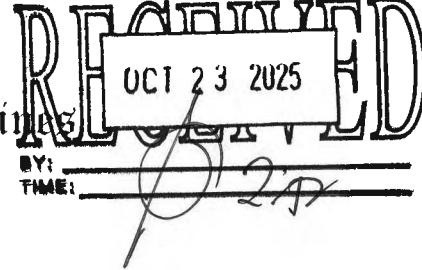




SUPREME COURT OF THE PHILIPPINES
P.I.O./COMMUNICATIONS OFFICE



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 274074
Plaintiff-appellee,

Present:

-versus-

ANTHONY VELASQUEZ *y*
MADRIGAL and DEMETRIO
BARRAMEDA *y* PALMA,
Accused;

LEONEN, S.A.J., *Chairperson*,
LAZARO-JAVIER,
LOPEZ,
KHO, JR., and,
VILLANUEVA, JJ.

ANTHONY VELASQUEZ *y*
MADRIGAL,
Accused-appellant.

Promulgated:
AUG 18 2025

X-----X

DECISION

LEONEN, S.A.J.:

Human memory is inherently fallible, susceptible to suggestion and distortion. Therefore, eyewitness identifications require careful scrutiny, not uncritical acceptance.

This Court resolves the appeal¹ filed by Anthony Velasquez *y* Madrigal (Velasquez) assailing the Court of Appeals Decision² that affirmed his conviction³ for murder under Article 248 of the Revised Penal Code.

¹ CA *rollo*, pp. 162-167.

² *Rollo*, pp. 10-31. The November 13, 2023 Decision in CA-G.R. CR-HC No. 16140 was penned by Associate Justice Perpetua Susana T. Atal-Paño and concurred in by Associate Justices Marlene B. Gonzales-Sison (Chairperson) and Maximo M. De Leon of the Sixth Division, Court of Appeals, Manila.

³ *Id.* at 34-53. The May 28, 2021 Judgment in Criminal Case No. 141815-TG was penned by Presiding Judge Bernard Pineda Bernal of Branch 70, Regional Trial Court, Taguig City.

In an Amended Information, Velasquez and co-accused Demetrio Barrameda *y* Palma (Barrameda) were charged with the murder of Mauro Mastrili, Jr. (Mauro).⁴ The accusatory portion of the Information reads:

That, on or about [December 5, 2009], in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, with the use of a caliber .45, did then and there willfully, unlawfully and feloniously attack, assault and shoot one Mauro Mastrili, Jr., hitting him on his head, thereby inflicting upon him fatal injuries which caused his instantaneous death, the said killing having been attended by [the] qualifying circumstance of treachery, which qualif[ies] such killing.

CONTRARY TO LAW.⁵

Barrameda remains at large. Therefore, pending his arrest, the criminal case against him has been archived.⁶

In the meantime, Velasquez pleaded not guilty to the charge during his arraignment. Pretrial and trial then ensued.⁷

The prosecution witnesses were Mauro's wife, Zenaida Mastrili, (Zenaida), and their child, Sarah Mastrili (Sarah).⁸ Their testimonies, taken together, tended to prove the following version of the facts.

The Mastrilis own a small store. The storefront is open, and though it has a screen, there is an unobstructed gap of about two inches.⁹ The store front also has a doorway with an aluminum main door and a smaller secondary door about 3 ½ feet in height.¹⁰ Inside the store is a table topped with a transparent shelf¹¹ that was "one meter wide and 1 ½ feet high."¹²

On December 5, 2009, at about 12:00 p.m., Mauro, Zenaida, and Sarah were inside the store.¹³ Mauro was watching television and sitting with his back to the doorway.¹⁴ The small secondary door was closed, while the aluminum main door was half-open.¹⁵ Zenaida and Sarah were minding the

⁴ *Id.* at 11.

⁵ *Id.* at 34.

⁶ *Id.* at 11.

⁷ *Id.*

⁸ *Id.* at 12.

⁹ *Id.* at 37.

¹⁰ *Id.*

¹¹ *Id.* at 13.

¹² *Id.* at 46.

¹³ *Id.* at 12.

¹⁴ *Id.* at 12-13.

¹⁵ *Id.* at 13, 44.

store. Zenaida was by the table giving instructions to Sarah, who was beside her.¹⁶ The two of them faced the storefront.¹⁷

Zenaida and Sarah saw a man move past the storefront and stop by the doorway.¹⁸ At that point, he was one meter away from them and three or four meters away from Mauro, who was still sitting with his back to the door.¹⁹ Sarah described the man as “wearing a red bull cap, a jacket[,] and belt bag”²⁰ and that he was tall and had a cleft palate.²¹ Zenaida and Sarah both stated that it was the first time they had seen him.²²

To Zenaida and Sarah’s shock, the man took a gun out of his belt bag, pointed it at Mauro, and shot him once from behind.²³ The shot hit Mauro’s head, the bullet entering “the right top side of [his] head and exit[ing through] the left top side.”²⁴ Mauro fell face down on the floor.²⁵ Sarah said the shooting happened within three to five seconds.²⁶

Still in shock, Sarah watched the shooter while Zenaida rushed to Mauro’s fallen body. Sarah saw the shooter put the gun back inside his belt bag and walk away. Another man then crossed the road and met up with the shooter. The shooter handed his belt bag to this man.²⁷

Zenaida realized that the shooter had left.²⁸ She instructed Sarah to tend to Mauro as she went outside to pursue the shooter.²⁹ She screamed for help while following the shooter.³⁰ She saw him look back at her.³¹

Meanwhile, neighbors who had come to Sarah’s aid rushed Mauro to the hospital. Sarah thus chased after Zenaida and the shooter.³²

Sarah came across Emilio Garcia, a barangay tanod who was riding a motorcycle. She told him of the shooting and “they went to Barangay Bambang and asked for help to stop the jeepney boarded by [the shooter] and [his companion who had earlier received the gun from him].”³³

¹⁶ *Id.* at 12, 44, 46.

¹⁷ *Id.* at 12–13.

¹⁸ *Id.* at 12–13, 44.

¹⁹ *Id.* at 12–13.

²⁰ *Id.* at 13.

²¹ *Id.* at 14.

