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WHEREFORE, the decision of the Regional Trial Court, Branch 18, Manila, finding accused-appellants Phoebe Astudillo and Ku Sho Ping guilty of violation of Art. III, §15, in relation to Art. IV, §21 of Republic Act No. 6425, otherwise known as, the Dangerous Drugs Act, as amended, is AFFIRMED with the MODIFICATION that the sentences imposed on accused-appellants Phoebe Astudillo and Ku Sho Ping are each reduced to *reclusion perpetua* while the fine on each of them is increased to ₱500,000.00.

SO ORDERED.

Davide Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., and *Azcuna JJ.*, concur.

Austria-Martinez, J., on leave.

EN BANC

[G.R. No. 141943-45. November 13, 2002]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DIOSDADO RECEPCION *Y* PALASO (deceased), FELIPE DELA CRUZ *Y* REYES, AUDIE DONA *Y* BINAN, ALFREDO BARACAS *Y* CONCEPCION, EDUARDO PALACPAC *Y* ROSALES, BERNARDO RANARA *Y* MORATALLA (at large), JOEMARI DELOS REYES Y CONCEPCION, DOMINADOR RECEPCION *Y* PALASO and ROBERT ALFONSO *Y* MARTIZANO,** *appellants.*

SYNOPSIS

Eight persons were charged with multiple murder, violation of Presidential Decree (P. D.) No. 1866 and robbery in band in

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three separate accusatory informations. Appellants herein allegedly entered a pub house and started shooting at the customers therein. When the shooting stopped, the lifeless bodies of five men were found sprawled on the floor. The occurrence was witnessed by several people who took the witness stand during the trial and identified some of the accused as the perpetrators of the crime. The group's devious actions did not stop there; they boarded a passenger jeep and used it as an escape vehicle. They stopped for a while to refuel at Petron station while some of them entered a convenience store from where more gunshots were fired. Their notorious adventure ended in Paniqui, Tarlac where the group debated on the fate of their driver. Finally, they decided to spare his life but, not without threatening to kill him if he would report the incident to the police. However, it was also through the testimony of the jeepney driver that led to the identification of the malefactors. Thus, the cases were filed against herein appellants. During trial, one of the malefactors died in an escape attempt, while another one escaped and remained at large. After trial, the seven remaining accused, including the escapee, were found guilty of multiple murder and were sentenced to several death penalties. The capital punishment having been imposed, the case was elevated to the Supreme Court for automatic review.

The Supreme Court found the seven appellants guilty of homicide, thus lowered the penalty. According to the Court, the eyewitnesses categorically identified the malefactors. The alleged discrepancies in the testimony of the witnesses could easily be explained by the fact that they saw the incident from different angles. The defense of alibi proffered by appellants proved to be too weak against the positive identification made by the eyewitnesses. The Court ruled that a scrutiny of the facts in evidence would indicate a scanty showing of the requirements to qualify the senseless killing of the five victims, either by treachery or by evident premeditation, to murder. Thus, the Court downgraded the crime committed to homicide.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON, HARDLY DISTURBED ON APPEAL, AS A RULE; RATIONALE. — In

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criminal cases, particularly where the capital punishment is imposed, this Court takes a most painstaking effort to ascertain the guilt or innocence of the convicted accused. Nevertheless, it has long been a standing rule that the findings on the credibility of witnesses by the trial court are hardly disturbed on appeal. The appellate court adheres to such deference in view of the vantage that a trial court enjoys in its reception of testimonial evidence. It is only when there evidently are matters of substance that have been overlooked that an appellate court would feel justified to ignore the evaluation and assessment made by the trial court on such evidence.

2. **ID.; ID.; ID.; NOT AFFECTED WHEN THE DISCREPANCY COULD BE EXPLAINED BY THE FACT THAT THE INCIDENT WAS SEEN AT DIFFERENT ANGLES.** — The eyewitnesses categorically identified the malefactors. The alleged discrepancies in the testimony of the witnesses could easily be explained by the fact that they saw the incident from different angles of the shooting. The impact of events, as well as the unconscious working of the mind, it is said, could readily warp the human perception in varying ways and degrees. Empiric data is yet to be found in order to accurately measure the value of testimony of a witness other than its conformity to human behavior and the common experience of mankind.

3. **ID.; ID.; ID.; ALIBI, AS A DEFENSE; PROVED TO BE TOO WEAK AGAINST THE POSITIVE IDENTIFICATION MADE BY AN EYEWITNESS.** — The defense of *alibi* proffered by appellants is much too weak against the positive identification made by the eyewitnesses. It is not enough for an *alibi* to prosper to prove that the person raising it has been somewhere else when the crime is committed; it must likewise be demonstrated that it would have been physically impossible for him to be at the scene of the crime. Where there is the least chance to be present at the *locus criminis, alibi* will not hold much water. The bare evidence given by appellants to vouch their individual claims and establish *alibi* is far from being iron-clad against the possibility of their having been at the crime scene.

4. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; DEFINED; NOT PRESENT IN CASE AT BAR.**— An essence of treachery is not only the swiftness and the surprise in the attack upon an unsuspecting victim but also

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the attendance of two concurring conditions, *i.e.,* that the malefactor must have employed means, method or manner of execution that would insure his safety from the retaliatory act of the victim, and such means, method or form of execution are consciously and deliberately adopted by the malefactor. x x x While the attack upon the victims could be described as being unexpected, somehow voiding any risk to the perpetrators thereof, there, is, however, insufficient evidence to indicate that the means adopted by the appellants have consciously been adopted. Mere suddenness of the attack is not enough to show treachery; it should also be shown that the mode of attack has knowingly been intended to accomplish the wicked intent. Neither would evident premeditation qualify the offense to murder in the absence of clear substantiation that the appellants have definitely resolved to commit the offense and have reflected on the means to bring about the execution following an appreciable length of time.

5. ID.; ID.; EVIDENT PREMEDITATION; CONSTRUED. — The qualifying circumstance of evident premeditation, on the other hand, requires that the execution of the criminal act be preceded by cool thought and reflection upon a resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. Evident premeditation needs proof of the time when the intent to commit the crime is engendered in the mind of the accused, the motive which gives rise to it, and the means which are beforehand selected to carry out that intent. All such facts and antecedents which make notorious the pre-existing design to accomplish the criminal purpose must be proven to the satisfaction of the court.

6. ID.; CONSPIRACY; DEFINED; PRESENT IN CASE AT BAR. — The presence of conspiracy could be revealed by the acts done before, during and after the commission of the crime that made evident a joint purpose, concerted action and concurrence of sentiments. The several acts of appellants during and after the shooting rampage disclosed a unison of objectives. Not one tried to stop the other in the perpetration of the crime. All were clearly in it together, performing specific acts with such closeness and coordination as would unmistakably show a common scheme. The attendance of treachery would thus render it unnecessary for the prosecution to show who among the

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conspirators actually hit and killed their victims, each of them being equally liable with the other in the perpetration of the crime.

7. ID.; HOMICIDE; PRESENT WHEN THE KILLING WAS NOT QUALIFIED. — Without proof of any circumstance that would qualify it, the killing could not amount to murder. Appellants should thus be held liable only for homicide for the death of each of the victims. It was alleged in the accusatory information and shown in evidence that the crimes were indeed perpetrated with the use of unlicensed firearms. Pursuant to Republic Act 8294 (amending Presidential Decree No. 1866), which was already in effect when the killing spree occurred, if "homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance."

