



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

THE PEOPLE OF THE
PHILIPPINES,

Plaintiff-appellee,

—versus—

LEONARDO BANAAG, JR.,
Accused-appellant.

G.R. No. 269657

Present:

LEONEN, *Chairperson*,
LAZARO-JAVIER,
M. LOPEZ,
J. LOPEZ, and
KHO, JR., *JJ*.

Promulgated:

JUL 22 2024

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DECISION

M. LOPEZ, J.:

The presence of treachery as a qualifying circumstance is not barred by death threats received by a murder victim.¹ Ultimately, the Court looks at the attack itself—if accused’s manner of execution is swift and unexpected such that an unsuspecting and unarmed victim is deprived of any chance to defend himself or to repel the aggression.² Thus, notwithstanding the victim’s prior knowledge of the danger in his life, a sudden attack that insures its commission without risk to the accused and without provocation on the part of the defenseless victim is considered treacherous.

¹ *People v. Ortiz, Jr.*, 638 Phil. 521 (2010) [Per J. Mendoza, Second Division].

² *People v. Nazareno*, 641 Phil. 503 (2010) [Per J. Perez, First Division]; *People v. Esquibel*, 666 Phil. 673 (2011) [Per J. Carpio, Second Division].

J

One such illustration is present in this appeal³ assailing the Decision⁴ of the Court of Appeals (CA), which affirmed with modification the Decision⁵ of the Regional Trial Court (RTC) convicting Leonardo Banaag, Jr. (Banaag) of murder and attempted murder.

ANTECEDENTS

Banaag was charged with the murder of Jovelito Agustin (Jovelito) and attempted murder of Joseph Agustin (Joseph) under the following Informations:

Criminal Case No. 9337

That at around 10:00 [p.m.] of June 15, 2010, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the above named accused confederating, mutually helping, and conspiring with one another did then and there, willfully, feloniously, and unlawfully, with intent to kill and with the qualifying circumstance of treachery and evident premeditation and with the aggravating circumstance of night time, shoot with a gun Joseph Agustin, having overtly commenced the commission of acts to kill said Joseph Agustin, but did not perform all the acts of execution to bring about the death of said Joseph Agustin by reason of causes other than the spontaneous desistance of the accused, to the damage and prejudice of said Joseph Agustin.

Criminal Case No. 9338

That at around 10:00 [p.m.] of June 15, 2010 in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, confederating, mutually helping and in conspiracy with one another, did then and there, willfully, feloniously and unlawfully, with intent to kill and with qualifying circumstances of treachery, abuse of superior strength, and evident premeditation, and with the aggravating circumstance of nighttime, shoot with a gun Jovelito Agustin, performing all the acts of execution necessary to kill him, resulting to the death of the latter, to the damage and prejudice of the heirs of said Jovelito Agustin.⁶

Banaag pleaded not guilty during his arraignment. Through its witnesses, the prosecution established that Jovelito was a radio announcer of DZJC Aksyon Radyo in a program dubbed as "Ilocos Norte-Laoag City By Night." In his radio program, Jovelito often tackled political issues in Ilocos Norte. Days before his demise, Jovelito received several death threats. He then requested his nephew, Joseph, to accompany him to his workplace.⁷

³ *Rollo*, pp. 3-4.

⁴ *Id.* at 8-27. The June 9, 2023 Decision in CA-G.R. CR-HC No. 15453 was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Gabriel T. Robeniol and Michael P. Ong of the Sixth Division, Court of Appeals, Manila.

⁵ *Id.* at 32-46. The January 19, 2021 Decision in Criminal Case Nos. 9337 and 9338 was penned by Presiding Judge Romeo E. Agacita, Jr. of Branch 27, Regional Trial Court, San Fernando City, La Union.

⁶ *Id.* at 10; 32.

⁷ *Id.* at 11.