²² *Id.* at 13, 46–47.

²³ *Id.* at 12–13.

²⁴ *Id.* at 12.

²⁵ *Id.*

²⁶ *Id.* at 13.

²⁷ *Id.* at 44–45.

²⁸ *Id.*

²⁹ *Id.* at 12.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 14.

³³ *Id.*

After successfully stopping the jeepney, barangay tanods asked the two men to alight. They did, but the man who then had the gun pointed it at the tanods while shouting “*huwag kayong makialam.*”³⁴ He ran away, while the shooter was cornered and arrested.³⁵ After a five-minute chase, other tanods and police officers caught him, so he and the shooter were taken to the police station.³⁶ The police confiscated the gun, which turned out to be a .45-caliber pistol.³⁷

The shooter and his companion were respectively identified as Velasquez and Barrameda.³⁸

Later, Sarah went to the hospital and discovered that Mauro was declared dead on arrival. His body was autopsied. She “read in open court the conclusion of the autopsy report”³⁹ that the gunshot wound had caused his death.⁴⁰

The prosecution failed to file a formal offer of evidence.⁴¹ Consequently, the results of the ballistic examination and paraffin test conducted on Velasquez did not form part of the prosecution’s evidence.⁴²

Velasquez, as the sole defense witness, denied the charge against him. He also denied knowing either the victim or Barrameda, whom he asserted he met only when they were in jail.⁴³

According to Velasquez, he travels from Cavinti, Laguna to Pasig City every Saturday to “[sell] ‘*dapo*’ or orchids. . . in front of the church.”⁴⁴ On the day of the incident—a Saturday—he had again gone to Pasig City. He had lunch after selling all his plants. By 12:30 p.m., he was on a jeepney bound for Alabang Station in Muntinlupa City, where he would transfer to a bus bound for Cavinti.⁴⁵

He said that “several persons in civilian clothes”⁴⁶ stopped the jeepney, and one of his co-passengers suddenly jumped out. Some of those people

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 12, 14.

³⁷ *Id.* at 12.

³⁸ *Id.* at 14.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* In its November 11, 2020 Order, the Regional Trial Court deemed the prosecution as having waived its right to file the formal offer.

⁴² *Id.* at 22.

⁴³ *Id.* at 15, 38–39.

⁴⁴ *Id.* at 15.

⁴⁵ *Id.*

⁴⁶ *Id.*

chased his co-passenger. To his surprise, one of them also pointed at him saying “*eto yung bumaril.*”⁴⁷ That person began grabbing and pulling him outside of the jeepney, forcing him to disembark. Police then came and took him to their station, where he learned that he was being accused of killing a person.⁴⁸

Velasquez stated that when he was apprehended, he was “wearing a white shirt, jeans[,] and shoes.”⁴⁹

The Regional Trial Court convicted Velasquez as charged. Relying on Zenaida and Sarah’s candid and straightforward testimonies,⁵⁰ the trial court found that the prosecution established beyond reasonable doubt all the elements of murder. Specifically, it found that Mauro’s killing was qualified by treachery, when Velasquez shot Mauro from behind and “deprived him of a reasonable opportunity to defend himself or retaliate.”⁵¹

The dispositive portion of the trial court’s Judgment⁵² reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Anthony Velasquez y Madrigal **GUILTY** beyond reasonable doubt of the crime of murder, qualified by treachery, and is sentenced to suffer the penalty of [*r*]eclusion [*p*]erpetua. Further, accused Velasquez is ordered to pay the surviving heirs of Mauro Mastrilli, Jr. the following amounts, *viz*:

1. Seventy-Five Thousand Pesos ([PHP] 75,000.00) as civil indemnity;
2. Seventy-Five Thousand Pesos ([PHP] 75,000.00) as moral damages;
3. Seventy-Five Thousand Pesos ([PHP] 75,000.00) as exemplary damages; and
4. The cost of suit.

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

Consequently, it is hereby ordered that accused Velasquez be immediately transferred and committed to the National Penitentiary.

SO ORDERED.⁵³ (Emphasis in the original, citation omitted)

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 41–49,

⁵¹ *Id.* at 16.

⁵² *Id.* at 34–53.

⁵³ *Id.* at 52–53.

Velasquez appealed, but the Court of Appeals affirmed his conviction for murder. It noted four circumstances that rendered the positive identification of Velasquez credible despite the shooting happening within a short period of time: (1) the shooting was a shocking event that made Zenaida and Sarah “strive to see the looks and faces of the assailants and observe the manner in which the crime is committed;”⁵⁴ (2) the crime happened in broad daylight; (3) Velasquez looked back at Zenaida when she was chasing after him; and, (4) Velasquez was caught a few minutes after the shooting.⁵⁵

The Court of Appeals added that the failure to submit the results of the ballistic examination and paraffin test was not fatal to the prosecution’s case, being inconclusive as to the identity of the firearm’s shooter. It said that a ballistic examination is conclusive only as to whether a bullet was fired from a particular firearm, not as to who fired it, while a paraffin test is only conclusive as to the presence, but not the source, of nitrate particles.⁵⁶

The Court of Appeals also affirmed the trial court’s finding of treachery.⁵⁷

Finally, the Court of Appeals affirmed the penalty imposed and damages initially awarded. However, it added the award of PHP 50,000.00 to Mauro’s heirs as temperate damages.⁵⁸ The dispositive portion of its Decision reads:

WHEREFORE, the appeal is **DENIED** for lack of merit. The May 28, 2021 Judgment of the Regional Trial Court, National Capital Judicial Region, Branch 70, Taguig City, in Criminal Case No. 141815-TG is hereby **AFFIRMED** with **MODIFICATION** such that, in addition to the amounts awarded by the trial court, accused-appellant is likewise **ORDERED** to pay the heirs of the victim, Mauro Mastrili, Jr., the amount of [PHP] 50,000.00 as temperate damages.

SO ORDERED.⁵⁹ (Emphasis in the original)

Velasquez filed his Notice of Appeal,⁶⁰ to which the Court of Appeals gave due course in its February 7, 2024 Resolution.⁶¹ The case records were then elevated to this Court.⁶²

⁵⁴ *Id.* at 21.

⁵⁵ *Id.* at 19–22.

