Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

ARTURO PUNZALAN, JR.,
Accused-Appellant,

G.R. No. 199892

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

DEC 10 2012

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D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] dated April 29, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02816 denying the appeal of appellant Arturo Punzalan, Jr. of the Decision[2] dated March 21, 2007 of the Regional Trial Court (RTC) of Iba, Zambales and affirming his conviction for the

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1 *Rollo*, pp. 2-28; penned by Associate Justice Noel G. Tijam with Associate Justices Marlene Gonzales-Sison and Leoncia R. Dimagiba, concurring.

2 CA *rollo*, pp. 16-50.

complex crime of double murder with multiple attempted murder, with certain modifications on the civil liability imposed on appellant.[3]

In August 2002, Seaman 1st Class (SN1) Arnulfo Andal, SN1 Antonio Duclayna, SN1 Evelio Bacosa, SN1 Cesar Domingo, SN1 Danilo Cuya, and SN1 Erlinger Bundang were among the members of the Philippine Navy sent for schooling at the Naval Education and Training Command (NETC) at San Miguel, San Antonio, Zambales. On August 10, 2002, at around 5:00 or 6:00 in the afternoon, they went to the "All-in-One" Canteen to have some drink. Later, at around 10:00 in the evening, they transferred to a nearby videoke bar, "Aquarius," where they continued their drinking session. Shortly thereafter, a heated argument between SN1 Bacosa and appellant ensued regarding a flickering light bulb inside "Aquarius."[4] When SN1 Bacosa suggested that the light be turned off ("*Patayin ang ilaw*"), appellant who must have misunderstood and misinterpreted SN1 Bacosa's statement belligerently reacted asking, "*Sinong papatayin*?," thinking that SN1 Bacosa's statement was directed at him.[5] SN1 Cuya tried to pacify SN1 Bacosa and appellant, while SN1 Bundang apologized to appellant in behalf of SN1 Bacosa. However, appellant was still visibly angry, mumbling unintelligible words and pounding his fist on the table.[6]

To avoid further trouble, the navy personnel decided to leave "Aquarius" and return to the NETC camp. They walked in two's, namely,

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3 *Rollo*, pp. 27-28. In particular, the Court of Appeals ordered appellant to pay the respective heirs of his victims SN1 Antonio Duclayna and SN1 Arnulfo Andal ₱75,000 civil indemnity, ₱75,000 moral damages, ₱30,000 exemplary damages and ₱25,000 temperate damages, plus ₱2,172,270.21 to the heirs of SN1 Andal representing SN1 Andal's loss of earning capacity. The Court of Appeals made the further modifications of ordering appellant to pay each of his surviving victims, SN1 Evelio Bacosa, SN1 Cesar Domingo, SN1 Danilo Cuya and SN1 Erlinger Bundang, ₱40,000 moral damages and ₱30,000 exemplary damages, plus ₱25,000 temperate damages in favor of SN1 Bacosa, SN1 Cuya and SN1 Bundang for the pecuniary losses they suffered on account of the injuries sustained.

4 Id. at 5.

5 Records, Vol. I, p. 199; testimony of SN1 Cesar Domingo, TSN, July 28, 2003, p. 7.

6 *Rollo*, p. 6.

SN1 Bundang and SN1 Domingo in the first group, followed by the group of SN1 Bacosa and SN1 Cuya, and SN1 Andal and SN1 Duclayna in the last group, with each group at one arm's length distance from the other.[7] Along the way, they passed by the NETC sentry gate which was being manned by SN1 Noel de Guzman and F1EN Alejandro Dimaala at that time.[8] SN1 Andal and SN1 Duclayna even stopped by to give the sentries some barbecue before proceeding to follow their companions.[9]

Soon after the navy personnel passed by the sentry gate, SN1 De Guzman and F1EN Dimaala flagged down a rushing and zigzagging maroon Nissan van with plate number DRW 706. The sentries approached the van and recognized appellant, who was reeking of liquor, as the driver. Appellant angrily uttered, "*kasi chief, gago ang mga 'yan!*," while pointing toward the direction of the navy personnel's group. Even before he was given the go signal to proceed, appellant shifted gears and sped away while uttering, "*papatayin ko ang mga 'yan!*"[10] While F1EN Dimaala was writing the van's plate number and details in the logbook, he suddenly heard a loud thud. Meanwhile, SN1 De Guzman saw how the van sped away towards the camp and suddenly swerved to the right hitting the group of the walking navy personnel prompting him to exclaim to F1EN Dimaala, "*chief, binangga ang tropa!*" SN1 De Guzman then asked permission to go to the scene of the incident and check on the navy personnel.[11]

