



Republic of the Philippines
Supreme Court
 Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 AUG 19 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff -Appellee,

G.R. No. 210710

Present:

VELASCO, JR., J.,
Chairperson,
 PERALTA,
 PEREZ,
 REYES, and
 PERLAS-BERNABE,* JJ.

- versus -

LUISITO GABORNE Y CINCO,
 Accused-Appellant.

Promulgated:

July 27, 2016

X ----- *Wilfredo V. Lapitan* ----- X

DECISION

PEREZ, J.:

Before the Court is an appeal from the Decision¹ of the Court of Appeals (CA) dated 29 July 2013 in CA-G.R. CR HC No. 01183, affirming the Decision² of the Regional Trial Court (RTC), Branch 33, Calbiga, Samar which found appellant Luisito Gaborne y Cinco guilty of the crime of Murder with the use of Unlicensed Firearm, as defined in Article 248 of the Revised Penal Code (RPC) as amended by Sec. 6 of Republic Act (R.A.) No. 7659, and Frustrated Murder as defined in Article 248 in relation to Article 50 of the RPC, respectively.

Together with two others, appellant was charged with Murder with the use of Unlicensed Firearm and Frustrated Murder in the following Informations:

* Additional Member per Raffle dated 13 July 2016.
¹ *Rollo*, pp. 3-21; Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino concurring.
² Records (Crim. Case No. CC-2007-1640), pp.186-205; Presided by Acting Presiding Judge Yolanda U. Dagandan.

Criminal Case No. CC-2007-1640

That on or about the 2nd day of February 2007, at about 11:00 o'clock in the evening more or less, at Brgy. Mugdo, Hinabangan, Samar, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating, mutually helping one another, with deliberate intent to kill, and with treachery and evident premeditation, which qualify the offense into murder, did there, willfully, unlawfully, and feloniously, shot (sic) Sixto Elizan y Herrera, with the use of an unlicensed firearm a caliber [.45 pistol, a special aggravating circumstance pursuant to RA 8294, which accused have provided themselves for the purpose, thereby hitting and inflicting upon the said Sixto Elizan y Herrera fatal gun shot wounds on the different parts of his body, which gun shot wounds caused his instantaneous death.³

Criminal Case No. CC-2007-1650

That on or about the 2nd day of February 2007, at around 11:00 o'clock in the evening more or less, at Brgy. Mugdo, Municipality of Hinabangan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating, mutually helping one another, with deliberate intent to kill, and with treachery, which qualifies the offense to murder, did, then and there, willfully, unlawfully and feloniously shot [sic] the victim, Rey Perfecto C. de Luna, with the use of a caliber [.45 pistol, an unlicensed firearm, a special aggravating circumstance pursuant to Rep. Act No. 8294, with which the accused have provided themselves for the purpose, thereby inflicting upon the victim the following wounds, to wit:

- Gun shot wound (R) back penetrating (R) chest, lacerating diaphragm, (R) lobe of the liver, thru and thru and greater omentum with massive hemoperitoneum
- Gun shot wound (R) para spinal area at L2 penetrating abdomen perforating ileum thru and thru

thus, accused have performed all the acts of execution which should have produced the crime of murder as a consequence but which nevertheless did not produce it by reason of some cause independent of the will of the accused, that is, the timely medical treatment/intervention rendered to the victim at Saint Paul's Hospital, Tacloban City.⁴

On arraignment, appellant entered a plea of NOT GUILTY⁵ for both charges. Trial on the merits ensued thereafter.

The Facts

³ Records (Crim. Case No. CC-2007-1640), p. 1.

⁴ Records (Crim. Case No. CC-2007-1650), pp. 1-2.

⁵ Records (Crim. Case No. CC-2007-1640), p.43; Records (Crim. Case No. CC-2007-1650), p. 22.