⁵⁶ *Id.* at 23.

⁵⁷ *Id.* at 24–25.

⁵⁸ *Id.* at 18–30.

⁵⁹ *Id.* at 30.

⁶⁰ CA *rollo*, pp. 162–167.

⁶¹ *Id.* at 172.

⁶² *Rollo*, p. 1.

In an August 7, 2024 Resolution, this Court required the parties to file their supplemental briefs, if they so desire, within 30 days from notice.⁶³ Both manifested that they would no longer file supplemental briefs.⁶⁴

Accused-appellant Anthony Velasquez *y* Madrigal maintains his innocence, assailing the credibility of Zenaida and Sarah's testimonies. He argues that the actions attributed to him – shooting a person in broad daylight and not even concealing his identity – were allegedly contrary to human experience, and that it was highly improbable for someone to just casually walk away after committing a crime.⁶⁵

Accused-appellant also points out the inconsistencies in Sarah's declarations. Earlier in her *salaysay*, she said she rode a motorcycle driven by an unidentified person. However, when she testified in court, Sarah claimed that she rode a barangay tanod's motorcycle to chase after the shooter. Accused-appellant contends that these show how Zenaida and Sarah's testimonies are unreliable and, therefore, should not have been given credence by the trial court and the Court of Appeals.⁶⁶

Accused-appellant adds that the prosecution failed to prove his identity as Mauro's shooter. He argues that Zenaida and Sarah could not have accurately remembered the shooter's features considering that the shooting happened within a short period of time, specifically three to five seconds.⁶⁷ He also maintains that he was not the person Sarah allegedly chased after. It just so happened that, after selling orchids in Pasig, he boarded the same jeepney boarded by the shooter.⁶⁸

Accused-appellant theorizes that the prosecution willfully suppressed the results of the ballistic examination and paraffin test. According to him, the results would have likely proven that he did not fire a gun on the day of the incident.⁶⁹

Lastly, accused-appellant argues that treachery was not established as there is no proof that the manner by which he allegedly shot Mauro was deliberately and consciously adopted to deprive Mauro of any opportunity to defend himself. The killing, therefore, cannot be punished as murder.⁷⁰

Plaintiff-appellee People of the Philippines counters that the prosecution proved accused-appellant's guilt beyond reasonable doubt, with

⁶³ *Id.* at 54–55.

⁶⁴ *Id.* at 56–61, 62–66.

⁶⁵ CA *rollo*, pp. 70–71.

⁶⁶ *Id.* at 71–72.

⁶⁷ *Id.* at 73–75.

⁶⁸ *Id.* at 70.

⁶⁹ *Id.* at 75.

⁷⁰ *Id.* at 76–79.

all the elements of murder having been established in this case.⁷¹ Plaintiff-appellee highlights that intent to kill was established given the location and severity of the gunshot wound sustained by Mauro.⁷²

Plaintiff-appellee maintains that Zenaida and Sarah were credible witnesses, and that their testimonies were candid and straightforward.⁷³ Their positive identification of accused-appellant renders his denial and alibi weak and worthless.⁷⁴ As to the inconsistency in Sarah's testimony, plaintiff-appellee argues that Sarah's knowledge of who drove the motorcycle she rode to chase after the shooter is a minor matter that does not jeopardize the prosecution's case. At any rate, Sarah's statements in her *salaysay* and on the witness stand were consistent on all crucial matters, specifically, that it was accused-appellant who went to their house to shoot her father on the head. These inconsistencies, therefore, do not diminish Sarah's credibility.⁷⁵

Lastly, plaintiff-appellee argues that the qualifying circumstance of treachery was established. The suddenness of accused-appellant's attack ensured that Mauro would be unable to defend himself. The deliberateness of the means employed was likewise apparent as shown by accused-appellant's choice of weapon and Barrameda's presence at the crime scene.⁷⁶

The issue for this Court's resolution is whether accused-appellant is guilty beyond reasonable doubt of murder. Subsumed in this issue are:

First, whether Zenaida and Sarah Mastrili's eyewitness testimonies credibly establish accused-appellant's identity as Mauro's shooter, given that the shooting happened within seconds;

Second, whether their testimonies are credible given their relation to the victim and the inconsistencies in Sarah's testimonies;

Third, whether treachery as an element of the felony of murder was established beyond reasonable doubt; and,

Fourth, whether the prosecution deliberately failed to file a formal offer of evidence to withhold the results of the ballistic testing and paraffin test conducted on accused-appellant.

⁷¹ *Id.* at 114–118.

⁷² *Id.* at 118–119.

⁷³ *Id.* at 115–118.

⁷⁴ *Id.* at 121–122.

⁷⁵ *Id.* at 120–121.

⁷⁶ *Id.* at 119–120.

I

The appeal is dismissed. Accused-appellant failed to show any reversible error on the part of the Court of Appeals. He remains guilty of murder under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, which provides:

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 perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or 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.

To sustain a murder conviction, the State must prove all the following elements: (a) that a person was killed; (b) that the accused killed them; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) that the killing is not parricide or infanticide.⁷⁷

There is no dispute as to the presence of the first and fourth elements. Mauro was killed and accused-appellant was not related to him, hence the killing was neither parricide⁷⁸ nor infanticide.⁷⁹ The issues in this case involve

⁷⁷ *People v. Obosa*, 429 Phil. 522, 537 (2002) [Per J. Sandoval-Gutierrez, *En Banc*].

⁷⁸ REV. PEN. CODE, art. 246 provides:

Article 246. *Parricide.* — Any person who shall kill [their] father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or [their] spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

⁷⁹ REV. PEN. CODE, art. 255 provides:

Article 255. *Infanticide.* — The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

If any crime penalized in this Article be committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of *prision mayor* in its medium and maximum periods, and if said crime be committed for the same purpose by the maternal grandparents or either of them, the penalty shall be *reclusion temporal*.

the second and third elements which, in this Court's view, were sufficiently established by the prosecution.

The second element is present here. Accused-appellant killed Mauro by shooting him on the head, as testified to by Zenaida and Sarah:

DIRECT EXAMINATION OF [ZENAIDA] BY ATTY. TEJERO

xxx xxx xxx

Q By the way, you said something happened to your husband[. What] happened to your husband?

