecution eyewitness' version of the incident; applying the totality of circumstances test, the out-of-court identification of accused-appellant (which is a show-up) is admissible and not in any way violative of his constitutional right; treachery attended PO2 Anoya's killing; accused-appellant's alibi is unavailing since he failed to prove the physical impossibility of his presence at the scene of the crime at the time of its commission; accused-appellant's corroborating witness was his girlfriend, who is obviously not a disinterested witness; the award of civil indemnity should be increased from Php50,000.00 to Php75,000.00 while the award of moral damages should be decreased from Php100,000.00 to Php75,000.00 in accordance with current jurisprudence; and since there is no aggravating circumstance, the award of exemplary damages has no basis and must be deleted.[18]

In ruling against Dasmariñas, the CA opined and concluded that his out-of-court identification by eyewitness Perias was "free from impermissible suggestions,"[19] pointing out as follows:

> Accused-appellant merely argued that that procedure conducted by the police officers in identifying the perpetrator of the crime is seriously flawed and gravely violated the accused-appellant's right to due process, as it denied him of his right to a fair trial to the extent that his in-court identification proceeded from and was influenced by impermissible suggestions.
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> Accused-appellant cited the rulings in People v. Rodrigo, GR No. 176159 September 11, 2008 and People v. Meneses, GR No. 111742

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[18] Id. at 12-13.
[19] Id. at 24.

> March 26, 1988. In People v. Rodrigo, the identification was done for the first time through a lone photograph shown (to witness) at police station and subsequently by personal confrontation at the same police station at an undisclosed time. The Court said that the initial photographic identification carries serious constitutional law implications in terms of the possible violation of the due process rights of the accused as it may deny him his rights to a fair trial to the extent that his in-court identification proceeded from and was influenced by impermissible suggestions in the earlier photographic identification.
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> In People vs. Meneses, the Court doubted the identification process of the suspect in stabbing incident in view of the statement in the Advance Information prepared by Police Investigator that the witness (son of the victim) can identify the suspect if he can see him again. The suspect turned out to be the uncle-in-law of the witness and who is known to the witness before the incident. The Police investigator contradicted himself on whether the witness readily pinpointed the suspect during the confrontation. Thus, the Court said that the identification is dubious.
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> **In the instant case, the eyewitness Aries Perias does not know the person of the accused-appellant but the eyewitness gave a description of the accused-appellant and the police prepared a cartographic sketch of the accused-appellant. The identification of the accused-appellant at the Quezon City Jail is only for the purpose of confirmation. The eyewitness at that time was behind a tinted glass. Thus, the identification of the accused-appellant in this case is free from impermissible suggestions. The rulings in People vs. Rodrigo and People vs. Meneses are not applicable in this case.**
>
> In this case, accused-appellant was positively identified as one of the assailants by the eyewitness. The eyewitness Aries Perias was only two (2) meters away from the accused-appellant when the crime was committed. The accused-appellant and his companion approached the victim PO2 Marlon Anoya from behind and accused-appellant with a 9mm pistol shoot twice hitting the victim's nape and below the right ear. The victim fell down and the companion of accused-appellant got the service pistol of the victim. Accused-appellant and his companion left and rode a jeepney. The victim was brought to a hospital but he was pronounced as dead on arrival.[20] (Emphasis ours)

We agree that the out-of-court identification of Dasmariñas by Perias as one of the two assailants did not result from any impermissible suggestion by the police or other external source; and that it could not have been influenced unfairly against Dasmariñas. It is notable that Perias repeated his identification in court during the trial. The reliability of the identification was based on Perias' having witnessed the shooting from the short distance of only two meters away. Also, although the shooting occurred at around 2:00 o'clock in the morning of June 16, 2007, there was adequate illumination because the scene of the crime was in front of the Sabnarra Beerhouse along Naga Road in Las Piñas City.[21] The proximity of his point

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[20] Id. at 12-14.
[21] Id. at 15.

of observation and the adequacy of the illumination provided to him the means to make the reliable identification of Dasmariñas.

Anent the attendance of the qualifying circumstance of treachery, the CA rendered the following finding, to wit:

> The killing of PO2 Anoya is attended by treachery. The victim was already drunk and he was shot at his back without any warning. The victim was defenseless and was not able to offer any resistance. The accused-appellant and his companion employed means for the easy commission of the crime. There is treachery 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 the execution, without risk to himself arising from the defense which the offended party might take.[22]

We cannot sustain the finding of the CA that the killing was attended by treachery. Although the information averred that:-

> x x x the above-named accused, conspiring and confederating together and both of them mutually helping and aiding each other without justifiable motive, with intent to kill and with treachery, abuse of superior strength, and evident premiditation (sic), did then and there knowingly, unlawfully and feloniously attack, assault and use personal violence upon one **PO2 MARLON N. ANOYA** , by then and there shooting him twice on his head, thereby inflicting upon the latter mortal wound which directly caused her (sic) death x x x.[23]

the acts constitutive of treachery were not thereby sufficiently averred. The mere usage of the term *treachery* in the information, without anything more, did not suffice for such term was a conclusion of law, not a factual averment.

The sufficiency of the information is judged by the rule applicable at the time of its filing. In this case, that rule is Section 9, Rule 110 of the *2000 Rules on Criminal Procedure*, which provides thusly:

> Section 9. Cause of the accusations. - 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**. (9a) (Bold underscoring supplied for emphasis)

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22 Id. at 27.
23 Id. at 3-4.

The text of the rule requires that the acts or omissions complained of as constituting the offense 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." In other words, the nature and character of the crime charged are determined not by the specification of the provision of the law alleged to have been violated but by the facts stated in the indictment, *that is*, the actual recital of the facts in the body of the information, and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law.[24] Indeed, the facts alleged in the body of the information, not the technical name given by the prosecutor appearing in the title of the information, determine the character of the crime.[25]

Dasmariñas was presumed innocent of wrongdoing, and thus was unaware of having committed anything wrong in relation to the accusation. Hence, the information must sufficiently give him the knowledge of what he had allegedly committed. Justice Moreland suggested in *United States v. Lim San*[26] how this objective could be accomplished, *viz.*:

> x x x Notwithstanding apparent contradiction between caption and body, we believe that we ought to say and hold that **the characterization of the crime by the fiscal in the caption of the information is immaterial and purposeless, and that the facts stated in the body of the pleading must determine the crime of which the defendant stands charged and for which he must be tried.** The establishment of this doctrine is permitted by the Code of Criminal Procedure, and is thoroughly in accord with common sense and with the requirements of plain justice.
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> x x x x
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> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. xxx. **That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a**

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[24] *People v. Diaz*, G.R. No. 130210, December 8, 1999, 320 SCRA 168, 175; *People v. Juachon*, G.R. No. 111630, December 6, 1999, 319 SCRA 761, 770; *People v. Salazar*, G.R. No. 99355, August 11, 1997, 277 SCRA 67, 88; *People v. Sandoval*, G.R. Nos. 95353-54, March 7, 1996, 254 SCRA 436, 452.

[25] *People v. Escosio*, G.R. No. 101742, March 25, 1994, 220 SCRA 475, 488); citing *People v. Mendoza*, R.R. No. 67610, July 31, 1989, 175 SCRA 743.

[26] 17 Phil. 273 (1910).

> **conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named.** x x x.

In *People v. Dimaano*,[27] the Court has reiterated the foregoing guideline thuswise:

> For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the **acts or omissions complained of as constituting the offense;** the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. **No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.**

The consequences are dire for the State if the standards of sufficiency defined by Section 9, supra, are not followed because the accused should be found and declared guilty only of the crime properly and sufficiently charged in the information. The significance of the propriety and sufficiency of the charge made in the information is explained in *People v. Manalili*:[28]

> x x x **an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be violative of this constitutional right. Indeed, the accused cannot be convicted of a crime, even if duly**

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[27] G.R. No. 168168, September 14, 2005, 469 SCRA 647, 666-667; (the crimes involved 2 counts of rape and 1 count of attempted rape).

[28] G.R. No. 121671, August 14, 1998, 294 SCRA 220, 252.

proven, unless it is alleged or necessarily included in the information filed against him.

Treachery, which both the CA and the RTC ruled to be attendant, has basic constitutive elements. Article 14, paragraph 16, of the *Revised Penal Code* states that "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which offended party might make." For treachery to be appreciated, therefore, two elements must be alleged and proved, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or retaliate; and (2) that the means of execution were deliberately or consciously adopted,[29] that is, the means, methods or forms of execution must be shown to be deliberated upon or consciously adopted by the offender.[30]

The information herein did not make any factual averment on *how* Dasmariñas had deliberately employed means, methods or forms in the execution of the act – setting forth such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged – that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make. As earlier indicated, to merely state in the information that *treachery* was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law.

Consequently, Dasmariñas could not be properly convicted of murder, but only of homicide, which is defined and penalized under Article 249, *Revised Penal Code*, to wit:

> Article 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.*

Dasmariñas is entitled to the benefits under the *Indeterminate Sentence Law*. In view of the absence of any modifying circumstance, the minimum of his indeterminate sentence is taken from *prision mayor*, and the maximum from the medium period of *reclusion temporal*. Accordingly, the indeterminate sentence is nine years of *prision mayor*, as the minimum, to 14 years, eight months and one day of *reclusion temporal*, as the maximum.

The heirs of the late PO2 Marlon M. Anoya are entitled to recover

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[29] *People v. Escarlos*, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 480; *People v. Hugo*, G.R. No. 134604, August 28, 2003, 410 SCRA 62, 80-81.

[30] *People v. Punzalan*, No. L-54562, August 6, 1987, 153 SCRA 1, 9.

civil liability. In that regard, the CA awarded civil indemnity of ₱75,000.00; ₱30,000.00 as exemplary damages; actual damages of ₱43,231.70; indemnity for loss of earning capacity in the amount of ₱2,498,724.10; and imposed interest of 6% *per annum* on all such damages from the finality of the judgment until full satisfaction. Conformably with *People v. Jugueta*,[31] however, we modify the awards by granting civil indemnity of ₱50,000.00; moral damages of ₱50,000.00; actual damages of ₱43,231.70; and indemnity for loss of earning capacity in the amount of ₱2,498,724.10, plus 6% *per annum* interest on all such damages from the finality of the judgment until full satisfaction.

We further grant exemplary damages of ₱50,000.00 despite our finding that the crime was only homicide. This is because we uphold the conclusion of the CA that treachery was shown to have characterized the shooting of the victim. The averment in the information of the facts constituting treachery was not indispensable for this purpose considering that the recovery of exemplary damages by the heirs of the victim was a matter of the civil law, and would not implicate the right of the accused to be informed of the nature and cause of the accusation against him. We have held so in *People v. Catubig*:[32]

> The term *aggravating circumstances* used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. **Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.** (Emphasis supplied)

WHEREFORE, the Court **AFFIRMS** the decision promulgated on May 28, 2012 by the Court of Appeals subject to the **MODIFICATION** that: (1) accused-appellant **JERSON DASMARIÑAS** is found and

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31 G.R. No. 202124, April 5, 2016, 788 SCRA 331.

32 G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

pronounced guilty beyond reasonable doubt of **HOMICIDE**, and, **ACCORDINGLY**, is punished with the indeterminate sentence of nine years of *prision mayor*, as minimum, to 14 years, eight months and one day of *reclusion temporal*, as maximum; (2) accused-appellant **JERSON DASMARIÑAS y GONZALES** is **ORDERED TO PAY** to the heirs of the late PO2 Marlon N. Anoya, represented by his widow, Lourdes Anoya, civil indemnity of ₱50,000.00; moral damages of ₱50,000.00; actual damages of ₱43,231.70; ₱50,000.00 as exemplary damages; and indemnity for loss of earning capacity in the amount of ₱2,498,724.10, plus 6% *per annum* interest on all such items of civil liability from the finality of the judgment until full satisfaction.

The accused-appellant shall further pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
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, Third Division

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

DEC 21 2017