On June 15, 2010, Jovelito finished working around 10:00 p.m. and decided to go home with Joseph. They boarded Jovelito's motorcycle going to Bacarra, Ilocos Norte. As they traversed the national road at Barangay Barit, Laoag City, Joseph, who was seated behind Jovelito, noticed a motorcycle that had no plate number and with two men on board. The motorcycle followed them along the national road. When the motorcycle caught up with them, Joseph looked at the two men and recognized the backseat passenger to be Banaag. Joseph recalled seeing Banaag during the previous elections, since the latter was the security aid of then candidate for vice mayor, Pacifico Velasco. As Jovelito sped up, Joseph saw Banaag lean towards the motorcycle driver to whisper something. Afterwards, the motorcycle sped up and chased after them. When they were a few meters away from the Victory Ricemill, Banaag's motorcycle eventually overtook them. They were only one meter away from each other when Banaag fired his gun directly at Jovelito. Joseph heard four successive gunshots and also got hit on his right thigh and right thumb. Joseph then saw Jovelito stained with blood as he heard someone from the motorcycle shout "*naalakan*," which meant "I got you now." After the incident, the motorcycle immediately sped away going north, while Jovelito's motorcycle lost its balance. As they fell along the highway, Jovelito said to Joseph "*matayakon barok*," which meant "I'm dying."⁸

Joseph and Jovelito were brought to Governor Roque B. Ablan Sr. Memorial Hospital where Jovelito died around 1:30 a.m. of June 16, 2010. His death certificate indicated that he died of hypovolemic shock due to multiple gunshot wounds in the abdomen. Joseph's Medico-Legal Certificate also showed that he suffered multiple grazing wounds on his right finger and right thigh, with hematoma and abrasion on his left leg.⁹

Meanwhile, Police Senior Inspector Melanie Ordoño, a forensic chemist, and Police Inspector Nilo P. Domingo went to the crime scene shortly after the incident. They found four .45 caliber auto fired cartridges and two jacketed fired bullets. They took samples and photographs of the blood smears they found on the grass and of Jovelito's personal belongings that fell on the ground. All these were marked, placed in a small pocket evidence, and turned over to the evidence custodian, Police Officer Floco. Further, the police officers who responded at the crime scene recounted that the place where the shooting occurred was well-lit with electrical posts.¹⁰

Around 9:00 a.m. of June 16, 2010, Police Officer III Jovie De Guzman, Police Inspector Freddie Evangelista and Police Officer III Nelson Ramiro went to the residence of Banaag. After being informed that Banaag already went abroad in 2009, they requested information from the Bureau of Immigration (BI) regarding Banaag's travel activities. The BI issued a certification that Banaag did

⁸ *Id.* at 11–12.

⁹ *Id.* at 12.

¹⁰ *Id.* at 13.

not travel outside the Philippines. Sometime in September 2010, Banaag was arrested by police officers in Summer Place Hotel in Baguio City.¹¹

Banaag denied the charges against him and interposed the alibi that he was not in Ilocos Norte when the incident occurred. He claimed being in Plaridel, Bulacan since 2009 working as a security officer at Walter Mart Mall. Sometime in June 2010, Banaag's father visited him and showed him a newspaper clipping that implicated him as a suspect in Jovelito's death and Joseph's attempted murder. Banaag then asked permission from his superior to go on leave so he can go to Ilocos Norte and clear his name. However, he was instead reassigned as Chief Security Officer in Summer Place Hotel, Baguio City, where he was arrested sometime in September 2010. Banaag admitted that he used to work for Vice Mayor Pacifico Velasco, who was his uncle. He confirmed that he used to be a member of the special forces of the Armed Forces of the Philippines so he was trained to use a firearm. He also confirmed that he had a live-in partner and a child living in Bacarra, Ilocos Norte.¹²

The RTC Ruling

On January 19, 2021, the RTC found Banaag guilty beyond reasonable doubt for the murder Jovelito and attempted murder of Joseph. It found Joseph's eyewitness account of the incident clear and straightforward, including his identification of Banaag as the one who fired the gunshots towards him and Jovelito. According to the RTC, Banaag's act was attended by treachery considering its sudden and unprovoked nature, and because it was committed during nighttime. The RTC also held that evident premeditation was apparent from Banaag's act of waiting for the victims along the national road. The dispositive portion reads:

WHEREFORE, premises considered, judgment is rendered in the following manner:

1. In Criminal Case No. 9337, accused Leonardo Banaag, Jr. is hereby found GUILTY beyond reasonable doubt of the crime of Attempted Murder and sentenced to an indeterminate penalty of imprisonment from six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum and to pay Joseph Agustin the amount of Fifty Thousand Pesos ([PHP] 50,000.00) as civil indemnity, Fifty Thousand Pesos ([PHP] 50,000.00) as moral damages, and Fifty Thousand Pesos ([PHP] 50,000.00), as temperate damages, which shall earn legal interest of 6% *per annum* reckoned from the date of finality of judgment until fully paid.