When they were hit by the vehicle from behind, SN1 Cuya and SN1 Bacosa were thrown away towards a grassy spot on the roadside. They

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7 Records, Vol. I, pp. 144-145; testimony of SN1 Evelio Bacosa, TSN, March 24, 2003, pp. 12-13.
8 *Rollo*, p. 6.
9 Records, Vol. I, pp. 290-291 and 370; testimonies of F1EN Alejandro Dimaala and SN1 Noel De Guzman , TSNs, May 26, 2004, pp. 3-4 and of January 19, 2005, p. 6, respectively.
10 Id. at 290-297, 370-375.
11 *Rollo*, p. 7.

momentarily lost consciousness.[12] When they came to, they saw SN1 Duclayna lying motionless on the ground.[13] SN1 Cuya tried to resuscitate SN1 Duclayna, while SN1 Bacosa tried to chase the van.[14]

SN1 Domingo was not hit by the van as he was in the first group and was pushed away from the path of the speeding van. He was able to see the vehicle's plate number. He also tried to chase the van with SN1 Bacosa but they turned around when the vehicle made a U-turn as they thought that it would come back for them. The vehicle, however, sped away again when other people started to arrive at the scene of the incident.[15]

SN1 De Guzman found SN1 Cuya administering cardiopulmonary resuscitation (CPR) on SN1 Duclayna. He also saw the misshapen body of SN1 Andal lying some 50 meters away, apparently dragged there when the speeding van hit SN1 Andal. SN1 Cuya instructed SN1 De Guzman to get an ambulance but the car of the officer on duty at that time arrived and they boarded SN1 Duclayna's body to the vehicle to be brought to the hospital.[16] The other injured navy personnel, namely, SN1 Cuya, SN1 Bacosa, and SN1 Bundang, were brought to the infirmary for treatment.[17]

Members of the local police soon arrived at the scene of the crime. Senior Police Officer (SPO) 1 Roberto Llorico, the police investigator, found the bloodied lifeless body of SN1 Andal lying on the side of the road. SPO1 Llorico was informed that appellant was the suspect. Fortunately, one of the responding officers was appellant's neighbor and led SPO1

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12 Id. at 6.

13 Records, Vol. I, pp. 83-84; testimony of SN1 Danilo Cuya, TSN, December 11, 2002, pp. 9-10.

14 Id. at 147; See also testimony of SN1 Evelio Bacosa, TSN, March 24, 2003, p. 15.

15 Id. at 202-203; testimony of SN1 Cesar Domingo, TSN, July 28, 2003, pp. 10-11.

16 Id. at 383-384; testimony of SN1 Noel De Guzman, TSN, February 23, 2005, pp. 4-5.

17 Id. at 86, 148 and 204; testimonies of SN1 Danilo Cuya, SN1 Evelio Bacosa and SN1 Cesar Domingo, TSNs, December 11, 2002, p. 12, March 24, 2003, p. 16 and July 28, 2003, p. 12, respectively.

Llorico to appellant's place where they found appellant standing near his gate. Appellant appeared drunk and was reeking of alcohol. They also saw the van parked inside the premises of appellant's place. Its front bumper was damaged. When they asked appellant why he ran over the navy personnel, he simply answered that he was drunk. The police officers then invited appellant to the police station and brought the van with them.[18]

A post mortem examination was conducted on the bodies of SN1 Andal and SN1 Duclayna by Dr. Jericho Cordero of Camp Crame Medical Division. Dr. Cordero's findings were that the injuries sustained by SN1 Andal were fatal and caused by a hard blunt object that hit his body. The force of the impact was such that the internal organs like the kidneys, mesentery and spleen were also fatally injured. SN1 Andal died of cardio-respiratory arrest as a result of massive blunt traumatic injuries to the head, thorax and abdomen. On the other hand, SN1 Duclayna sustained fatal injuries to the head and liver. The head and neck injuries were such that a lot of blood vessels were ruptured and the fractures were embedded in the brain. The laceration on the liver, also a mortal injury, was a blunt traumatic injury.[19]

As regards the other navy personnel, SN1 Cuya suffered lacerated wounds on the head and different parts of the body for which he was confined at the infirmary for about eighteen (18) days;[20] SN1 Bacosa sustained injuries on his knee and left hand and stayed in the infirmary for a day;[21] and SN1 Bundang suffered injuries to his right foot.[22]

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18 *Rollo*, p. 8.
19 Id. at 8-9.
20 Id. at 6.
21 Id. at 7.
22 Records, Vol. I, p. 149; testimony of SN1 Evelio Bacosa, TSN, March 24, 2003, p. 17.