8. ID.; PERSONS CRIMINALLY LIABLE; ACCESSORIES; NOT PRESENT IN CASE AT BAR. — The trial court has convicted FOl Felipe dela Cruz as an accessory. This Court, however, finds no evidence to convict him as such accessory. Under Article 19 of the Revised Penal Code, the actual knowledge of the commission of the crime is an important element to being an *encubridor,* and the records are bereft of sound proof that dela Cruz has had knowledge of any or all of the nefarious deeds earlier committed by his guests.

9. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; WHEN ILLEGALITY THEREOF DEEMED WAIVED.— The arrest of appellants has been made in "hot pursuit," an exception from the rule that warrantless arrests are illegal. In any event, appellants can no longer assail the illegality of their arrest since such a claim has not been brought up before or during the arraignment. The failure to timely move for the quashal of the Information on this basis operates as a waiver of the right to question the supposed irregularity of the arrest.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

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DECISION

VITUG, *J.*:

Five innocent men met their sudden death at a not-so-forlorn corner of Caloocan City when a group of malefactors, without apparent provocation or reason, had cast their terror on the early morning of 28 July 1999.

Eight[1] persons were charged with multiple murder, violation of Presidential Decree (P.D.) No. 1866,[2] and robbery in band in three separate accusatory Informations that read:

In Criminal Case No. 57208 —

"That on or about 1:15 o'clock a.m. of July 28, 1999 in Caloocan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent to kill, evident premeditation and treachery after posing as customers and armed with unlicensed handguns entered Sabungan Fastfood & Videoke and once inside, without any provocation from anyone suddenly, unexpectedly and in totally senseless and surprising act or rampage attacked, assaulted and shot five (5) customers, namely: Benjamin E. Valdez, Rodolfo D. Ortega, Augusto A. Billodo, Ruperto S. San Juan and Renato T. Cleofas, Sr., thereby hitting and mortally wounding the said five (5) persons causing their instantaneous death."[3]

In Criminal Case No. 57209 —

"That on or about 1:00 to 3:00 A.M. or thereabout, on July 28, 1999 in Caloocan City, Philippines, and within the jurisdiction of this

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[1] Diosdado Recepcion died during the pendency of the case.

[2] Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments used in the Manufacture of Firearms, Ammunition, or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes.

[3] *Rollo*, pp. 9-10.

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Honorable court, the above-named accused had in their possession, custody and control the following firearms/handguns loaded with ammunitions to wit:

a. One (1) Cal. 38 Armscor SN-760006;
b. One (1) Cal. 38 Armscor SN-51900;
c. One (1) Cal. 38 Armscor SN-51952;
d. One (1) Cal. 38 Squires Bingham SN-1095906;
e. One (1) Pistol 9mm Noringco SN-861406966;
f. Fifty-two (52) pcs. Cal. 38 live ammunitions;
g. Twenty-eight (28) pcs. 9MM live ammunitions;
h. Eight (8) pcs. Cal. 38 empty shells,

"without the necessary license or authority as required by law and which firearms were used in the commission of multiple murder (killing of five persons, namely: Benjamin E. Valdez, Roldolfo D. Ortega, Augusto A. Billodo, Ruperto S. San Juan and Renato T. Cleofas, Sr. at Sabungan Fastfood & Videoke, which is within the jurisdiction of this Honorable Court)."[4]

In Criminal Case No. 57210 —

"That on or about 1:15 A.M. on July 28, 1999 in Caloocan City, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, acting in concert, conspiring, confederating and mutually helping one another, with intent of gain, by means of force, threats, violence or intimidation, and immediately after accused totally unprovoked and unexpected shooting rampage, which resulted in the death of several customers, did then and there willfully, unlawfully and feloniously, with the use of their unlicensed firearm, forcibly and violently take, divest, and carry away from LENY GATICA, FREDEBERT DADON, DENNIS SERRANO and RODEL FESARIT, the following cash and personal belongings, namely: a lady bracelet worth ₱3,500.00, three (3) men wristwatches worth ₱7,500.00 and the establishment earnings of ₱5,000.00, to the loss, damage and prejudice of the above-named owner/s."[5]

The indictees, when arraigned, pled "not guilty" to all the charges. The cases were tried jointly.

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[4] *Rollo*, pp. 13-14.

[5] *Rollo*, pp. 17-18.

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The Version of the Prosecution —

Marie Flamiano was a waitress at "Sabungan Fastfood and Videoke Pub," located along Samson Road, in Caloocan City. At about one-thirty on the morning of 28 July 1999, she was attending to customers when seven men, she identified to be Diosdado Recepcion, Alfredo Baracas, Joemari delos Reyes, Bernardo Ranara, Dominador Recepcion, Robert Alfonso and Audie Dona, entered the pub while one was tailing behind at the entrance. The men occupied table 12 and ordered beer from waitress Eliza Bautista. A few minutes later, three men from the group transferred to table 10. Just as Marie was approaching table 13 to get the microphone from a customer, one of the men stood up and fired his gun at another customer. Marie identified this gunman to be Alfredo Baracas.

Eliza Bautista, the waitress who served the group, among them Diosdado Recepcion, Robert Alfonso, Audie Dona, Alfredo Baracas, Eduardo Palacpac, Joemari delos Reyes and Dominador Recepcion, saw another man pull out a gun and shot a customer, Rodolfo Ortega, while on his knees. The women later identified the gunman to be Diosdado Recepcion. Rosalia Juanica, a co-waitress who had meanwhile dashed out and hid at the nearby "St. Joseph Store," saw Rodolfo Ortega, kneeling with both hands raised in plea, but one of the men, she likewise identified to be Diosdado Recepcion, fired his gun at pointblank range.

Jojo Paraiso was with his co-security guards having a drinking spree when a group of armed men, started shooting. Some of the men shouted, "*dapa*," but Jojo's companion, Benjamin Valdez, unfortunately took a bullet shot before he could get the chance to heed the warning. Jojo identified the person who fired at Valdez to be Robert Alfonso. He hid under the table and could only watch the men gone berserk. The last of the gunmen who left the pub, still firing his gun, was Joemari delos Reyes.

Jhosa Reyes, a waitress at the A & E Kitchenette just across the Sabungan, saw the gunmen and their cohorts scamper away after the shooting incident. She recognized three of the gunmen, Robert Alfonso, Joemari delos Reyes and Eduardo Palacpac,

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as being "regular" customers at the A & E Kitchenette. Shortly before the shooting, Alfonso, delos Reyes, Palacpac and another companion were drinking at the kitchenette but soon headed towards the alley near the pub.

Found sprawled on the floor, when the shooting finally stopped, were the lifeless bodies of five men — Benjamin Valdez, Augusto Billodo, Renato Cleofas, Rodolfo Ortega and Ruperto San Juan.