¹¹ *Id.* at 12–14.

¹² *Id.* at 14–15.

2. In Criminal Case No. 9338, accused Leonardo Banaag, Jr. is hereby found GUILTY beyond reasonable doubt of the crime of Murder defined under Article 248 of the Revised Penal Code and imposes the penalty of RECLUSION PERPETUA and to pay the surviving heirs of Jovelito Agustin, the amount of One Hundred Thousand Pesos ([PHP] 100,000.00) as civil indemnity, One Hundred Thousand Pesos ([PHP] 100,000.00) as moral damages, and One Hundred Thousand Pesos ([PHP] 100,000.00) as temperate damages, which shall earn legal interest of 6% *per annum* reckoned from the date of finality of judgment until fully paid.
3. The herein accused Leonardo Banaag, Jr. shall be credited the period of his detention during the pendency of this case in accordance with existing laws and procedures.
4. To pay costs of the suit.

SO ORDERED.¹³

Banaag appealed to the CA and contended that his identity was not clearly established and that the qualifying circumstances of treachery and evident premeditation were not duly proven by the prosecution.¹⁴

The CA Ruling

On June 9, 2023, the CA affirmed with modification the RTC Decision convicting Banaag of the crimes charged. It held that the prosecution proved all the elements of murder and attempted murder and that Joseph's testimony is worthy of full faith and credit, considering the lack of motive on his part to falsely testify against Banaag. The CA also found that Banaag's identity was firmly established by the prosecution given Joseph's eyewitness account of the incident and his familiarity with Banaag. The CA also discounted Banaag's alibi since he failed to substantiate his claim that he was in Plaridel, Bulacan during the shooting incident. Anent the qualifying circumstances, the CA agreed with the RTC that treachery attended the killing of, and injuries sustained by, the victims. However, it held that evident premeditation was not duly proven since there was no evidence of the time when Banaag decided and planned to kill Jovelito and proof that a sufficient period of time passed between this determination and his actual execution of the crime. Nonetheless, the CA affirmed the penalties meted out by the RTC, but modified the amount of the damages awarded. The CA also awarded exemplary damages in both cases. The CA disposed:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated January 19, 2021 of the Regional Trial Court, Branch 27, San

¹³ *Id.* at 46.

¹⁴ CA rollo, pp. 41-57.

Fernando City, La Union is AFFIRMED with MODIFICATION in that the dispositive portion thereof is to read as follows:

(1) In Criminal Case No. 9337, accused-appellant Leonardo Banaag, Jr. is hereby held GUILTY beyond reasonable doubt for the crime of attempted murder and is sentenced to suffer the penalty of imprisonment of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. He is ordered to pay the victim Joseph Agustin the following: Twenty-five Thousand Pesos ([PHP] 25,000.00) as civil indemnity; Twenty-five Thousand Pesos ([PHP] 25,000.00) as moral damages; Twenty-five Thousand Pesos ([PHP] 25,000.00) as exemplary damages; and, Fifty Thousand Pesos ([PHP] 50,000.00) as temperate damages.

(2) In Criminal Case No. 9338, accused-appellant Leonardo Banaag, Jr. is hereby held GUILTY beyond reasonable doubt for the crime of murder and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the heirs of the victim Jovelito Agustin the following: Seventy-Five Thousand Pesos ([PHP] 75,000.00) as civil indemnity; Seventy-Five Thousand Pesos ([PHP] 75,000.00) as moral damages; Seventy-Five Thousand Pesos ([PHP] 75,000.00) as exemplary damages; and Fifty Thousand Pesos ([PHP] 50,000.00) as temperate damages.