Appellant was thereafter charged under an Information[23] which reads as follows:

> That on or about the 10th day of August 2002, at about 11:00 o'clock in the evening, in Brgy. West Dirita, Municipality of San Antonio, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, while driving and in control of a Nissan Van with plate no. DRW 706, did there and then wil[l]fully, unlawfully and feloniously, bump, overrun, smash and hit from behind with the use of the said van, the following persons: Antonio Duclayna, Arnulfo Andal, Evelio Bacosa, Danilo Cuya, Erlinger Bundang and Cesar Domingo, all members of the Philippine [N]avy then assigned at the Naval Education and Training Command in San Antonio, Zambales, thereby inflicting upon them the following physical injuries, to wit:
>
> DANILO CUYA:
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> "Head Injury, grade 1 (Lacerated wound 5.0 cm, accipito-parietal area, (L) and lacerated wound, Lower lip) 2 to VA"
>
> EVELIO BACOSA:
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> "Multiple abrasion, wrist, volar surface (L), 2nd digit, abrasion, dorsun, (L) foot"
>
> ERLINGER BUNDANG:
>
> "Abrasion, medial maleolus, (R)"
>
> ARNULFO ANDAL:
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> "Head Injury, Grade IV; (Depressed Fracture, Frontal: Lacerated wounds, 8.0 cm 3.0 cm. forehead, and 5.0 cm parietal, (R);
>
> Avulsion, medial aspect, upper arm to elbow, hip and enguinal area, (L);
>
> Multiple abrasion, anterior and posterior chest, knees and (R) foot-secondary to VA"
>
> ANTONIO DUCLAYNA:
>
> "Head Injury, Grade IV (Lacerated wound, Contusion, Hematoma (R) Parietal) secondary to VA"
>
> which act of said accused directly caused the death of Arnulfo Andal and Antonio Duclayna, and in so far as Danilo Cuya, Evelio Bacosa and

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23 Id. at 2-3.

> Erlinger Bundang were concerned, said accused performed all the acts of execution which would produce the crime of Murder as a consequence, but nevertheless, did not produce said crime by reason of cause/s independent of his will, that is, by the timely and able medical assistance rendered to said Danilo Cuya, Evelio Bacosa and Erlinger Bundang, which prevented their death, and finally as to Cesar Domingo, said accused commenced the commission of the acts constituting Murder directly by overt acts, but was not able to perform all the acts of execution by reason of some cause other than accused's own desistance, that is due to the timely avoidance of the van driven by accused, and that the commission of the crimes was attended with treachery, evident premeditation, cruelty and use of a motor vehicle, and by deliberately and inhuman[ely] augmenting the suffering of the victim Arnulfo Andal, to the damage and prejudice of Danilo Cuya, Evelio Bacosa, Erlinger Bundang and Cesar Domingo and the family and heirs of the deceased Arnulfo Andang and Antonio Duclayna.

When arraigned, appellant maintained his innocence.[24]

After pre-trial, trial ensued and the prosecution presented evidence to establish the facts stated above.

In his defense, appellant testified that in the evening of August 10, 2002, he was drinking with Marvin Acebeda and Romeo Eusantos at the "Aquarius" videoke bar. When he sang, the navy personnel who were also inside the bar laughed at him as he was out of tune. He then stood up, paid his bills and went out. After a while, Acebeda followed him and informed him that the navy personnel would like to make peace with him. He went back inside the bar with Acebedo and approached the navy personnel. When SN1 Bacosa appeared to reach out for appellant's hand, appellant offered his hand but SN1 Bacosa suddenly punched appellant's right ear. To avoid further altercation, appellant left the bar with Acebeda in tow. Appellant went home driving his van, with the spouses Romeo and Alicia Eusantos who hitched a ride as passengers. When they passed by the sentry, somebody threw stones at the van. When he alighted and inspected the

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[24] *Rollo*, p. 5.

vehicle, he saw that one of the headlights was broken. Thereafter, he saw SN1 Bacosa and another man approaching him so he went back inside the van but the duo boxed him repeatedly on his shoulder through the van's open window. When he saw the four other navy personnel coming towards him, he accelerated the van. During the whole incident, Romeo was asleep as he was very drunk while Alicia was seated at the back of the van. Upon reaching appellant's home, the spouses alighted from the van and proceeded to their place. After 20 minutes, police officers arrived at appellant's house and told him that he bumped some people. Appellant went with the police officers to the police station where he was investigated and detained.[25]

