



**Republic of the Philippines  
Supreme Court  
Manila**

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 191256**

Present:

CARPIO,\* Acting CJ,  
LEONARDO-DE CASTRO,\*\*  
Acting Chairperson,  
MENDOZA,\*\*\*  
REYES, and  
PERLAS-BERNABE,\*\*\*\* JJ.

- versus -

Promulgated:

**GARY ALINAO,**  
Accused-Appellant.

**SEP 18 2013**

X-----X

**DECISION**

**LEONARDO-DE CASTRO, J.:**

This is an appeal from the Decision<sup>1</sup> of the Court of Appeals dated October 28, 2009 in CA-G.R. CR.-H.C. No. 03567, which affirmed with modification the Decision<sup>2</sup> of the Regional Trial Court of Luna, Apayao in Crim. Case No. 38-2006 finding accused-appellant Gary Alinao guilty beyond reasonable doubt of the crime of murder.

Accused-appellant Gary Alinao, together with his son, Jocel Alinao, was charged in an Information dated September 5, 2006 with the crime of Murder with the Use of Illegally Possessed Firearm under Article 248 of the Revised Penal Code. The Information states:

\* Per Special Order No. 1550 dated September 16, 2013.

\*\* Per Special Order No. 1549 dated September 16, 2013.

\*\*\* Per Special Order No. 1545 dated September 16, 2013.

\*\*\*\* Per Special Order No. 1537 (Revised) dated September 6, 2013.

<sup>1</sup> Rollo, pp. 2-36; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Magdangal M. de Leon and Priscilla J. Baltazar-Padilla, concurring.

<sup>2</sup> CA rollo, pp. 51-58.

That on or about February 27, 2006 in Badduat, Kabugao, Apayao and within the jurisdiction of this Honorable Court, the said accused did, then and there and with intent to kill and with evident premeditation, willfully, unlawfully and feloniously set on fire the house of Antonio Ardet knowing it to be occupied at the time and when said Antonio Ardet came out from his burning house shot him with an illegally possessed shotgun hitting him on his face that caused his instantaneous death.<sup>3</sup>

With Jocel Alinao still at large, only accused-appellant Gary Alinao was arraigned. He pleaded not guilty to the offense charged.

The first witness for the prosecution was **Police Officer (PO) 1 Armando Arnais**, an operation and investigation officer of the Kabugao Municipal Police Station. He testified that his office was assigned to investigate the case. During said investigation, he was able to secure the sworn statements of several witnesses to the incident. Hence, he filed a criminal complaint which he identified in the course of his testimony.<sup>4</sup>

**Dr. Cynthia T. Melchor** conducted the postmortem examination on the body of Antonio Ardet and executed a postmortem report. She testified that there were seven entry gunshot wounds on the head of the victim, and that all seven wounds were fatal.<sup>5</sup>

**Nestor Ardet**, half-brother of the victim Antonio Ardet, testified that on February 27, 2006 at around 11:00 p.m., he was inside his house, which was eight meters away from the house of the deceased Antonio Ardet. He was awakened by the barking of dogs. He stood and slowly opened his window, and saw Antonio Ardet's house burning. Gary Alinao was pointing his gun at the door of Antonio Ardet, with Jocel Alinao behind him.<sup>6</sup> On cross, Nestor later corrected himself and said that it was a door, not a window, through which he peeped and saw the incident.<sup>7</sup>

Antonio Ardet tried to get out of his house, but Gary Alinao shot him and fell inside the burning house. Gary and Jocel Alinao ran towards Barangay Baduat. Nestor Ardet went out of the house and shouted, asking for help to bring Antonio Ardet out of the burning house. Boyet Tamot, Elvis Singsing, Tano Singsing and Wally Sipsip responded to his call. The premises were bright because of the fire.<sup>8</sup> When the police came, the accused were also in the vicinity of the crime.<sup>9</sup> Nestor likewise saw accused-appellant go to Antonio's wake once.<sup>10</sup>

---

<sup>3</sup> Records, p. 1.

<sup>4</sup> TSN, March 26, 2007, pp. 2-3.

<sup>5</sup> Id. at 8-9.