A He was shot, [S]ir.

Q Did you see the person who shot your husband?

A Yes, [S]ir.

Q Now, Madam Witness, can you stand up, pinpoint the person, the accused[-appellant], who shot your husband?

A Yes, [S]ir.

COURT INTERPRETER

Witness is pointing to a male person wearing yellow shirt who when asked identified himself as — *pangalan po*?

THE ACCUSED[-APPELLANT]

[Accused-appellant], Ma'am.

xxx xxx xxx

Q Now, Madam Witness, at that point and time, about 12:00 [p.m.] on December 5[, 2009], do you remember anything unusual that happened, if any?

A Yes, [S]ir.

Q And what is that?

A I saw a man who was standing [in] front of my store, [S]ir.

Q After seeing this man at the door of your store, what happened next, if any?

A I saw him [take] something from his bag and I was shocked to see that it was a gun and he shot my husband, [S]ir.

Q How many time[s], if you remember, was your husband shot?

A Only once, [S]ir.

DIRECT EXAMINATION OF [SARAH] BY PROS. ALCARAZ

xxx xxx xxx

Q Why are you here, [Sarah]?

A To give justice to what happened to my father, Ma'am.

Q What happened to your father?
A He was shot, Ma'am.

Q Who shot your father?
A [Accused-appellant], Ma'am.

Q Do you see him in the courtroom right now?
A Yes, Ma'am.

Q Can you point to where he is seated right now?
A Yes, Ma'am.

Court Interpreter

Witness point to a male person wearing a yellow t-shirt who when asked identified himself as Anthony Velasquez.

xxx xxx xxx

Q After this person, the [accused-appellant], stood in front of this half opened door of your store, what did he do next, if any?

A He was wearing a belt bag and we didn't know that there was something inside that bag. We saw him take out something from that belt bag and we didn't expect that it was a gun and he pointed it to my father and shot him, Ma'am.⁸⁰ (Emphasis in the original, citations omitted)

The third element is likewise present here, with Mauro's killing being qualified by treachery. There is treachery "when the offender commits any of the crimes against the person, employing means, methods or forms in the execution, without risk to [themselves] arising from the defense which the offended party might make."⁸¹ Its essence is "in the suddenness of the attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend [themselves] and thereby ensuring the commission of the offense without risk to the offender arising from the defense which the offended party might make."⁸²

The elements of treachery are: (1) "that during the attack, the victim could not have defended [themselves] from the offender";⁸³ and (2) "that the offender deliberately chose a form of attack which would render [them] immune from risk or retaliation by the victim."⁸⁴

Both elements of treachery are present in this case. The manner by which accused-appellant killed Mauro left the latter without any means to defend himself. Mauro was shot from behind, with the attack being so sudden

⁸⁰ *Rollo*, pp. 19–21.

⁸¹ REV. PEN. CODE, art.14(16). See also *People v. Santiago*, 898 Phil. 858, 867 (2021) [Per J. Hernando, Third Division].

⁸² *People v. Pitulan*, 869 Phil. 177, 200 (2020) [Per J. Leonen, Third Division]. (Citation omitted)

⁸³ *People v. Magallano, Jr.*, 845 Phil. 109, 111 (2018) [Per J. Leonen, Third Division]. (Citation omitted)

⁸⁴ *Id.*

and quick that it happened within seconds. Accused-appellant also aimed for Mauro's head given the low probability of surviving a gunshot to the head.

Accused-appellant also consciously and deliberately adopted the manner and form of attack. Accused-appellant armed himself with a gun, which he concealed in a belt bag. He shot Mauro while the latter had his back to him. Accused-appellant then casually walked away from the scene of the crime so as not to attract attention to him. Most indicative of the attack's deliberateness was Barrameda's presence. Barrameda was there to receive the belt bag so that accused-appellant would not be caught with the gun.⁸⁵

II

Despite being Mauro's relatives, Zenaida and Sarah remain credible and unbiased eyewitnesses. It was established that the two of them had a clear and unobstructed view of the incident as they were a mere meter away from Mauro when accused-appellant shot him. Furthermore, as found by the trial court that observed the demeanor of Zenaida and Sarah on the witness stand, they testified in a "categorical, straightforward, spontaneous[,] and frank manner."⁸⁶ Their version of the events remained consistent and plausible, even during cross-examination. In the trial court's May 28, 2021 Judgment:

Even during the cross-examination of Zenaida, and the cross and re-direct examination of Sarah Mastrili, they remained steadfast with their recollection as to the facts and circumstances that took place on 05 December 2009. These Prosecution witnesses reiterated that they actually saw how accused Velasquez swiftly shot the victim at the back of his head while watching TV inside their store and, thereafter, transferred possession of the subject firearms to accused Barrameda, declaring as follows:

Cross-Examination of Zenaida Mastrili

xxx

Q You alleged during direct examination that you saw the accused pulling something out, took something out of his bag and it was a gun and he shot your husband. Can you describe to us this gun?

A It is like this long and the color is, I'm not sure if it's black or Ma'am.

ATTY. TABAYAG --

Can we stipulate on the length of the gun about one ruler?

Q Did you actually see the accused pointing the gun at your husband?

A Yes, Ma'am.

Q How did he point that gun?

⁸⁵ *Rollo*, pp. 25-26.

⁸⁶ *Id.* at 48.

A After taking out the gun from his bag, he pointed it immediately to my husband and fired it, Ma'am.

Q In your previous testimony, you said that at the time your husband was shot, he was seated. Where exactly was he seated relative to the position of the accused?

A The accused is standing by the front door and my husband was seated 3 to 4 meters away from him, Ma'am.

Q And that the accused shot your, allegedly, your husband only once?

A Yes, Ma'am.

Q And that bullet hit your husband at the right back of his right ear?

A Yes, Ma'am.

Q Can you describe to us the relative position of the accused with respect to you and your husband?

A I am one meter away fronting the accused, Ma'am, and my husband is 3 to 4 meters away from the accused.

Q Can you draw a sketch?

Note: Witness is given a bond paper and draw a sketch.

ATTY. TABAYAG –

Can you indicate the distance from your relative position, from the accused to your husband?