Ruben Labjata, a jeepney driver, was waiting for passengers at Dagohoy Street, Caloocan City, when he heard gunshots. He was about to leave with only a few passengers when, unexpectedly, three men arrived and ordered all the passengers to get off the vehicle. The men menacingly pointed their guns at Labjata and ordered him to drive. Moments later, five more men boarded his jeepney. Three of the men stayed with the driver at the front seat while the other five sat at the rear. The group directed Labjata to drive towards *Monumento* and then to EDSA. After stopping briefly at Petron Station to refuel, the group proceeded to Quezon City. At a "7-11" convenience store, in Tandang Sora, some of the men alighted from the vehicle. More gunshots were fired. Boarding once again the jeepney, the men told Labjata to go north until they finally reached, hours later, Paniqui, Tarlac. At Paniqui, the men debated on the driver's fate. After hearing one suggest that he should be killed ("*tumba*"), Labjata panicked and begged the group to spare him — "*maawa po kayo, may pamilya po ako*." One of the men allowed him to go home with a warning that he should not report the incident to the police. In open court, he identified the malefactors to be Audie Dona, Alfredo Baracas, Diosdado Recepcion, Bernardo Ranara, Eduardo Palacpac, Dominador Recepcion, Joemari delos Reyes and Robert Alfonso.

Conrado Marquez, a tricycle driver, was waiting for passengers along the highway of Paniqui, Tarlac, when he saw a group of men alight from a dirty jeepney. Four of the men rode in his tricycle, while the other four took two more tricycles. Marquez brought the group to Brgy. Coral, Ramos, Tarlac.

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Around lunchtime on 29 July 1999, the Bulacan Police invited Ruben Labjata for questioning. Taken by police authorities to Tarlac, he pointed to the exact place where the armed men got off from his vehicle. Conrado Marquez, likewise invited by the police for interrogation, readily informed the police of the place where he brought the men who hired his tricycle. The police promptly cordoned the area and the group, along with *FO1* Felipe dela Cruz, surrendered after several calls by the police. Taken into custody were Felipe dela Cruz, Joemari delos Reyes, Audie Dona, Alfredo Baracas, Eduardo Palacpac, Bernardo Ranara, Robert Alfonso, and Dominador Recepcion. Diosdado Recepcion, then a special agent of the Narcotics Command, was intercepted at the national highway of Cuyapo, Nueva Ecija, on board a tricycle. At the Tarlac Police Station, Labjata identified his passengers, namely, Audie Dona, Alfredo Baracas, Diosdado Recepcion, Bernardo Ranara, Eduardo Palacpac, Dominador Recepcion, Joemari delos Reyes and Robert Alfonso.

Diosdado Recepcion, Felipe dela Cruz, Audie Dona, Alfredo Baracas, Eduardo Palacpac, Bernardo Ranara, Joemari delos Reyes, Dominador Recepcion, and Roberto Alfonso were charged with multiple murder, violation of P.D. No. 1866, and robbery in band before the Regional Trial Court, National Capital Region, Branch 129, Caloocan City. The incident that occurred at the 7-11 convenience store also spawned several separate criminal informations (not involved in the instant cases under review).

During the trial, Diosdado Recepcion died in an escape attempt, while accused Bernardo Ranara escaped and remained at large.

The Version of the Defense

The defense interposed *alibi*.

According to Dominador Recepcion, he was, at the time of the reported shooting incident, fast asleep at Greenwoods Subdivision in Cainta, Rizal, where he was a construction worker. His co-workers were Eduardo Palacpac and Robert Alfonso. On the evening of 27 July 1999, the trio went to Pansi, Paniqui, Tarlac, to help Dominador Recepcion's nephew, Joemari delos

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Reyes, find a job. it was after one o'clock in the afternoon when Joemari brought them to the house of his cousin *FO1* Felipe dela Cruz.

Joemari delos Reyes testified that, on the afternoon of 28 July 1999, he was at home when his uncle Dominador Recepcion arrived with Robert Alfonso and Eduardo Palacpac. He brought his guests to the house of Felipe dela Cruz where they partook of beer.

Felipe dela Cruz stated that on 28 July 1999, about one o'clock in the afternoon, his father fetched him from a cousin's house. When he arrived home, he was met by Joemari delos Reyes along with the latter's companions, namely, Eduardo Palacpac, Robert Alfonso, and Dominador Recepcion. In the evening of the same day, about eight o'clock, he invited his visitors to join him in attending a wake just a few meters away, and they stayed there until dawn. The following morning of 29 July 1999, policemen arrived and cordoned his house. He was arrested together with Joemari delos Reyes, Audie Dona and Alfredo Baracas. During a series of questioning at the Caloocan Police Station, dela Cruz insisted that he was attending a wake at the time the shooting incident occurred in Caloocan City.

Audie Dona said that on 28 July 1999, he and his friend Alfredo Baracas, went to Pansi, Ramos, Tarlac, to visit his cousin Joemari delos Reyes and to get some fresh fish and vegetables. When he did not find Joemari at his house, he and Baracas proceeded to the place of dela Cruz where they were invited to join the group of Felipe dela Cruz, Joemari delos Reyes, Eduardo Palacpac, and Dominador Recepcion in a drinking spree. Dona and Baracas stayed until nine o'clock in the evening when they repaired to the house of Joemari to spend the night. On 29 July 1999, he and Baracas went back to see dela Cruz but found Joemari still sleeping. The two dozed off while waiting for Joemari to wake up until they all found themselves surrounded by the police.

When the trial was over and weighing the evidence before it, the court *a quo* found the several accused *guilty* in Criminal

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Case No. C-57208 for multiple murder but *acquitted* them in Criminal Case No. C-57209 for the charge of illegal possession of firearm and Criminal Case No. 57210 for robbery in band because of insufficiency of evidence. The trial court adjudged thusly:

"WHEREFORE, premises considered, this Court finds the following accused GUILTY beyond reasonable doubt of Multiple Murder in Criminal Case No. C-57208, as defined and penalized under Art. 248 of the Revised Penal Code, as amended by Section 6 of Rep. Act No. 7659:

1. Audie Dona
2. Alfredo Baracas
3. Bernardo Ranara (escaped)
4. Eduardo Palacpac
5. Dominador Recepcion
6. Joemari delos Reyes
7. Robert Alfonso

"Accordingly, the *7* above-named accused shall each serve the penalty of *DEATH FIVE (5) TIMES OVER* corresponding to the *5* victims they murdered.

"By way of civil liabilities, the *7* above-named accused shall jointly and severally pay the following amounts of money to the following complaining witnesses, without subsidiary imprisonment in case of insolvency:

1. Divina Ortega —

a) Death Indemnity	–	₱ 50,000.00
b) Moral Damages	–	100,000.00
c) Funeral expense	–	20,000.00
TOTAL	–	170,000.00

2. Virginia Cleofas —

a) Death Indemnity	–	₱ 50,000.00
b) Moral Damages	–	100,000.00
c) Funeral expense	–	20,000.00
TOTAL	–	170,000.00

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3.	Jocelyn Valdez —		
	a) Death Indemnity	–	₱ 50,000.00
	b) Moral Damages	–	100,000.00
	c) Funeral expense	–	36,000.00
	TOTAL	–	186,000.00
4.	Estella Ablong San Juan —		
	a) Death Indemnity	–	₱ 50,000.00
	b) Moral Damages	–	100,000.00
	c) Funeral expense	–	17,500.00
	TOTAL	–	167,500.00
5.	Heirs of Augusto Billodo —		
	a) Death Indemnity	–	₱ 50,000.00
	b) Moral Damages	–	100,000.00
	TOTAL	–	150,000.00

"or the aggregate amount of ₱843,500.00.