<sup>6</sup> TSN, March 27, 2007, pp. 2-4.

<sup>7</sup> TSN, June 6, 2007, pp. 6-7.

<sup>8</sup> TSN, March 27, 2007, pp. 4-6.

<sup>9</sup> TSN, June 6, 2007, pp. 18-19.

<sup>10</sup> Id. at 22.

The deceased's daughter, **Annie Ardet**, testified that accused-appellant Gary Alinao is the husband of her father's sister (and was thus the deceased's brother-in-law). Jocel Alinao is Gary Alinao's son and Annie Ardet's cousin. She incurred more than ₱112,000.00 as burial expenses. After her father was buried, Annie Ardet reported her father's death to the Municipal Hall of Kabugao, Apayao and she was issued a Death Certificate. She testified that when her father died, her family grieved so much and could not sleep or eat well.<sup>11</sup>

**Boyet Tamot**, nephew of the victim Antonio Ardet and accused-appellant's wife, Linda Ardet, testified that he was inside his house with his wife and two children on February 27, 2006. His house was around 10 meters away from that of Antonio Ardet. At around 11:00 p.m., he heard dogs barking and went to the cornfield beside his house. He saw Gary and Jocel Alinao going near the house of Antonio Ardet. Gary Alinao took a container from Jocel and poured the contents on the wall of Antonio Ardet's house. Gary Alinao set the house on fire. Boyet Tamot went inside his house as the place grew brighter from the fire. He heard gunshots. When he peeped outside, he saw that Gary and Jocel Alinao had left.<sup>12</sup> On cross, Boyet Tamot explained that he only revealed what he saw on November 23, 2006 as he was afraid of accused-appellant Gary Alinao. Gary did not threaten Boyet Tamot personally, but as he and his son have already killed somebody, Boyet was afraid they could do it to him as well. Accused-appellant Gary Alinao was already in jail on November 23, 2006. Boyet did not, however, see Gary Alinao shoot Antonio Ardet or even point a gun at him.<sup>13</sup>

**Edison Beltran**, another nephew of the victim Antonio Ardet and accused-appellant's wife, Linda Ardet, testified that on February 27, 2006, he was in the house of his cousin Niño Singsing Beltran. He saw Gary and Jocel Alinao pass by, going upstream to the house of Antonio Ardet. Gary Alinao was holding a plastic gallon container and a winchester shotgun. Five minutes later, Edison heard gunshots and saw fire. He ran towards the fire to help. Gary Alinao, holding a short homemade shotgun, and Jocel Alinao, holding a winchester shotgun, were running back to the place where they came from. On cross, Edison Beltran explained that he only went to the police on May 26, 2006, which was after the burial, because he was frightened of Gary Alinao, who said in public that anyone who will give his testimony will be killed. Edison changed his mind when people were telling him that reporting the incident would stop the criminal activities of the accused.<sup>14</sup>

---

<sup>11</sup> Id. at 25-30.

<sup>12</sup> TSN, July 11, 2007, pp. 3-6.

<sup>13</sup> Id. at 11-16.

<sup>14</sup> TSN, July 12, 2007, pp. 3-15.

For the defense, 71-year old **Manuel Morta** testified that on February 27, 2006, he attended the wake of Elvie Agculao at around 7:00 a.m. and left the place at around midnight. Gary Alinao was among the many people who attended the wake. Gary was there from 9:00 a.m. to 11:00 p.m. Gary invited him to sleep in the house but he refused. Two minutes after Gary left, they heard that Antonio Ardet was dead.<sup>15</sup>

**Senior Police Officer (SPO) 3 Marcelino Tenay** testified that on February 27, 2006, his office received information from the Vice Mayor that there was an incident at Sitio Colilimtao, Barangay Baduat wherein a certain Boy Ardet was shot to death and his house was burned. SPO3 Tenay called the fire station and requested a car from the Vice Mayor to bring him and his companions to the area.<sup>16</sup>

At the crime scene, SPO3 Tenay and his companions saw that while the fire was still blazing, the house was already completely burned and that only the posts were left standing. Antonio Ardet's body was brought to the backyard, which was around 7 to 10 meters away from the house. SPO3 Tenay was able to talk to a person who claimed to be the brother of the victim. This alleged brother saw two persons ascending towards Sitio Tabbu.<sup>17</sup>