Appellant's only other witness was Alicia Eusantos. She testified that she and her husband hitched a ride with appellant in the evening of August 10, 2002. She did not notice any unusual incident from the time they rode the vehicle until they alighted from it. She learned about the incident on the following day only when her statement was taken by the police.[26]

After the parties have rested their respective cases, the RTC of Iba, Zambales found appellant guilty and rendered a Decision dated March 21, 2007 with the following dispositive portion:

> IN VIEW THEREOF, accused ARTURO PUNZALAN, JR. is found GUILTY beyond reasonable doubt of the complex crime of Double Murder qualified by treachery with Attempted Murder attended by the aggravating circumstance of use of motor vehicle and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*.
>
> For the death of SN1 Antonio Duclayna and SN1 Arnulfo Andal, civil indemnity of ₱50,000.00 each is awarded to their heirs. This is in addition to the amount of moral damages at ₱50,000.00 each for the emotional and mental sufferings, plus ₱12,095.00 to the heirs of Duclayna representing actual damages.

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25 Id. at 9-10.

26 Id. at 10.

> Accused is likewise ordered to pay SN1 Evelio Bacosa, SN1 Cesar Domingo, SN1 Danilo Cuya and SN1 Erlinger Bundang ₱30,000.00 each or an aggregate amount of ₱120,000.00 as indemnity for their attempted murder.[27]

Appellant filed an appeal with the Court of Appeals. In his brief,[28] appellant claimed that the trial court erred in not finding that he may not be held criminally liable as he merely acted in avoidance of greater evil or injury, a justifying circumstance under paragraph 4, Article 11 of the Revised Penal Code. His act of increasing his vehicle's speed was reasonable and justified as he was being attacked by two men whose four companions were also approaching. He asserted that the attack against him by the two navy personnel constituted actual and imminent danger to his life and limb. The sight of the four approaching companions of his attackers "created in his mind a fear of greater evil," prompting him to speed up his vehicle to avoid a greater evil or injury to himself. According to appellant, if he accidentally hit the approaching navy men in the process, he could not be held criminally liable therefor. The instinct of self-preservation would make one feel that his own safety is of greater importance than that of another.[29]

Appellant further faulted the trial court in appreciating the qualifying circumstance of treachery. He asserted that nothing in the records would show that he consciously or deliberately adopted the means of execution. More importantly, treachery was not properly alleged in the Information.[30]

The Office of the Solicitor General (OSG), on behalf of the People of the Philippines, refuted the arguments of appellant and defended the

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27 CA *rollo*, p. 50.
28 Id. at 70-88.
29 Id. at 83-85.
30 Id. at 85-87.

correctness of the RTC Decision. In its brief,[31] the OSG claimed that the trial court rightly rejected appellant's defense of avoidance of greater evil or injury. Appellant's version of the events did not conform to the physical evidence and it was not consistent with the testimony of his own witness.

The OSG also argued that treachery was appropriately appreciated by the trial court. The Information was written in a way that sufficiently described treachery where "the unsuspecting victims were walking towards their barracks and totally unprepared for the unexpected attack from behind."[32]

After considering the respective arguments of the parties, the Court of Appeals rendered the assailed Decision dated April 29, 2011 with the following decretal portion:

> **WHEREFORE**, the instant Appeal is **Denied**. The assailed Decision, dated March 21, 2007, of the Regional Trial Court of Iba, Zambales, Branch 69, in Criminal Case No. RTC-3492-I, is **AFFIRMED** with **MODIFICATION,** in that Accused-Appellant is hereby ordered to pay the heirs of SN1 Antonio Duclayna and SN1 Arnulfo Andal civil indemnity of Php75,000, moral damages of Php75,000, temperate damages of Php25,000 and exemplary damages of Php30,000. In addition to the foregoing damages, Accused-Appellant is as well held liable to pay the heirs of SN1 Andal the amount of Php2,172,270.21 to represent the amount of loss of earning capacity of SN1 Andal.
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> Accused-Appellant is likewise ordered to pay the surviving victims, SN1 Evelio Bacosa, SN1 Cesar Domingo, SN1 Danilo Cuya and SN1 Erlinger Bundang, moral and exemplary damages in the amount of Php40,000 and Php30,000, respectively. Award of temperate damages in the amount of Php25,000 is proper in favor of SN1 Bacosa, SN1 Cuya and SN1 Bundang for the unsubstantiated amount of pecuniary losses they suffered on account of the injuries they sustained. SN1 Cesar Domingo, however, is not entitled to temperate damages.[33]

Hence, this appeal.