(3) All damages awarded shall earn interest at the rate of six percent (6%) from date of finality of this Decision until fully paid.

SO ORDERED.¹⁵

Hence, this recourse.¹⁶ Accused-appellant Leonardo Banaag, Jr. and plaintiff-appellee People of the Philippines, through the Office of the Solicitor General, dispensed with the filing of supplemental briefs and adopted their pleadings before the CA.¹⁷

Accused-appellant challenged Joseph's identification, asserting that the latter could not have clearly seen the assailant since the crime scene was not well-lit and because Joseph was on board a moving motorcycle. Accused-appellant also averred that treachery is absent in this case because the victims were already forewarned of the attack. According to accused-appellant, the death threats received by Jovelito sufficiently warned the victims of the attack and gave them an opportunity to defend themselves. Lastly, accused-appellant contended that the prosecution failed to sufficiently prove the presence of evident premeditation.

ISSUE

The instant appeal hinges on the issue of Joseph's credibility as the lone eyewitness of the crime.

¹⁵ CA rollo, pp. 137-138.

¹⁶ Rollo, pp. 3-4.

¹⁷ *Id.* at 50-52; 55-56.

RULING

The appeal is unmeritorious.

At the outset, we stress that the RTC's assessment on the credibility and competence of the witnesses and the veracity of their statements are accorded great weight because it had the opportunity to observe the witnesses and their demeanor during trial which is vital in determining whether they are telling the truth.¹⁸ Thus, except in cases when the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which might alter the result, the Court shall uphold the factual findings of the trial court, especially when such findings were sustained by the CA.¹⁹

In this case, both the RTC and CA found Joseph's testimony straightforward and convincing. Joseph identified accused-appellant as the one who shot him and Jovelito multiple times, which eventually killed the latter and caused him to sustain several injuries. Moreover, Joseph and the other prosecution witnesses recounted that the place where the whole incident occurred had good lighting conditions that allowed Joseph to clearly identify accused-appellant as the one who fired the gunshots. Joseph testified as follows:

Q: Mr. Witness, on June 15, 2010 about 9:30 in the evening, do you recall where were you?

A: Yes, Sir.

Q: Please tell us where were you at that time?

A: I was with my uncle at the radio station DCJZ action Radio Laoag City, your Honor.

Q: And where is this radio station located, Mr. Witness?

A: At Laoag City, your honor.

Q: And why were you with your uncle?

A: I am his companion, your Honor.

Q: And where were you with your uncle at the time, Mr. Witness?

A: I am his companion in his motor, your Honor.

Q: You said that you were at the radio station with your uncle, why were you there at the radio station Mr. Witness?

A: To accompany my uncle your honor because he has a death threat, your Honor.

Q: You said that you were at the radio station at that time, where did you proceed next, Mr. witness?

A: We were going home to Bacarra, your Honor.

¹⁸ *People v. Enriquez, Jr.*, 854 Phil. 609 (2019) [Per J. Caguioa, Second Division].

¹⁹ *People v. Juada*, G.R. No. 252276, November 11, 2021 [Per J. M. Lopez, First Division].

Q: And what mode of transportation did you use in going to Bacarra, Mr. Witness?

A: Single motor.

....

Q: And while going home to Bacarra and along the way, what did you observe?

A: When we were at Brgy. Barit, I saw two male persons riding in a motorcycle, your Honor.

....

Q: Mr. Witness, the first time that you noticed the presence of the motorcycle with 2 riders, what did you observe, if any?

A: The motorcycle has no plate number, your Honor.

Q: And how about the back-rider, what did you observe anything to the back-rider?

A: The back-rider looked at me and I also looked at him, your Honor.

....

Q: And then when the motorcycle you were riding and the motorcycle of these 2 riders were side by side to each other, what did you notice as to the back-rider, if any?

A: I saw Leonardo Banaag, Jr., your Honor.

Q: You said you identified Leonardo Banaag, Jr. as the back-rider. Why do you say that the back-rider is Leonardo Banaag, Jr.?

A: I can recognize him because he was campaigning in our place before.

Q: You said Leonardo Banaag, Jr. was campaigning in your place before, he run as what Mr. Witness?