Accused-appellant **Gary Alinao** testified that on February 27, 2006, he went to the house of Elvy<sup>18</sup> Agculao for the latter's wake. Elvy's house is 300 meters away from his own, or around four minutes walk. He stayed in Elvy's house from 8:00 a.m. to 11:00 p.m. He knew that he left at 11:00 p.m. because he partook of the last *merienda* at that time.<sup>19</sup>

A few minutes after arriving home, accused-appellant Gary Alinao heard someone call his name. He went out of the house and saw three persons, Warry Mahuray, Elvis Singsing, and his son Edgar. They told him that "Manong Antonio is dead," and that the house of Antonio was burned. Jesus Era arrived, and the five of them went to the scene of the crime aboard two motorcycles. He left his other son, co-accused Jocel Alinao, in the house. On the way, they dropped by the house of Rene and Aldrin Ukong, who were nephews of Antonio, but nobody came out of the house. When they reached the house of Antonio, Gary Alinao went directly to the body of Antonio to look at him. He told Nestor Ardet to move the body of Antonio, but Nestor answered, "later." Nevertheless the body was moved into the house of Nestor.<sup>20</sup>

---

<sup>15</sup> TSN, October 1, 2007, pp. 2-3.

<sup>16</sup> TSN, October 25, 2007, pp. 2-3.

<sup>17</sup> Id. at 3-4.

<sup>18</sup> Spelled Elvie Agculao in some portions of the records.

<sup>19</sup> TSN, January 10, 2008, p. 3.

<sup>20</sup> Id. at 4-10.

The police arrived at around 2:00 a.m. and started asking Gary questions. He told them to ask Nestor instead. The police proceeded to talk to Nestor, with Gary one meter away from them. He heard Nestor tell the police “I heard something running towards upward (sic), sir.” He stayed at Nestor’s house until morning, drinking gin with Edison, his *co-barangay tanod* Stewart Alinao, Celso Tallong and Junior Siddayao.<sup>21</sup>

Sometime during his stay that night, the vice mayor talked to him on the cellular phone to ask him if Rene Ukkong, Aldrin Ukkong and Edison Beltran were there. He went home at around 10:00 a.m. His wife, Linda Alinao, arrived home at 5:00 p.m. from Tuguegarao. The following day, he went to the house of Antonio to help.<sup>22</sup>

Accused-appellant Gary Alinao believes that Edison Beltran was only boasting about seeing Gary and Jocel Alinao pass by his house. Gary Alinao claims that Edison’s house is 500 meters away from Antonio’s house, and that one cannot see Antonio’s house from Edison’s.<sup>23</sup>

On cross, accused-appellant Gary Alinao testified that Elvy Agculao’s house is 300 meters away from his own, and 5 kilometers away from the house of Antonio Ardet. He also testified that when the police came to arrest him, he pointed to his son and told them to arrest him. The police told him they’ll do so later.<sup>24</sup> The court proceeded to order the arrest of a certain police officer Robles for dereliction of duty in failing to arrest Jocel Alinao. Robles was asked in a later hearing why he did not arrest Jocel Alinao when Gary Alinao pointed at him. Robles answered that the person Gary pointed at was Edgar Alinao, and not Jocel. Gary Alinao affirmed that this was what happened.<sup>25</sup>

**Linda Alinao**, the wife of accused-appellant Gary Alinao and sister of both deceased Antonio Ardet and prosecution witness Nestor Ardet, testified that her brother, prosecution witness Nestor Ardet, told her that he was forced to testify by Aldrin Ukkong and Rosendo Ukkong by hitting him with a firearm. She claimed that the mark of the gun can be seen on Nestor Ardet’s body.<sup>26</sup>

**SPO3 Felipe Erving** testified that they reached the crime scene between 1:00 a.m. and 2:00 a.m. on February 27, 2006. The house was burned and the body of Antonio Ardet was retrieved by his neighbor and placed 10 meters away from the burning house. It was a moonless night. He asked the people at the scene about the incident, but they told him nothing.<sup>27</sup>

---

<sup>21</sup> Id. at 10-11.