The antecedent facts culled from the Appellee's Brief⁶ and the records of the case are summarized as follows:

On 2 February 2007 at around 10:30 in the evening, Rey Perfecto De Luna (De Luna) and Sixto Elizan⁷ (Elizan) entered a *videoke* bar⁸ at *Barangay* Mugdo, Hinabangan, Samar.⁹ Noli Abayan (Abayan), appellant and Joselito Bardelas (Bardelas) followed five minutes thereafter.¹⁰

While Elizan and De Luna were drinking, singing and merely having fun, four successive gunshots¹¹ were fired through the window. Because of this, Elizan and De Luna were hit from behind.¹² Later on, De Luna¹³ and Marialinisa Pasana¹⁴ (Pasana) saw appellant, who was then wearing a black t-shirt and a black cap, holding a gun aimed at their location. Pasana also saw accused-appellant and Bardelas escape after the incident.¹⁵

Elizan and De Luna were brought to St. Paul's Hospital at Tacloban City.¹⁶ Unfortunately, Elizan was pronounced dead upon arrival. De Luna, on the other hand, survived.¹⁷

Appellant steadfastly denied the accusations. According to him, he and his companions ordered for bottles of beer. However, when they tried to order for more bottles, the waitress refused to give them their order unless they pay for their previous orders first.¹⁸ While Abayan was explaining to the father of the owner of the *videoke* bar, appellant and Bardelas went out to urinate,¹⁹ however, the waitress locked the front door.²⁰ While standing outside, he heard the waitress utter the words, "If you will not pay, I [will] have you killed, all of you, right this moment."²¹ He also consistently contend that it was a man wearing black shirt and camouflage pants who fired shots to the *videoke* bar,²² not him.

⁶ CA *rollo*, pp. 70-87.

⁷ Also referred to in the records as Sixto Elisan.

⁸ Also referred to in the records as "Mana Riting" & "Narita Gayuso."

⁹ TSN, 21 August 2008, pp. 5-8.

¹⁰ TSN, 19 June 2008, pp. 9-11.

¹¹ TSN, 25 September 2008, pp. 4-5.

¹² TSN, 21 August 2008, pp. 8-9.

¹³ *Id.* at 10.

¹⁴ TSN, 19 June 2008, p. 34-38.

¹⁵ *Id.* at 16-21.

¹⁶ *Id.* at 22.

¹⁷ TSN, 29 January 2009, pp. 7-17 and 29-43.

¹⁸ TSN, 13 August 2009, pp. 9-11.

¹⁹ *Id.* at 12.

²⁰ TSNs, 8 October 2009, p.9 and 4 June 2009, pp. 13-14.

²¹ *Id.* at 13; TSN, 8 October 2009, p. 9.

²² *Id.* at 14-17.

The following day, appellant and Bardelas were arrested and underwent paraffin test.²³

Ruling of the Regional Trial Court

On 12 March 2010, the RTC rendered a joint judgment finding accused-appellant guilty of the two (2) charges of Murder with the use of Unlicensed Firearm and Frustrated Murder. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the [c]ourt finds the co-accused **LUISITO GABORNE y CINCO GUILTY BEYOND REASONABLE DOUBT** as principal in the crimes of:

- A. Murder with the Use of an Unlicensed Firearm under Art. 248 of the Revised Penal Code in Criminal Case No. CC-2007-1640 and considering the presence of one (1) aggravating circumstance without any mitigating circumstance to offset it, hereby sentences him to suffer imprisonment of RECLUSION PERPETUA; to pay the Heirs of Sixto Elisan y Herrera Php75,000.00 as civil indemnity for his death; Php50,000.00 in moral damages and Php25,000.00 in exemplary damages and to pay the costs of this suit.
- B. Frustrated Murder penalized under Art. 248 in relation to Art. 50 of the Revised Penal Code in Criminal Case No. CC-2007-1650 and considering the presence of one (1) aggravating circumstance without any mitigating circumstance to offset it hereby sentences him to suffer imprisonment of an indeterminate penalty ranging from ELEVEN (11) YEARS of Prison Mayor as minimum to EIGHTEEN (18) YEARS of Reclusion Temporal as maximum, to pay Perfecto de Luna Php264,866.58 as civil liability without subsidiary imprisonment in case of insolvency and to pay the costs of this suit.

The accused who underwent preventive imprisonment since February 3, 2007 shall be credited with the full time during which he was deprived of his liberty if he agreed voluntarily and in writing to abide by the same disciplinary rules imposed upon convicted prisoners otherwise he will be entitled to only four-fifths (4/5) thereof.