THE WITNESS –

This is where I am standing at the back of the shelf, Ma'am.

ATTY. TABAYAG –

It is established that the distance is about 3-4 meters.

Q You mentioned earlier of a shelf. Can you indicate the shelf? How high are these shelves?

A It is one meter wide and 1 ½ feet high, Ma'am.

Q And these shelves was (sic) placed on top of a table?

A Yes, Ma'am.

Q So, the height of the table and the shelves with respect to you, could you point to your body just to show what is the height of the shelf?

A I was at the side of the shelf that is why I can see the people in front, Ma'am.

xxx

Cross-Examination of Sarah Mastrili

xxx

Q Madam witness, you mentioned that the culprit for the death of your father is Anthony Velasquez?

A Yes, Ma'am. xxx

Q Was it the first time you saw Anthony Velasquez?
A Yes, Ma'am.

Q Meaning, when you saw him stopped in front of your store, his face was not revealed to you because of the bull cap?
A I saw it, Ma'am.

Q Despite the bullcap?
A Yes, Ma'am.

Q Even when you saw him only that time?
A Yes, Ma'am.

Q And do you confirm that your store is made of screen?
A Yes, Ma'am.

Q And because of the screen, you cannot fully see the person of the accused who was standing in front of the store?
A I can still see him, Ma'am.

Q Madam witness, you mentioned earlier that prior to the incident, you were asked by your mother to do something?
A Yes, Ma'am.

Q And for that reason, your attention was given to that chores?
A Yes, Ma'am.

Q So the presence of accused Anthony Velasquez in front of your store is not unusual?
A Yes, Ma'am.

Q And because your attention was caught by the chores that your mother told you, is it correct that it would be possible for you to notice that the person, Anthony Velasquez stopped by your store is actually getting something from his belt bag?
A No, Ma'am.

Q And what was your father doing at that time again?
A He was watching television, Ma'am.

Q Do you remember what program he was watching during that time?
A It was a Saturday at that time, he was watching a program about cockfighting, Ma'am.

xxx

Q Did your father notice that person, if you know?
A No, Ma'am.

Q So it was only you who noticed that person?
A Me and my mother, Ma'am.

Q As you stated in your affidavit, despite noticed that the person, the accused is actually getting a gun, pulling out a gun from his belt bag, you never bother to scream or shout or tell your father to ran?

A It happened so fast, Ma'am.

Q So Madam witness, of course you were shocked?

A Yes, Ma'am.

Q And you were not sure at that time where to attend to, whether to look out and chase the person who shot your father or to attend to your father?

A Yes, Ma'am.

Q So you no longer noticed the person of the accused, as you claimed that he was the one who shot your father at that time?

A I saw him, Ma'am.

Q By the way, Madam witness, from the time the accused stopped in front of your store up to the time he shot the gun, can you tell the period, the minutes or second that lapsed.

A Three (3) to five (5) seconds, Ma'am.

Q And are you saying that for that very short period of time, you were able to know the person responsible for the killing of your father?

A Yes, Ma'am.

Q You mentioned that after the shooting incident, you saw Anthony Velasquez turned over the gun to the other person in the name of Demetrio?

A Yes, Ma'am.

Q And they walked away from your place as if nothing happened?

A Yes, Ma'am.

XXX

Q Do you have proof that at that time that was the things, the bullcap and the jacket was the accused wearing at the time of the incident, do you have photographs?

A None, Ma'am.

Q So you have no other proof that the person that you saw who shot your father wearing bullcap and jacket is the same person of the accused, Anthony Velasquez?

A I just remember his face, Ma'am.

Q You remember the face of Anthony Velasquez in just five (5) seconds?

A Yes, Ma'am.

Q As the person whom you first met?

A Yes, Ma'am.⁸⁷

The defense tries to cast doubt on the eyewitness identification of accused-appellant as Mauro's shooter. Accused-appellant insinuates that Zenaida and Sarah could not have remembered his face considering that the

⁸⁷ *Id.* at 45-48.

shooting happened within seconds. They were also not familiar with him; it was only during the shooting when Zenaida and Sarah saw his face for the first time.

It is true that human memory is fallible and susceptible to suggestion. In *People v. Nuñez*,⁸⁸ this Court acquitted the accused despite a positive identification because the eyewitnesses' recollection of the events was likely distorted and externally influenced.

In *Nuñez*, four men robbed a gas station, killing the owner and an employee in the process. Two of the four men were apprehended, tried, and convicted of robbery with homicide.⁸⁹ Six years after the incident, Crisente Pepaño Nuñez (Nuñez) was arrested on the premise that he was the "Paul Pobre" who robbed the gas station and shot the gas station owner dead. Nuñez was likewise tried and convicted based on the eyewitness accounts of the gas station attendant and sales clerk present during the robbery.⁹⁰

In resolving Nuñez's appeal, this Court discussed the scientific fact of the frailty of human memory and the potential inaccuracies of eyewitness identification. Based on research, human memory is selective, "[perceiving] and accurately [recording] only a very small percentage of information [previously perceived]."⁹¹ It is also reconstructive, meaning, retrieving memory stored in the brain is "akin to putting puzzle pieces together."⁹²

Therefore, during the reconstruction process, "human memory can change in dramatic and unexpected ways because of the passage of time or subsequent events."⁹³ There can be "unconscious blending"⁹⁴ of "actual fragments of memory of the event"⁹⁵ with "information provided during the memory retrieval process."⁹⁶ It is this suggestibility that sometimes leads to wrongful convictions, thus rendering statements on the "supposed natural propensity for remembering the faces of assailants"⁹⁷ occasionally found in case law inaccurate, if not downright wrong.

Instead of "sweeping approbations"⁹⁸ of this supposed natural propensity, *Nuñez* emphasized the need for courts to appreciate the totality-of-circumstances test adopted in *People v. Teehankee, Jr.*,⁹⁹ which, in turn,

⁸⁸ 819 Phil. 406 (2017) [Per J. Leonen, Third Division].

⁸⁹ *Id.* at 409–410.

⁹⁰ *Id.* at 410–413.

⁹¹ *Id.* at 415, citing Elizabeth F. Loftus et al., *Beyond the Ken? Testing Jurors' Understanding of Eyewitness Reliability Evidence*, 46 JURIMETRICS 177 (2006).