<sup>22</sup> Id. at 11-15.

<sup>23</sup> Id. at 16.

<sup>24</sup> Id. at 22-27.

<sup>25</sup> TSN, February 7, 2008, pp. 1-2.

<sup>26</sup> TSN, January 11, 2008, pp. 11-12.

<sup>27</sup> TSN, February 7, 2008, pp. 3-6.

SPO3 Erving went to the house where the body was brought and got the chance to talk to Nestor Ardet. SPO3 Erving asked Nestor Ardet where he was when the victim was shot and his house was burned. Nestor Ardet told him that he was sleeping inside his room at that time. SPO3 Erving asked Nestor Ardet if he noticed any person during the incident, but Nestor replied “None, sir.” Upon further questioning, Nestor said that he peeped through the windows when he heard a shot from the burning house. He saw two persons running towards Sitio Tabbu, but did not recognize them. He estimated the house of Nestor to be 29 meters away from Antonio Ardet’s house. He saw accused-appellant Gary Alinao at the scene, but did not talk to him.<sup>28</sup>

The prosecution then presented rebuttal witnesses.

**Benito Agculao** testified that his house was considered a public place on February 27, 2006 during the wake of his daughter, Elvy Agculao. While he had seen accused-appellant playing cards on February 25, he did not see him on the 26<sup>th</sup> and the 27<sup>th</sup>. On the 27<sup>th</sup>, he did not see accused-appellant from 5:00 p.m. until midnight, although he admittedly had to go out sometimes and urinated twice or thrice.<sup>29</sup>

**Nestor Ardet** was recalled to the witness stand. He admitted that he was asked by SPO3 Erving if he saw who burned and shot the victim and that he told SPO3 Erving that he did not recognize the two persons running away. He testified that he was frightened at that time because both Gary and Jocel Alinao had firearms and were not yet arrested. He denied the claim of Linda Ardet that Rosendo Ukkong forced him to testify in favor of complainant and stated that he voluntarily testified to tell the truth. On February 28, Nestor Ardet revealed the names of the perpetrators to Annie Ardet. The court asked Nestor to show if there was really a scar on his breast allegedly caused by Rosendo Ukkong. The court interpreter identified a white portion on his breast, but the opposing counsels disagreed as to whether it was a scar.<sup>30</sup>

As surrebuttal evidence, the defense recalled **Linda Alinao** to the stand. Linda Alinao reiterated that Nestor was maltreated by Rosendo Ukkong and was forced to testify. She claims that she would not make a false statement since the victim, Antonio Ardet, is her full-blood brother, while Nestor is her half-brother. She admitted that she was not present when Nestor was maltreated, but that was what Nestor told her and that Nestor even showed her his torn and dirty clothes.<sup>31</sup>

---

<sup>28</sup> Id. at 6-8.

<sup>29</sup> TSN, April 24, 2008, pp. 10-13.

<sup>30</sup> TSN, July 17, 2008, pp. 2-3.

<sup>31</sup> Id. at 6-7.

On September 9, 2008, the trial court rendered its Decision finding accused-appellant guilty of murder with evident premeditation as the qualifying circumstance. The dispositive portion of the Decision reads:

**WHEREFORE**, finding the accused Gary Alinao y Aridao guilty beyond reasonable doubt of the crime of Murder charged against him, the court hereby sentences said accused to suffer the penalty of imprisonment of (sic) **RECLUSION PERPETUA**.

Accused, Gary Alinao is further ordered to pay the aggrieved party the sum of **FIFTY THOUSAND PESOS (₱50,000.00)** by way of civil indemnity for the death of Antonio Ardet, plus moral damages in the amount of **ONE HUNDRED TWENTY THOUSAND PESOS (₱120,000.00)** and actual and exemplary [damages] in the amount of **SEVENTY[-]FIVE THOUSAND PESOS (₱75,000.00)** and **THIRTY THOUSAND PESOS (₱30,000.00)** respectively.

Whatever imprisonment the accused have (sic) undergone in this case shall be credited in his favor.

The case as against Jocel Alinao is ordered **ARCHIVED** and to be retrieved upon his arrest.