"Considering that the accused Diosdado Recepcion is now deceased, he is hereby dropped from these cases, pursuant to Article 89 of the Revised Penal Code.

"Considering also that the accused Bernardo Ranara is now at large after having escaped on November 22, 1999, let an Order of Arrest be issued against him for the service of his sentence in Criminal Case No. C-57208 for Multiple Murder.

"As an Accessory to Multiple Murder under Article 19 of the Revised Penal Code, the accused FO1 Felipe dela Cruz shall serve the indeterminate penalty of imprisonment from 10 years and 1 day of *Prision Mayor*, as minimum, to 17 years, 4 months and 1 day of *Reclusion Temporal,* as maximum, with all the accessory penalties under the law and shall pay the costs.

"Criminal Case No. C-57209 for Illegal Possession of Firearms is ordered dismissed, the filing thereof being unnecessary, pursuant to Section 1 of Rep. Act No. 8294.

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"Criminal Case No. C-57210 for Robbery in Band is likewise ordered dismissed for insufficiency of evidence.

"The Branch Clerk of this Court shall now issue the corresponding Commitment Order to the Director, Bureau of Corrections, thru the City Jail Warden of Quezon City.

"Pursuant to Section 22 of Rep. Act 7659, the Branch Clerk shall elevate the complete records of this case to the Honorable Supreme Court within *20* days but not earlier than *15* days after this promulgation, for automatic review."[6]

The capital punishment having been imposed on herein appellants for the crime of multiple murder, the case was elevated to this Court for automatic review. In their brief, appellants ascribed to the trial court a number of alleged errors but, by and large, they focused on the issue of credibility of the witnesses and the imposition of the death penalty.

Appellants argue that the witnesses presented by the prosecution have committed several inconsistencies, mainly on the identities of the gunmen, said to be well enough to discredit their testimony. The poor lighting condition of the pub, they claim, could have easily blurred the vision of the witnesses frustrating any clear identification of the assailants. The defense also belabors the finding of conspiracy and, in general, of their conviction by the trial court.

In criminal cases, particularly where the capital punishment is imposed, this Court takes a most painstaking effort to ascertain the guilt or innocence of the convicted accused. Nevertheless, it has long been a standing rule that the findings on the credibility of witnesses by the trial court are hardly disturbed on appeal. The appellate court adheres to such deference in view of the vantage that a trial court enjoys in its reception of testimonial evidence. It is only when there evidently are matters of substance that have been overlooked that an appellate court would feel justified to ignore the evaluation and assessment made by the

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[6] *Rollo*, pp. 70-72.

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trial court on such evidence. Looking closely at the records, nothing significant is disclosed to warrant a reversal of the rule. Observe thusly —

Testimony of Eliza Bautista

"Q Miss Bautista, you said you are a waitress of Sabungan Fastfood and Videoke?

"A Yes, sir.

"Q And as such, one of your duties is to serve food, drinks or whatever to your customers?

"A Yes, sir.

"Fiscal Dañosos

"Q Did you recall if you reported for work sometime at around 12 to 1:00 o'clock midnight at Sabungan Fastfood on July 28, 1999?

"A Yes, sir. I was there, sir.

"x x x x x x x x x

"Fiscal Dañosos

"Q Alright. You said you have 2 customers in the name of San Juan and Ortega. And then, you said also you pointed to the group of the accused and you said that they were [y]our last customers. Alright, more or less, what time did [these] new customers or last customers of yours arrived?

"A 1:15 a.m., sir.

"x x x x x x x x x

"Q Now, when you saw them entering the Sabungan Restaurant, what if any did you do being a waitress?

"A After they entered together, they ordered 7 beers. So, I served 7 beers and then occupied a table and after occupying the table, the 3 transferred to another table, sir.

"x x x x x x x x x

"Q Let's go back Miss Bautista to your last customers. You said that you served beer to 7 customers and you said they were your last and in fact, you just pointed them because they are here, is that correct?

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"A Yes, sir.

"Interpreter

Witness pointing to the accused.

"Fiscal Dañosos

"Q Alright. How are you so sure that they were the last customers on that early morning of July 28, 1999 at around 1:20 in the morning?

"A Because I was the one serving them and I was able to talk to them, sir.

"Q Can you recall who among the 7 whom you talked with first?

"A That one, sir.

"Interpreter

As witness pointing to the person who identified himself as Robert Alfonso when asked.

"Fiscal Dañosos

"Q Was he also the one who ordered beer from you?

"A That one, sir. He was the one who ordered the 7 beers.

"Interpreter

As witness pointing to the person who ordered 7 beers and identified himself as Audie Dona.

"x x x x x x x x x

"Fiscal Dañosos

"Q Is there anything unusual that happened?

"Court

Answer.

"A I did not notice anything unusual when I served beer, sir. Because after I gave them a bottle of beer, after that they have put their beers on a glass, sir.

"x x x x x x x x x

"Q After pouring beer to their glass, what else happened?

"A Nothing happened, sir. They just sat [there].

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"Q Alright. You said that Ortega and San Juan [were] shot dead. Now, would you know or recall who shot Ortega and San Juan?

"A I know who shot Ortega. But I don't know who shot San Juan, sir.

"Q Alright, who shot Ortega?

"A That man, sir.

"Interpreter

Witness pointing to a person who identified himself as Diosdado Recepcion when asked.

"x x x x x x x x x

"Fiscal Dañosos

"Q Alright. We go back Miss Witness to the 7 customers that you served beer. Now, [these] 7 customers that you [said] became your last customer[s] that evening, would you be able to identify or recognize their faces if you see them again?

"A Yes, sir.

"x x x x x x x x x

"Court

Teka, isa-isahin mo. Sige.

"Interpreter

"As witness pointing to Diosdado Recepcion, Alfredo Baracas, Audie Dona, Robert Alfonso, Eduardo Palacpac, Joemari delos Reyes, Dominador Recepcion.

"Fiscal Dañosos

"Q Thank you Miss Witness. Alright, Miss Bautista, do you recall if all or anyone of these 7 customers that you have just identified were old or former customers of Sabungan Restaurant?

"A Not our former customers, sir."[7]

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[7] TSN, 24 September 1999, pp. 27-35.

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Testimony of Marie Flamiano

"Asst. Chief Pros. Mariano

Ms. Witness, you said you are a waitress at Sabungan Restaurant, how long have you been a waitress thereat?

"A For 7 months, now, sir.

"Q Do you remember having reported for work on the evening of July 27, 1999?

"A Yes, sir.

"Q And what is your working hours at the Sabungan Restaurant?

"A From 6:00 p.m., sir.

"Q In the evening of July 27, 1999?

"A 6:00 p.m., sir.

"Q Up to what time?

"A Up to 2:00 a.m., sir.

"Q In the early morning of July 28, 1999 at about 1:20, do you recall of any unusual incident that occurred in Sabungan Restaurant?

"A Yes, sir.

"Q What was that incident?

"A They shot somebody, sir.