⁹² *Id.*

⁹³ *Id.* at 415–416.

⁹⁴ *Id.* at 416.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 426.

⁹⁸ *Id.*

⁹⁹ 319 Phil. 128 (1995) [Per J. Puno, Second Division].

was based on the circumstances outlined in the American cases of *Neil v. Biggers*¹⁰⁰ and *Manson v. Brathwaite*.¹⁰¹

The following circumstances should thus be considered in determining the soundness of the identification of a perpetrator: *first*, the witness's opportunity to view the criminal at the time of the crime; *second*, the witness's degree of attention at that time; *third*, the accuracy of any prior description given by the witness; *fourth*, the level of certainty demonstrated by the witness at the identification; *fifth*, the length of time between the crime and the identification; and *sixth*, the suggestiveness of the identification procedure.¹⁰² As expounded in *Nuñez*:

[E]yewitness identification is affected by "normal human fallibilities and suggestive influences." *People v. Teehankee, Jr.* introduced in this jurisdiction the totality of circumstances test, which relies on factors already identified by the United States Supreme Court in *Neil v. Biggers*:

(1) the witness'[s] opportunity to view the criminal at the time of the crime; (2) the witness'[s] degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

A witness'[s] credibility is ascertained by considering the first two factors, i.e., the witness'[s] opportunity to view the malefactor at the time of the crime and the witness'[s] degree of attention at that time, based on conditions of visibility and the extent of time, little and fleeting as it may have been, for the witness to be exposed to the perpetrators, peruse their features, and ascertain their identity.

The degree of a witness'[s] attentiveness is the result of many factors, among others: exposure time, frequency of exposure, the criminal incident's degree of violence, the witness'[s] stress levels and expectations, and the witness'[s] activity during the commission of the crime.

The degree of the crime's violence affects a witness'[s] stress levels. A focal point of psychological studies has been the effect of the presence of a weapon on a witness'[s] attentiveness[:]

To not consider a weapon's effect on eyewitness performance is to ignore relevant information. The weapon effect does reliably occur, particularly in crimes of short duration in which a threatening weapon is visible. Identification accuracy and feature accuracy of eyewitnesses are likely to be affected, although, as previous research has

¹⁰⁰ 409 U.S. 188 (1972).

¹⁰¹ 432 U.S. 98 (1977).

¹⁰² *People v. Nuñez*, 819 Phil. 406, 423 (2017) [Per J. Leonen, Third Division].

noted . . . there is not necessarily a concordance between the two.

Apart from the witness'[s] opportunity to view the perpetrator during the commission of the crime and the witness'[s] degree of attention at that time, the accuracy of any prior description given by the witness is equally vital. Logically, a witness'[s] credibility is enhanced by the extent to which his or her initial description of the perpetrator matches the actual appearance of the person ultimately prosecuted for the offense.

The totality of circumstances test also requires a consideration of the degree of certainty demonstrated by the witness at the moment of identification. What is most critical here is the initial identification made by the witness during investigation and case build-up, not identification during trial.

A witness'[s] certainty is tested in court during cross-examination. In several instances, this Court has considered a witness'[s] straight and candid recollection of the incident, undiminished by the rigors of cross-examination as an indicator of credibility.

Still, certainty on the witness stand is by no means conclusive. By the time a witness takes the stand, [they] shall have likely made narrations to investigators, to responding police or barangay officers, to the public prosecutor, to any possible private prosecutors, to the families of the victims, other sympathizers, and even to the media. The witness, then, may have established certainty, not because of a foolproof cognitive perception and recollection of events but because of consistent reinforcement borne by becoming an experienced narrator. Repeated narrations before different audiences may also prepare a witness for the same kind of scrutiny that [they] will encounter during cross-examination. Again, what is more crucial is certainty at the onset or on initial identification, not in a relatively belated stage of criminal proceedings.

The totality of circumstances test also requires a consideration of the length of time between the crime and the identification made by the witness. “[P]eople are less accurate and complete in their eyewitness accounts after a long retention interval than after a short one.” Ideally then, a prosecution witness must identify the suspect immediately after the incident[.]

Equally jeopardizing is a witness'[s] interactions with other individuals involved in the event. As noted by cognitive psychologist Elizabeth F. Loftus, “post-event information can not only enhance existing memories but also change a witness's memory and even cause nonexistent details to become incorporated into a previously acquired memory.”

Thus, the totality of circumstances test also requires a consideration of the suggestiveness of the identification procedure undergone by a

witness. Both verbal and non-verbal information might become inappropriate cues or suggestions to a witness[.]¹⁰³ (Citations omitted)

Complementing these six circumstances are the 12 danger signals of erroneous identification first listed in *People v. Pineda*:¹⁰⁴

- (1) the witness originally stated that [they] could not identify anyone;
- (2) the identifying witness knew the accused before the crime, but made no accusation against [them] when questioned by the police;
- (3) a serious discrepancy exists between the identifying witness'[s] original description and the actual description of the accused;
- (4) before identifying the accused at the trial, the witness erroneously identified some other person;
- (5) other witnesses to the crime fail to identify the accused;
- (6) before trial, the witness sees the accused but fails to identify [them];
- (7) before the commission of the crime, the witness had limited opportunity to see the accused;
- (8) the witness and the person identified are of different racial groups;
- (9) during [their] original observation of the perpetrator of the crime, the witness was unaware that a crime was involved;
- (10) a considerable time elapsed between the witness'[s] view of the criminal and [their] identification of the accused;
- (11) several persons committed the crime; and
- (12) the witness fails to make a positive trial identification.¹⁰⁵

Applying the totality-of-circumstances test in *Teehankee* vis-à-vis the 12 danger signals in *Pineda*, this Court acquitted Nuñez on the ground of reasonable doubt. During the first trial involving two of the assailants, one of the eyewitnesses admitted that she could not remember the appearance of the assailants' companions.¹⁰⁶ However, eight years after, when she testified during Nuñez's trial, the eyewitness was confident that Nuñez was one of the robbers.¹⁰⁷ Furthermore, Nuñez's identification did not come until after he had been arrested, specifically only during arraignment.¹⁰⁸ Being the sole object of identification, Nuñez's identification was deemed suggestive that it "practically induce[d] in the prosecution witness the belief that [Nuñez], to

¹⁰³ *Id.* at 423–428.