Let an Alias Warrant of arrest be issued for his apprehension.<sup>32</sup>

Accused-appellant appealed through a Notice of Appeal<sup>33</sup> dated September 12, 2008. The Court of Appeals rendered its Decision on October 28, 2009, with the following dispositive portion:

**WHEREFORE**, premises considered, the Decision dated 09 September 2008 of the Regional Trial Court of Luna, Apayao, Branch 26 in *Crim. Case No. 38-2006* finding accused-appellant Gary Alinao guilty beyond reasonable doubt of Murder, as defined in Article 248 of the Revised Penal Code, and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED** with **MODIFICATION** in that accused-appellant is further **ORDERED** to pay to the heirs of the victim Antonio Ardet, ₱75,000.00 as civil indemnity *ex delicto*, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages, all with interest at the legal rate of six percent (6%) *per annum* from this date until fully paid. The award of ₱30,000.00 as exemplary damages is hereby **DELETED**.<sup>34</sup>

Accused-appellant appealed to this Court through another Notice of Appeal<sup>35</sup> dated November 9, 2009. On June 1, 2010, accused-appellant filed a Supplemental Brief adopting his Appellant's Brief which he filed with the Court of Appeals as well as asserting new arguments and adducing the following additional assignment of error:

---

<sup>32</sup> CA rollo, p. 58.

<sup>33</sup> Id. at 59.

<sup>34</sup> Rollo, p. 33.

<sup>35</sup> Id. at 37-39.

THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>36</sup>

**Whether or not accused-appellant  
killed Antonio Ardet**

Taken together, accused-appellant's Supplemental Brief and Appellant's Brief pose the following arguments to show that the prosecution failed to prove that he was one of the culprits responsible for the death of Antonio Ardet:

1. Nestor Ardet's testimony is highly suspect. Nestor did not immediately execute an affidavit to implicate accused-appellant despite the fact that the victim is his brother.<sup>37</sup> When Nestor was investigated by the police officers, he failed to identify the alleged malefactors.<sup>38</sup> Nestor and Antonio's sister, Linda Ardet, testified that Nestor had admitted to her his being mauled, assaulted, intimidated and forced to testify against accused-appellant. Although Nestor denied the same, Linda Ardet's testimony that there was a scar on Nestor's breast as a result of the mauling was purportedly confirmed when the Court asked Nestor to show his breast.<sup>39</sup>

Nestor Ardet's identification of accused-appellant is questionable. Nestor testified that he peeped through a slightly opened window or door measuring only three inches in width. Nestor likewise testified that he was 12 meters<sup>40</sup> away from the accused-appellant when the latter allegedly shot Antonio Ardet.<sup>41</sup> Nestor's barbed-wire fence, the roof of his porch, and the elevation of Antonio's house allegedly further obstructed Nestor's view of the crime scene.<sup>42</sup>

2. The testimonies of Edison Beltran and Boyet Tamot, who both claimed that they were aided by the light of the moon, were incredible. Edison's testimony that he saw accused-appellant holding a short firearm at around 11:00 p.m., and Boyet's testimony that he saw accused-appellant burn Antonio's house at around that time were negated by the testimonies of SPO3 Tenay and SPO3 Erving, who both stated and presented evidence that the evening of February 27, 2006 was a moonless night.<sup>43</sup>

Edison Beltran and Boyet Tamot's assertion that they did not immediately report what they saw because they were afraid to do so was a

---

<sup>36</sup> Id. at 46.

<sup>37</sup> CA *rollo*, p. 83.

<sup>38</sup> Id. at 80; accused-appellant citing SPO3 Erving's Testimony, TSN, February 7, 2008, p. 7.

<sup>39</sup> TSN, July 17, 2008, pp. 2-3.

<sup>40</sup> Nestor Ardet testified that he was 8 meters away from accused-appellant Gary Alinao when the latter shot Antonio Ardet. The Court asked Nestor Ardet to illustrate the length of his perceived 8 meters. The court interpreter judged the illustrated distance to be around 12 meters (TSN, March 27, 2007, pp. 4-5).

<sup>41</sup> CA *rollo*, p. 79.

