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FIRST DIVISION

[G.R. Nos. L-49264-66. October 9, 1985]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLANDO M. CATIPON and PEDRO MOJICA,** *defendants,* **ROLANDO M. CATIPON,** *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ENTRIES IN POLICE BLOTTER UNRELIABLE AS THEY WERE NOT DULY ACCOMPLISHED.**— The defense discredits the testimonies of the complainants, Bucao (Maximo, Feliciana and Anita) identifying ROLANDO as one of the assailants contending that during the investigation, shortly after the shooting, they stated that they did not know the assailants. Submitted in evidence in support thereof was a typewritten document purporting to be a copy of an entry lifted from the police blotter regarding the incident of June 13, 1971 wherein Anita was supposed to have said that she "could not determine who is the suspect." That document, however, is of doubtful probative value. The original was not presented on the ground that it had been lost but the circumstances surrounding the loss had not been explained. Neither was it a certified copy issued by the custodian of the record. It bears no date. It was not signed by Police Chief Leonardo P. Hebreo whose name was typewritten below, but was merely signed by one Pat. Hermene Cabana, also a member of the Ternate police force. The fact that entries in the police blotter were not duly accomplished makes them unreliable.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; POSITIVE IDENTIFICATION OF THE ACCUSED BY THE PROSECUTION WITNESSES.**— There can be no question but that ROLANDO was positively identified by the complainants Bucao during the trial. The trial Court made the prosecution witnesses go down the witness stand several times and point to the assailant, and each time, they pinpointed ROLANDO without hesitation.

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3. **ID.; ID.; ID.; ID.; DEFENSE OF MISTAKEN IDENTITY OF THE ACCUSED, NOT CREDIBLE; CASE AT BAR.**— The complainants Bucao could not have been mistaken regarding ROLANDO's identity notwithstanding the initial confusion in names. The shooting occurred in broad daylight in their presence. The witnesses were in the upper floor of the house; the upper floor being merely 1 ½ meters from the ground floor. Feliciana was at the window, and saw the appellant shoot her father; she sought cover when her father fell. Maximo was inside the house and saw ROLANDO and PEDRO shoot Guillermo at the ground floor. When ROLANDO went upstairs he pushed aside Anita and approached Maximo. Maximo testified that ROLANDO pointed a gun at him. It is the natural reaction of every victim of criminal violence to strive to know the identity of the assailant. It should also be recalled that because "Emilio Morales" was not summoned during the preliminary investigation conducted by Fiscal Esteleydiz in IS No. TM-108-71 there was no confrontation between him on the one hand, and the complainants Bucao on the other. The Fiscal himself declared that he "never saw the identity of Emilio Morales." Neither were the complainants Bucao given a chance to identify him. Had there been such confrontation between the person of "Emilio Morales" and said witnesses, the confusion as to identity could have been rectified sooner. There is no evidence either that there was any similarity in features between "Emilio Morales" and ROLANDO, which could support ROLANDO's defense of mistaken identity.

4. **ID.; ID.; ID.; ID.; CONFUSION OF WITNESSES AS TO THE NAME OF THE ACCUSED WHO PERPETRATED THE CRIME DOES NOT AFFECT THEIR TESTIMONY WHERE THE MALEFACTOR HAS BEEN POSITIVELY IDENTIFIED.**— In the ultimate, the confusion of witnesses as to the name of the accused who perpetrated the crime does not affect their testimony where the malefactor has been positively identified. The identification of the person of the accused is more important than his name.

5. **ID.; ID.; ALIBI; NOT A STRONG DEFENSE; IT WAS NOT PHYSICALLY IMPOSSIBLE FOR AN ACCUSED TO BE PRESENT AT THE PLACE WHERE THE CRIME WAS COMMITTED AT THE TIME OF ITS PERPETRATION.**— The

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testimonies of defense witnesses tending to prove alibi are not worthy of credence. They were given by fellow police officers, who would naturally be biased in favor of ROLANDO. Moreover, alibi is not a strong defense when it was not physically impossible for an accused to be present at the place where the crime was committed at the time of its perpetration. Assuming that ROLANDO was at Barrio Bucal IV in Maragondon, Cavite, on the day of the incident, it was not impossible for him to have been at Barrio Kasuyan in Ternate which is about 5 kilometers distant, at about the same time that the crime was committed. Maragondon and Ternate are adjoining towns in Cavite. From Barrio Bucal IV, the highway traverses Barrio Kasuyan, the scene of the crime, on the way to the poblacion of Ternate. The incident occurred around 3:30 o'clock P.M., at approximately which time, ROLANDO would have been passing Barrio Kasuyan if he had, in fact, left Maragondon at around 3:00 P.M. riding a "*calesa*".

6. ID.; ID.; ID.; **FUTILE AND UNAVAILING IN THE FACE OF POSITIVE IDENTIFICATION OF THE ACCUSED BY THE PROSECUTION WITNESSES.**— Besides, ROLANDO's alibi is futile and unavailing in the face of his positive identification as one of the culprits by the complainants Bucao.

7. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; APPRECIATED DUE TO THE SUDDEN AND UNEXPECTED SHOOTING OF THE VICTIM.**— Treachery attended the commission of the offense and elevated the crime to murder because of the sudden and unexpected shooting of the victims. The victims' hands were raised when the malefactors fired at them, killing two and wounding the third one. All three victims were unable to put up any effective defense and were denied any means of escape from the attack, without any risk to the assailants. Treachery is present when the shooting of the victim with a carbine is sudden and unexpected to the point of incapacitating the victim to repel or escape it. And where the hands of the victim were raised as ordered by the accused and notwithstanding that the accused fired at him without any risk to accused, treachery is present.

8. ID.; ID.; **EVIDENT PREMEDITATION, NOT APPRECIATED IN CASE AT BAR.**— Evident premeditation, however, was not

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attendant. The mere fact that three days before the shooting, ROLANDO and PEDRO went to Victorio's house looking for him but did not find him, and that they went back on June 13, 1971 and killed and wounded the victims is not sufficient to establish that aggravating circumstance. For evident premeditation to be appreciated the accused should have conceived to commit the crime and persisted in the criminal intent notwithstanding that he had the opportunity for reflection to allow his conscience to overcome the determination of his will.

9. **ID.; MURDER; PENALTY FOR MURDER WHERE NO AGGRAVATING NOR MITIGATING CIRCUMSTANCES ARE PRESENT.**— As held by the trial Court, appellant Rolando Catipon is guilty of 2 separate crimes of Murder for the killing of Guillermo Nato (TM-276) and Victorio Bucao (TM-277), respectively. There being no aggravating nor mitigating circumstance, the trial Court correctly imposed the penalty of *reclusion perpetua* except that considering that two murders were committed, two *reclusion perpetuas* should have been imposed. The indemnity to be paid for death should be increased to ₱30,000.00 in each case.

10. **ID.; FRUSTRATED MURDER; WOUND INFLICTED ON VICTIM WAS FATAL AND WOULD HAVE CAUSED DEATH WITHOUT TIMELY MEDICAL ATTENDANCE.**— ROLANDO is also guilty of Frustrated Murder for the wounding of Maximo Bucao (TM-278). Dr. Jose Yap, the attending physician, gave the opinion that the wound inflicted on Maximo was fatal and would have caused death as a result of hemorrhage without timely medical attendance. ROLANDO had performed all acts of execution, in fact, believing Maximo to be dead after kicking him, which would have consummated the killing but due to timely medical attendance, which is a cause independent of the will of the perpetrator, it was not consummated. It is thus frustrated.

11. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; THE APPEAL IN THE FRUSTRATED MURDER CASE WITHIN THE COURT'S JURISDICTION AS IT AROSE OUT OF THE SAME OCCURRENCE AS THE TWO MURDERS COMMITTED BY ACCUSED.**— The appeal in the Frustrated Murder case is within this Court's jurisdiction as it arose out of the same occurrence as the two murders committed by ROLANDO.

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APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Gregorio M. Familiar for defendant-appellant.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

The deaths of Victorio Bucao and Guillermo Nato, and the wounding of Maximo Bucao on June 13, 1971 at Barrio Kasuyan, Ternate, Cavite, led to the filing of two (2) separate Informations for Murder and one (1) Information for Frustrated Murder against ROLANDO M. Catipon and PEDRO Mojica. PEDRO was not apprehended so that the case proceeded only as against ROLANDO, the accused-appellant herein.

The prosecution evidence has been aptly summarized in plaintiff-appellee's Brief as follows:

"On June 13, 1971, in the afternoon, Victorio Bucao and the members of his family — his wife, Anita Cantada, sons Maximo and Nilo, and daughters Feliciana, Remedios, Leonila and Marilyn — were in their small house at barrio Kasuyan, Ternate, Cavite. Also with them at the time was Guillermo Nato, a distant relative. The house had an upper floor, about 1 ½ meters from the ground with a little balcony. From the balcony, one had a view of the entrance to the house and the ground floor (Tsn, Aug. 14, 1974, pp. 2, 8, 12-13, 39-42).

At about 3:00 o'clock in the afternoon of said date, Rolando Catipon and Pedro Mojica arrived at the house of Victorio who met them. They asked Victorio for some water to drink. When Victorio was giving them water, the duo told him to raise his hands up. Victorio pleaded that they take pity on him but before he could say anything more, Rolando and Pedro fired several shots at Victorio from their carbines, killing him.

Rolando and Pedro then went inside the house and shot Guillermo Nato who was on the ground floor doing some carpentry job. Guillermo died on the spot.

After killing Guillermo, Rolando and Pedro went upstairs. On the upper floor were Anita and her children. Rolando poked his carbine

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at Anita who pleaded with him to pity her and her children. Rolando pushed Anita aside and accosted Maximo, 14. He fired at Maximo, hitting him on the left thigh. Maximo fell. Rolando kicked him several times. Thinking that Maximo was dead, Rolando and Pedro ran away (Tsn, Aug. 14, 1974, pp. 3-9; Feb. 11, 1975, pp. 1-8).

Maximo was brought to the Grace Hospital and Maternity in Rosario, Cavite (Tsn, Aug. 14, 1974, pp. 10-11). Dr. Jose C. Yap who attended to him diagnosed the injury as: 'Gunshot wound, left thigh, distal third, through and through. Barring complications, injury may heal from 3-4 weeks' (Exhs. A-TM-278).

Guillermo Nato's death was due to: 'Intensive hemorrhage, multiple gunshot wounds' (Exh. A-TM-276).

Victorio Bucao's death was likewise due to: 'Intensive hemorrhage, multiple gunshot wounds' (Exh. A-TM-277)."

Feliciana Bucao further testified that three days prior to June 13, 1971, she saw ROLANDO and PEDRO for the first time at their home looking for her father Victorio, who was out. At the time, ROLANDO introduced himself to her brother Maximo as "Emilio Morales."[1] It turns out that "Emilio Morales" is a brother of Mayor Edgardo Morales of Ternate, Cavite, and is a cousin of ROLANDO.

So it was that when Maximo, Feliciana and Anita (the complainants Bucao) gave their statements on September 21, 1971, before the 215th PC Company at Tejero, Rosario, Cavite, they implicated "Emilio Morales" and one alias PEDRO as the assailants (Exhibits "1", "2" and "3"). A charge was filed before the Fiscal's Office against "Emilio Morales" and a certain PEDRO. During the preliminary investigation conducted by Asst. Provincial Fiscal Leonardo Esteleydiz, however, "Emilio Morales" was never summoned, and because Emilio Morales died on November 19, 1971, said Fiscal just dismissed the case in a Resolution dated January 25, 1973. The same Fiscal, as a defense witness, testified that he had not filed any formal charges against "Emilio Morales" before the Court because he was still waiting

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[1] T.s.n., November 22, 1974, pp. 2-8.

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for Anita Bucao to give him the full name of the other assailant, PEDRO.[2]

On January 21, 1973, ROLANDO Catipon was arrested and detained at the 55th PC Battalion at Sangley Point. Thereat, the complainants Bucao identified him as one of the malefactors who killed the two victims at their house.

On March 20, 1974, two separate Informations charging Murder were filed before the Court of First Instance of Cavite, for the death of Guillermo Nato (Crim. Case No. TM-276), and Victorio Bucao (Crim. Case No. TM-277), and one for Frustrated Murder for the wounding of Maximo Bucao (Crim. Case No. TM-278).

ROLANDO pleaded not guilty, relying for his defense on alibi and mistaken identity.

Accounting for his whereabouts, ROLANDO, a member of the Ternate police force until his arrest on January 21, 1973, narrated that on June 13, 1971, he went to Maragondon, Cavite, to attend the *fiesta*. He was in civilian clothes and carried a .38 caliber pistol. He first dropped by the house of Carlos Andalahao, a Maragondon policeman at 8:00 o'clock in the morning. Because food was not yet ready, he left a few minutes later and proceeded to the house of Eduardo Diño, also a member of the Maragondon police force. ROLANDO left Diño's house at about 2:00 P.M. of the same day. At about 3:00 o'clock that same afternoon, ROLANDO was at the *poblacion* of Maragondon waiting for a ride to take him to Ternate.

Continuing, ROLANDO narrated that upon arrival at Ternate at about 4:00 P.M., he went direct to the municipal building. While waiting for his tour of duty starting at 5:00 P.M., he was informed of the incident in question. Together with the Ternate Police Chief Hebreo, Sgt. Hermenegildo Cabana, and another policemen, they went to the Barrio Kasuyan to conduct an investigation. They recovered 14 empty carbine shells from the house of the victim Victorio Bucao.

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[2] T.s.n., July 14, 1976, p. 13.

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According to ROLANDO, Anita Bucao, Victorio's widow, told the investigation team that she did not recognize the assailants and that he was ordered to stay to guard the dead bodies until 12:00 midnight, when he returned to the municipal building.

After trial, the Court *a quo* found ROLANDO guilty of the crime of double Murder, qualified by treachery and evident premeditation, in Criminal Cases Nos. TM-276 and TM-277 and was sentenced to *reclusion perpetua.* He was also convicted of Frustrated Murder in Criminal Case No. TM-278 and was sentenced to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum. ROLANDO was further ordered to pay the widows of Guillermo Nato and Victorio Bucao in the amount of ₱12,000,00 each, and to Maximo Bucao the sum of ₱2,000.00 plus costs.

Hence, this appeal, with the following Assignments of Error:

I

"The trial Court erred in believing the testimony of prosecution witnesses, namely, Maximo Bucao, Feliciana Bucao and Anita Cantada.

II

"The trial Court erred in finding that the identity of the accused-appellant was established by clear and convincing evidence.

III

"The trial Court erred in not believing the testimony of the witnesses for the defense.

IV

"The trial Court erred in not upholding the appellant's defense of alibi.

V

"The trial Court erred in finding the appellant guilty beyond reasonable doubt of the crime of frustrated murder and two (2) separate murders treated in the three (3) separate informations of the instant three (3) criminal cases."

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1. The defense discredits the testimonies of the complainants, Bucao (Maximo, Feliciana and Anita) identifying ROLANDO as one of the assailants contending that during the investigation, shortly after the shooting, they stated that they did not know the assailants. Submitted in evidence in support thereof was a typewritten document purporting to be a copy of an entry lifted from the police blotter regarding the incident of June 13, 1971 wherein Anita was supposed to have said that she "could not determine who is the suspect."

That document (Exhibit "8"), however, is of doubtful probative value. The original was not presented on the ground that it had been lost but the circumstances surrounding the loss had not been explained. Neither was it a certified copy issued by the custodian of the record. It bears no date. It was not signed by Police Chief Leonardo P. Hebreo whose name was typewritten below, but was merely signed by one Pat. Hermene Cabana, also a member of the Ternate police force. The fact that entries in the police blotter were not duly accomplished makes them unreliable.[3]

In so far as Anita's imputed statement is concerned, we agree with the following observations of the Solicitor General:

"Assuming that Anita Cantada made the statement imputed to her, the same was understandable because Anita was then under a state of emotional shock and agitation as was to be expected of someone who saw the brutal killing of her husband and a relative and the wounding of her son before the terrified eyes of her little children.

"Thus, in *People v. Telan*, 5 SCRA 433 (1962), it was held that there is nothing unnatural in the inability of the widow and of the other eyewitnesses to give a coherent narration and identify the appellants that same night the event occurred, due to their emotional shock and agitation which was obvious even to the police officers.

"Besides, if it is true that appellant Rolando Catipon was with the group of policemen who went to the house of the deceased to

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[3] *People vs. Tatlonghari*, 27 SCRA 726 [1969].

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investigate in the evening of June 13, 1971, there was greater reason for Anita not to have mentioned appellant as one of the culprits because of fear of appellant who was with his fellow police officers. Under the watchful eye of appellant, Anita could hardly be expected to denounce him as a murderer (*People v. Sales*, 44 SCRA 489 [1972])."[4]

And although it may be that Maximo Bucao answered "cannot remember" to some of the questions propounded to him, those referred to details which will not affect the credibility of his testimony in its totality.

2. ROLANDO's identity has been clearly established.

It is true that three months after the incident or on September 21, 1971, the complainants Bucao implicated "Emilio Morales" and one Pedro (Exhibits "1", "2" and "3"); but that two years after the incident, or on March 13, 1973, at Sangley Point, Cavite, they executed sworn statements implicating ROLANDO and PEDRO Mojica. As they had explained, however, they had mentioned the name of "Emilio Morales" during the initial preliminary investigation because ROLANDO had introduced himself as "Emilio Morales" three days before June 13, 1971.[5] As Maximo Bucao testified:

"Q Do you know of any reason why Rolando Catipon is also known as Emilio Morales?

"A Yes, sir, because when he arrived he introduced himself as Emilio Morales.

"Q When he arrived at your house on June 13, 1971?

"A When our house was still being constructed.

"Q Why did he come to your house when it was being constructed?

"A Because Rolando Catipon is looking for my father.

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[4] pp. 9 & 10, Brief for the Plaintiff-Appellee.

[5] T.s.n., November 22, 1974, pp. 6-9.

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"Q But did you not state before that you have seen Rolando Catipon in uniform of a policeman in the Municipal Building?

"A Yes, sir.

"Q And at that time you know him also as Emilio Morales, when he was wearing the uniform?

"A Yes, sir.

"Q So, as far as you are concerned, Emilio Morales and Rolando Catipon, the policeman, is one and the same person?

"A Yes, sir."[6]

Corroborative also is Feliciana's declaration:

"Q When did you come to know that the name of the accused was Rolando Catipon for the first time?

"A You know, when we learned that there is a person who was detained and apprehended there at Sangley Point, my brother in company of one from Ternate went there at Sangley Point, Cavite City and asked Sgt. Poras to let out this person detained there so that we can recognize him, so Sgt. Poras let out this person detained and then my brother was asked if this is Emilio Morales and the answer of my brother is that he is Rolando Catipon.

"Q So, it was only during that occasion when you came to know that the name of this accused is Rolando Catipon, is that correct?

"A Yes, sir.

"Q And after that, after recognizing that person pointed to as Rolando Catipon, you told the PC investigator at Sangley Point that the one who killed your father was Rolando Catipon, is that correct?

"A Yes, sir, and in fact I know very well that face."[7]

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[6] T.s.n., August 14, 1974, pp. 45 & 46.

[7] T.s.n., November 26, 1974, pp. 21-23.

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There can be no question but that ROLANDO was positively identified by the complainants Bucao during the trial.[8] The trial Court made the prosecution witnesses go down the witness stand several times and point to the assailant, and each time, they pinpointed ROLANDO without hesitation.

The complainants Bucao could not have been mistaken regarding ROLANDO's identity notwithstanding the initial confusion in names. The shooting occurred in broad daylight in their presence. The witnesses were in the upper floor of the house; the upper floor being merely 1 ½ meters from the ground floor.[9] Feliciana was at the window, and saw the appellant shoot her father; she sought cover when her father fell.[10] Maximo was inside the house and saw ROLANDO and PEDRO shoot Guillermo at the ground floor.[11] When ROLANDO went upstairs he pushed aside Anita and approached Maximo.[12] Maximo testified that ROLANDO pointed a gun at him.[13] It is the natural reaction of every victim of criminal violence to strive to know the identity of the assailant.[14]

It should also be recalled that because "Emilio Morales" was not summoned during the preliminary investigation conducted by Fiscal Esteleydiz in IS No. TM-108-71[15] there was no confrontation between him on the one hand, and the complainants Bucao on the other. The Fiscal himself declared that he "never saw the identity of Emilio Morales."[16] Neither were the

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[8] T.s.n., August 14, 1974, p. 4; t.s.n., February 11, 1975, p. 10; t.s.n., November 26, 1974, p. 45.

[9] T.s.n., August 14, 1974, pp. 12 & 39; t.s.n., February 11, 1975, p. 6.

[10] T.s.n., November 22, 1974, pp. 2 & 13; t.s.n., November 26, 1974, p. 33.

[11] T.s.n., August 14, 1974, pp. 7 & 8.

[12] T.s.n., February 11, 1975, p. 7.

[13] T.s.n., August 14, 1974, p. 8.

[14] *People vs. Orteza*, 6 SCRA 109 [1962].

[15] T.s.n., November 26, 1974, p. 42; t.s.n., July 14, 1976, p. 20.

[16] T.s.n., July 14, 1976, p. 11.

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complainants Bucao given a chance to identify him. Had there been such confrontation between the person of "Emilio Morales" and said witnesses, the confusion as to identity could have been rectified sooner. There is no evidence either that there was any similarity in features between "Emilio Morales" and ROLANDO, which could support ROLANDO's defense of mistaken identity.

In the ultimate, the confusion of witnesses as to the name of the accused who perpetrated the crime does not affect their testimony where the malefactor has been positively identified.[17] The identification of the person of the accused is more important than his name.[18]

3. The testimonies of defense witnesses tending to prove alibi are not worthy of credence. They were given by fellow police officers, who would naturally be biased in favor of ROLANDO. Moreover, alibi is not a strong defense when it was not physically impossible for an accused to be present at the place where the crime was committed at the time of its perpetration.[19] Assuming that ROLANDO was at Barrio Bucal IV in Maragondon, Cavite, on the day of the incident, it was not impossible for him to have been at Barrio Kasuyan in Ternate which is about 5 kilometers distant, at about the same time that the crime was committed. Maragondon and Ternate are adjoining towns in Cavite. From Barrio Bucal IV, the highway traverses Barrio Kasuyan, the scene of the crime, on the way to the poblacion of Ternate. The incident occurred around 3:30 o'clock P.M., at approximately which time, ROLANDO would have been passing Barrio Kasuyan if he had, in fact, left Maragondon at around 3:00 P.M. riding a "*calesa*."[20]

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[17] *People vs. Cañizares*, 107 SCRA 296 [1981].

[18] *People vs. Ramos*, 85 Phil. 683 [1950].

[19] *People vs. Manimtim*, 120 SCRA 324 [1983]; *People vs. Remollo*, 123 SCRA 209 [1983].

[20] T.s.n., March 3, 1977, pp. 8 & 9.

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Besides, ROLANDO's alibi is futile and unavailing in the face of his positive identification as one of the culprits by the complainants Bucao.[21]

4. Treachery attended the commission of the offense and elevated the crime to murder because of the sudden and unexpected shooting of the victims. The victims' hands were raised when the malefactors fired at them, killing two and wounding the third one. All three victims were unable to put up any effective defense and were denied any means of escape from the attack, without any risk to the assailants. Treachery is present when the shooting of the victim with a carbine is sudden and unexpected to the point of incapacitating the victim to repel or escape it.[22] And where the hands of the victim were raised as ordered by the accused and notwithstanding that the accused fired at him without any risk to accused, treachery is present.[23]

Evident premeditation, however, was not attendant. The mere fact that three days before the shooting, ROLANDO and PEDRO went to Victorio's house looking for him but did not find him, and that they went back on June 13, 1971 and killed and wounded the victims is not sufficient to establish that aggravating circumstance. For evident premeditation to be appreciated the accused should have conceived to commit the crime and persisted in the criminal intent notwithstanding that he had the opportunity for reflection to allow his conscience to overcome the determination of his will.[24]

As held by the trial Court, appellant Rolando Catipon is guilty of 2 separate crimes of Murder for the killing of Guillermo Nato (TM-276) and Victorio Bucao (TM-277), respectively. There being no aggravating nor mitigating circumstance, the

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[21] *People vs. Manimtim, supra*; *People vs. Remollo, supra.*

[22] *People vs. Ordiales*, 42 SCRA 238 [1971].

[23] *People vs. Lasafin*, 92 Phil. 668 [1953].

[24] *People vs. Sarmiento*, 8 SCRA 263 [1963]; *People vs. Parayno*, 24 SCRA 3 [1968].

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trial Court correctly imposed the penalty of *reclusion perpetua* except that considering that two murders were committed, two *reclusion perpetuas* should have been imposed. The indemnity to be paid for death should be increased to ₱30,000.00 in each case.

ROLANDO is also guilty of Frustrated Murder for the wounding of Maximo Bucao (TM-278). Dr. Jose Yap, the attending physician, gave the opinion that the wound inflicted on Maximo was fatal and would have caused death as a result of hemorrhage without timely medical attendance.[25] ROLANDO had performed all acts of execution, in fact, believing Maximo to be dead after kicking him, which would have consummated the killing but due to timely medical attendance, which is a cause independent of the will of the perpetrator, it was not consummated. It is thus frustrated.[26] The appeal in the Frustrated Murder case is within this Court's jurisdiction as it arose out of the same occurrence as the two murders committed by ROLANDO.

WHEREFORE, the appealed judgments are hereby AFFIRMED with the modification that defendant-appellant, Rolando M. Catipon, shall suffer two *reclusion perpetuas* and shall indemnify the heirs of Guillermo Nato and Victorio Bucao in the sum of ₱30,000.00 each. With costs.

SO ORDERED.

Teehankee (Chairman), Plana, Gutierrez, Jr., De la Fuente, and *Patajo, JJ.*, concur.

Relova, J., on leave.

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[25] T.s.n., September 29, 1975, pp. 16 & 17.

[26] Article 6, Revised Penal Code; *People vs. Doria*, 55 SCRA 435 [1974].