"Q Who shot somebody?

"A They are here in Court, sir.

"Q Whom did you see shooting somebody at that time?

"A *Para silang walang awang namaril . . .*

"Atty. Ongteco

Your Honor, the answer is irresponsive.

"Court

Let it remain, just answer what is being asked of you.

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"Asst. Chief Pros. Mariano

You said that there were persons who shot individuals in Sabungan, how many were they?

"A Seven (7), sir.

"Q Now, if they are here in Court, will you be able to recognize them?

"A Yes, sir.

"Q Will you point to them if they are here in Court?

"Interpreter

Witness is pointing to 7 male persons inside this Courtroom, who when asked their names, answered . . . Diosdado Recepcion, Alfredo Baracas, Joemari delos Reyes, Bernardo Ranara, Dominador Recepcion, Robert Alfonso and Audie Dona.

"Asst. Chief Pros. Mariano

These 7 persons whom you identified, do you know what particular acts they did at the Sabungan incident?

"A They were shooting.

"x x x x x x x x x

"Q Aside from the fact that you saw them with guns, what else did you see?

"A I saw the dead person outside, that person was already kneeling and begging for life but they still killed that person.

"Q And do you know who shot that person who was already kneeling?

"A The first person I pointed out in Court.

"Q And you are referring to?

"A Diosdado Recepcion, sir."[8]

On cross-examination, this witness elaborated:

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[8] TSN, 27 September 1999, pp. 4-6.

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"Q And what could be your basis in pointing to Diosdado Recepcion as well as to accused Alfredo Baracas and the rest, when you did not see who shot whom?

"A Because I saw them, sir.

"Q How far were you from these two accused that I mentioned during the shooting incident?

"A About 7 to 8 meters, sir.

"Q At that time the shooting incident occurred, what was your duty, if ever?

"A Because it was almost our closing time, I was just sitting, I have nobody to serve.

"Q When these 7 persons entered, were there other customers in the establishment?

"A Yes, sir.

"x x x x x x x x x

"Q In other words, when you scampered outside, you did not see with particularity the accused shooting the victim, is that correct?

"A While I was running, I saw them, they were shooting the victims, sir.

"Q You mean to tell me that during the time you were running outside, your head was turning back to where the accused were situated shooting?

"A Yes, sir. (Witness is pointing as to the direction of the door of the restaurant)

"Q With that distance you are pointing to, to the corner of this room, you could have not ascertain[ed] Mr. Diosdado Recepcion holding a gun and shooting at somebody, is that correct?

"A I saw him, sir.

"Q In fact in your testimony, you cannot identify whether it was a short gun or a long gun?

"A Yes, sir, I could not identify the kind of guns they were using.

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"Q Because you became very scared, frightened and nervous that is why you scampered outside?

"A Yes, sir.

"Q And also because of that nervousness and fright that you experienced, you are in doubt whether it was really Diosdado Recepcion whom you saw?

"A I saw him sir. (*Siya po*).

"Q That incident on July 28, 1999 was the first time that you saw this person whom you pointed as Diosdado Recepcion, is that right?

"A Yes, sir.

"Q So, how can you be very sure that it was him who was holding a gun and shooting at somebody when you said that was the first time that you saw him and your distance was quite far and likewise you cannot determine or ascertain whether he was holding a long gun or short gun?

"A Because I saw them standing, sir.

"Q You mean to tell me that aside from Diosdado Recepcion, all the 7 accused were all standing?

"A Yes, sir, they were all standing.

"Q And you also would like to impress before this Court that all the 7 accused were holding a gun and were all standing and were all shooting at somebody?

"A I am not sure but all of them stood up and shot somebody."[9]

Testimony of Jojo Paraiso

"Q Now, on the said date, July 28, 1999 at around 1:30 in the morning, do you still remember your whereabouts?

"A Yes, sir.

"Q Where were you?

"A I was at Sabungan Restaurant, sir.

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[9] TSN, 27 September 1999, pp. 14-18.

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"Q Accordingly, you were on duty on said date, July 28, 1999. Why were you at Sabungan Fastfood?

"A I was already off-duty at that time, sir.

"Q Now, who were with you at Sabungan Restaurant, if any?

"A We were 5, sir.

"Q Please tell us their names or some of them?

"A Our Asst. OIC, Benjamin Valdez, Fisaret, Daniel Aycardo, Jimmy Serrano and myself, sir.

"Q Would I get from you that all these companions of yours were also security guards?

"A Yes, sir.

"Fiscal Bajar

While you and your 4 other companions were inside the Sabungan Restaurant on July 28, 1999 at around 1:30 in the early morning, do you remember any unusual incident that happened inside or outside thereat?

"A Yes, sir.

"Q But before that, what were you and your other 4 companions doing at the Sabungan Restaurant on the wee-hours of July 28, 1999?

"A We were having a drinking spree, sir.

"Q What was that unusual incident that happened inside the Sabungan Restaurant?

"A A shooting incident suddenly took place and then we dropped ourselves on the ground because of that shooting incident, sir.

"Q But before that shooting incident, do you recall what particular place inside the Sabungan Restaurant were you seated?

"A Yes, sir.

"Q Where were you particularly seated?

"A Near the side of the Sabungan Fastfood and we were in front of the videoke machine, sir.

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"Q When you said in front you were just very near?

"A Yes, sir.

"Q Now, [was] there any other persons inside the Sabungan Fastfood aside from you and your companions?

"A Yes, sir.

"Q How many, if you remember?

"A We were 9, sir.

"Court

And aside from the 5 of them?

"A There were 9 customers in all in that restaurant, sir.

"Court

"Q Including you or excluding you?

"A Including me, sir. We were 9 customers.

"Fiscal Bajar

"Q How about the non-customers?

"A 7, sir.

"Q And what were [these] non-customers doing inside the Sabungan Restaurant?

"A They also ordered beer and they also posed as customers, sir.

But they were not able to drink beer and when they ordered they already fired their guns, sir.

"Fiscal Bajar

"Q Now, where were [these] other non-customers who were ordering beers situated inside the Sabungan Restaurant in relation to where you were seated?

"A They positioned themselves at the center of the videoke machine but at first they were together and then they ordered, the 3 separated from the group, sir.

"Q And how far was your table from this table of the non-customers?

"A About 3 meters away from our table, sir.

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"x x x x x x x x x

"Fiscal Bajar

"Q Okay. Now, after the group parted ways and the 3 occupied another table, what happened?

"A 3 minutes after, the 3 separated from the group and the shooting started, sir.

"Q And where did the shooting come from?

"A From the 3 persons who separated from the group, sir.

"Q Why did you say that it came from the 3 persons?

"A Because after hearing the first shot, I looked at that direction, sir.

"Q And were you able to see the firearms used in firing the shots?

"A I saw a light or spark that came out from the nozzle of the gun after I heard the shot, sir.

"Q And to what direction does the firing directed or pointed to?

"A To the persons they shot, sir.

"Q Where were [these] persons firing located?

"A They were seated because they were also drinking, sir.

"Q In relation to where you were seated and drinking, where were these persons located?

"A They were at the side of the restaurant and near the table who fired the shots, sir.

"Q And how many table[s] were [occupied by these] persons and to where the firing was directed?