Because the prosecution absolutely failed to prove guilt of accused **NOLI ABAYAN y LARGABO** and co-accused **JOSELITO BARDELAS y BACNOTAN** from the instant criminal charges, they are **ACQUITTED** in these cases. No civil liability is assessed against them.

Because the said accused are detained, the Provincial Warden of Samar are hereby ordered to release the said accused from detention

²³ TSN, 13 August 2009, pp. 23 and 26.

unless they are held for some other cause or ground.²⁴

Ruling of the Court of Appeals

The CA found no merit in appellant's arguments. It pointed out that appellant is estopped from questioning the legality of his arrest as it was raised for the first time on appeal.²⁵ Thus, the appellate court was fully convinced that there is no ground to deviate from the findings of the RTC. The dispositive portion of the decision reads:

WHEREFORE, the instant appeal is hereby DENIED. The Joint Judgment dated March 12, 2010 rendered by Branch 33, Regional Trial Court of Calbiga, Samar, 8th Judicial Region in Criminal Case Nos. [CC-]2007-1640 and [CC-]2007-1650 is hereby **AFFIRMED WITH MODIFICATION** as to the award of damages, to wit:

1. The award of civil indemnity in Criminal Case No. [CC-]2007-1640 is affirmed;
2. The award of moral damages in the amount of Php50,000.00 in Criminal Case No. [CC-]2007-1640 is affirmed;
3. The award of exemplary damages in the amount of Php25,000.00 in Criminal Case No. [CC-]2007-1640 is affirmed;
4. In Criminal Case No. [CC-]2007-1650, accused-appellant is ordered to pay moral damages to the private offended party, Rey Perfecto De Luna, in the amount of Php40,000.00;
5. In Criminal Case No. [CC-]2007-1650, accused appellant is likewise ordered to pay exemplary damages to the private offended party, Rey Perfecto De Luna, in the amount of Php20,000.00; and
6. Accused-appellant is further ordered to additionally pay the private offended parties in the two criminal cases, Rey Perfecto De Luna and the heir/s of Sixto Elizan, interest on all damages at the legal rate of six percent (6%) from the date of finality of this judgment until the amounts awarded shall have been fully paid.²⁶

Appellant appealed the decision of the CA. The Notice of Appeal was given due course and the records were ordered elevated to this Court for review. In a Resolution²⁷ dated 19 February 2014, this Court required the parties to submit their respective supplemental briefs. Both parties

²⁴ Records (Crim. Case No. CC-2007-1640), pp. 204-205.

²⁵ *Rollo*, p. 15.

²⁶ *Id.* at 19-20.

²⁷ *Id.* at 28-29.

manifested that they are adopting all the arguments contained in their respective briefs in lieu of filing supplemental briefs.²⁸

Our Ruling

We find that the degree of proof required in criminal cases has been met in the case at bar. Appellant's defenses of denial and alibi are bereft of merit.

Assailing the legality of arrest should be made before entering a plea

Before anything else, we resolve the procedural issue raised by the appellant.²⁹

Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.³⁰ In *People v. Velasco*,³¹ this Court held that the accused is estopped from assailing the legality of his arrest for his failure to move for the quashal of the Information before arraignment. In this case, appellant only questioned the legality of his arrest for the first time on appeal.³²

Furthermore, even granting that indeed there has been an irregularity in the arrest of the appellant, it is deemed cured by his voluntary submission to the jurisdiction of the trial court over his person.³³ Thus, appellant is deemed to have waived his constitutional protection against illegal arrest³⁴ when he actively participated in the arraignment³⁵ and trial of this case.³⁶

Elements of Murder and Frustrated Murder were established

This Court finds that the circumstance of treachery should be

²⁸ Id. at 30 and 40-42.
²⁹ CA rollo, p. 29.
³⁰ *Miclat, Jr. v. People*, 672 Phil. 191, 203 (2013).
³¹ *People v. Velasco*, 722 Phil. 243, 252 (2013).
³² Rollo, p. 15.
³³ *People v. Ereño*, 383 Phil 30, 41 (2000).
³⁴ *People v. Rivera*, 613 Phil. 660, 667 (2009).
³⁵ Records (Crim. Case No. CC-2007-1640), p. 43.
³⁶ Id. at 155.

appreciated, qualifying the crime to Murder. According to the Revised Penal Code:

ARTICLE 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 any 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.