<sup>42</sup> Records, p. 79. The sketch drawn by Nestor Ardet during his testimony on June 6, 2007 was marked as Exhibit K (records, p. 128).

<sup>43</sup> CA *rollo*, p. 84.



“lame excuse” since they later came out in the open despite the knowledge that one of the accused remains at large.<sup>44</sup>

After a thorough review of the testimonies of all the witnesses and other evidence presented, we find no reason to disturb the findings of fact of the trial court. As we have held time and again, factual findings of the trial court, especially those affirmed by the Court of Appeals, are generally conclusive on this Court when supported by the evidence on record.<sup>45</sup> In *People v. Sapigao, Jr.*,<sup>46</sup> we explained the reason for this rule:

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, “There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court.” (Citations omitted.)

This Court observes that in the case at bar, counsels for both sides went the extra mile in questioning the witnesses through in-depth cross-examinations, re-direct and re-cross examinations, and even bringing them back as rebuttal and sur-rebuttal witnesses. The trial court, for its part, was also very active in trying to ascertain the credibility of the witnesses. The trial court thus had every opportunity to take advantage of observing the witnesses' demeanor, conduct, and attitude, as well as the emphasis, gesture, and inflection of their voices, as potent aids in ascertaining which of them were telling the truth. As we find nothing material in the records which the trial court seems to have ignored, misunderstood or misconstrued that could warrant the reversal of its factual findings, said findings should be affirmed.

Accused-appellant hinges his defense mainly on discrediting Nestor Ardet, Antonio Ardet's brother. The testimony of Nestor Ardet, however, was clear and straightforward. The defense's contentions against his ability

---

<sup>44</sup> Id. at 85.

<sup>45</sup> *People v. Barde*, G.R. No. 183094, September 22, 2010, 631 SCRA 187, 209.

<sup>46</sup> G.R. No. 178485, September 4, 2009, 598 SCRA 416, 425-426.

to have seen the incident are likewise merely excessive nitpicking. Based on experience, a three-inch opening of either a door or a window is certainly wide enough to give the observer a full view of the outside if he “peeps” (peering with the eyes very close to the crevice) through it, as Nestor said he did. The defense likewise failed to show how the barbed-wire fence, the roof of the porch, and the elevation of Antonio’s house could have completely blocked Nestor’s view of the house.

We are also more inclined to believe the testimony of Nestor Ardet over that of his sister, Linda Alinao. While both are siblings of the deceased, Antonio Ardet, Linda Alinao is the wife of accused-appellant himself, and is naturally expected to be protective of him. Linda Alinao’s testimony is likewise hearsay as she was not present when Nestor Ardet was allegedly maltreated and forced to testify against her husband. Furthermore, we cannot emphasize enough that Nestor Ardet and Linda Alinao were recalled on the same trial date to refute each other’s testimonies. The trial court was thus afforded an even better opportunity to observe their demeanor, conduct, attitude, gesture, and inflection of their voices, and ultimately believed Nestor over Linda.

As regards the distance of the houses of Antonio and Nestor, we agree with the finding that Nestor’s estimation of 12 meters should be considered more accurate as he is certainly more familiar with the surroundings of the place than SPO3 Erving, who estimated the distance to be 29 meters.

Accused-appellant emphasizes the testimonies of defense witnesses that there was no moon on the night of February 27, 2006. Nestor Ardet, however, testified that the surroundings were very bright because of the fire that razed the victim’s house. It should be furthermore stressed that the three eyewitnesses, Nestor Ardet, Boyet Tamot and Edison Beltran are all relatives of accused-appellant and his son Jocel. As correctly held by the Court of Appeals, it was settled in *People v. Amodia*<sup>47</sup> that “once a person knows another through association, identification becomes an easy task even from a considerable distance; most often, the face and body movements of the person identified [have] created a lasting impression on the identifier's mind that cannot easily be erased.”