¹⁰⁴ 473 Phil. 517 (2004) [Per J. Carpio, *En Banc*].

¹⁰⁵ *Id.* at 547–548, *citing* PATRICK M. WALL, EYE-WITNESS IDENTIFICATION IN CRIMINAL CASES 90–130 (1965).

¹⁰⁶ *People v. Nuñez*, 819 Phil. 406, 440 (2017) [Per J. Leonen, Third Division].

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

the exclusion of any other person, must have been the supposed fourth robber.”¹⁰⁹ All these, taken together, raised reasonable doubt as to whether Nuñez was the “Paul Pobre” who actually robbed the gas station and killed its owner. These circumstances were also noted as indicative of the unsoundness of the identification process.

Unlike the eyewitness identification in *Nuñez*, the identification of accused-appellant in this case satisfies the totality-of-circumstances test. Moreover, none of the danger signals in *Pineda* exist here.

First, Zenaida and Sarah watched accused-appellant—from a mere one-meter distance—as he walked past the storefront, stood by the door, and shot Mauro. That whole time, they had an unobstructed view of him. The storefront only had a screen, and the store’s main door was only half-open. Though the shooting itself only took seconds, Zenaida and Sarah were already watching accused-appellant even before he pulled out his gun. They took note of him because he was new to their eyes, someone they had never seen around their store or area before. In addition, the shooting took place at noon, when illumination is not at issue.

Second, they kept their attention on accused-appellant and his movements.¹¹⁰ Zenaida only momentarily shifted her focus to Mauro’s fallen body, but when she noticed that accused-appellant was walking away, she immediately chased after him. Meanwhile, Sarah, who froze,¹¹¹ had been wholly unable to tear her eyes from accused-appellant; she remained watching as he bagged his gun, walked away, met up with Barrameda, and turned the bag over to the latter.

Third, “lack of a prior description of the [shooter] in the present case should not lead to a conclusion that witnesses’ identification was erroneous.”¹¹² Zenaida and Sarah did not have the opportunity to stop and give a prior description to the police because they personally chased accused-appellant shortly after the shooting. Though Sarah later recruited the help of barangay tanods in stopping the jeepney that accused-appellant and Barrameda boarded, she made sure to be present throughout the whole process of accused-appellant being made to get off the jeepney, getting arrested by the police, and being taken by the police to their station.

Fourth, at the initial opportunity to identify Mauro’s shooter, Zenaida and Sarah demonstrated similarly high levels of certainty. While they both stated that the very day of the incident was the first time they saw accused-appellant, at no point did either of them waver or hesitate in asserting that he

¹⁰⁹ *Id.* at 443.

¹¹⁰ *People v. Sabangan*, 723 Phil. 591, 614 (2013) [Per J. Leonardo-De Castro, First Division].

¹¹¹ *People v. Campos*, 908 Phil. 482, 486 (2021) [Per J. M. Lopez, Second Division].

¹¹² *People v. Pepino*, 777 Phil. 29, 58 (2016) [Per J. Brion, *En Banc*].

was the same man who had shot Mauro. Notably, his face made an impression on Sarah not only because she froze after seeing him shoot her father, but also because he had a cleft palate as an identifying mark. For her part, Zenaida was assured in her recollection of his face since she had seen it again after the shooting, when he looked back at her as she tailed him.

Fifth, very little time passed between the shooting and Zenaida and Sarah's identification of accused-appellant to the authorities as Mauro's shooter. Within minutes of the shooting, accused-appellant was apprehended by the barangay tanods and turned over to the police.

Sixth, there was no suggestiveness in the identification procedure. Zenaida and Sarah did not identify accused-appellant from a line-up, a show-up, or a mugshot.¹¹³ They themselves participated in his apprehension right after the shooting.

All of these circumstances show the credibility of Zenaida's and Sarah's identification of accused-appellant as Mauro's shooter. This is true even if the killing itself only happened within seconds.

II (A)

Accused-appellant highlights that in Sarah's *salaysay*, she attested that she asked for help from a stranger on board a motorcycle to chase after Velasquez. However, during trial, she testified that the motorcycle she rode belonged to a barangay tanod named Emilio Garcia. This allegedly contradicts her prior statement about not knowing the person on the motorcycle she boarded.

While this can be considered an inconsistency in Sarah's version of the facts, it is nevertheless minor and inconsequential. Whether Sarah knew the person on board the motorcycle she rode to chase accused-appellant has no bearing on the "overarching narrative of what crime was committed; how, when, and where it was committed; and who committed it." Sarah and her testimony, therefore, remain credible.

II (B)

The prosecution's failure to submit the results of the ballistic examination and paraffin test conducted on accused-appellant does not constitute suppression of evidence. Even if we assume that each of the tests yielded a negative result, these do not conclusively mean that accused-appellant did not shoot a firearm.

¹¹³ *People v. Teehankee, Jr.*, 319 Phil. 128, 180 (1995) [Per J. Puno, Second Division].

“Ballistic testing establishes only a likelihood that a bullet was fired from a specific weapon. By itself, it is not enough to prove when the weapon was fired or who fired the weapon.”¹¹⁴ On the other hand, a paraffin test is done to detect the presence of nitrates, chemicals which are not uniquely found in gunpowder.¹¹⁵ A negative paraffin test only means that no detectable nitrates were found on the person at the time of testing, a result that could come from various factors unrelated to innocence or guilt.¹¹⁶

The results of the ballistic examination and paraffin testing only become indispensable when there are no credible eyewitnesses to the crime. Here, the prosecution established that Zenaida and Sarah are credible witnesses. Therefore, presenting the results of the ballistics examination and paraffin test is not required and can even be dispensed with. In *People v. Pitulan*:¹¹⁷

[P]araffin testing is conclusive only as to the presence of nitrate particles in a person, but not as to its source, such as from firing a gun. By itself, paraffin testing only indicates a possibility, not infallibility, that a person has fired a gun:

[P]araffin test[ing] is inconclusive. We held: “Scientific experts concur in the view that the paraffin test has . . . prove[n] extremely unreliable in use. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be established from this test alone that the source of the nitrates or nitrites was the discharge of firearm. The person may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, fertilizers, pharmaceuticals, and leguminous plants such as peas, beans, and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco.” 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.