A: No, your Honor but it seems that he is only a bodyguard.

Q: Bodyguard of whom, Mr. Witness?

A: Bodyguard of Pacifico Velasco, your Honor.

Q: And who is this Pacifico Velasco, Mr. Witness?

A: Running for vice-mayor in our place and won as vice-mayor in our place.

Q: And how many times have you seen this Leonardo Banaag in your place, Mr. Witness?

A: Twice, your Honor.

Q: When Pacifico "Pacing" Velasco was campaigning?

A: When they were proclaiming the winners.

Q: Aside from that instance, were there other instances you saw or you were with this Leonardo Banaag?

A: Yes, sir, the shooting incident when we were the victim, on June 15, your Honor.

Q: And you said that you identified and saw the face of Leonardo Banaag and you also identified him as the backrider. Did you notice if he said something to the driver, Mr. Witness?

A: He leaned his head on the right shoulder of the driver and whispered something.

Q: When Leonardo Banaag leaned his head on the shoulder of the driver, what was your reaction, if any?

A: I just looked at them and then we proceeded.

Q: And when you proceeded along your way, what happened next?

A: They followed us and when we were near the boundary of Bacarra and Laoag near the ricemill, they shot us four times and my uncle was hit and my finger and my thigh were also hit.

....

Q: And how did you know that it was Leonardo Banaag who shot your uncle then, Mr. Witness?

A: Because they kept on following us and I can see the motorcycle that they were using.

....

Q: Mr. Witness, where was the position of their motorcycle in relation to the motorcycle that you were riding at the time the accused shot your uncle?

A: It's just 1 meter apart.

Q: When you said one meter apart you mean in front of you or 1 meter beside you?

A: One meter in front of us, your Honor.

....

Q: Immediately after your uncle was shot, did you hear any shout or any utterance, Mr. Witness?

A: Yes, there was somebody who shouted "naalakan" which means "I got you now."

Q: And after your uncle was shot, what did the two persons in that motorcycle do or proceed, if any?

A: They proceeded northward, your Honor.

Q: And when you fell in the canal, what did you do next?

A: My uncle told me, "I'm dying."

....

Q: Mr. Witness, you said a while ago that you were able to identify Leonardo Banaag along the way. How were you able to identify him when it was already 9:30 in the evening?

A: There is a street light in the area, that is why I can recognize that person.

Q: Street light. You said that you were able to identify Leonardo Banaag when the motorcycle was in front of Julian's Motor Shop. Are you saying that the street light is near the motor shop?
A: Yes, 2 street lights.²⁰

Joseph's testimony remained consistent and unwavering even during his cross-examination:

Q: It was when while you were proceeding north when you saw another motorcycle, is that correct?
A: Yes, ma'am.

Q: In the motorcycle, you were the backrider in your uncle's motorcycle?
A: Yes, ma'am.

Q: You saw another motorcycle also proceeding towards the north, is that correct?
A: Yes, ma'am.

Q: The motorcycle followed you, is that correct?
A: Yes, ma'am.

Q: When you were buying empanada that motorcycle was not yet around, is that correct?
A: Yes, ma'am.

Q: When did you actually notice the presence of the other motorcycle?
A: In the part of Barit, ma'am.

Q: This motorcycle was very fast or very slow in following you?
A: Slow, ma'am.

....

Q: All the time the motorcycle was just following you when you were proceeding north direction?
A: Yes, ma'am.

Q: And then you mentioned that when you reached the Victory Ricemill one (1) of the riders of the motorcycle started shooting at you, is that correct?
A: Yes, ma'am.²¹

*Accused-appellant is guilty of murder
and attempted murder*

From Joseph's eyewitness account of the killing incident, the following elements of murder under Article 248 of the Revised Penal Code (RPC), as amended by Republic Act No. 7659, was established: (1) that a person was killed;

²⁰ Rollo, pp. 19-20; 36-43.

²¹ CA rollo, p. 98-100.

