



Republic of the Philippines  
Supreme Court  
Baguio City

EN BANC

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 202124

Present:

SERENO, C.J.,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE,\*  
LEONEN, and  
JARDELEZA,\*\*  
CAGUIOA, JJ.

- versus -

Promulgated:

IRENEO JUGUETA,  
Accused-Appellant.

April 5, 2016

X-----*[Signature]*-----X

DECISION

PERALTA, J.:

This resolves the appeal from the Decision<sup>1</sup> of the Court of Appeals (CA) dated January 30, 2012 in CA-G.R. CR HC No. 03252. The CA affirmed the judgments of the Regional Trial Court (RTC), Branch 61,

\* On leave.

\*\* No part.

<sup>1</sup> Penned by Associate Justice Jane Aurora T. Lantion, with Associate Justices Isaias P. Dicdican and Rodil V. Zalameda, concurring; *rollo*, pp. 2-21.

Gumaca, Quezon, finding accused-appellant Ireneo Jugueta y Flores guilty beyond reasonable doubt of Double Murder in Criminal Case No. 7698-G and Multiple Attempted Murder in Criminal Case No. 7702-G.

In Criminal Case No. 7698-G, appellant was charged with Double Murder, defined and penalized under Article 248 of the Revised Penal Code, allegedly committed as follows:

That on or about the 6<sup>th</sup> day of June 2002, at about 9:00 o'clock in the evening, at Barangay Caridad Ilaya, Municipality of Atimonan, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a caliber .22 firearm, with intent to kill, qualified by treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with said firearm Mary Grace Divina, a minor, 13 years old, who suffered the following:

“Gunshot wound -

Point of Entry – lower abdomen, right, 2 cm. from the midline and 6 cm. from the level of the umbilicus, directed upward toward the left upper abdomen.”

and Claudine Divina, a minor, 3 ½ years of age, who suffered the following:

“Gunshot wound -

Point of Entry - 9<sup>th</sup> ICS along the mid-axillary line, right, 1 cm. diameter

Point of Exit - 7<sup>th</sup> ICS mid-axillary line, left;”

which directly caused their instant death.

That the crime committed in the dwelling of the offended party who had not given provocation for the attack and the accused took advantage of nighttime to facilitate the commission of the offense.

Contrary to law.<sup>2</sup>

In Criminal Case No. 7702-G, appellant, together with Gilbert Estores and Roger San Miguel, was charged with Multiple Attempted Murder, allegedly committed as follows:

That on or about 9:00 o'clock in the evening of 6<sup>th</sup> day of June, 2002, at Barangay Caridad Ilaya, Municipality of Atimonan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court,

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<sup>2</sup> Record, Vol. 1, pp. 2-3.

the above-named accused, conspiring and confederating together and mutually helping one another, armed with short firearms of undetermined calibres, with intent to kill, qualified by treachery, with evident premeditation and abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, and shoot with the said firearms the house occupied by the family of Norberto Divina, thereby commencing the commission of the crime of Murder, directly by overt acts, but did not perform all the acts of execution which would have produced it by reason of some cause or accident other than the spontaneous desistance of the accused, that is, the occupants Norberto Divina, his wife Maricel Divina and children Elizabeth Divina and Judy Ann Divina, both elementary pupils and who are minors, were not hit.

CONTRARY TO LAW.<sup>3</sup>

Roger San Miguel, however, moved for reinvestigation of the case against them. At said proceedings, one Danilo Fajarillo submitted his sworn statement stating that on June 6, 2002, he saw appellant with a certain “Hapon” and Gilbert Estores at the crime scene, but it was only appellant who was carrying a firearm while the other two had no participation in the shooting incident. Fajarillo further stated that Roger San Miguel was not present at the crime scene. Based on the sworn statement of Fajarillo, the Provincial Prosecutor found no *prima facie* case against Gilbert Estores and Roger San Miguel.<sup>4</sup> Thus, upon motion of the prosecution, the case for Attempted Murder against Gilbert Estores and Roger San Miguel was dismissed, and trial proceeded only as to appellant.<sup>5</sup>

At the trial, the prosecution presented the testimonies of Norberto Divina, the victim, and Dr. Lourdes Taguinod who executed the Medico-Legal Certificate and confirmed that the children of Norberto, namely, Mary Grace and Claudine, died from gunshot wounds. Dr. Taguinod noted that the trajectory of the bullet wounds showed that the victims were at a higher location than the shooter, but she could not tell what kind of ammunitions were used.<sup>6</sup>

Norberto testified that the appellant is his brother-in-law. He recounted that in the evening of June 6, 2002, as his entire family lay down on the floor of their one-room nipa hut to sleep, the “sack” walling of their hut was suddenly stripped off, and only the supporting bamboo (fences) remained. With the covering of the wall gone, the three (3) men responsible for the deed came into view. Norberto clearly saw their faces which were illuminated by the light of a gas lamp hanging in their small hut. Norberto identified the 3 men as appellant, Gilbert Estores and Roger San Miguel.

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<sup>3</sup> Record, Vol. II., p. 2.

<sup>4</sup> Order of the Provincial Prosecutor, Record, Vol. I, pp. 12-14.

<sup>5</sup> RTC Order, Record, Vol. II, pp. 66-67.

<sup>6</sup> TSN, February 5, 2004, Folder of TSN's.

The 3 men ordered Norberto to come down from his house, but he refused to do so. The men then uttered, “*Magdasal ka na at katapusan mo na ngayon.*” Norberto pleaded with them, saying, “*Maawa kayo sa amin, matanda na ako at marami akong anak. Anong kasalanan ko sa inyo?*” Despite such plea for mercy, a gunshot was fired, and Norberto immediately threw his body over his children and wife in an attempt to protect them from being hit. Thereafter, he heard successive gunshots being fired in the direction where his family huddled together in their hut.<sup>7</sup>

When the volley of shots ceased and the three (3) men left, Norberto saw that his two (2) young daughters were wounded. His wife went out of their house to ask for help from neighbors, while he and his older daughter carried the two (2) wounded children out to the street. His daughter Mary Grace died on the way to the hospital, while Claudine expired at the hospital despite the doctors' attempts to revive her.<sup>8</sup>

In answer to questions of what could have prompted such an attack from appellant, Norberto replied that he had a previous altercation with appellant who was angered by the fact that he (Norberto) filed a case against appellant's two other brothers for molesting his daughter.<sup>9</sup>

On the other hand, appellant was only able to proffer denial and alibi as his defense. Appellant's testimony, along with those of Gilbert Estores, Roger San Miguel, Isidro San Miguel and Ruben Alegre, was that he (appellant) was just watching TV at the house of Isidro San Miguel, where he had been living for several years, at the time the shooting incident occurred. However, he and the other witnesses admitted that said house was a mere five-minute walk away from the crime scene.<sup>10</sup>

Finding appellant's defense to be weak, and ascribing more credence to the testimony of Norberto, the trial court ruled that the evidence clearly established that appellant, together with two other assailants, conspired to shoot and kill the family of Norberto. Appellant was then convicted of Double Murder in Criminal Case No. 7698-G and Multiple Attempted Murder in Criminal Case No. 7702-G.

The dispositive portion of the trial court's judgment in Criminal Case No. 7698-G reads:

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<sup>7</sup> TSN, March 3, 2004, Folder of TSN's.

<sup>8</sup> *Id.*

<sup>9</sup> TSN, June 28, 2004, Folder of TSN's.

<sup>10</sup> TSN's, February 10, 2005, April 7, 2005, February 15, 2006, August 3, 2006, September 6, 2006 and June 7, 2006.

WHEREFORE and in view of all the foregoing, the Court finds accused Ireneo Jugueta guilty beyond reasonable doubt for Double Murder defined and punished under Article 248 of the Revised Penal Code and is hereby sentenced to suffer *Reclusion Perpetua* for the death of Mary Grace Divina and to indemnify her heirs in the amount of Php50,000.00 and another to suffer *Reclusion Perpetua* for the death of Claudine Divina and accused is further ordered to indemnify the heirs of Claudine Divina in the sum of Php50,000.00. In addition, he is hereby ordered to pay the heirs of the victims actual damages in the amount of Php16,150.00 and to pay for the costs.

SO ORDERED.<sup>11</sup>

On the other hand, the dispositive portion of the trial court's judgment in Criminal Case No. 7702-G, reads:

WHEREFORE and in view of all the foregoing, the Court finds accused Ireneo Jugueta guilty beyond reasonable doubt for Multiple Attempted Murder defined and penalized under Article 248 in relation to Article 51 of the Revised Penal Code and is hereby sentenced to suffer the penalty of FOUR (4) YEARS and TWO (2) MONTHS of *Prision Correccional* as minimum to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* as maximum for each of the offended parties; Norberto Divina, Maricel Divina, Elizabeth Divina and Judy Ann Divina. Further, accused is ordered to pay for the costs of the suit.