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31 Id. at 131-172.
32 Id. at 169.
33 *Rollo*, pp. 27-28.

Both appellant and the OSG adopted the respective briefs they filed in the Court of Appeals.[34]

Is appellant guilty of the complex crime of murder with frustrated murder?

After a thorough review of the records of this case and the arguments of the parties, this Court affirms appellant's conviction.

Both the RTC and the Court of Appeals found the evidence presented and offered by the prosecution credible and that the "prosecution witnesses had overwhelmingly proved beyond reasonable doubt the culpability of the Accused-Appellant."[35] The Court of Appeals correctly observed that prosecution witnesses F1EN Dimaala and SN1 De Guzman "positively identified accused-appellant as the one who hit and ran over the victims."[36] The Court of Appeals further found:

> The testimonies of the prosecution witnesses, taken together, inevitably showed the criminal intent of the Accused-Appellant to inflict harm on the victims. They testified on the incident in a clear, concise, corroborative, and straightforward manner. Thus, their testimonies must prevail over the testimony given by the Accused-Appellant which, on the other hand, was neither substantiated nor supported by any evidence.
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> The prosecution witnesses testified that they actually saw how Accused-Appellant ran over the victims who were walking inside the NETC camp on the night of August 10, 2002. Accused-Appellant, who was driving his van from behind, suddenly bumped and ran over the victims. The victims were thrown away, resulting in the instantaneous death of SN1 Duclayna and SN1 Andal and causing injuries to the other victims.
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> x x x x

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34 Id. at 36-40; Manifestations of the OSG and appellant dated April 25, 2012 and May 21, 2012, respectively.

35 Id. at 13.

36 Id.

> Accused-Appellant's version of the crime, upon which the justifying circumstance of avoidance of greater evil or injury is invoked, is baseless. This is because his assertions anent the existence of the evil which he sought to be avoided [did] not actually exist as [they] neither conformed to the evidence at hand nor [were] [they] consistent with the testimony of his own witness, Alicia Eusantos x x x.
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> x x x x
>
> Accused-Appellant's own witness, Alicia Eusantos, not only failed to corroborate his claim but also belied Accused-Appellant's claim that he was attacked by the Philippine Navy personnel. Alicia Eusantos categorically stated that she did not witness any unusual incident in the evening of August 10, 2002 while on board the Nissan Urvan Van driven by Accused-Appellant while they were cruising the access road going to the NETC compound. Accused-Appellant's claim, therefore, is more imaginary than real. The justifying circumstance of Avoidance of Greater Evil or Injury cannot be invoked by the Accused-Appellant as the alleged evil sought to be avoided does not actually exist.[37]

Moreover, whether or not petitioner acted in avoidance of greater evil or injury is a question of fact. It is an issue which concerns doubt or difference arising as to the truth or the falsehood of alleged facts.[38] In this connection, this Court declared in *Martinez v. Court of Appeals*[39]:

> [T]he well-entrenched rule is that findings of fact of the trial court in the ascertainment of the credibility of witnesses and the probative weight of the evidence on record affirmed, on appeal, by the CA are accorded high respect, if not conclusive effect, by the Court and in the absence of any justifiable reason to deviate from the said findings.

This Court has combed through the records of this case and found no reason to deviate from the findings of the trial and appellate courts. There is nothing that would indicate that the RTC and the Court of Appeals "ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of

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37 Id. at 16-20.

38 *Republic v. Malabanan*, G.R. No. 169067, October 6, 2010, 632 SCRA 338, 345. In this case, the Court stated: "There is a question of fact when the doubt [or difference] arises as to the truth or [the falsehood] of the alleged facts."

39 G.R. No. 168827, April 13, 2007, 521 SCRA 176, 193.

the case."[40]

Under paragraph 4, Article 11 of the Revised Penal Code, to successfully invoke avoidance of greater evil as a justifying circumstance, [41] the following requisites should be complied with:

(1) the evil sought to be avoided actually exists;

(2) the injury feared be greater than that done to avoid it; and

(3) there be no other practical and less harmful means of preventing it.

The RTC and the Court of Appeals rejected appellant's self-serving and uncorroborated claim of avoidance of greater evil. The trial and appellate courts noted that even appellant's own witness who was in the van with appellant at the time of the incident contradicted appellant's claim. Thus, the RTC and the Court of Appeals concluded that the evil appellant claimed to avoid did not actually exist. This Court agrees.