(2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide. For attempted murder, under Article 6 of the RPC, there is an attempt to commit a felony when the offender directly commences its commission by overt acts but was unable to perform all the acts of execution which should have produced the felony by reason of some cause or accident other than his or her own spontaneous desistance. When an accused uses a deadly weapon in assaulting the victim but the latter sustains wounds that are not fatal, the Court held that there is attempted murder, as in this case, or attempted homicide.²²

Joseph proved how accused-appellant, riding in tandem with his motorcycle driver, pursued them along the national road of Barangay Barit. Accused-appellant chased Jovelito and Joseph, and open fired at them upon overtaking their motorcycle. After firing several gunshots and injuring both Jovelito and Joseph, accused-appellant and his companion sped away in their motorcycle. A few hours after their encounter, Jovelito died of hypovolemic shock or extreme blood loss. Joseph, on the other hand, sustained injuries on his right thigh, right hand, and left leg. The killing of Jovelito and wounding of Joseph are not parricide or infanticide.

*Treachery qualified the killing of
Jovelito and wounding of Joseph*

The Court agrees that the prosecution sufficiently established the presence of treachery in both charges. Treachery is present when the following conditions exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.²³

Here, accused-appellant was riding the backseat of a motorcycle. He trailed the victims, who were also riding a motorcycle, and swiftly fired his gun at them when he found a precise distance from which he can clearly shoot and unobtrusively execute his plan to kill them. After sustaining multiple gunshot wounds on the abdomen, Jovelito lost control of his motorcycle, and he and Joseph fell into a canal. The suddenness of accused-appellant's attack against Jovelito and Joseph, coupled with the multiple and successive gunshots he fired, afforded the victims without any means to retaliate or defend themselves. The subsequent utterance "*naalakan*," heard by Joseph after they were shot, clearly shows accused-appellant's intent to kill and that he deliberately and consciously adopted the mode of attack.

²² *Palaganas v. People*, 533 Phil. 169, 193 (2006) [Per J. Chico-Nazario, First Division].

²³ *People v. Guro*, 851 Phil. 1041, 1045 (2019) [Per J. Caguioa, Second Division].

Accused-appellant's contention that treachery is belied by the death threats received by Jovelito deserves scant consideration. Although Jovelito had been receiving threats days before his death, and despite Joseph seeing the assailants before the attack, the victims remained unsuspecting of the impending danger in their lives on that fateful night. Accused-appellant's attack was sudden and unprovoked, depriving the victims of any chance to defend themselves. The Court has already declared that treachery is appreciated even in instances when the victim was warned of the danger in his life. The decisive factor is the manner of execution that rendered the victim defenseless,²⁴ as in this case, where accused-appellant's swift and deliberate act of firing successive gunshots left the victims defenseless.²⁵

Indeed, the principal consideration in determining the existence of treachery is the attack itself. The Court looks at the manner of execution and whether the chosen means, method, or form gave the victim an opportunity to retaliate. Circumstances preceding the attack, such as a prior altercation or, in this case, death threats, do not negate treachery, even if these served as a warning to the victim about the impending danger of death.²⁶ In *People v. Quijano*,²⁷ the Court appreciated treachery despite the accused's threats because the attack employed by the accused was rapid and successive which rendered the victim helpless:

In a long line of cases, the Court clarified that treachery shall still be appreciated even if the victim was forewarned of the attack. The decisive factor is that despite the warning, the execution of the attack made it impossible for the victim to defend himself or to retaliate. The same holds true if the prior warning did not diminish the suddenness of the attack.

Notably, in *People v. Ortiz, Jr.*, it was stressed that even if the victim was aware of the threat to his life and of the accused's grudge against him, treachery still exists because the victim had no inkling that he would actually be attacked on that fateful night. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.

In the same vein, in *People v. Abendan*, it was held that treachery exists even if the victim sensed that his life was in danger. After all, the warning did not diminish the suddenness of the attack, and the victim remained helpless and was deprived of the slightest opportunity to defend himself.

Moreover, in *People v. PFC Malejana*, treachery was appreciated even if the accused fired a warning shot prior to attacking the victim. The Court explained that the "the swift unfolding of events placed the victim in a position where he could not effectively defend himself from the assault on his person." Likewise, the Court declared that the interval of time between the alleged warning and the subsequent fatal shots was not sufficient to put the victim on guard.²⁸

²⁴ *People v. Ortiz, Jr.*, 638 Phil. 521 (2010) [Per J. Mendoza, Second Division].