"A Only one (1), sir.

"x x x x x x x x x

"Fiscal Bajar

"Q Now, how many shots did you hear?

"A Many, sir. And I could not count it, sir.

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"Q And how about you, what did you do when you heard this successive shots from the table of this 3 persons?

"A One of them shouted '*dapa*,' that is why I hid myself under the table, sir.

"Q Now, how about your other 4 companions, what did they do after you dropped yourself [on] the ground?

"A The other one who was shot remained seated in front of his table. But my other 3 companions docked on the table, sir.

"Q And what happened to that person who was shot? That [lone] person that according to you who was shot?

"A He died, sir.

"Q And after you have '*yuko*,' did you notice what happened next?

"A I looked outside, sir. And then I found out that my [companion was] shot and then the one beside him was shot next, sir.

"Q Now, where did this person who shot your companions come from because, according to you, you were looking outside?

"A That person who shot my companion was near the table of my other companion that was shot and the distance of my companion from the one who shot him was only about a meter away, sir.

"Q When you said companion who was shot, are you referring to the one who transferred to another table?

"A Yes, sir. Our companion, sir.

"x x x x x x x x x

"Q So, after you saw your companions shot, what did you do, if any?

"A I remained there under the table but sometimes I would look and sometimes I would bow my head.

"Q And to whom were you looking at?

"A To our companions, sir.

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"Q And do you remember how many times [you performed] that '*yuko, tingin, yuko, tingin*?'

"A Whenever I noticed that they were looking at me, I [would] look down or bow my head, sir.

"Court

What do you mean 'they?'

"A The one who [shot] my companions, your Honor.

"Fiscal Bajar

"Q And how far was this person who [shot] your companions from you who was looking at him and to the one who looked at you?

"A About 4 meters, sir.

"Q Now, if that person is in Court, would you be able to identify him?

"A Yes, sir.

"Q Please point to him if he is around? You [tap] his shoulder, if you want?

"A Yes, sir. This one, sir.

"Interpreter

Witness tapped the shoulder of Robert Alfonso.

"x x x x x x x x x

"Q Could you recognize anyone of them?

"A The one who shot our companions and he was with the 4 persons in that table, sir.

"Q So, the question is if you have recognized anyone of the persons who remained in the table?

"A Yes, sir. The one who came out last after the shooting, sir. But when he came out he fired a gun.

"Q If that last person you saw was on their way out from the Sabungan Restaurant is in Court, can you point to him? Please step down and tap the shoulder if he is around?

"A Yes, sir. This one, sir.

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"Interpreter

As witness stepped down from the witness stand and tapped the shoulder of the accused Joemari Delos Reyes.

"x x x x x x x x x

"Q Now, please demonstrate to us how your companion was shot by Robert Alfonso?

"A Like this, sir. The accused was in the standing position when he fired [at] my companion at a distance of one (1) meter. And after shooting my companion, that gun man fired again at a man beside my companion, sir.

"Q And what was the position of your companion when he was fired upon?

"A He was seated, sir.

"Q And what was then your position when you saw your companion being shot?

"A I was under the table but I was looking at their direction, sir."[10]

On cross-examination, Paraiso continued:

"Q Mr. Witness, you said that the shooting incident happened at 1:30 in the early morning of July 28, 1999. What time did you start drinking at the Sabungan Restaurant?

"A About 12:45 a.m., sir.

"Q How many bottles of what were you drinking?

"A Beer, sir.

"Q How many bottles of beer have you already consumed?

"A During the shooting incident 2 bottles, sir.

"Q Now, according also to you it was the 3 men who separated from the larger group [who] transferred to another table?

"A Yes, sir.

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[10] TSN, 24 September 1999, pp. 10-18.

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"Q And it was after about 15 minutes that one of them started shooting?

"A Yes, sir.

"x x x x x x x x x

"Q How did you position yourself when you hid yourself under the table? How did you position yourself? Did the table completely cover you?

"A The table completely covered me, sir.

"Q Could you say that you were not shot because you were not seen by the gunman?

"A Yes, sir. I know that they did not notice me there under the table, sir. Maybe if they noticed me that I was there under the table looking at them, maybe they would shoot me, sir.

"Q So, we can presume that you were not shot because you were not seen by the gunman?

"A Yes, sir.

"Q You were not seen because the table was about 3 x 3 ft. Do you mean to tell us Mr. Witness that 3 ft. x 3 ft. table was able to accommodate all 5 of you?

"A Yes, sir.

"Q Now, you were also not seen by the gunman because the table was covered by the table cloth?

"A No cover, sir.

"Q You felt that at that time that you present yourself under the table was not detected by the gunman because none of them noticed you under the table?

"A I know that I was [not] noticed by them, sir. Because [if] they have noticed me under the table and they know that I was looking at them, they will shoot me, sir."[11]

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[11] TSN, 24 September 1999, pp. 22-25.

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Testimony of Jhosa Reyes

"Q In the early morning of July 28, 1999, do you remember of any unusual incident that happened at your place of work?

"A Yes, sir.

"Q What was that incident, if you can still recall?

"A There was a shooting incident, sir.

"Q Where was that shooting incident?

"A In Sabungan, sir, in front of the place where I work.

"Q How far is that *Sabungan* from your place of work?

"A Across the highway, sir.

"Q Do you know who were the persons who fired their guns at *Sabungan*?

"A Yes, sir.

"Q Why do you know these persons?

"A Because the persons who fired their guns were our customers first before they transferred to *Sabungan*, sir.

"Q How often do you see these persons at your dining place?

"A Twice, sir.

"Q When was the first time that you saw them?

"A Every week, sir.

"Q What were they doing when they [went] to your place?

"A They [drank], sir.

"Q How many are these persons, if you can remember?

"A Because the 3 persons used to go to our place but recently they were 4 already but the other one was not drinking, sir, just [went] back and forth.

"Q These customers whom you said were the ones who started shooting at *Sabungan*, who were these persons, if you know?

"A I was able to recognize Ricky, Edwin.

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"Q Who else? I thought you said there were 4 of them.

"Court

The question [was], who fired the gun?

"FISCAL MARIANO

"Q Who were these persons who fired the gun?

"Court

Ricky, Edwin, *sino pa*?

"Witness

Those are the only two but almost all of them, Your Honor.

"Fiscal Mariano

If they are in Courtroom, will you be able to identify them?

"A Yes, sir.

"Q Please point them out.

"Atty. Ongteco

May we request that the witness tell the Court who is Ricky, Edwin?

"Court

Unahin si Ricky. Tumayo ang itinuro.

"Mr. dela Cruz

Witness pointed to a person who when asked of his name, answered to the name of Robert Alfonso.

"Court

Sino pa? Iyong bumaril, ha?

"Mr. dela Cruz

Witness pointed to a person who when asked of his name answered to the name of Joemari delos Reyes.

"Court

Sino pa?

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"Mr. dela Cruz

Witness pointed to a person who when asked of his name answered to the name of Eduardo Palacpac."[12]

Testimony of Ruben Labjata

"Q Mr. Labjata, will you tell this Honorable Court where were you in the early morning of July 28, 1999?

"A I was in Dagohoy with my jeepney waiting for passengers, sir.