Thus, the elements of murder are: (1) that a person was killed; (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.³⁷

Furthermore, there is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.³⁸

The requisites of treachery are:

³⁷ *People v. Dela Cruz*, 626 Phil. 631, 639 (2010).

³⁸ *Cirera v. People*, G.R. No. 181843, 14 July 2014, 730 SCRA 27, 47 citing Revised Penal Code, Art. 14 (16).

- (1) The employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and
- (2) Deliberate or conscious adoption of such means, method, or manner of execution.³⁹

In this case, the hapless victims were merely drinking and singing in front of the *videoke* machine when shot by the appellant. The firing was so sudden and swift that they had no opportunity to defend themselves or to retaliate. Furthermore, appellant's acts of using a gun and even going out of the *videoke* bar evidently show that he consciously adopted means to ensure the execution of the crime.

In addition, the lower courts appropriately found appellant liable for the crime of Frustrated Murder.

A felony is frustrated when the 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.⁴⁰

Dr. Angel Cordero M.D. categorically said that De Luna could have died because of the wounds if the surgery was not conducted timely.⁴¹ Hence, appellant performed all the acts of execution which could have produced the crime of murder as a consequence, but nevertheless, did not produce it by reason of a cause independent of his will, which is, in this case, the timely and able medical attendance rendered to De Luna.

The defense of denial cannot be given more weight over a witness' positive identification

Appellant denies the accusations on the ground that he has no motive to kill Elizan and injure De Luna. This alibi is bereft of merit. Intent is not synonymous with motive. Motive alone is not a proof and is hardly ever an essential element of a crime.⁴² As a general rule, proof of motive for the

³⁹ *People v. Pirame*, 384 Phil. 286, 301 (2000) citing *People v. Gatchalian*, 360 Phil. 178, 196–197 (1998).

⁴⁰ *Serrano v. People*, 637 Phil. 319, 335 (2010).

⁴¹ TSN, 29 January 2009, p. 38.

⁴² *People v. Ballesteros*, 349 Phil. 366, 374 (1998).

commission of the offense charged does not show guilt and absence of proof of such motive does not establish the innocence of accused for the crime charged such as murder.⁴³ In *Kummer v. People*,⁴⁴ this Court held that motive is irrelevant when the accused has been positively identified by an eyewitness.

Evidently, accused-appellant's intent to kill was established beyond reasonable doubt. This can be seen from his act of shooting Elizan and De Luna from behind with a firearm while they were innocently singing and drinking. Intent to kill was also manifest considering the number of gun shot wounds sustained by the victims.⁴⁵

In the instant case, Pasana and De Luna positively identified accused-appellant as the person who fired shots during the incident:

Pasana's testimony:

Q: Can you recall who among the five (5) went out?

A: Yes, Ma'am.

Q: Of the two (2) among the five (5) who went out, are these two (2) people or persons here in court right now?

A: Yes, Ma'am.

Q: And who are these two (2) persons you are referring to, can you point it out to the Honorable Court if they are here in [c]ourt right now?

A: That person, Ma'am.

Interpreter: Witness, Your Honor, is pointing to a person who earlier identified himself as Luisito Gaborne.

x x x x

Q: Point specifically, who among those persons?

A: That person, Ma'am.

Interpreter: Witness, Your Honor, is pointing to a person who identified himself earlier as Luisito Gaborne.⁴⁶

De Luna's Testimony:

Q: How about the appearance of the guy whom you said holding a

⁴³ *Cupps v. State*, 97 Northwestern Reports, 210.

⁴⁴ 717 Phil. 670, 680-681 (2013).

⁴⁵ Records, pp. 36-37 and 96.

⁴⁶ TSN, 19 June 2008, pp.14-16.