SO ORDERED.<sup>12</sup>

Aggrieved by the trial court's judgments, appellant appealed to the CA. On January 30, 2012, the CA rendered a Decision affirming appellant's conviction for the crimes charged.<sup>13</sup>

Dissatisfied with the CA Decision, appellant elevated the case to this Court. On July 30, 2012, the Court issued a Resolution<sup>14</sup> notifying the parties that they may submit their respective Supplemental Briefs. Both parties manifested that they will no longer submit supplemental briefs since they had exhaustively discussed their positions before the CA.<sup>15</sup>

The main issue advanced in the Appellant's Brief deals with the inconsistencies in Norberto's testimony, such as his failure to state from the beginning that all three assailants had guns, and to categorically identify appellant as the one holding the gun used to kill Norberto's children.

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<sup>11</sup> Record, Vol. I, pp. 293-294.

<sup>12</sup> Record, Vol. II, p. 131.

<sup>13</sup> *Supra* note 1.

<sup>14</sup> *Rollo*, p. 27.

<sup>15</sup> *Rollo*, pp. 33-34.

The appeal is unmeritorious.

At the outset, it must be stressed that factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect. Thus, generally, the Court will not recalibrate and re-examine evidence that had been analyzed and ruled upon by the trial court and affirmed by the CA.<sup>16</sup>

The evidence on record fully supports the trial court's factual finding, as affirmed by the CA, that appellant acted in concert with two other individuals, all three of them carrying firearms and simultaneously firing at Norberto and his family, killing his two young daughters. Norberto clearly saw all of the three assailants with their firearms as there is illumination coming from a lamp inside their house that had been laid bare after its walling was stripped off, to wit:

Q: When the wall of your house was stripped off by these three persons at the same time, do you have light in your house?

A: Yes, sir.

Q: What kind of light was there?

A: A gas lamp.

Q: Where was the gas lamp placed at that time?

A: In the middle of our house.

x x x x

Q: when did they fire a shot?

A: On the same night, when they had stripped off the wallings.

Q: How many gunshots did you hear?

A: Only one.

Q: Do you know the sound of a gunshot? A firearm?

A: Yes, sir, it is loud? (sic)

x x x x

Q: After the first shot, was there any second shot?

A: After that, successive fire shot (sic) followed and my youngest and eldest daughters were hit.

x x x x

Q: How many of the three were holding guns at that time?

A: All of them.

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<sup>16</sup> *People of the Philippines v. Renandang Mamaruncas*, 680 Phil. 192, 211 (2012).

Q: You mean to tell the honorable court that these three persons were having one firearm each?

A: Yes, sir.

Q: And they fired shots at the same time?

A: Yes, sir.

Q: To what direction these three persons fired (sic) their firearms during that night?

A: To the place where we were.

Q: When those three persons were firing their respective firearms, what was your position then?

A: I ordered my children to lie down.

Q: How about you, what was your position when you were ordering your children to lie down?

A: (witness demonstrated his position as if covering his children with his body and ordering them to line (sic) down face down)

Q: Mr. Witness, for how long did these three persons fire shots at your house?

A: Less than five minutes, sir.

Q: After they fired their shots, they left your house?

A: Yes, sir.

Q: And when these persons left your house, you inspected your children to see what happened to them?

A: Yes, sir, they were hit.

x x x<sup>17</sup>

Appellant and the two other malefactors are equally responsible for the death of Norberto's daughters because, as ruled by the trial court, they clearly conspired to kill Norberto's family. Conspiracy exists when two or more persons come to an agreement regarding the commission of a crime and decide to commit it. Proof of a prior meeting between the perpetrators to discuss the commission of the crime is not necessary as long as their concerted acts reveal a common design and unity of purpose. In such case, the act of one is the act of all.<sup>18</sup> Here, the three men undoubtedly acted in concert as they went to the house of Norberto together, each with his own firearm. It is, therefore, no longer necessary to identify and prove that it is the bullet particularly fired from appellant's firearm that killed the children.

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<sup>17</sup> TSN, July 14, 2004, pp. 6-8.

<sup>18</sup> *People v. Nazareno*, 698 Phil. 187, 193 (2012).

Murder is defined under Article 248 of the Revised Penal Code as the unlawful killing of a person, which is not parricide or infanticide, attended by circumstances such as treachery or evident premeditation.<sup>19</sup> The presence of any one of the circumstances enumerated in Article 248 of the Code is sufficient to qualify a killing as murder.<sup>20</sup> The trial court correctly ruled that appellant is liable for murder because treachery attended the killing of Norberto's two children, thus:

x x x Evidence adduced show that the family of Norberto Divina, were all lying down side by side about to sleep on June 6, 2002 at around 9:00 o'clock in the evening, when suddenly their wall made of sack was stripped off by [appellant] Ireneo Jugueta, Roger San Miguel and Gilberto Alegre (sic) [Gilbert Estores]. They ordered him to go out of their house and when he refused despite his plea for mercy, they fired at them having hit and killed his two (2) daughters. The family of Norberto Divina were unarmed and his children were at very tender ages. Mary Grace Divina and Claudine who were shot and killed were 13 years old and 3 ½ years old respectively. In this case, the victims were defenseless and manifestly overpowered by armed assailants when they were gunned down. There was clear showing that the attack was made suddenly and unexpectedly as to render the victims helpless and unable to defend themselves. Norberto and his wife and his children could have already been asleep at that time of the night. x x x<sup>21</sup>

Verily, the presence of treachery qualified the killing of the hapless children to murder. As held in *People v. Fallorina*,<sup>22</sup> the essence of treachery is the sudden and unexpected attack on an unsuspecting victim without the slightest provocation on his part. Minor children, who by reason of their tender years, cannot be expected to put up a defense. When an adult person illegally attacks a child, treachery exists.

As to the charge of multiple attempted murder, the last paragraph of Article 6 of the Revised Penal Code states that a felony is attempted when the offender commences the commission of a felony directly by overt acts,

<sup>19</sup> *People v. Adviento, et al.*, 684 Phil. 507, 519 (2012)

<sup>20</sup> 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 temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
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 street car or locomotive, fall of an airship, 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.

<sup>21</sup> *Supra* note 11, at 287.

<sup>22</sup> 468 Phil. 816, 840 (2004), citing *People v. Bustamante*; 445 Phil. 345, 363-364 (2003); *People v. Magno*, 379 Phil. 531, 554 (2000).

and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In *Esqueda v. People*,<sup>23</sup> the Court held:

If one inflicts physical injuries on another but the latter survives, the crime committed is either consummated physical injuries, if the offender had no intention to kill the victim, or frustrated or attempted homicide or frustrated murder or attempted murder if the offender intends to kill the victim. Intent to kill may be proved by evidence of: (a) motive; (b) the nature or number of weapons used in the commission of the crime; (c) the nature and number of wounds inflicted on the victim; (d) the manner the crime was committed; and (e) the words uttered by the offender at the time the injuries are inflicted by him on the victim.

In this case, the prosecution has clearly established the intent to kill on the part of appellant as shown by the use of firearms, the words uttered<sup>24</sup>during, as well as the manner of, the commission of the crime. The Court thus quotes with approval the trial court's finding that appellant is liable for attempted murder, *viz.*:

In the case at bar, the perpetrators who acted in concert commenced the felony of murder first by suddenly stripping off the wall of their house, followed by successive firing at the intended victims when Norberto Divina refused to go out of the house as ordered by them. If only there were good in aiming their target, not only Mary Grace and Claudine had been killed but surely all the rest of the family would surely have died. Hence, perpetrators were liable for Murder of Mary Grace Divina and Claudine Divina but for Multiple Attempted Murder for Norberto Divina, Maricel Divina, Elizabeth Divina and Judy Ann Divina. But as [appellant] Ireneo Jugueta was the only one charged in this case, he alone is liable for the crime committed.<sup>25</sup>

Meanwhile, the supposed inconsistencies in Norberto's testimony, *i.e.*, that he failed to state from the very beginning that all three assailants were carrying firearms, and that it was the shots from appellant's firearm that killed the children, are too trivial and inconsequential to put a dent on said witness's credibility. An examination of Norberto's testimony would show that there are no real inconsistencies to speak of. As ruled in *People v. Cabtalan*,<sup>26</sup> “[m]inor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of witnesses, as well as their positive identification of the accused as the perpetrators of the crime.”<sup>27</sup> Both the trial court and the CA found Norberto's candid and straightforward testimony to be worthy of belief and this Court sees no reason why it should not conform to the principle reiterated in *Medina, Jr. v. People*<sup>28</sup> that:

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<sup>23</sup> 607 Phil. 480, 505 (2009).