Moreover, appellant failed to satisfy the third requisite that there be no other practical and less harmful means of preventing it. Under paragraph 4, Article 11 of the Revised Penal Code, infliction of damage or injury to another so that a greater evil or injury may not befall one's self may be justified only if it is taken as a last resort and with the least possible prejudice to another. If there is another way to avoid the injury without causing damage or injury to another or, if there is no such other way but the

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40 *People v. Belo*, G.R. No. 187075, July 5, 2010, 623 SCRA 527, 536.

41 Art. 11. *Justifying circumstances*. – The following do not incur any criminal liability:

x x x x

4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it;

Third. That there be no other practical and less harmful means of preventing it.

damage to another may be minimized while avoiding an evil or injury to one's self, then such course should be taken.

In this case, the road where the incident happened was wide, some 6 to 7 meters in width,[42] and the place was well-lighted.[43] Both sides of the road were unobstructed by trees, plants or structures.[44] Appellant was a driver by occupation.[45] However, appellant himself testified that when he shifted to the second gear and immediately stepped on the accelerator upon seeing the four navy personnel approaching from in front of him,[46] he did not make any attempt to avoid hitting the approaching navy personnel even though he had enough space to do so. He simply sped away straight ahead, meeting the approaching navy personnel head on, totally unmindful if he might run them over.[47] He therefore miserably failed to resort to other practical and less harmful available means of preventing the evil or injury he claimed to be avoiding.

The appreciation of treachery as a circumstance that qualified the killing of SN1 Duclayna and SN1 Andal and the attempted killing of the others is also correct. This Court agrees with the following disquisition of the Court of Appeals:

> We find that the RTC correctly appreciated the existence of treachery in the commission of the offense. Treachery qualifies the killing to murder. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make. The elements of treachery are: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of

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42 Records, Vol. I, p. 317; testimony of F1EN Alejandro Dimaala, TSN of July 14, 2004, p. 6.
43 Id. at 386-387; testimony of SN1 Noel de Guzman, TSN, February 23, 2005, pp. 7-8.
44 Records, Vol. II, p. 736; TSN, May 15, 2006, p. 7; Exhibits "C-3" and "C-4."
45 Id. at 710; testimony of appellant, TSN, February 15, 2006, p. 2.
46 Id. at 717; TSN, February 15, 2006, p. 9.
47 Id. at 738; TSN, May 15, 2006, p. 9.

execution was deliberate or consciously adopted.

Accused-Appellant's act of running over the victims with his van from behind while the victims were walking inside the NETC camp was a clear act of treachery. The victims were not given any warning at all regarding the assault of the Accused-Appellant. The victims were surprised and were not able to prepare and repel the treacherous assault of Accused-Appellant. The prosecution witnesses testified that after they had flagged down Accused-Appellant's van, the latter accelerated and upon reaching the middle of the road, it suddenly swerved to the right hitting the victims who were startled by the attack.

x x x x

A close review of the information would disclose that the qualifying circumstance of treachery was stated in ordinary and concise language and the said act was described in terms sufficient to enable a layman to know what offense is intended to be charged, and enables the court to pronounce proper judgment.

We quote pertinent portion of the information, which reads:

> "x x x the said accused, with intent to kill, while driving and in control of a Nissan Van with plate No. DRW 706, did then and there willfully and feloniously, **bump, overrun, smash and hit from behind** with the use of said van, x x x."

Applying the Supreme Court's discussion in *People vs. Batin*, citing the case of *Balitaan v. Court of First Instance of Batangas*, to wit:

> "The main purpose of requiring the various elements of a crime to be set forth in an Information is to enable the accused to suitably prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense. x x x.
>
> It is often difficult to say what is a matter of evidence, as distinguished from facts necessary to be stated in order to render the information sufficiently certain to identify the offense. As a general rule, matters of evidence, as distinguished from facts essential to the description of the offense, need not be averred. For instance, it is not necessary to show on the face of an information for forgery in what manner a person is to be defrauded, as that is a matter of evidence at the trial.
>
> **We hold that the allegation of treachery in the Information is sufficient. Jurisprudence is replete with cases wherein we found the allegation of treachery sufficient without any further explanation as to the circumstances surrounding it.**"

> Clearly, We find that the information is sufficient as it not merely indicated the term treachery therein but also described the act itself constituting treachery. Such statement, without a doubt, provided the supporting facts that constituted the offense, sufficiently alleging the qualifying circumstance of treachery when it pointed out the statement, "smash and hit from behind."[48] (Emphases supplied; citations omitted.)