- gun, can you recall?
A: I can recall him if he is inside the court, ma'am.
- Q: Can you point it out to the court, the other guy whom you saw at the videoke bar?
A: Yes, ma'am, if I can go with him in a short distance, I can point him.
- Q: Can you point him?
A: (The witness stood up and approach (sic) the accused' bench and pointed to a person and when asked his name answered to (sic): Luisito Gaborne)
- Q: You said that there was also another guy by the window? (the court butt-in [sic])

THE COURT:

- Q: Excuse me, this man who answered Luisito Gaborne was the one holding the fire arm?
A: Yes, your Honor.⁴⁷

This Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.⁴⁸

It is doctrinally entrenched in our jurisprudence⁴⁹ that the defense of denial is inherently weak because it can easily be fabricated. Such defense becomes unworthy of merit if it is established only by the accused themselves and not by credible persons. Thus, this Court agrees with the lower courts in giving the positive identification of the eyewitnesses more weight than appellant's defense of denial.

Paraffin Tests are not conclusive

The positive identification made by the prosecution witnesses bears more weight than the negative paraffin test result conducted the day after the incident.

⁴⁷ TSN, 21 August 2008, pp. 11-14.

⁴⁸ *People v. Abat*, G.R. No. 202704, 2 April 2014, 720 SCRA 557, 564 citing *People v. Banzuela*, 723 Phil. 797, 814 (2013).

⁴⁹ *People v. Barde*, 645 Phil. 434, 457 (2010); *People v. Berdin*, 462 Phil. 290, 304 (2003); *People v. Francisco*, 397 Phil. 973, 985 (2000).

Paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test was extremely unreliable for use. It can only establish the presence or absence of nitrates or nitrites on the hand; however, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm. The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun, since nitrates are also admittedly found in substances other than gunpowder.⁵⁰

In this case, prosecution witness, Pasana⁵¹ and the victim himself, De Luna,⁵² testified in the trial court that it was indeed the appellant who was holding the gun during the incident. It should also be considered that appellant was arrested the day after the incident.⁵³ Thus, it is possible for appellant to fire a gun and yet bear no traces of nitrate or gunpowder as when the hands are bathed in perspiration or washed afterwards.⁵⁴

Corpus delicti of the crime can be established by testimony

With regard to the appreciation of the aggravating circumstance of the use of an unlicensed firearm, we agree with the trial court and the appellate court that the same must be appreciated in the instant case. In *People v. Lualhati*, this Court ruled that in crimes involving unlicensed firearm, the prosecution has the burden of proving the elements thereof, which are: (1) the existence of the subject firearm and (2) the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess the same.⁵⁵

Appellant's contention that the *corpus delicti* was not established for the reason that the firearm used was not presented as evidence is not persuasive. In *People v. Orehuela*,⁵⁶ this Court held that the existence of the firearm can be established by testimony, even without the presentation of the said firearm. In the present case, the testimonies of Pasana and De Luna indubitably demonstrated the existence of the firearms. Furthermore, the certification⁵⁷ from the Philippine National Police that appellant is not a

⁵⁰ *People v. Cajumocan*, 474 Phil. 349, 358 (2004).

⁵¹ TSN, 19 June 2008, p. 16.

⁵² TSN, 21 August 2008, p. 12.

⁵³ TSN, 13 August 2009, pp. 19-22.

⁵⁴ *People v. Pagal*, 338 Phil. 946, 951 (1997).

⁵⁵ G.R. Nos. 105289-90, 21 July 1994, 234 SCRA 325, 332.

⁵⁶ G.R. Nos. 108780-81, 29 April 1994, 232 SCRA 82, 96.

⁵⁷ Records, p. 41.

firearm license holder of any caliber proves that he is not licensed to possess the same. Thus, the prosecution was able to prove the existence of the firearm and that the appellant is not licensed to possess the same notwithstanding the fact that the firearm used was not presented as evidence.