<sup>24</sup> “Magdasal ka na at katapusan mo na ngayon.”

<sup>25</sup> *Supra* note 12, at 128-129.

<sup>26</sup> 682 Phil. 164 (2012).

<sup>27</sup> *People v. Cabtalan, supra*, at 168.

<sup>28</sup> G.R. No. 161308, January 15, 2014, 713 SCRA 311.

Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation. This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor x x x.<sup>29</sup>

The records of this case, particularly the testimonies of the witnesses, reveal no outstanding or exceptional circumstance to justify a deviation from such long-standing principle. There is no cogent reason to overturn the trial court's ruling that the prosecution evidence, particularly the testimony of Norberto Divina identifying appellant as one of the assailants, is worthy of belief. Thus, the prosecution evidence established beyond any reasonable doubt that appellant is one of the perpetrators of the crime.

However, the Court must make a clarification as to the nomenclature used by the trial court to identify the crimes for which appellant was penalized. There is some confusion caused by the trial court's use of the terms "Double Murder" and "Multiple Attempted Murder" in convicting appellant, and yet imposing penalties which nevertheless show that the trial court meant to penalize appellant for two (2) separate counts of Murder and four (4) counts of Attempted Murder.

The facts, as alleged in the Information in Criminal Case No. 7698-G, and as proven during trial, show that appellant is guilty of 2 counts of the crime of Murder and not Double Murder, as the killing of the victims was not the result of a single act but of several acts of appellant and his cohorts. In the same vein, appellant is also guilty of 4 counts of the crime of Attempted Murder and not Multiple Attempted Murder in Criminal Case No. 7702-G. It bears stressing that the Informations in this case failed to comply with the requirement in Section 13, Rule 110 of the Revised Rules of Court that an information must charge only one offense.

As a general rule, a complaint or information must charge only one offense, otherwise, the same is defective. The reason for the rule is stated in *People of the Philippines and AAA v. Court of Appeals, 21<sup>st</sup> Division, Mindanao Station, et al.*,<sup>30</sup> thus:

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<sup>29</sup> *Medina, Jr. v. People, supra*, at 320.

<sup>30</sup> G.R. No. 183652, February 25, 2015.

The rationale behind this rule prohibiting duplicitous complaints or informations is to give the accused the necessary knowledge of the charge against him and enable him to sufficiently prepare for his defense. The State should not heap upon the accused two or more charges which might confuse him in his defense. Non-compliance with this rule is a ground for quashing the duplicitous complaint or information under Rule 117 of the Rules on Criminal Procedure and the accused may raise the same in a motion to quash before he enters his plea, otherwise, the defect is deemed waived.

However, since appellant entered a plea of not guilty during arraignment and failed to move for the quashal of the Informations, he is deemed to have waived his right to question the same. Section 9 of Rule 117 provides that “[t]he failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.”

It is also well-settled that when two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose upon him the proper penalty for each offense.<sup>31</sup> Appellant can therefore be held liable for all the crimes alleged in the Informations in Criminal Case Nos. 7698-G and 7702-G, *i.e.*, 2 counts of murder and 4 counts of attempted murder, respectively, and proven during trial.

Meanwhile, in *People v. Nelmidia*,<sup>32</sup> the Court explained the concept of a complex crime as defined in Article 48<sup>33</sup> of the Revised Penal Code, thus:

In a complex crime, two or more crimes are actually committed, however, in the eyes of the law and in the conscience of the offender they constitute only one crime, thus, only one penalty is imposed. There are two kinds of complex crime. The first is known as a compound crime, or when a single act constitutes two or more grave or less grave felonies while the other is known as a complex crime proper, or when an offense is a necessary means for committing the other. The classic example of the first kind is when a single bullet results in the death of two or more persons. A different rule governs where separate and distinct acts result in a number

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<sup>31</sup> *People of the Philippines and AAA v. Court of Appeals, 21<sup>st</sup> Division, Mindanao Station, et al.*, *supra*.

<sup>32</sup> 694 Phil. 529, 581 (2012).

<sup>33</sup> Art. 48. Penalty for Complex Crimes – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

killed. Deeply rooted is the doctrine that when various victims expire from separate shot, such acts constitute separate and distinct crimes.<sup>34</sup>

Here, the facts surrounding the shooting incident clearly show that appellant and the two others, in firing successive and indiscriminate shots at the family of Norberto from their respective firearms, intended to kill not only Norberto, but his entire family. When several gunmen, as in this case, indiscriminately fire a series of shots at a group of people, it shows their intention to kill several individuals. Hence, they are committing not only one crime. What appellant and his cohorts committed cannot be classified as a complex crime because as held in *People v. Nelmidia*,<sup>35</sup> “each act by each gunman pulling the trigger of their respective firearms, aiming each particular moment at different persons constitute distinct and individual acts which cannot give rise to a complex crime.”<sup>36</sup>

Furthermore, the Court notes that both the trial court and the CA failed to take into account dwelling as an ordinary, aggravating circumstance, despite the fact that the Informations in Criminal Case Nos. 7698-G and 7702-G contain sufficient allegations to that effect, to wit:

Criminal Case No. 7698-G for Double Murder:

That the crime was committed in the dwelling of the offended party who had not given provocation for the attack and the accused took advantage of nighttime to facilitate the commission of the offense.<sup>37</sup>

Criminal Case No. 7702-G for Multiple Attempted Murder:

x x x the above-named accused, conspiring and confederating together and mutually helping one another, armed with short firearms of undetermined calibres, with intent to kill, qualified by treachery, with evident premeditation and abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, and shoot with the said firearms the house occupied by the family of Norberto Divina, thereby commencing the commission of the crime of Murder, directly by overt acts, but did not perform all the acts of execution which would have produced it by reason of some cause or accident other than the spontaneous desistance of the accused x x x<sup>38</sup>

In *People v. Agcanas*,<sup>39</sup> the Court stressed that “[i]t has been held in a long line of cases that dwelling is aggravating because of the sanctity of

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<sup>34</sup> *People v. Nelmidia*, *supra* note 32, at 569-570. (Emphasis omitted)

<sup>35</sup> *Supra* note 32.

<sup>36</sup> *People v. Nelmidia*, *supra*, at 570.

<sup>37</sup> *Supra* note 2.

<sup>38</sup> *Supra* note 3.

<sup>39</sup> 674 Phil. 626, 635 (2011).1

privacy which the law accords to human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.” Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor.<sup>40</sup> The testimony of Norberto established the fact that the group of appellant violated the victims' home by destroying the same and attacking his entire family therein, without provocation on the part of the latter. Hence, the trial court should have appreciated dwelling as an ordinary aggravating circumstance.

In view of the attendant ordinary aggravating circumstance, the Court must modify the penalties imposed on appellant. Murder is punishable by *reclusion perpetua* to death, thus, with an ordinary aggravating circumstance of dwelling, the imposable penalty is death for each of two (2) counts of murder.<sup>41</sup> However, pursuant to Republic Act (RA) No. 9346, proscribing the imposition of the death penalty, the penalty to be imposed on appellant should be *reclusion perpetua* for each of the two (2) counts of murder without eligibility for parole. With regard to the four (4) counts of attempted murder, the penalty prescribed for each count is *prision mayor*. With one ordinary aggravating circumstance, the penalty should be imposed in its maximum period. Applying the Indeterminate Sentence Law, the maximum penalty should be from ten (10) years and one (1) day to twelve (12) years of *prision mayor*, while the minimum shall be taken from the penalty next lower in degree, *i.e.*, *prision correccional*, in any of its periods, or anywhere from six (6) months and one (1) day to six (6) years. This Court finds it apt to impose on appellant the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as minimum, for each of the four (4) counts of attempted murder.

Anent the award of damages, the Court deems it proper to address the matter in detail as regards criminal cases where the imposable penalty is *reclusion perpetua* to death. Generally, in these types of criminal cases, there are three kinds of damages awarded by the Court; namely: civil indemnity, moral, and exemplary damages. Likewise, actual damages may be awarded or temperate damages in some instances.

First, civil indemnity *ex delicto* is the indemnity authorized in our criminal law for the offended party, in the amount authorized by the prevailing judicial policy and apart from other proven actual damages, which itself is equivalent to actual or compensatory damages in civil law.<sup>42</sup>

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<sup>40</sup> *People v. Evangelio*, 672 Phil. 229, 248-249 (2011).

<sup>41</sup> Revised Penal Code, Art. 63, par. (1), provides, in part, that when the penalty consists of two (2) indivisible penalties and is attended by one or more aggravating circumstances, the greater penalty shall be applied, and in this case, the death penalty shall be imposed.

<sup>42</sup> *People v. Combate*, 653 Phil. 487, 504 (2010), citing *People v. Victor*, 354 Phil. 195, 209 (1998).

This award stems from Article 100 of the RPC which states, "Every person criminally liable for a felony is also civilly liable."

It is to be noted that civil indemnity is, technically, not a penalty or a fine; hence, it can be increased by the Court when appropriate.<sup>43</sup> Article 2206 of the Civil Code provides:

Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

In our jurisdiction, civil indemnity is awarded to the offended party as a kind of monetary restitution or compensation to the victim for the damage or infraction that was done to the latter by the accused, which in a sense only covers the civil aspect. Precisely, it is civil indemnity. Thus, in a crime where a person dies, in addition to the penalty of imprisonment imposed to the offender, the accused is also ordered to pay the victim a sum of money as restitution. Also, it is apparent from Article 2206 that the law only imposes a minimum amount for awards of civil indemnity, which is ₱3,000.00. The law did not provide for a ceiling. Thus, although the minimum amount for the award cannot be changed, increasing the amount awarded as civil indemnity can be validly modified and increased when the present circumstance warrants it.<sup>44</sup>

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<sup>43</sup> *Corpuz v. People of the Philippines*, G.R. No. 180016, April 29, 2014, 724 SCRA 1, 57.

<sup>44</sup> *Id.* at 58-59.

The second type of damages the Court awards are moral damages, which are also compensatory in nature. *Del Mundo v. Court of Appeals*<sup>45</sup> expounded on the nature and purpose of moral damages, viz.:

Moral damages, upon the other hand, may be awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered. Although incapable of exactness and no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is imperative, nevertheless, that (1) injury must have been suffered by the claimant, and (2) such injury must have sprung from any of the cases expressed in Article 2219<sup>46</sup> and Article 2220<sup>47</sup> of the Civil Code. x x x.

Similarly, in American jurisprudence, moral damages are treated as "compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong."<sup>48</sup> They may also be considered and allowed "for resulting pain and suffering, and for humiliation, indignity, and vexation suffered by the plaintiff as result of his or her assailant's conduct, as well as the factors of provocation, the reasonableness of the force used, the attendant humiliating circumstances, the sex of the victim, [and] mental distress."<sup>49</sup>

The rationale for awarding moral damages has been explained in *Lambert v. Heirs of Rey Castillon*: "[T]he award of moral damages is aimed at a restoration, within the limits possible, of the spiritual status quo ante; and therefore, it must be proportionate to the suffering inflicted."<sup>50</sup>

<sup>45</sup> G.R. No. 104576, January 20, 1995, 240 SCRA 348, 356-357.

<sup>46</sup> Art. 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in Article 309;
- (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brother and sisters may bring the action mentioned in No. 9 of this article, in the order named.

<sup>47</sup> Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

<sup>48</sup> *Bagumbayan Corp. v. Intermediate Appellate Court*, No. L-66274, September 30, 1984, 132 SCRA 441, 446.

<sup>49</sup> 6A C.J.S. Assault § 68.

<sup>50</sup> G.R. No. 160709, February 23, 2005, 452 SCRA 285, 296.

Corollarily, moral damages under Article 2220<sup>51</sup> of the Civil Code also does not fix the amount of damages that can be awarded. It is discretionary upon the court, depending on the mental anguish or the suffering of the private offended party. The amount of moral damages can, in relation to civil indemnity, be adjusted so long as it does not exceed the award of civil indemnity.<sup>52</sup>

Finally, the Civil Code of the Philippines provides, in respect to exemplary damages, thus:

ART. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

Also known as “punitive” or “vindictive” damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted,<sup>53</sup> the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant – associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud<sup>54</sup> – that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.<sup>55</sup>

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<sup>51</sup> Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

<sup>52</sup> *Lito Corpuz v. People of the Philippines*, *supra* note 43, at 59.

<sup>53</sup> *People v. Dalisay*, 620 Phil. 831, 844 (2009), citing *People v. Catubig*, 416 Phil. 102, 119 (2001), citing *American Cent. Corp. v. Stevens Van Lines, Inc.*, 103 Mich App 507, 303 NW2d 234; *Morris v. Duncan*, 126 Ga 467, 54 SE 1045; *Faircloth v. Greiner*, 174 Ga app 845, 332 SE 2d 905; §731, 22 Am Jur 2d, p. 784; *American Surety Co. v. Gold*, 375 F 2d 523, 20 ALR 3d 335; *Erwin v. Michigan*, 188 Ark 658, 67 SW 2d 592.

<sup>54</sup> §762, 22 Am Jur 2d pp. 817-818.

<sup>55</sup> §733, 22 Am Jur 2d, p. 785; Symposium: Punitive Damages, 56 So Cal LR 1, November 1982.

The term aggravating circumstances used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.<sup>56</sup>

The reason is fairly obvious as to why the Revised Rules of Criminal Procedure<sup>57</sup> requires aggravating circumstances, whether ordinary or qualifying, to be stated in the complaint or information. It is in order not to trample on the constitutional right of an accused to be informed of the nature of the alleged offense that he or she has committed. A criminal complaint or information should basically contain the elements of the crime, as well as its qualifying and ordinary aggravating circumstances, for the court to effectively determine the proper penalty it should impose. This, however, is not similar in the recovery of civil liability. In the civil aspect, the presence of an aggravating circumstance, even if not alleged in the information but proven during trial would entitle the victim to an award of exemplary damages.

Being corrective in nature, exemplary damages, therefore, can be awarded, not only due to the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230

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<sup>56</sup> *People v. Catubig*, *supra* note 53, at 119-120.

<sup>57</sup> Rule 110 of the Rules of Court provides:

Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and **specify its qualifying and aggravating circumstances**. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. (Emphasis supplied)

Sec. 9. Cause of the accusations. - The acts or omissions complained of as constituting the offense and **the qualifying and aggravating circumstances must be stated in ordinary and concise language** and not necessarily in the language used in the statute but in terms **sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment**. (Emphasis supplied)

prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*,<sup>58</sup> the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*,<sup>59</sup> the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. In *People v. Cañada*,<sup>60</sup> *People v. Neverio*<sup>61</sup> and *People v. Layco, Sr.*,<sup>62</sup> the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

Existing jurisprudence pegs the award of exemplary damages at ₱30,000.00,<sup>63</sup> despite the lack of any aggravating circumstance. The Court finds it proper to increase the amount to ₱50,000.00 in order to deter similar conduct.

If, however, the penalty for the crime committed is death, which cannot be imposed because of the provisions of R.A. No. 9346, prevailing jurisprudence<sup>64</sup> sets the amount of ₱100,000.00 as exemplary damages.

Before awarding any of the above mentioned damages, the Court, however, must first consider the penalty imposed by law. Under RA 7659 or *An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, and for Other Purposes*, certain crimes under the RPC and special penal laws were amended to impose the death penalty under certain circumstances.<sup>65</sup> Under the same law, the following crimes are punishable by *reclusion perpetua*: piracy in general,<sup>66</sup> mutiny on the high seas,<sup>67</sup> and simple rape.<sup>68</sup> For the following crimes, RA 7659 has imposed the penalty of *reclusion perpetua* to

<sup>58</sup> G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613, 634.

<sup>59</sup> 322 Phil. 551 (1996).

<sup>60</sup> 617 Phil. 587 (2009).

<sup>61</sup> 613 Phil. 507 (2009).

<sup>62</sup> 605 Phil. 877 (2009).

<sup>63</sup> *People v. Abellera*, 553 Phil. 307 (2007).

<sup>64</sup> *People v. Gambao*, G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533-534.

<sup>65</sup> *People v. Combate*, *supra* note 41, at 509.

<sup>66</sup> Art. 122. *Piracy in general and mutiny on the high seas or in Philippine waters*. - The penalty of *reclusion perpetua* shall be inflicted upon any person who, on the high seas, or in Philippine waters, shall attack or seize a vessel or, not being a member of its complement nor a passenger, shall seize the whole or part of the cargo of said vessel, its equipment or passengers. The same penalty shall be inflicted in case of mutiny on the high seas or in Philippine waters.