²⁵ *People v. Reyes*, 823 Phil. 695 (2018) [Per J. Tijam, First Division].

²⁶ *People v. Vallespin*, 439 Phil. 816 (2002) [Per J. Corona, Third Division].

²⁷ G.R. No. 202151, February 10, 2021 [Per J. Gaerlan, First Division].

²⁸ *Id.*

Similarly, the death threats against Jovelito did not diminish Banaag's treacherous attack, which was purposely and deliberately adopted. Hence, the finding of treachery by the RTC and CA must be sustained.

The prosecution failed to prove the qualifying circumstance of evident premeditation

As to the qualifying circumstance of evident premeditation, the Court agrees with the CA that the prosecution did not prove its existence beyond reasonable doubt. In order to establish the existence of evident premeditation, the prosecution must prove beyond reasonable doubt the following requisites during trial: (i) the time when the offender determined to commit the crime, (ii) an act manifestly indicating that he clung to his determination, and (iii) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act, and to allow his conscience to overcome the resolution of his will.²⁹ Thus, essential to the finding of evident premeditation is showing an overt act of how the accused carefully planned and prepared for the crime.³⁰ Without proof of the accused's persistent resolve to commit the crime despite the consequences of his act, evident premeditation cannot be appreciated to qualify an offense.³¹

In this case, the CA correctly held that the prosecution failed to show the presence of evident premeditation since the witnesses only testified on the circumstances surrounding the night when accused-appellant shot Jovelito and Joseph several times.³² There was no evidence of when and how accused-appellant planned to kill the victims, and that the actual execution of the crime was preceded by cool thought and reflection.³³ Indeed, the time when accused-appellant decided to kill Jovelito and Joseph is necessary to prove that there was a sufficient period of time that passed between the planning stage and the execution of the crime. Its absence is fatal to the finding that evident premeditation attended the killing of Jovelito and wounding of Joseph.³⁴

The inherently weak defenses of denial and alibi cannot prevail over Joseph's eyewitness account of the shooting incident

²⁹ *People v. Sualog*, G.R. No. 250852, October 10, 2022 [Per J. M. Lopez, Second Division].

³⁰ *People v. Abierra*, 833 Phil. 276 (2018) [Per J. Reyes, Jr., Second Division].

³¹ *People v. Biso*, 448 Phil. 591 (2003) [Per J. Callejo, Sr., Second Division].

³² *People v. Agramon*, 833 Phil. 747 (2018) [Per J. Caguioa, Second Division].

³³ *People v. Grabador, Jr.*, 833 Phil. 276 (2018) [Per J. Reyes, Jr., Second Division].

³⁴ *People v. Kalipayan*, 824 Phil. 173 (2018) [Per J. Gesmundo, Third Division].

As a rule, denial and alibi are weak defenses especially if controverted by an eyewitness' testimony, as in this case.³⁵ Accused-appellant's alibi that he was not in Ilocos Norte on June 15 and 16, 2010 remained unsubstantiated. As observed by the CA, accused-appellant failed to prove that he was in Bulacan for a work assignment or that it was physically impossible for him to be in the crime scene or within its vicinity at the time of the commission of the crime. Thus, accused-appellant's defense of denial and alibi cannot prevail over the positive and categorical declaration of Joseph, an eyewitness to the incident. An accused relying on the defense of alibi must establish the physical impossibility for him to be present at the scene of the crime at the time of its commission, which accused-appellant failed to do so.³⁶ Likewise, there is no fact or circumstance showing any ill motive on Joseph's part to falsely testify against accused-appellant. Thus, the Court sees no reason to depart from the findings of the CA and RTC.

Penalties and civil liabilities

Under Article 248 of the RPC, the prescribed penalty for murder is *reclusion perpetua* to death. Corollarily, Article 63 (2) of the RPC states that when the law prescribes a penalty composed of two indivisible penalties and there are neither mitigating nor aggravating circumstances in the commission of the crime, as in this case, the lesser penalty shall be applied. Since no aggravating nor any mitigating circumstance had been proved, the Court imposes the penalty of *reclusion perpetua* in Criminal Case No. 9338.