***Illegal Possession of Firearm as an
aggravating circumstance
in the crimes of Murder and
Frustrated Murder***

The CA appropriately appreciated the use of an unlicensed firearm as an aggravating circumstance in the crimes of Murder and Frustrated Murder. Under R.A. No. 1059, use of loose firearm in the commission of a crime, like murder, shall be considered as an aggravating circumstance.⁵⁸

In view of the amendments introduced by R.A. No. 8294 and R.A. No. 10591, to Presidential Decree No. 1866, separate prosecutions for homicide and illegal possession are no longer in order. Instead, illegal possession of firearm is merely to be taken as an aggravating circumstance in the crime of murder.⁵⁹ It is clear from the foregoing that where murder results from the use of an unlicensed firearm, the crime is not qualified illegal possession but, murder. In such a case, the use of the unlicensed firearm is not considered as a separate crime but shall be appreciated as a mere aggravating circumstance. Thus, where murder was committed, the penalty for illegal possession of firearms is no longer imposable since it becomes merely a special aggravating circumstance.⁶⁰ The intent of Congress is to treat the offense of illegal possession of firearm and the commission of homicide or murder with the use of unlicensed firearm as a single offense.⁶¹

In the case at hand, since it was proven that accused-appellant was not a licensed firearm holder,⁶² and that he was positively identified by the witnesses as the one who fired shots against the victims, the use of an unlicensed firearm in the commission of the crimes of Murder and Frustrated Murder should be considered as an aggravating circumstance thereof.

The presence of such aggravating circumstance would have merited

⁵⁸ *Celino v CA*, G.R. No. 170562, 553 Phil. 178, 185 (2007) citing *People v. Ladjaalam*, 395 Phil. 1 (2010).

⁵⁹ *People v. Avecilla*, 404 Phil. 476, 483 (2001).

⁶⁰ *People v. Molina*, 354 Phil. 746, 786 (1998).

⁶¹ *Id.* at 786-787.

⁶² Records, p. 41.

the imposition of the death penalty for the crime of Murder. However, in view of R.A. No. 9346, we are mandated to impose on appellant the penalty of *reclusion perpetua* without eligibility for parole.

Damages and civil liability

This Court resolves to modify the damages awarded by the appellate court in line with the recent jurisprudence.⁶³ Appellant shall pay the Heirs of Sixto Elizan y Herrera ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for the crime of Murder with the use of Unlicensed Firearm.

Appellant shall also be liable to pay ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for the crime of Frustrated Murder. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Judgment until fully paid.

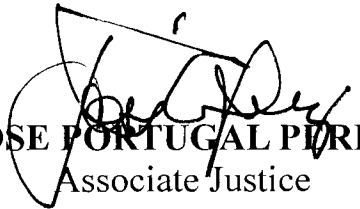
WHEREFORE, the 29 July 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01183 is **AFFIRMED** with **MODIFICATIONS**. Appellant LUISITO GABORNE Y CINCO is found **GUILTY** beyond reasonable doubt of the crime of Murder with the use of Unlicensed Firearm and shall suffer a penalty of *Reclusion Perpetua*, without eligibility for parole and shall pay the Heirs of Sixto Elizan y Herrera ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages; and of the crime of Frustrated Murder and is hereby sentenced to suffer the indeterminate penalty ranging from eleven (11) years of *Prision Mayor* as minimum, to eighteen (18) years of *Reclusion Temporal* as maximum and shall pay ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

All monetary awards for damages shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

In the service of his sentence, appellant, who is a detention prisoner, shall be credited with the entire period of his preventive imprisonment.

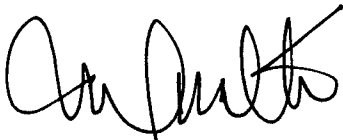
⁶³ *People v. Jugueta*, G.R. No. 202124, 5 April 2016 citing *People v. Gambao*, 718 Phil. 507, 531 (2013).

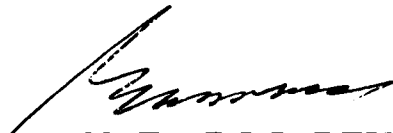
SO ORDERED.



JOSE PORTUGAL PEREZ
 Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson



DIOSDADO M. PERALTA
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice


ESTELA M. PERLAS-BERNABE
 Associate Justice


ATTESTATION

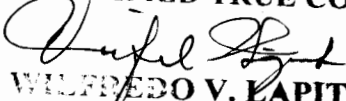
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
AUG 19 2016