"Q More or less, what time was that when you were with your jeep and waiting for passengers?

"A Between twelve and one a.m., sir.

"Q Do you recall, Mr. Labjata, of any unusual incident that occurred while waiting for passengers inside your jeepney?

"A While my jeep was parked there, I heard gunshots, sir.

"Q What else, if any, happened?

"A I was about to leave then and I have already passengers when some people suddenly arrived, sir.

"x x x x x x x x x

"Q Did you, if you did notice if the 3 men who ordered immediately to let your passengers get off the jeep, if they were armed?

"Atty. Ongteco

The same objection.

"Court

Same ruling, you are practically telling the witness that they were armed.

"Fiscal Dañosos

"Q Alright, while the 3 ordered you, did you notice anything, if you did any?

"A They were armed with guns, sir.

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[12] TSN, 13 September 1999, pp. 41-43.

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"Q What kind of guns, are they long arms or short arms?

"A Short arms, sir.

"x x x x x x x x x

"Q Other than the 3 were there other persons who boarded your jeep?

"Atty. Ongteco

Same objection.

"Court

I will allow that.

"Atty. Ongteco

But that is the same banana because according to the witness, the 3 persons ordered the other passengers of the jeep to alight.

"Court

That was ordering the passengers to alight. The question now is, were there other persons who boarded your jeep. I will allow that. Answer that.

"Witness

When they told me to start the jeep, there were some persons who boarded the jeep, sir.

"Fiscal Dañosos

"Q Can you also tell the Honorable Court briefly what was the condition of this other group who also boarded?

"A They were also holding guns, sir.

"Q More or less, how many of them, the one[s] that boarded again?

"A When I start[ed] the engine or already driving the jeep I saw 8, sir.

"x x x x x x x x x

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"Fiscal Dañosos

"Q When you were ordered to go, what did you do, if any?

"A I drove the jeep and then we made a turn near the Monumento Circle and proceeded to Edsa, sir.

"Q While you were proceeding to Edsa, did you notice anything unusual again?

"A Yes, sir, I noticed something unusual because while they were conversing to each other, I heard somebody said that '*hindi ako ang bumaril.*'

"x x x x x x x x x

"Q From Petron Gas Station after you have gassed up, where did you go, if you went somewhere else?

"A We proceeded to the highway and then when we were already far from Petron, we made a left turn, sir.

"Q In what direction was this left [turn] going towards?

"A I am not familiar with that route, sir.

"Q By the way, who among the group ordered you to what direction you [were] going to?

"A The one on my left side, sir.

"Q At that point of time, did the group tell you where you [were] going?

"A I do not know where to go but they ordered me and I followed them.

"Q Now, as a jeepney driver from Bulacan, can you tell the Honorable Court to what direction or route you were going?

"A After making a left turn, we passed by a 711 store, sir.

"x x x x x x x x x

"Q While you were driving your jeep from Caloocan City to Tarlac, was there a time whether one of the group told you what to do?

"A Yes, sir. They poked a gun at me and told me to follow them whatever they wanted me to do, sir.

"x x x x x x x x x

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"Q While you were so scared because you were ordered and you realized that you reached Paniqui, was there at any moment while driving your jeep that you [felt] that you might be killed by this armed men?

"Atty. Ongteco

Leading.

"Fiscal Dañosos

I am asking for his feelings.

"Court

Did you ever feel that you might be killed? I will allow it.

"Witness

Because when we arrived [at] Tarlac, I heard one of them said '*tumba*.'

"x x x x x x x x x

"Court

What did you do after hearing '*tumba*?' Witness may answer.

"Witness

I told them, 'Sir, *maawa naman po kayo*.'

"Fiscal Dañosos

"Q To whom did you address your words?

"A I just said, '*Maawa naman po kayo, huwag ninyo po akong itumba* because I have a family.'

"Q After you told the group of the accused that, 'Sir, *huwag naman ninyo akong itumba*,' what else transpired?

"A One of them said, 'in behalf of your family, *bubuhayin ka namin* for the sake of your family. (*Alang-alang sa pamilya mo*).

"Q What else, if any, after one of them told you that for the sake of your family, we will not kill you.

"A They told me that after reaching Tarlac, I will return back and without turning my head and do not report to the police or else they will shoot me.

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"Q So, after you received those orders, what did you do, if any?

"A When they alighted from the jeep, I did not look at them. Once they alighted, I proceeded or went back to Bulacan, sir.

"Q You said that after hearing their orders and reaching Paniqui, Tarlac, they went down. They alighted. Did all of them alight at the same time?

"A They alighted one after the other, sir.

"Q After they have alighted, what else if any transpired?

"A I left at a place where they alighted and then I went back to Bulacan, sir.

"x x x x x x x x x

"Q When did you see them again?

"A After they were arrested from their hideout, sir.

"Q Where exactly did you meet them at Paniqui, Tarlac?

"A At the Municipal Hall of Paniqui, Tarlac, sir.

"Q More or less, what time was that already?

"A About past eight in the morning, sir.

"Q You said that at around past eight, you saw the group again who commandeered your jeep. How did you know that they were the same persons who commandeered your jeep that early morning of July 28, 1999?

"A Because I was able to recognize the faces of the others, sir.

"Q Mr. Witness, if you can see the faces of this group of persons who commandeered your jeep and who threatened to kill you and who ordered you to stop at Paniqui, Tarlac, and which you saw again the following day in the morning at Paniqui, Tarlac, would you be able to recognize their faces again if you will see these people?

"A Yes, sir.

"Q Now, will you please stand, Mr. Witness, and look around this courtroom and then point to the faces of those people

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whom you said commandeered your jeep in that early morning?

"Mr. Nestor dela Cruz

The witness pointed to a man, who when asked of his name, answered to the name of Audie Dona.

"Fiscal Dañosos

Who else?

"Mr. dela Cruz

The witness pointed to a man, who when asked of his name, answered to the name of Alfredo Baracas.

"Fiscal Dañosos

Who else?

"Mr. dela Cruz

The witness pointed to a man, who when asked of his name, answered to the name of Diosdado Recepcion.

"Fiscal Dañosos

Who else?

"Mr. dela Cruz

The witness pointed to a man, who when asked of his name, answered to the name of Bernardo Ranara.

"Fiscal Dañosos

Who else?

"Mr. dela Cruz

The witness pointed to a man, who when asked of his name, answered to the name of Eduardo Palacpac.

"Fiscal Dañosos

Who else?

"Mr. dela Cruz

The witness pointed to a man, who when asked of his name, answered to the name of Dominador Recepcion.

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"Fiscal Dañosos

Who else?

"Mr. dela Cruz

The witness pointed to a man, who when asked of his name, answered to the name of Joemari delos Reyes.

"Fiscal Dañosos

Who else?

"Mr. dela Cruz

The witness pointed to a man, who when asked of his name, answered to the name of Robert Alfonso."[13]

The eyewitnesses categorically identified the malefactors. The alleged discrepancies in the testimony of the witnesses could easily be explained by the fact that they saw the incident from different angles of the shooting. The impact of events, as well as the unconscious working of the mind, it is said, could readily warp the human perception in varying ways and degrees. Empiric data is yet to be found in order to accurately measure the value of testimony of a witness other than its conformity to human behavior and the common experience of mankind.[14]

The defense of *alibi* proffered by appellants is much too weak against the positive identification made by the eyewitnesses. It is not enough for an *alibi* to prosper to prove that the person raising it has been somewhere else when the crime is committed; it must likewise be demonstrated that it would have been physically impossible for him to be at the scene of the crime.[15] Where there is the least chance to be present at the *locus criminis*, *alibi* will not hold much water.[16] The bare evidence given by

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[13] TSN, 13 September 1999, pp. 9-26.

[14] *People vs. Abulencia*, G.R. No. 138403, 22 August 2001.

[15] *People vs. Napud, Jr., et al.*, G.R. 123058, 26 September 2001; *People vs. Manayan*, G.R. No. 142741-43, 25 October 2001; *People vs. Galvez*, G.R. No. 136867-68, 24 September 2001; *People vs. Peleras, et al.*, G.R. No. 140512, 13 September 2001.

[16] *People vs. Quimson*, G.R. 130499, 05 October 2001.

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appellants to vouch their individual claims and establish *alibi* is far from being iron-clad against the possibility of their having been at the crime scene.

Article 248[17] of the Revised Penal Code, as amended by Republic Act (R.A.) No. 7659, makes a person guilty of murder if the killing is attended by, among other circumstances (but not here appurtenant), treachery or evident premeditation. An essence of treachery is not only the swiftness and the surprise in the attack upon an unsuspecting victim but also the attendance of two concurring conditions, *i.e.*, that the malefactor must have employed means, method or manner of execution that would insure his safety from the retaliatory act of the victim, and such means, method or form of execution are consciously and deliberately adopted by the malefactor. The qualifying circumstance of evident premeditation, on the other hand, requires that the execution of the criminal act be preceded by cool thought and reflection upon a resolution to carry out the criminal intent

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[17] Art. 248. *Murder.* — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means of persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (As amended by Section 6, R.A. No. 7659.)

[18] *People vs. Durante*, 53 Phil 363; *People vs. Camo*, 91 Phil. 240.

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during the space of time sufficient to arrive at a calm judgment.[18] Evident premeditation needs proof of the time when the intent to commit the crime is engendered in the mind of the accused, the motive which gives rise to it, and the means which are beforehand selected to carry out that intent. All such facts and antecedents which make notorious the pre-existing design to accomplish the criminal purpose must be proven to the satisfaction of the court.[19]

A scrutiny of the facts in evidence would indicate a scanty showing of the requirements to qualify the senseless killing of the five victims, either by treachery or by evident premeditation, to murder. While the attack upon the victims could be described as being unexpected, somehow voiding any risk to the perpetrators thereof, there is, however, insufficient evidence to indicate that the means adopted by the appellants have consciously been adopted. Mere suddenness of the attack is not enough to show treachery; it should also be shown that the mode of attack has knowingly been intended to accomplish the wicked intent.[20] Neither would evident premeditation qualify the offense to murder in the absence of clear substantiation that the appellants have definitely resolved to commit the offense and have reflected on the means to bring about the execution following an appreciable length of time.

The trial court, however, correctly appreciated conspiracy. The presence of conspiracy could be revealed by the acts done before, during and after the commission of the crime that made evident a joint purpose, concerted action and concurrence of sentiments.[21] The several acts of appellants during and after the shooting rampage disclosed a unison of objectives. Not one tried to stop the other in the perpetration of the crime. All

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[19] Aquino, *The Revised Penal Code*, Volume I, 1997 Edition.

[20] *People vs. Delgado*, 77 Phil Reports 11; *People vs. Amaguin*, 229 SCRA 166.

[21] *People vs. Tumanon, et al.*, 351 SCRA 676; *People vs. Bolivar, et al.*, 352 SCRA 438.

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were clearly in it together, performing specific acts with such closeness and coordination as would unmistakably show a common scheme. The attendance of treachery would thus render it unnecessary for the prosecution to show who among the conspirators actually hit and killed their victims, each of them being equally liable with the other in the perpetration of the crime.

Without proof of any circumstance that would qualify it, the killing could not amount to murder. Appellants should thus be held liable only for homicide for the death of each of the victims. It was alleged in the accusatory information and shown in evidence that the crimes were indeed perpetrated with the use of unlicensed firearms. Pursuant to Republic Act 8294[22] (amending Presidential Decree No. 1866), which was already in effect when the killing spree occurred, if "homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance."

The trial court has convicted FO1 Felipe dela Cruz as an accessory. This Court, however, finds no evidence to convict him as such accessory. Under Article 19 of the Revised Penal Code, the actual knowledge of the commission of the crime is an important element to being an *encubridor*, and the records are bereft of sound proof that dela Cruz has had knowledge of any or all of the nefarious deeds earlier committed by his guests.

The arrest of appellants has been made in "hot pursuit," an exception from the rule that warrantless arrests are illegal. In any event, appellants can no longer assail the illegality of their arrest since such a claim has not been brought up before or during the arraignment. The failure to timely move for the quashal of the Information on this basis operates as a waiver of the right to question the supposed irregularity of the arrest.[23]

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[22] An Act Amending The Provisions of Presidential Decree No. 1866, As Amended, Entitled "Codifying The Laws On Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition Or Disposition Of Firearms, Ammunition Or Explosives Or Instruments Used In The Manufacture Of Firearms, Ammunition Or Explosives, And Imposing Stiffer Penalties For Certain Violations Thereof, And For Relevant Purposes".

[23] *People vs. Costelo*, 316 SCRA 895.

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The crime of homicide is punishable under Article 249 of the Revised Penal Code by *reclusion temporal* with a duration of 12 years and 1 day to 20 years. Applying the Indeterminate Sentence Law, the appellants may be held to suffer imprisonment, as minimum, of anywhere within the full range of *prision mayor* of from 6 years and 1 day to 12 years and, as maximum, to anywhere within the range of *reclusion temporal* in its maximum period, considering the attendance of the aggravating circumstance of "use of an unlicensed firearm," of from 14 years, 8 months and 1 day to 20 years.

The damages awarded by the trial court accord with prevailing jurisprudence except for the grant of ₱100,000.00 moral damages to the heirs of each of the victims which amount should be reduced to ₱50,000.00.

WHEREFORE, the assailed judgment of the court *a quo* convicting appellants is *AFFIRMED* subject to the following *MODIFICATIONS*, to wit:

Appellants Dominador Recepcion, Audie Dona, Alfredo Baracas, Eduardo Palacpac, Bernardo Ranara, Joemari delos Reyes and Robert Alfonso are all hereby found guilty of homicide, on five counts, and each of them shall suffer five imprisonment terms, each for the death of their five victims, of the indeterminate penalty of 9 years and 1 day of *prision mayor*, as minimum, to 16 years and 1 day of *reclusion temporal* in its maximum period, as maximum, and shall pay, jointly and severally, the sums adjudged by the trial court except that the ₱100,000.00 moral damages to each victim is reduced, correspondingly, to ₱50,000.00.

Appellant Felipe dela Cruz is *ACQUITTED* for insufficiency of evidence.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C .J ., Bellosillo, Puno, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Morales, Callejo, Sr., and *Azcuna, JJ .*, concur.

Austria-Martinez, J., on leave.