For the attempted murder of Joseph, the penalty shall be *prision mayor*, in accordance with Article 51 of the RPC, which states that a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed in case of an attempt to commit a felony. Applying the Indeterminate Sentence Law, the maximum penalty shall be the medium period of *prision mayor*, which is eight years and one day to 10 years, because there is no mitigating or aggravating circumstances proved. The minimum penalty shall be within the range of the next penalty lower in degree from the prescribed penalty, which is *prision correccional* in this case, with a duration of six months and one day to six years. Thus, the CA and RTC correctly imposed the penalty of six years of *prision correccional*, as minimum, to eight years and one day of *prision mayor*, as maximum, in Criminal Case No. 9337.

The Court also agrees with the damages imposed by the CA, but deems it proper to delete the award of temperate damages in Criminal Case No. 9337. In *People v. Jugueta*,³⁷ temperate damages are awarded in a murder case only when the victim died, as it is meant to answer for burial or funeral expenses when no documentary evidence is presented and offered by the prosecution to prove the

³⁵ *People v. Villagracia, et al.*, 292 Phil. 222 (1993) [Per J. Melo, Third Division].

³⁶ *People v. Leocadio*, G.R. No. 227396, February 22, 2023 [Per J. M. Lopez, Second Division]; *People v. Agando*, 388 Phil. 353 (2000) [Per J. Puno, First Division].

³⁷ 783 Phil. 806 (2016) [Per J. Peralta, *En Banc*].

expenses. Hence, accused-appellant shall only pay Joseph PHP 25,000.00 as civil indemnity, PHP 25,000.00 as moral damages, and PHP 25,000.00 as exemplary damages, with interest at the rate of 6% per annum from date of finality of this Decision until fully paid. He shall also pay Jovelito's heirs PHP 75,000.00 as civil indemnity, PHP 75,000.00 as moral damages, PHP 75,000.00 as exemplary damages, and PHP 50,000.00 temperate damages, with interest at the rate of 6% per annum from date of finality of this Decision until fully paid.³⁸

FOR THESE REASONS, the appeal is **DENIED**. The Court of Appeals' Decision dated June 9, 2023 in CA-G.R. CR-HC No. 15453 is **AFFIRMED with MODIFICATION**:

1) In Criminal Case No. 9337, accused-appellant Leonardo Banaag, Jr. is found **GUILTY** beyond reasonable doubt of attempted murder under Article 248 in relation to Article 51 of the Revised Penal Code and is sentenced to suffer the penalty of six years of *prision correccional*, as minimum, to eight years and one day of *prision mayor*, as maximum. Accused-appellant Leonardo Banaag, Jr. is also **DIRECTED** to **PAY** Joseph Agustin the amounts of PHP 25,000.00 as civil indemnity, PHP 25,000.00 as moral damages, and PHP 25,000.00 as exemplary damages, all with legal interest at the rate of 6% per annum from the finality of this Decision until full payment.

2) In Criminal Case No. 9338, accused-appellant Leonardo Banaag, Jr. is found **GUILTY** beyond reasonable doubt of murder under Article 248 of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua*. Accused-appellant Leonardo Banaag, Jr. is also **DIRECTED** to **PAY** Jovelito Agustin's heirs the amounts of PHP 75,000.00 as civil indemnity, PHP 75,000.00 as moral damages, PHP 75,000.00 as exemplary damages, and PHP 50,000.00 as temperate damages, all with legal interest at the rate of 6% per annum from the finality of this Decision until full payment.

SO ORDERED.



MARIO V. LOPEZ
Associate Justice

³⁸ *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, 716 Phil. 267 (2013) [Per J. Peralta, *En Banc*].

WE CONCUR:



MARVIC M.V.F. LEONEN

Senior Associate Justice
Chairperson



AMY C. LAZARO-JAVIER

Associate Justice



JHOSEP V. LOPEZ

Associate Justice



ANTONIO T. KHO, JR.

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision has been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN

Senior Associate Justice
Chairperson

CERTIFICATION

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



ALEXANDER G. GESMUNDO

Chief Justice