Similarly, ballistic testing establishes only a likelihood that a bullet was fired from a specific weapon. By itself, it is not enough to prove when the weapon was fired and who fired the weapon. In *Lumanog*, this Court held that ballistic testing, along with the presentation of the weapon and bullets used, are indispensable if there is no credible eyewitness to the shooting. To sustain a conviction, it is sufficient that the *corpus delicti* is established and the eyewitness, through a credible testimony, identifies the accused as the assailant. This Court held:

¹¹⁴ *People v. Pitulan*, 869 Phil. 177, 197 (2020) [Per J. Leonen, Third Division].

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ 869 Phil. 177 (2020) [Per J. Leonen, Third Division].

As this Court held in *Velasco v. People*[:]

As regards the failure of the police to present a ballistic report on the seven spent shells recovered from the crime scene, the same does not constitute suppression of evidence. A ballistic report serves only as a guide for the courts in considering the ultimate facts of the case. It would be indispensable if there are no credible eyewitnesses to the crime inasmuch as it is corroborative in nature. **The presentation of weapons or the slugs and bullets used and ballistic examination are not prerequisites for conviction.** The *corpus delicti* and the positive identification of accused-appellant as the perpetrator of the crime are more than enough to sustain his conviction. Even without a ballistic report, the positive identification by prosecution witnesses is more than sufficient to prove accused's guilt beyond reasonable doubt. In the instant case, **since the identity of the assailant has been sufficiently established, a ballistic report on the slugs can be dispensed with in proving petitioner's guilt beyond reasonable doubt.**

Finally, in *People v. Casanghay*, this Court ruled that the absence of paraffin and ballistic testing is not fatal to the prosecution's case. It has no effect on the evidentiary value of an eyewitness testimony positively identifying the accused as the assailant:

The absence of a ballistic examination comparing the bullets fired from the fatal gun with the deformed slug recovered at the scene of the crime cannot nullify the evidentiary value of the positive identification of the appellant by prosecution eyewitnesses. Likewise, the failure of the police to conduct a paraffin test on the appellant is not fatal to the case of the prosecution. Scientific experts agree that the paraffin test is extremely unreliable. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be established from this test alone that the source of the nitrates or nitrites is the discharge of a firearm.¹¹⁸ (Emphasis in the original, citations omitted)

III

The foregoing, as against the weak denial and alibi proffered by accused-appellant, overwhelmingly establish his guilt beyond reasonable doubt. Accused-appellant's allegation that he merely boarded the same jeepney that the shooter boarded is doubtful considering that he was positively and credibly identified by Zenaida and Sarah as Mauro's shooter.

All told, accused-appellant was correctly convicted for the murder of Mauro Mastrili, Jr.

¹¹⁸ *Id.* at 197-198.

IV

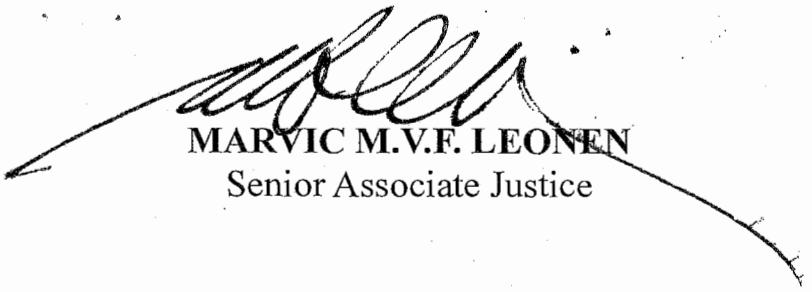
Under Article 248 of the Revised Penal Code, murder is punished with *reclusion perpetua* to death. The penalty being composed of two indivisible penalties, and there being no mitigating or aggravating circumstance present in this case,¹¹⁹ the lesser of the two penalties, i.e., *reclusion perpetua*, shall be applied.

The award of PHP 75,000.00 civil indemnity, PHP 75,000.00 moral damages, and PHP 75,000.00 exemplary damages are retained as per *People v. Jugueta*.¹²⁰ In the absence of documentary evidence of burial or funeral expenses, the award of PHP 50,000.00 temperate damages is affirmed, the crime having resulted in the death of the victim.¹²¹

ACCORDINGLY, the appeal is **DISMISSED**. The November 13, 2023 Decision of the Court of Appeals in CA-G.R. CR-HC No. 16140 is **AFFIRMED**. Accused-appellant Anthony Velasquez y Madrigal is **GUILTY** of murder under Article 248 of the Revised Penal Code. He is sentenced to suffer the penalty of *reclusion perpetua*.

Furthermore, he is ordered to **PAY** the heirs of Mauro Mastrili, Jr. 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 monetary awards shall earn interest at the rate of 6% per annum from the finality of this Decision until fully paid.

SO ORDERED.



MARVIC M.V.F. LEONEN
Senior Associate Justice

¹¹⁹ REV. PEN CODE, art. 63 partly provides:
Article 63. *Rules for the application of indivisible penalties.* —

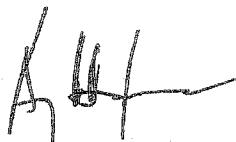
In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

(2) When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

¹²⁰ 783 Phil. 806, 848 (2016) [Per J. Peralta, *En Banc*].

¹²¹ The Court has set temperate damages at PHP 50,000.00. See *People v. Albaran*, 883 Phil. 381, 398 (2020) [Per C.J. Peralta, First Division].

WE CONCUR:



AMY C. LAZARO-JAVIER

Associate Justice



JHOSEP Y. LOPEZ

Associate Justice



ANTONIO T. KHO, JR.

Associate Justice



RAUL B. VILLANUEVA

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.

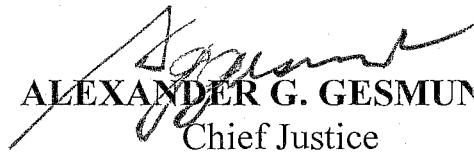


MARVIC M.V.F. LEONEN

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