The essence of treachery is the sudden and unexpected attack by the aggressor on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims.[49] The six navy personnel were walking by the roadside, on their way back to their camp. They felt secure as they have just passed a sentry and were nearing their barracks. They were totally unaware of the threat to their life as their backs were turned against the direction where appellant's speeding van came. They were therefore defenseless and posed no threat to appellant when appellant mowed them down with his van, killing two of them, injuring three others and one narrowly escaping injury or death. Beyond reasonable doubt, there was treachery in appellant's act. This was sufficiently alleged in the Information which not only expressly mentioned treachery as one of the circumstances attending the crime but also described it in understandable language:

> [T]he said accused, with intent to kill, while driving and in control of a Nissan Van with plate no. DRW 706, did then and there willfully, unlawfully and feloniously, **bump, overrun, smash and hit from behind** with the use of said van, the following persons: Antonio Duclayna, Arnulfo Andal, Evelio Bacosa, Danilo Cuya, Erlinger Bundang and Cesar Domingo, x x x.[50] (Emphasis supplied.)

Use of motor vehicle was also properly considered as an aggravating circumstance. Appellant deliberately used the van he was driving to pursue

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48 *Rollo*, pp. 16-17, 22-23.

49 *People v. Gutierrez*, G.R. No. 188602, February 4, 2010, 611 SCRA 633, 644.

50 Records, p. 2.

the victims. Upon catching up with them, appellant ran over them and mowed them down with the van, resulting to the death of SN1 Andal and SN1 Duclayna and injuries to the others.[51] Thereafter, he continued to speed away from the scene of the incident. Without doubt, appellant used the van both as a means to commit a crime and to flee the scene of the crime after he committed the felonious act.

The felony committed by appellant as correctly found by the RTC and the Court of Appeals, double murder with multiple attempted murder, is a complex crime contemplated under Article 48 of the Revised Penal Code:

> 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.

Appellant was animated by a single purpose, to kill the navy personnel, and committed a single act of stepping on the accelerator, swerving to the right side of the road ramming through the navy personnel, causing the death of SN1 Andal and SN1 Duclayna and, at the same time, constituting an attempt to kill SN1 Cuya, SN1 Bacosa, SN1 Bundang and SN1 Domingo.[52] The crimes of murder and attempted murder are both

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51 *See People v. Mallari*, 452 Phil. 210, 222 (2003). This case has similarity to the case of appellant herein: Mallari deliberately used his truck in pursuing the victim and, upon catching up with the victim, Mallari hit him with the truck, as a result of which the victim died instantly. The Court found that the truck was the means used by Mallari to perpetrate the killing of his victim.

52 The crime committed against SN1 Cuya, SN1 Bacosa, SN1 Bundang and SN1 Domingo, is a case of multiple attempted murder because none of them was proven to have suffered a mortal wound from the incident. This Court stated in *Palaganas v. People* (G.R. No. 165483, September 12, 2006, 533 Phil. 169, 193 [2006]): "when the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal wound /s but did not die because of timely medical assistance, the crime committed is frustrated murder or frustrated homicide depending on whether or not any of the qualifying circumstances under Article 249 of the Revised Penal Code are present. However, if the wound/s sustained by the victim in such a case were not fatal or mortal, then the crime committed is only attempted murder or attempted homicide. If there was no intent to kill on the part of the accused and the wound/s sustained by the victim were not fatal, the crime committed may be serious, less serious or slight physical injury."

grave felonies[53] as the law attaches an afflictive penalty to capital punishment (*reclusion perpetua* to death) for murder while attempted murder is punished by *prision mayor*,[54] an afflictive penalty.[55]

Under Article 248 of the Revised Penal Code, as amended, murder is punishable by *reclusion perpetua* to death. Article 63[56] of the same Code provides that if the penalty prescribed is composed of two indivisible penalties, as in the instant case, and there is an aggravating circumstance the higher penalty should be imposed. Since use of vehicle can be considered as an ordinary aggravating circumstance, treachery, by itself, being sufficient to qualify the killing, the proper imposable penalty – the higher sanction – is death. However, in view of the enactment of Republic Act No. 9346,[57] prohibiting the imposition of the death penalty, the penalty for the killing of each of the two victims is reduced to *reclusion perpetua* without eligibility for parole.[58] The penalty of *reclusion perpetua* thus imposed by the Court of Appeals on appellant for the complex crime that he committed is correct.