<sup>67</sup> *Id.*

<sup>68</sup> Art. 335. *When and how rape is committed*. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion temporal*. x x x

death: qualified piracy;<sup>69</sup> qualified bribery under certain circumstances;<sup>70</sup> parricide;<sup>71</sup> murder;<sup>72</sup> infanticide, except when committed by the mother of the child for the purpose of concealing her dishonor or either of the maternal grandparents for the same purpose;<sup>73</sup> kidnapping and serious illegal detention under certain circumstances;<sup>74</sup> robbery with violence against or intimidation of persons under certain circumstances;<sup>75</sup> destructive arson, except when death results as a consequence of the commission of any of the acts penalized under the article;<sup>76</sup> attempted or frustrated rape, when a

<sup>69</sup> Art. 123. *Qualified piracy.* - The penalty of *reclusion perpetua* to death shall be imposed upon those who commit any of the crimes referred to in the preceding article, under any of the following circumstances:

1. Whenever they have seized a vessel by boarding or firing upon the same;
2. Whenever the pirates have abandoned their victims without means of saving themselves or;
3. Whenever the crime is accompanied by murder, homicide, physical injuries or rape.

<sup>70</sup> Art. 211-A. *Qualified Bribery.* - If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by *reclusion perpetua* and/or death in consideration of any offer, promise, gift or present, he shall suffer the penalty for the offense which was not prosecuted. x x x

<sup>71</sup> Art. 246. *Parricide.* - Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

<sup>72</sup> 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 or 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.

<sup>73</sup> Art. 255. *Infanticide.* - The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

<sup>74</sup> Art. 267. *Kidnapping and serious illegal detention.* - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

x x x x

<sup>75</sup> Art. 294. *Robbery with violence against or intimidation of persons - Penalties.* - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

x x x x.

<sup>76</sup> Art. 320. *Destructive Arson.* - The penalty of *reclusion perpetua* to death shall be imposed upon any person who shall burn:

1. One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, committed on several or different occasions.
2. Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to, official governmental function or business, private transaction, commerce, trade, workshop, meetings and conferences, or merely incidental to a definite purpose such as

homicide is committed by reason or on occasion thereof; plunder;<sup>77</sup> and carnapping, when the driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.<sup>78</sup> Finally, RA 7659 imposes the death penalty on the following crimes:

(a) In qualified bribery, when it is the public officer who asks or demands the gift or present.

b) In kidnapping and serious illegal detention: (i) when the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person; (ii) when the victim is killed or dies as a consequence of the detention; (iii) when the victim is raped, subjected to torture or dehumanizing acts.

(c) In destructive arson, when as a consequence of the commission of any of the acts penalized under Article 320, death results.

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but not limited to hotels, motels, transient dwellings, public conveyances or stops or terminals, regardless of whether the offender had knowledge that there are persons in said building or edifice at the time it is set on fire and regardless also of whether the building is actually inhabited or not.

3. Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure.

4. Any building, factory, warehouse installation and any appurtenances thereto, which are devoted to the service of public utilities.

5. Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance.

Irrespective of the application of the above enumerated qualifying circumstances, the penalty of reclusion perpetua to death shall likewise be imposed when the arson is perpetrated or committed by two (2) or more persons or by a group of persons, regardless of whether their purpose is merely to burn or destroy the building or the burning merely constitutes an overt act in the commission or another violation of law.

The penalty of reclusion perpetua to death shall also be imposed upon any person who shall burn:

1. Any arsenal, shipyard, storehouse or military powder or fireworks factory, ordnance, storehouse, archives or general museum of the Government.

2. In an inhabited place, any storehouse or factory of inflammable or explosive materials.

x x x x

<sup>77</sup> Republic Act No. 7080 (1991), Sec. 2. *Definition of the Crime of Plunder; Penalties.* - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

<sup>78</sup> Republic Act No. 6539 (1972), Sec. 14. *Penalty for Carnapping.* - Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by x x x the penalty of *reclusion perpetua* to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.

(d) In rape: (i) when by reason or on occasion of the rape, the victim becomes insane or homicide is committed; (ii) when committed with any of the following attendant circumstances: (1) when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim; (2) when the victim is under the custody of the police or military authorities; (3) when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity; (4) when the victim is a religious or a child below seven years old; (5) when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease; (6) when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency; and (7) when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

From these heinous crimes, where the imposable penalties consist of two (2) indivisible penalties or single indivisible penalty, all of them must be taken in relation to Article 63 of the RPC, which provides:

*Article 63. Rules for the application of indivisible penalties.* - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. when in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
2. when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
3. when the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
4. when both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation. (Revised Penal Code, Art. 63)

Thus, in order to impose the proper penalty, especially in cases of indivisible penalties, the court has the duty to ascertain the presence of any

mitigating or aggravating circumstances. Accordingly, in crimes where the imposable penalty is *reclusion perpetua* to death, the court can impose either *reclusion perpetua* or death, depending on the mitigating or aggravating circumstances present.

But with the enactment of RA 9346 or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, the imposition of death penalty is now prohibited. It provides that in lieu of the death penalty, the penalty of *reclusion perpetua* shall be imposed when the law violated makes use of the nomenclature of the penalties of the RPC.<sup>79</sup>

As a result, the death penalty can no longer be imposed. Instead, they have to impose *reclusion perpetua*. Despite this, the principal consideration for the award of damages, following the ruling in *People v. Salome*<sup>80</sup> and *People v. Quiachon*,<sup>81</sup> is "the penalty provided by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender."<sup>82</sup>

When the circumstances surrounding the crime would justify the imposition of the death penalty were it not for RA 9346, the Court has ruled, as early as July 9, 1998 in *People v. Victor*,<sup>83</sup> that the award of civil indemnity for the crime of rape when punishable by death should be ₱75,000.00. We reasoned that "[t]his is not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time, but also an expression of the displeasure of the Court over the incidence of heinous crimes against chastity."<sup>84</sup> Such reasoning also applies to all heinous crimes found in RA 7659. The amount was later increased to ₱100,000.00.<sup>85</sup>

In addition to this, the Court likewise awards moral damages. In *People v. Arizapa*,<sup>86</sup> ₱50,000.00 was awarded as moral damages without need of pleading or proving them, for in rape cases, it is recognized that the victim's injury is concomitant with and necessarily results from the odious crime of rape to warrant per se the award of moral damages.<sup>87</sup> Subsequently, the amount was increased to ₱75,000.00 in *People v. Soriano*<sup>88</sup> and ₱100,000.00 in *People v. Gambao*.<sup>89</sup>

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<sup>79</sup> RA 9346, Sec. 2.

<sup>80</sup> 532 Phil. 368, 385 (2006).

<sup>81</sup> 532 Phil. 414, 428 (2006).

<sup>82</sup> See *People v. Sarcia*, 615 Phil. 97 (2009).

<sup>83</sup> *Supra* note 41.

<sup>84</sup> *People v. Victor*, *supra*, at 210.

<sup>85</sup> *People v. Gambao*, *supra* note 64, at 533.

<sup>86</sup> 384 Phil. 766 (2000).

<sup>87</sup> *People v. Arizapa*, *supra*.

<sup>88</sup> 436 Phil. 719 (2002).

<sup>89</sup> *Supra* note 64.

Essentially, despite the fact that the death penalty cannot be imposed because of RA 9346, the impossible penalty as provided by the law for the crime, such as those found in RA 7569, must be used as the basis for awarding damages and not the actual penalty imposed.

Again, for crimes where the impossible penalty is death in view of the attendance of an ordinary aggravating circumstance but due to the prohibition to impose the death penalty, the actual penalty imposed is *reclusion perpetua*, the latest jurisprudence<sup>90</sup> pegs the amount of ₱100,000.00 as civil indemnity and ₱100,000.00 as moral damages. For the qualifying aggravating circumstance and/or the ordinary aggravating circumstances present, the amount of ₱100,000.00 is awarded as exemplary damages aside from civil indemnity and moral damages. Regardless of the attendance of qualifying aggravating circumstance, the exemplary damages shall be fixed at ₱100,000.00. "[T]his is not only a reaction to the apathetic societal perception of the penal law and the financial fluctuation over time, but also an expression of the displeasure of the Court over the incidence of heinous crimes x x x."<sup>91</sup>

When the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the Court rules that the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 exemplary damages, regardless of the number of qualifying aggravating circumstances present.

When it comes to compound and complex crimes, although the single act done by the offender caused several crimes, the fact that those were the result of a single design, the amount of civil indemnity and moral damages will depend on the penalty and the number of victims. For each of the victims, the heirs should be properly compensated. If it is multiple murder without any ordinary aggravating circumstance but merely a qualifying aggravating circumstance, but the penalty imposed is death because of Art. 48 of the RPC wherein the maximum penalty shall be imposed,<sup>92</sup> then, for every victim who dies, the heirs shall be indemnified with ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.

In case of a special complex crime, which is different from a complex crime under Article 48 of the RPC, the following doctrines are noteworthy:

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<sup>90</sup> *People v. Gambao*, *supra* note 64.

<sup>91</sup> *People v. Victor*, *supra* note 42, at 210.

<sup>92</sup> ARTICLE 48. *Penalty for complex crimes*. — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

In *People of the Philippines v. Conrado Laog*,<sup>93</sup> this Court ruled that special complex crime, or more properly, a composite crime, has its own definition and special penalty in the Revised Penal Code, as amended. Justice Regalado, in his Separate Opinion in the case of *People v. Barros*,<sup>94</sup> explained that composite crimes are "neither of the same legal basis as nor subject to the rules on complex crimes in Article 48 [of the Revised Penal Code], since they do not consist of a single act giving rise to two or more grave or less grave felonies [compound crimes] nor do they involve an offense being a necessary means to commit another [complex crime proper]. However, just like the regular complex crimes and the present case of aggravated illegal possession of firearms, only a single penalty is imposed for each of such composite crimes although composed of two or more offenses."<sup>95</sup>

In *People v. De Leon*,<sup>96</sup> we expounded on the special complex crime of robbery with homicide, as follows:

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery with homicide, must be consummated.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed, or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.<sup>97</sup>

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<sup>93</sup> 674 Phil. 444 (2011).

<sup>94</sup> 315 Phil. 314 (1995).

<sup>95</sup> *Id.* at 338.

<sup>96</sup> 608 Phil. 701 (2009).

<sup>97</sup> *People v. De Leon*, *supra*, at 716-717, citing *People v. Salazar*, 342 Phil. 745, 765 (1997); *People v. Abuyen*, G.R. No. 77285, September 4, 1992, 213 SCRA 569, 582; *People v. Ponciano*, G.R. No. 86453, December 5, 1991, 204 SCRA 627, 639 and *People v. Mangulabnan, et al.*, 99 Phil. 992, 999 (1956).

In the special complex crime of rape with homicide, the term "homicide" is to be understood in its generic sense, and includes murder and slight physical injuries committed by reason or on occasion of the rape.<sup>98</sup> Hence, even if any or all of the circumstances (treachery, abuse of superior strength and evident premeditation) alleged in the information have been duly established by the prosecution, the same would not qualify the killing to murder and the crime committed by appellant is still rape with homicide. As in the case of robbery with homicide, the aggravating circumstance of treachery is to be considered as a generic aggravating circumstance only. Thus we ruled in *People v. Macabales*:<sup>99</sup>

Finally, appellants contend that the trial court erred in concluding that the aggravating circumstance of treachery is present. They aver that treachery applies to crimes against persons and not to crimes against property. However, we find that the trial court in this case correctly characterized treachery as a generic aggravating, rather than qualifying, circumstance. Miguel was rendered helpless by appellants in defending himself when his arms were held by two of the attackers before he was stabbed with a knife by appellant Macabales, as their other companions surrounded them. In *People v. Salvatierra*, we ruled that when alevosia (treachery) obtains in the special complex crime of robbery with homicide, such treachery is to be regarded as a generic aggravating circumstance. Robbery with homicide is a composite crime with its own definition and special penalty in the Revised Penal Code. There is no special complex crime of robbery with murder under the Revised Penal Code. Here, treachery forms part of the circumstances proven concerning the actual commission of the complex crime. Logically it could not qualify the homicide to murder but, as generic aggravating circumstance, it helps determine the penalty to be imposed.<sup>100</sup>

Applying the above discussion on special complex crimes, if the penalty is death but it cannot be imposed due to RA 9346 and what is actually imposed is the penalty of *reclusion perpetua*, the civil indemnity and moral damages will be ₱100,000.00 each, and another ₱100,000.00 as exemplary damages in view of the heinousness of the crime and to set an example. If there is another composite crime included in a special complex crime and the penalty imposed is death, an additional ₱100,000.00 as civil

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<sup>98</sup> *People v. Nanas*, 415 Phil. 683 (2001), citing *People v. Penillos*, G.R. No. 65673, January 30, 1992, 205 SCRA 546, 564 and *People v. Sequiño*, 332 Phil. 90 (1996).

<sup>99</sup> 400 Phil. 1221 (2000).

<sup>100</sup> *People v. Macabales*, *supra*, at 1236-1237, citing *People v. Vivas*, G.R. No. 100914, May 6, 1994, 232 SCRA 238, 242.

indemnity, ₱100,000.00 moral damages and ₱100,000.00 exemplary damages shall be awarded for each composite crime committed.

For example, in case of Robbery with Homicide<sup>101</sup> wherein three (3) people died as a consequence of the crime, the heirs of the victims shall be entitled to the award of damages as discussed earlier. This is true, however, only if those who were killed were the victims of the robbery or mere bystanders and not when those who died were the perpetrators or robbers themselves because the crime of robbery with homicide may still be committed even if one of the robbers dies.<sup>102</sup> This is also applicable in robbery with rape where there is more than one victim of rape.

In awarding civil indemnity and moral damages, it is also important to determine the stage in which the crime was committed and proven during the trial. Article 6 of the RPC provides:

Art. 6. Consummated, frustrated, and attempted felonies. - Consummated felonies, as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when an offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

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<sup>101</sup> Art. 294. Robbery with violence against or intimidation of persons; Penalties. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

2. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted; Provided, however, that when the robbery accompanied with rape is committed with a use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death (As amended by PD No. 767).

3. The penalty of *reclusion temporal*, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted.

4. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by sub-divisions 3 and 4 of said Article 263. (As amended by R.A. 18)

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases. (As amended by R. A. 18).

<sup>102</sup> *People v. De Leon*, *supra* note 96; *People v. Ebet*, 649 Phil. 181 (2010).

As discussed earlier, when the crime proven is consummated and the penalty imposed is death but reduced to *reclusion perpetua* because of R.A. 9346, the civil indemnity and moral damages that should be awarded will each be ₱100,000.00 and another ₱100,000.00 for exemplary damages or when the circumstances of the crime call for the imposition of *reclusion perpetua* only, the civil indemnity and moral damages should be ₱75,000.00 each, as well as exemplary damages in the amount of ₱75,000.00. If, however, the crime proven is in its frustrated stage, the civil indemnity and moral damages that should be awarded will each be ₱50,000.00, and an award of ₱25,000.00 civil indemnity and ₱25,000.00 moral damages when the crime proven is in its attempted stage. The difference in the amounts awarded for the stages is mainly due to the disparity in the outcome of the crime committed, in the same way that the imposable penalty varies for each stage of the crime. The said amounts of civil indemnity and moral damages awarded in cases of felonies in their frustrated or attempted stages shall be the bases when the crimes committed constitute complex crime under Article 48 of the RPC. For example, in a crime of murder with attempted murder, the amount of civil indemnity, moral damages and exemplary damages is ₱100,000.00 each, while in the attempted murder, the civil indemnity, moral damages and exemplary damages is ₱25,000.00 each.

In a special complex crime, like robbery with homicide, if, aside from homicide, several victims (except the robbers) sustained injuries, they shall likewise be indemnified. It must be remembered that in a special complex crime, unlike in a complex crime, the component crimes have no attempted or frustrated stages because the intention of the offender/s is to commit the principal crime which is to rob but in the process of committing the said crime, another crime is committed. For example, if on the occasion of a robbery with homicide, other victims sustained injuries, regardless of the severity, the crime committed is still robbery with homicide as the injuries become part of the crime, "Homicide", in the special complex crime of robbery with homicide, is understood in its generic sense and now forms part of the essential element of robbery,<sup>103</sup> which is the use of violence or the use of force upon anything. Hence, the nature and severity of the injuries sustained by the victims must still be determined for the purpose of awarding civil indemnity and damages. If a victim suffered mortal wounds and could have died if not for a timely medical intervention, the victim should be awarded civil indemnity, moral damages, and exemplary damages equivalent to the damages awarded in a frustrated stage, and if a victim suffered injuries that are not fatal, an award of civil indemnity, moral damages and exemplary damages should likewise be awarded equivalent to the damages awarded in an attempted stage.

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<sup>103</sup> Revised Penal Code, Art. 293. *Who are guilty of robbery.* - Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

In other crimes that resulted in the death of a victim and the penalty consists of divisible penalties, like homicide, death under tumultuous affray, reckless imprudence resulting to homicide, the civil indemnity awarded to the heirs of the victim shall be ₱50,000.00 and ₱50,000.00 moral damages without exemplary damages being awarded. However, an award of ₱50,000.00 exemplary damages in a crime of homicide shall be added if there is an aggravating circumstance present that has been proven but not alleged in the information.

Aside from those discussed earlier, the Court also awards temperate damages in certain cases. The award of ₱25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.<sup>104</sup> Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved.<sup>105</sup> In this case, the Court now increases the amount to be awarded as temperate damages to ₱50,000.00.

In the case at bar, the crimes were aggravated by dwelling, and the murders committed were further made atrocious by the fact that the victims are innocent, defenseless minors – one is a mere 3½-year-old toddler, and the other a 13-year-old girl. The increase in the amount of awards for damages is befitting to show not only the Court's, but all of society's outrage over such crimes and wastage of lives.

In summary:

I. For those crimes<sup>106</sup> like, Murder,<sup>107</sup> Parricide,<sup>108</sup> Serious Intentional Mutilation,<sup>109</sup> Infanticide,<sup>110</sup> and other crimes involving death of a victim where the penalty consists of indivisible penalties:

1.1 Where the penalty imposed is death but reduced to *reclusion perpetua* because of RA 9346:

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<sup>104</sup> *People v. Tagudar*, 600 Phil. 565, 590 (2009), citing *People v. Dacillo*, 471 Phil. 497, 510 (2004).

<sup>105</sup> *Id.*, citing *People v. Surongon*, 554 Phil. 448, 458 (2007).

<sup>106</sup> Article 255, RTC.

<sup>107</sup> Article 248, RTC.

<sup>108</sup> Article 246, RTC.

<sup>109</sup> Article 262, RTC.

<sup>110</sup> Note that if the crime penalized in Article 255 [Infanticide] was committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of *prision mayor* in its medium and maximum periods, and if said crime was committed for the same purpose by the maternal grandparents or either of them, the penalty shall be *reclusion temporal*. (As amended by R.A. 7659). Hence, the damages to be awarded should be the same as in Roman Numeral Number Five (V) of the summary, *i.e.*, In other crimes that result in the death of the victim and the penalty consists of divisible, because the prescribed penalties are divisible.

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

1.2 Where the crime committed was not consummated:

a. Frustrated:

- i. Civil indemnity – ₱75,000.00
- ii. Moral damages – ₱75,000.00
- iii. Exemplary damages – ₱75,000.00

b. Attempted:

- i. Civil indemnity – ₱50,000.00
- ii. Exemplary damages – ₱50,000.00
- iii. Exemplary damages – ₱50,000.00

2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:

- a. Civil indemnity – ₱75,000.00
- b. Moral damages – ₱75,000.00
- c. Exemplary damages – ₱75,000.00

2.2 Where the crime committed was not consummated:

a. Frustrated:

- i. Civil indemnity – ₱50,000.00
- ii. Moral damages – ₱50,000.00
- iii. Exemplary damages – ₱50,000.00

b. Attempted:

- i. Civil indemnity – ₱25,000.00
- ii. Moral damages – ₱25,000.00
- iii. Exemplary damages – ₱25,000.00

II. For Simple Rape/Qualified Rape:

1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346:

- a. Civil indemnity – ₱100,000.00
- b. Moral damages – ₱100,000.00
- c. Exemplary damages<sup>111</sup> – ₱100,000.00

1.2 Where the crime committed was not consummated but merely attempted:<sup>112</sup>

- a. Civil indemnity – ₱50,000.00
- b. Moral damages – ₱50,000.00
- c. Exemplary damages – ₱50,000.00

2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:

- a. Civil indemnity – ₱75,000.00
- b. Moral damages – ₱75,000.00
- c. Exemplary damages – ₱75,000.00

2.2 Where the crime committed was not consummated, but merely attempted:

- a. Civil indemnity – ₱25,000.00
- b. Moral damages – ₱25,000.00
- c. Exemplary damages – ₱25,000.00

III. For Complex crimes under Article 48 of the Revised Penal Code where death, injuries, or sexual abuse results, the civil indemnity, moral damages and exemplary damages will depend on the penalty, extent of violence and sexual abuse; and the number of victims where the penalty consists of indivisible penalties:

1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346:

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

1.2 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:

- a. Civil indemnity – ₱75,000.00
- b. Moral damages – ₱75,000.00
- c. Exemplary damages – ₱75,000.00

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<sup>111</sup> Exemplary damages in rape cases are awarded for the inherent bestiality of the act committed even if no aggravating circumstance attended the commission of the crime.

<sup>112</sup> There is no frustrated stage in the crime of rape.

The above Rules apply to every victim who dies as a result of the crime committed. In other complex crimes where death does not result, like in Forcible Abduction with Rape, the civil indemnity, moral and exemplary damages depend on the prescribed penalty and the penalty imposed, as the case may be.

IV. For Special Complex Crimes like Robbery with Homicide,<sup>113</sup> Robbery with Rape,<sup>114</sup> Robbery with Intentional Mutilation,<sup>115</sup> Robbery with Arson,<sup>116</sup> Rape with Homicide,<sup>117</sup> Kidnapping with Murder,<sup>118</sup> Carnapping with Homicide<sup>119</sup> or Carnapping with Rape,<sup>120</sup> Highway Robbery with Homicide,<sup>121</sup> Qualified Piracy,<sup>122</sup> Arson with Homicide,<sup>123</sup> Hazing with Death, Rape, Sodomy or Mutilation<sup>124</sup> and other crimes with death, injuries, and sexual abuse as the composite crimes, where the penalty consists of indivisible penalties:

1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346:

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

In Robbery with Intentional Mutilation, the amount of damages is the same as the above if the penalty imposed is Death but reduced to *reclusion perpetua* although death did not occur.

1.2 For the victims who suffered mortal/fatal wounds<sup>125</sup> and could have died if not for a timely medical intervention, the following shall be awarded:

- a. Civil indemnity – ₱75,000.00
- b. Moral damages – ₱75,000.00
- c. Exemplary damages – ₱75,000.00

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<sup>113</sup> Art. 294 (1), RPC.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Art. 266-A, RPC as amended by RA 8353.

<sup>118</sup> Art. 267, RPC.

<sup>119</sup> RA No. 6539.

<sup>120</sup> *Id.*

<sup>121</sup> P.D. 532.

<sup>122</sup> Art. 123, RPC.

<sup>123</sup> Art. 320, RPC.

<sup>124</sup> RA No. 8049.

<sup>125</sup> This is so because there are no stages of the component crime in special complex crimes but the victims must be compensated as if the component crimes were separately committed.

1.3 For the victims who suffered non-mortal/non-fatal injuries:

- a. Civil indemnity – ₱50,000.00
- b. Moral damages – ₱50,000.00
- c. Exemplary damages – ₱50,000.00

2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:

- a. Civil indemnity – ₱75,000.00
- b. Moral damages – ₱75,000.00
- c. Exemplary damages – ₱75,000.00

In Robbery with Intentional Mutilation, the amount of damages is the same as the above if the penalty imposed is *reclusion perpetua*.

2.2 For the victims who suffered mortal/fatal wounds and could have died if not for a timely medical intervention, the following shall be awarded:

- a. Civil indemnity – ₱50,000.00
- b. Moral damages – ₱50,000.00
- c. Exemplary damages – ₱50,000.00

2.3 For the victims who suffered non-mortal/non-fatal injuries:

- a. Civil indemnity – ₱25,000.00
- b. Moral damages – ₱25,000.00
- c. Exemplary damages – ₱25,000.00

In Robbery with Physical Injuries,<sup>126</sup> the amount of damages shall likewise be dependent on the nature/severity of the wounds sustained, whether fatal or non-fatal.

The above Rules do not apply if in the crime of Robbery with Homicide, the robber/s or perpetrator/s are themselves killed or injured in the incident.

Where the component crime is rape, the above Rules shall likewise apply, and that for every additional rape committed, whether against the same victim or other victims, the victims shall be entitled to the same damages unless the other crimes of rape are treated as separate crimes, in which case, the damages awarded to simple rape/qualified rape shall apply.

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<sup>126</sup> Art. 294 (3), RPC.

V. In other crimes that result in the death of a victim and the penalty consists of divisible penalties, *i.e.*, Homicide, Death under Tumultuous Affray, Infanticide to conceal the dishonour of the offender,<sup>127</sup> Reckless Imprudence Resulting to Homicide, Duel, Intentional Abortion and Unintentional Abortion, etc.:

1.1 Where the crime was consummated:

- a. Civil indemnity – ₱50,000.00
- b. Moral damages – ₱50,000.00

1.2 Where the crime committed was not consummated, except those crimes where there are no stages, *i.e.*, Reckless Imprudence and Death under tumultuous affray:

- a. Frustrated:
  - i. Civil indemnity – ₱30,000.00
  - ii. Moral damages – ₱30,000.00
- b. Attempted:
  - i. Civil indemnity – ₱20,000.00
  - ii. Moral damages – ₱20,000.00

If an aggravating circumstance was proven during the trial, even if not alleged in the Information,<sup>128</sup> in addition to the above mentioned amounts as civil indemnity and moral damages, the amount of ₱50,000.00 exemplary damages for consummated; ₱30,000.00 for frustrated; and ₱20,000.00 for attempted, shall be awarded.

VI. A. In the crime of Rebellion where the imposable penalty is *reclusion perpetua* and death occurs in the course of the rebellion, the heirs of those who died are entitled to the following:<sup>129</sup>

- a. Civil indemnity – ₱100,000.00
- b. Moral damages – ₱100,000.00
- c. Exemplary damages – ₱100,000.00<sup>130</sup>

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<sup>127</sup> If the crime of infanticide in Art. 255 of the RPC was committed by the mother of the child or by the maternal grandparent/s in order to conceal her dishonor, the penalties against them are divisible, *i.e.*, *prision mayor* in its medium and maximum periods, and *reclusion temporal*, respectively.

<sup>128</sup> See *People v. Catubig*, *supra* note 53.

<sup>129</sup> Although the penalty prescribed by law is *reclusion perpetua*, the damages awarded should be the same as those where the penalty is death due to the gravity of the offense and the manner of committing the same.

<sup>130</sup> In order to deter the commission of the crime of rebellion and serve as an example, exemplary damages should be awarded.

B. For the victims who suffered mortal/fatal wounds in the course of the rebellion and could have died if not for a timely medical intervention, the following shall be awarded:

- a. Civil indemnity – ₱75,000.00
- b. Moral damages – ₱75,000.00
- c. Exemplary damages – ₱75,000.00

C. For the victims who suffered non-mortal/non-fatal injuries:

- a. Civil indemnity – ₱50,000.00
- b. Moral damages – ₱50,000.00
- c. Exemplary damages – ₱50,000.00

VII. In all of the above instances, when no documentary evidence of burial or funeral expenses is presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded.

To reiterate, Article 2206 of the Civil Code provides that the minimum amount for awards of civil indemnity is ₱3,000.00, but does not provide for a ceiling. Thus, although the minimum amount cannot be changed, increasing the amount awarded as civil indemnity can be validly modified and increased when the present circumstance warrants it.<sup>131</sup>

Prescinding from the foregoing, for the two (2) counts of murder, attended by the ordinary aggravating circumstance of dwelling, appellant should be ordered to pay the heirs of the victims the following damages: (1) ₱100,000.00 as civil indemnity for each of the two children who died; (2) ₱100,000.00 as moral damages for each of the two victims; (3) another ₱100,000.00 as exemplary damages for each of the two victims; and (4) temperate damages in the amount of ₱50,000.00 for each of the two deceased. For the four (4) counts of Attempted Murder, appellant should pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages for each of the four victims. In addition, the civil indemnity, moral damages, exemplary damages and temperate damages payable by the appellant are subject to interest at the rate of six percent (6%) per annum from the finality of this decision until fully paid.<sup>132</sup>

Lastly, this Court echoes the concern of the trial court regarding the dismissal of the charges against Gilberto Estores and Roger San Miguel who had been identified by Norberto Divina as the companions of appellant on the night the shooting occurred. Norberto had been very straightforward and

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<sup>131</sup> *Supra* note 38.

<sup>132</sup> See *Dario Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 459.

unwavering in his identification of Estores and San Miguel as the two other people who fired the gunshots at his family. More significantly, as noted by the prosecutor, the testimonies of Estores and San Miguel, who insisted they were not at the crime scene, tended to conflict with the sworn statement of Danilo Fajarillo, which was the basis for the Provincial Prosecutor's ruling that he finds no probable cause against the two. Danilo Fajarillo's sworn statement said that on June 6, 2002, he saw appellant with a certain "Hapon" and Gilbert Estores at the crime scene, but it was only appellant who was carrying a firearm and the two other people with him had no participation in the shooting incident. Said circumstances bolster the credibility of Norberto Divina's testimony that Estores and San Miguel may have been involved in the killing of his two young daughters.

After all, such reinvestigation would not subject Estores and San Miguel to double jeopardy because the same only attaches if the following requisites are present: (1) a first jeopardy has attached before the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. In turn, a first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent.<sup>133</sup> In this case, the case against Estores and San Miguel was dismissed before they were arraigned. Thus, there can be no double jeopardy to speak of. Let true justice be served by reinvestigating the real participation, if any, of Estores and San Miguel in the killing of Mary Grace and Claudine Divina.

**WHEREFORE**, the instant appeal is **DISMISSED**. The Decision of the Court of Appeals dated January 30, 2012 in CA-G.R. CR HC No. 03252 is **AFFIRMED** with the following **MODIFICATIONS**:

(1) In Criminal Case No. 7698-G, the Court finds accused-appellant Ireneo Jugueta **GUILTY** beyond reasonable doubt of two (2) counts of the crime of murder defined under Article 248 of the Revised Penal Code, attended by the aggravating circumstance of dwelling, and hereby sentences him to suffer two (2) terms of *reclusion perpetua* without eligibility for parole under R.A. 9346. He is **ORDERED** to **PAY** the heirs of Mary Grace Divina and Claudine Divina the following amounts for each of the two victims: (a) ₱100,000.00 as civil indemnity; (b) ₱100,000.00 as moral damages; (c) ₱100,000.00 as exemplary damages; and (d) ₱50,000.00 as temperate damages.

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<sup>133</sup> *Quiambao v. People*, G.R. No. 185267, September 17, 2014, 735 SCRA 345, 356-357.

(2) In Criminal Case No. 7702-G, the Court finds accused-appellant Ireneo Jugueta **GUILTY** beyond reasonable doubt of four (4) counts of the crime of attempted murder defined and penalized under Article 248 in relation to Article 51 of the Revised Penal Code, attended by the aggravating circumstance of dwelling, and sentences him to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum, for each of the four (4) counts of attempted murder. He is **ORDERED** to **PAY** moral damages in the amount of ₱50,000.00, civil indemnity of ₱50,000.00 and exemplary damages of ₱50,000.00 to each of the four victims, namely, Norberto Divina, Maricel Divina, Elizabeth Divina and Judy Ann Divina.

(3) Accused-appellant Ireneo Jugueta is also **ORDERED** to **PAY** interest at the rate of six percent (6%) *per annum* from the time of finality of this decision until fully paid, to be imposed on the civil indemnity, moral damages, exemplary damages and temperate damages.

(4) Let the Office of the Prosecutor General, through the Department of Justice, be **FURNISHED** a copy of this Decision. The Prosecutor General is **DIRECTED** to immediately conduct a **REINVESTIGATION** on the possible criminal liability of Gilbert Estores and Roger San Miguel regarding this case. Likewise, let a copy of this Decision be furnished the Secretary of Justice for his information and guidance.

**SO ORDERED.**

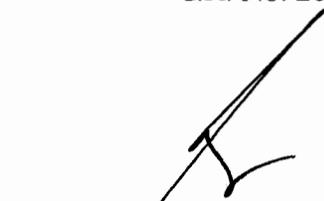
  
**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

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



**ANTONIO T. CARPIO**  
Associate Justice



**PRESBITERO J. VELASCO, JR.**  
Associate Justice



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



**ARTURO D. BRION**  
Associate Justice



**LUCAS P. BERSAMIN**  
Associate Justice



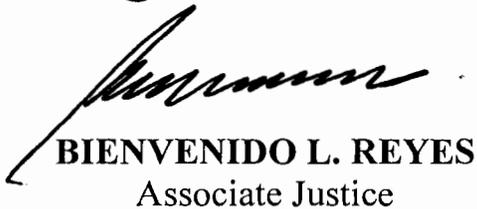
**MARIANO C. DEL CASTILLO**  
Associate Justice



**JOSE PORTUGAL PEREZ**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



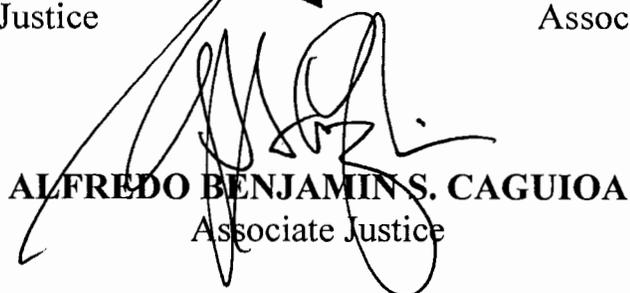
**BIENVENIDO L. REYES**  
Associate Justice

On leave  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice



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

No part  
**FRANCIS H. JARDELEZA**  
Associate Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

**CERTIFICATION**

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



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