Finally, Nestor Ardet, Boyet Tamot and Edison Beltran all adequately explained their delay in revealing what they saw. We cannot underestimate how they feared for their lives as they all saw firsthand what accused-appellant can do to them. Edison Beltran even heard accused-appellant’s warning that anyone who will give his testimony will be killed. As regards Nestor Ardet, it is certainly very understandable that he would refrain from identifying accused-appellant as the perpetrator to the police officer, with the armed accused-appellant close by. Accused-appellant himself testified that he was merely one meter away when SPO3 Erving was asking Nestor

---

<sup>47</sup>

G.R. No. 173791, April 7, 2009, 584 SCRA 518, 535.

questions and can actually hear what they were saying. Neither does Jocel Alinao's remaining at large at the time they revealed what they witnessed affect their credibility. Having seen that it was accused-appellant and not Jocel Alinao who actually started the fire and shot Antonio Ardet, it makes perfect sense that Nestor Ardet, Boyet Tamot and Edison Beltran are more frightened of accused-appellant than his son.

The appellate court committed no error in applying the jurisprudential principle that delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given.<sup>48</sup>

**Whether or not evident premeditation should be considered**

Accused-appellant likewise claims that there was no evidence categorically showing evident premeditation.

For evident premeditation to be appreciated, the following elements must be proved: a) the time when the accused determined to commit the crime; b) an act manifestly indicating that the accused has clung to his determination; and, c) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.<sup>49</sup> The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.<sup>50</sup>

In the case at bar, accused-appellant, in razing Antonio Ardet's house in order to drive him out and shooting him the moment he appears at his front door, clearly had a *previously and carefully crafted plan* to kill his victim. We are convinced that the time it took accused-appellant and his son to device their plan, plot where the gasoline should be poured, and procure the gasoline and the firearms, as well as the time it took to go to Antonio Ardet's house, and even the time when they waited for Antonio Ardet to come out of the house, all afforded accused-appellant sufficient opportunity to reflect upon the consequences of his act to kill his brother-in-law and his determination to commit the cold-blooded deed from the time of its conception until it was carried out.

---

<sup>48</sup> The Court of Appeals cited *People v. Berondo*, G.R. No. 177827, March 30, 2009, 582 SCRA 547, 552. See also *People v. Paraiso*, 402 Phil. 372, 382 (2001).

<sup>49</sup> *Bug-atan v. People*, G.R. No. 175195, September 15, 2010, 630 SCRA 537, 556.


<sup>50</sup> *People v. Duavis*, G.R. No. 190861, December 7, 2011, 661 SCRA 775, 784.

**Award of exemplary damages**


The Court of Appeals deleted the trial court's award of exemplary damages on the ground that no aggravating circumstance was established in evidence.<sup>51</sup> This Court, however, has ruled that an award of exemplary damages is justified if an aggravating circumstance, *either qualifying or generic*, accompanies the crime.<sup>52</sup> In the case at bar, the qualifying circumstance of evident premeditation was duly alleged in the Information and proved during the trial. Therefore, in line with current jurisprudence,<sup>53</sup> we reinstate the trial court's award of the amount of ₱30,000.00 as exemplary damages to heirs of the victim, Antonio Ardet.

**WHEREFORE**, the Decision of the Court of Appeals dated October 28, 2009 in CA-G.R. CR.-H.C. No. 03567, which affirmed with modification the Decision of the Regional Trial Court of Luna, Apayao in Crim. Case No. 38-2006 finding accused-appellant Gary Alinao **GUILTY** beyond reasonable doubt of the crime of murder is hereby **AFFIRMED**, with **MODIFICATION** reinstating the trial court's award of the amount of ₱30,000.00 as exemplary damages to the heirs of the victim, Antonio Ardet. Accused-appellant Gary Alinao is likewise **ORDERED** to pay the heirs of Antonio Ardet interest at the legal rate of six percent (6%) per annum on all the amounts of damages awarded, commencing from the date of finality of this Decision until fully paid.

**SO ORDERED.**

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Acting Chairperson, First Division

WE CONCUR:

  
**ANTONIO T. CARPIO**  
Acting Chief Justice

<sup>51</sup>

CA rollo, p. 188.

<sup>52</sup>


*People v. Paling*, G.R. No. 185390, March 16, 2011, 645 SCRA 627, 644.

<sup>53</sup>

Id.


  
**JOSE CATRAL MENDOZA**  
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.

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Acting Chairperson, First Division

#### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

  
**ANTONIO T. CARPIO**  
Acting Chief Justice