The awards of ₱75,000.00 civil indemnity and ₱75,000.00 moral damages to the respective heirs of SN1 Andal and SN1 Duclayna are also proper. These awards, civil indemnity and moral damages, are mandatory without need of allegation and proof other than the death of the victim,

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53 Art. 9. *Grave felonies, less grave felonies, and light felonies*. – Grave felonies are those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive, in accordance with Article 25 of this Code.

54 *See* Art. 248, Revised Penal Code defining and punishing the crime of murder, in relation to Art. 250 of the same Code.

55 In fact, in this case, the murders of SN1 Andal and SN1 Duclayna are sufficient to constitute a complex crime as they are two grave felonies resulting from a single act.

56 Art. 63. *Rules for the application of indivisible penalties*. – x x x. 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. x x x.

57 An Act Prohibiting the Imposition of the Death Penalty, signed into law on June 24, 2006.

58 Sec. 3 of Republic Act No. 9346 provides that "persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole x x x."

owing to the fact of the commission of murder.[59]

Moreover, in view of the presence of aggravating circumstances, namely the qualifying circumstance of treachery and the generic aggravating circumstance of use of motor vehicle, the award of ₱30,000.00 exemplary damages to the respective heirs of the deceased victims is also correct.[60] In addition, it cannot be denied that the heirs of the deceased victims suffered pecuniary loss although the exact amount was not proved with certainty. Thus, the award of ₱25,000.00 temperate damages to the heirs of each deceased victim is appropriate.[61]

As it was proven that, at the time of his death, SN1 Andal had a monthly income of ₱13,245.55,[62] the grant of ₱2,172,270.21 for loss of earning capacity is in order.[63]

As to the surviving victims, SN1 Cuya, SN1 Bacosa, SN1 Bundang and SN1 Domingo, the Court of Appeals correctly granted each of them ₱40,000 moral damages for the physical suffering, fright, serious anxiety, moral shock, and similar injuries caused to them by the incident.[64] And as the crime was attended by aggravating circumstances, each of them was properly given ₱30,000 exemplary damages.[65]

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59 *People v. Camat*, G.R. No. 188612, July 30, 2012.

60 *People v. Barde*, G.R. No. 183094, September 22, 2010, 631 SCRA 187, 220.

61 Id. at 220-221.

62 Philippine Navy pay slip of SN1 Andal for the period July 1-31, 2002; RTC records, vol. II, p. 683.

63 This amount has been computed using the following formula established in jurisprudence: Life Expectancy x (Gross Annual Income [GAI] less Living Expenses [50% GAI]) Where Life Expectancy = 2/3 x (80 – age of the deceased).
Thus: Unearned income = (2/3 [80-39]) ([₱13,245.55 x 12] – [1/2 [₱13,245.55 x 12]]
= (2/3 [41]) (₱158,946.60 - ₱79,473.30)
= (2/3 [41]) (₱79,473.30)
= (27.3333335) (₱79,473.30)
= ₱2,172,270.21.

64 *People v. Nelmida*, G.R. No. 184500, September 11, 2012.

65 Id.

Finally, those who suffered injuries, namely, SN1 Cuya, SN1 Bacosa and SN1 Bundang, were correctly awarded ₱25,000 temperate damages each for the pecuniary loss they suffered for hospitalization and/or medication, although no receipts were shown to support said loss.[66]

WHEREFORE, the appeal is hereby **DENIED**. The Decision dated April 29, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02816 affirming the conviction of appellant Arturo Punzalan, Jr. for the complex crime of double murder with multiple attempted murder, imposing upon him the penalty of *reclusion perpetua* and ordering him to pay the following:

(a) To the respective heirs of SN1 Arnulfo Andal and SN1 Antonio Duclayna:

(i) ₱75,000.00 civil indemnity;

(ii) ₱75,000.00 moral damages;

(iii) ₱30,000.00 exemplary damages; and

(iv) ₱25,000.00 temperate damages;

(b) To the heirs of SN1 Andal, ₱2,172,270.21 for loss of earning capacity;

(c) To each of the surviving victims, SN1 Danilo Cuya, SN1 Evelio Bacosa, SN1 Erlinger Bundang and SN1 Cesar Domingo:

(i) ₱40,000.00 moral damages; and

(ii) ₱30,000.00 exemplary damages; and

(d) To SN1 Cuya, SN1 Bacosa and SN1 Bundang, ₱25,000.00 temperate damages each

is **AFFIRMED**.

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66 Id.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice