

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CLARITO ARIZOBAL A.K.A. “BOY ZAPANTA” AND JOHN
DOE, ACCUSED, CLARITO ARIZOBAL A.K.A. “BOY
ZAPANTA,” ACCUSED-APPELLANT.**

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GONZALES-SISON, M., J.:[*]

This appeal seeks to reverse and set aside the Judgment[1] dated November 26, 2012 of the Regional Trial Court, Branch 3, Legazpi City, which found herein accused-appellant Clarito Arizobal a.k.a. "Boy Zapanta" guilty beyond reasonable doubt as principal of the crime of Murder committed against the victim, Rowell Endrinal, in Criminal Case No. 10336 and, accordingly, sentenced him to reclusion perpetua. As regards civil liability, the trial court finds accused-appellant liable to the heirs of the victim for the sum of PhP50,000.00 as civil indemnity plus the sum of PhP 35,000.00 as actual damages, and the further sum of PhP50,000.00 as moral damages.

The accused Clarito Arizobal a.k.a. "Boy Zapanta" and his co-accused John Doe were charged with the crime of Murder, defined and penalized under Article 248[2] of the Revised Penal Code in an Information[3] which reads as follows:

"That on or about the 11[th] day of February, 2004, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another for a common purpose, with intent to kill, did then and there willfully, unlawfully and feloniously, and with treachery and evident [premeditation], attack, assault and shot one ROWELL ENDRINAL a.k.a. "GUAPO", thereby inflicting upon the latter injuries which directly caused the death of the said ROWELL ENDRINAL a.k.a "GUAPO".

CONTRARY TO LAW."

Out of the two accused in the Information, only appellant Clarito Arizobal was tried before the court a quo. The other one remained at large.

As noted by the trial court, appellant at the time of his apprehension for this instant case, he had already been adjudged guilty of the crime of Robbery with Homicide by final judgment of the Supreme Court in *People v. Arizobal, et al.*[4] He has not as yet served his sentence because he jumped bail. He was tried and convicted in absentia. Thus, upon his apprehension pursuant to the warrant of arrest issued by the trial court, appellant was committed to the custody of the Director of Prisons, through the City Jail Warden of Legazpi City. Accordingly, the City Jail Warden turned over the person of the appellant to the custody of the New Bilibid Prison. Thus, upon the commitment of the appellant to the National Penitentiary, the Supreme Court directed that the trial of the appellant be conducted by the Regional Trial Court of Muntinlupa City. Hence, the appellant was tried before Branch 204 of the Regional Trial Court of Muntinlupa City.[5]

Upon being arraigned on January 27, 2006, appellant pleaded "not guilty" to the crime charged.[6] Thereafter, trial on the merits ensued.

From the evidence for the prosecution, the following version is established.

Dolores Raña testified that she was a resident of Purok 1, Barangay Oro Site, Legaspi City. She used to sell pansit and bread for breakfast by putting out a table in front of her residence. She usually commenced selling at 5:30 o'clock in the morning. Sometime in the last week of January 2004, she has had about five (5) regular customers who visited her makeshift pancit eatery for about four (4) times. The five regular customers included an elderly person and the appellant whose name she did not know yet at that time.[7]

On 11 February 2004, out of the five regular customers, only the appellant and a companion returned to her eatery. On that date, she had many customers who mostly bought take-out pancit. She particularly remembered the appellant and his companion because they ordered pancit and ate it right at the eatery. The appellant occupied a chair on the side of the table. After about five (5) minutes, the appellant finished his pancit. He left the eatery and proceeded towards the direction on the left side of Dolores, who was then busy attending to the other customers. The companion of the appellant did not finish his pancit. He also left and Dolores did not know which direction he took.[8]

Not long after the appellant had left the eatery that Dolores heard five (5) successive gunshots. After she heard the fifth shot, she moved a bit forward and looked towards the direction earlier taken by the appellant. She saw the appellant pointing a gun at a person and then she heard the final shot. The appellant was approximately fifteen (15) to twenty (20) meters away from Dolores. The man to whom the appellant pointed his gun was prostrate on the ground. Thereafter, appellant loaded a "magazine"[9] into his gun and walked away from his victim. The appellant, who walked towards the direction of the railway, even passed by Dolores who was stupefied and could not move as the appellant passed by. Their eyes met.[10]

Dolores learned later that the victim of the appellant was Endrinal, a long time neighbor of hers. Endrinal was a newscaster and better known as Mr. Guapo. The CIDG[11] investigated Dolores at her store then at the former's office. She was shown three (3) albums of pictures of persons and from which she identified a picture of the appellant as the gunman-assailant of Endrinal. She later learned from the CIDG and her neighbors that the gunman, whose photograph appears in a newspaper, was Claudio Arizobal. [Dolores identified him in open court.] The CIDG asked her to execute a written statement[12] of what she witnessed on that fateful day of February 11, 2004.[13]

Raul Guerrero y del Mundo - a 15-year old high school student at the time of the commission of the crime - testified that he was a former resident of PNR Site, Barangay 33, Legazpi City. On February 11, 2004, he had no classes so he decided to play basketball with his friends, namely: Mark Santiago, Marcelo Segara, Jake Betis, Rolly [Basabe], and Boboy. At about 5:55 o'clock in the morning on that day, Raul went to the basketball court in PNR Site where he met with his friends. As they could not find opponents thereat, they decided to proceed to the basketball court of Oro Site. On their way to Oro Site, they passed by the pansitan of Dolores Raña. The group of Raul decided to drop by the pansitan to buy some bread. As the group approached the pansitan, Raul noticed two (2) persons eating pancit. The duo stared menacingly [masamang tingin] at Raul's group. Raul and his friends, intimidated by the two persons, decided not to buy bread from the pansitan anymore. They instead proceeded to the riprap or the cemented dike and hanged out there for some time before they would have gone to their intended destination in PNR Site. Raul and his group sat on the riprap facing the pansitan. While tarrying at the riprap, Raul noticed a man squatting by the corner of the street near another riprap. He was about 3 to 4 meters away from the group of Raul. Raul and his friends lingered a while at the riprap because they were suspicious of the man who was squatting. The group also noticed at a distance a parked motorcycle with two men on board and whose backs were turned towards Raul's group.[14]

Raul Guerrero was born in PNR Site and grew up there. He knows most families in the place. He also knew Rowell Endrinal who was better known as "Guapo". Endrinal, a media man, also had his residence in PNR Site. On that day when Raul and his friends tarried at the riprap, Rowell Endrinal was outside of his house doing his morning physical exercises. After some time at the riprap, Raul and his friends decided to go back to the basketball court at the PNR Site. Before leaving the riprap, Raul noticed the man squatting by the corner of the road drew a .45 caliber gun from his back and tucked it in front of his pants. As Raul and his friends were already proceeding towards the basketball court in PNR Site, he heard three gunshots fired. He looked back towards the direction of the riprap from where they came from and he saw two men running towards their direction and even overtook or passed by them. Raul noticed that one of the two men was somewhat hiding a gun in front of his shirt as the duo ran. Raul recognized the two men to be the one squatting by the corner of the road and the other one who was eating pancit in the pansitan of Dolores Raña.[15]

After hearing the gunshots, Raul and his friends decided to go home. Raul thus proceeded back to his house. On his way home, he met Endrinal's assistant, Arzhenal Lorenzo, who told Raul that Endrinal was gunned down. Raul noticed that Lorenzo's pants were blooded. As Raul passed by the house of Endrinal, he noticed that there were many people and police officers thereat. Raul volunteered to the police officers the information that he was at the scene of the crime before the incident happened. At a later time, Raul was brought by the police officers to Camp Ola for investigation. He was shown several pictures from which he recognized the person who squatted by the corner of the street and the riprap. He informed the police officers of his recognition of the person in the picture. That person turned out to be the accused in this case. The police also took the written statement[16] of Raul on which he affixed his signature.[17]

Marina T. Endrinal testified that she is the widow of Rowell Endrinal. They were married for 27 years already when her husband Rowell was gunned down. They have 3 children. Her late husband was a blocktime radio commentator and a newspaper publisher. He earned around PhP100,000.00 a month. She spent PhP91,000.00 for the burial lot of her husband, about PhP20,000.00 for the funeral services. She was hospitalized because of the incident that befell her husband. She spent around PhP45,000.00 for such hospitalization. Rowell was 46 years old when he was killed. She was left to solely raise their youngest child who was a student at the University of the Philippines. The pain she suffered on account of the demise of her husband is not quantifiable.[18]

Dr. Raoul Alcantara testified that he was the Medico-Legal Officer of the National Bureau of Investigation, Regional Office No. 5, Naga City, on February 11, 2004. On that day, a request from P/Supt. Heriberto Olitoquit, the Chief of Police of Legazpi City, to conduct an autopsy on the body of one Rowell Endrinal, came to the attention of Dr. Alcantara. Thus, he proceeded to Legazpi City and conducted the autopsy of the body of Rowell Endrinal at the La Funeraria de Oro. Dr. Alcantara found out that the cadaver sustained eight (8) gunshot wounds which had similar large entry points. He opined that the wounds must have been inflicted using a high caliber firearm such as .45 caliber gun. The wounds could not have been inflicted using an Armalite rifle. Of the gunshot injuries sustained by the deceased, wounds No. 6 and 7 mentioned in the Postmortem Findings of the Autopsy Report[19] issued by the doctor, if inflicted individually, were fatal and would have caused instantaneous death. The doctor also opined that injuries numbered 1, 2, 3, 4 and 5 taken collectively would have likewise caused death due to loss of blood. He also prepared an anatomical diagram[20] that shows the location of the injuries sustained by the deceased. He certified in the autopsy report that the deceased, Rowell Endrinal, died due to multiple gunshot wounds.[21]

Ronan Masacupan testified that he was an employee of the National Bureau of Investigation, Manila, on 9 March 2004. He was then assigned to the Firearm Investigation Division of the NBI. His chief was Rogelio G. Munar who retired from the service in 2006. Masacupan is familiar with the signature of his chief, which signature the

former recognized on FID Report NO. 55-9-3-204 (BRO-NO-04-06).[22] Masacupan was present when Munar signed on the FID report.[23]

The defense, on the other hand, had its own version of the incident, as follows:

On February 11, 2004, Clarito Arizobal was in Fairview, Quezon City. He was then helping in the grocery business of his aunt, Bonilda Arizobal.[24] Arizobal began staying with his aunt in Fairview, Quezon City in 1997. He used to go with his relatives who work in the construction industry. In 1998, he went back to the province of Masbate to look for another work because of the poor income in Metro-Manila. After he returned to Masbate, a cousin of Arizobal, Nilo Hermosa, introduced Arizobal to former Mayor Cantila who employed Arizobal as errand boy in the former's hotel. Arizobal worked for the former mayor until 2000 when his aunt wrote him a letter instructing him to go back to Metro-Manila. His aunt wanted him to help in her grocery business.[25]

The first time Arizobal learned about the assassination of Rowell Endrinal was on the 12th or 13th of February 2004 and from his friend who had a newspaper. Arizobal saw his picture in the newspaper. He was then in Fairview, Quezon City. He read from the newspaper that he was one of the suspects who killed Rowell Endrinal. After a week from the time that he had read from the newspaper that he was a suspect, Arizobal decided to go back to former Mayor Cantila and asked him how it happened that he [Arizobal] became a suspect. Ex-Mayor Cantila told him that such things do happen even without participation. Arizobal told the Ex-Mayor that he would rather go back to Manila. Ex-Mayor Cantila prevailed upon him to stay put in the province so they could do something about the case. He stayed with Ex-Mayor Cantila until his arrest sometime in 2005 by operatives of the CIDG. The CIDG[26] operatives, a man and a woman, billeted at the hotel of Ex-Mayor Cantila. Then the woman asked for a driver because her husband was having a stomach ache. Arizobal volunteered to drive the tricycle for the "spouses guests". When they reached a drug store, there were other five (5) CIDG operatives waiting for them. The CIDG operatives arrested Arizobal. He voluntarily gave himself up to the CIDG operatives who brought him to Camp Simeon Ola in Legazpi City. Ex-Mayor Cantila visited him at Camp Ola. After four (4) days from his arrest, he was brought to the New Bilibid Prison.[27]

After trial on the merits, the trial court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, the Court hereby renders judgment finding accused Clarito Arizobal guilty beyond reasonable doubt as principal of the crime of Murder committed against the victim, Rowell Endrinal, and hereby sentences the accused to reclusion perpetua.

As regards civil liability, the Court hereby finds the accused liable to the legal heirs of the victim for the sum of PhP50,000.00 as civil indemnity plus the sum of PhP35,000.00 as actual damages, and the further sum of PhP50,000.00 as moral damages.

SO ORDERED."

Hence, the present appeal anchored on the following assignment of errors, viz:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT DESPITE THE IMPROBABLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF MURDER DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH EVIDENT PREMEDITATION.

First, the appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt because the testimonies of the prosecution witnesses are inherently improbable. Second, appellant claims that the [defense] prosecution failed to establish evident premeditation.

The Solicitor General counters that there is moral certainty that Arizobal is guilty of the crime of Murder. In fact, Dolores Raña, an eyewitness to the killing, testified that she heard five (5) successive gunshots shortly after Arizobal and John Doe left her "pansitan". She also heard someone exclaimed, "May nabaril!" She then saw Rowell lying on the ground with Arizobal firing another shot at Rowell. Raña's testimony was corroborated by Raul Guerrero. Raul testified that while hanging out at the riprap with his friends, which is a few meters away from Raña's pansitan, he saw Rowell doing his morning exercises. He also saw Arizobal squatting on another riprap at the corner of the street. After staying a few minutes at the riprap, Raul and his friends decided to leave for the basketball court at the PNR Site. At the moment, Raul saw Arizobal taking a gun from behind his back and putting it in front of him. As the group walked away from the riprap, Raul heard multiple gunshots. Raul looked back and saw Arizobal and another man running past them, with Arizobal trying to conceal a gun by hiding it in front of him. More importantly, appellant was positively identified by the prosecution witnesses, hence, the latter's testimony cannot be simply discredited by appellant's mere denial and alibi.

The first assigned error basically involves a determination of the credibility of the prosecution witnesses.

Settled is the rule that when it comes to credibility of witnesses, appellate courts generally do not overturn the findings of trial courts. The latter are in a best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, demeanor and behavior in court.[28] We see no reason to deviate from this rule.

Appellant's bid to exonerate himself by attempting to destroy the credibility of the prosecution witnesses is without merit. The prosecution witnesses' accounts of the incident are straightforward and categorical. Dolores Raña testified thus:

"FISCAL LIBAN:

Q

-

If you still remember at about 5:45 in the morning, did you have customers then?

A

-

There were many, sir.

Q

-

Whom do you remember as your customers, if you still remember on February 11, 2004?

A

-

Yes, sir, I remember there were two (2) persons there, Arizobal and the other person whom I was not able to recall.

FISCAL LIBAN:

May I manifest in the course of her testimony she was pointing to somebody in the Courtroom and saying "yon". And may we ask the Court to direct that person to supply as (sic) the name.

THE COURT:

You just ask her. (sic)

FISCAL LIBAN:

Yes, your Honor. But may we put on record that she was referring to somebody in the Courtroom as "yon".

FISCAL LIBAN:

You said earlier when you ask the customers were at the date, time and place I asked (sic) you said "yon" to whom are you referring to when you said "yon"?

THE COURT INTERPRETER:

The witness pointing a person whose (sic) sitting on the bench who introduced himself as Clarito Arizobal.

FISCAL LIBAN:

Q

-

After a while after they order pancit ordered from you pancit, (sic) what did you do?

A

-

They were two (2) who ate there, only Clarito Arizobal and other person. The other person was not able to finish his food while Clarito Arizobal was able to finish his food.

Q

-

After finishing his food what did you see Clarito Arizobal do if at all you saw him doing anything?

A

-

I saw him left and while I was attending to other customers, I heard gunshots report, sir.

Q

-

How many gun reports (sic) did you hear?

A

-

I heard five (5) and it was then that I was able to look in that direction and it was then that I saw him pointing a gun to a person and it was then that I heard the final shot, sir.

Q

-

How far was Clarito Arizobal when you saw him shooting at another?

A

-

Around fifteen (15) to twenty (20) meters away from me, sir.

Q

-

What was the condition of the light at about that time that you saw Clarito Arizobal doing this?

A

-

There was no light but it was already morning and it was already clear.

Q

-

What was the position of the person who was shot by Clarito Arizobal?

A

-

I saw him he was already lying prostrate on the floor.

Q

-

After you saw Clarito Arizobal shoot this person whom you saw was lying prostrate on the ground, what did Clarito Arizobal do afterwards?

A

-

I saw him loaded magazine in his gun, sir, and afterwards he left that person sir, he even pass by my place and he just walking, (sic) sir.

Q

-

What distinctly do you remember Clarito Arizobal did when he passed by your place?

A

-

He just glance at me, sir.

Q

-

You mean your eyes met?

A

-

Yes, sir."[29]

To corroborate the testimony of Dolores Raña, another witness for the prosecution, Raul Guerrero, narrated the events that transpired in that fateful hour of 5:55 o'clock in the morning of February 11, 2004, thus:

"FISCAL LIBAN:

Q

-

Why were you not able to play basketball at that time?

A

-

Because there were no players at that time, sir.

Q

-

Since there were no players at that time you were not able to play basketball, what did you decide to do?

THE COURT:

By the way, what time was this?

FISCAL LIBAN:

Q

-

What time was this?

A

-

At 5:55 in the morning, sir.

Q

-

What did you decide to do when you were not able to play basketball since there were no players as you said?

A

-

I went to Oro Site, sir.

Q

-

Who went with you if any in going to Oro Site?

A

-

Mark Santiago, sir.

Q

-

Who else?

A

-

Marcelo Segara, Jake Betis, Rolly Basarbe and Boboy, sir.

Q

-

Where did you meet these persons anyway?

A

-

I met them at the Oro Site, sir.

Q

-

No, on that day, on February 11, 2004 at 5:55, where did you meet these persons?

A

-

At PNR Site, sir.

Q

-

So you have decided to go to Oro Site, in deciding to go there, what road or path did you decide to take in going from PNR to Oro Site?

A

-

Railroad tracks, sir.

x x x

Q

-

What did you do while on the way to Oro Site thru the railroad tracks, if any?

A

-

We were supposed to buy bread, sir.

Q

-

Where were you intending to buy bread?

A

-

In "pansitan", sir.

Q

-

You intended to buy bread in "pansitan". Now, whose "pansitan" is this, if you know?

A

-

Dolores Raña, sir.

Q

-

Do you know this Dolores Raña by name and by face?

A

-

Yes, sir.

Q

-

Why do you know her?

A

-

She is the "kumare" of my mother, sir.

Q

-

You said you intended to buy bread at the "pansitan" of Dolores Raña. Now, were you able to buy bread at the "pansitan" of Dolores Raña?

A

-

No, sir.

Q

-

Why were you not able to buy bread?

A

-

Because there were two male persons looked at us, sir.

Q

-

What were these two men doing, if you know?

A

-

They were eating pansit, sir.

Q

-

You said they looked at you, that was the reason why you did not buy bread. What was in their looks that cause you not to buy bread?

A

-

They looked at us differently, sir.

Q

-

What do you mean when you say differently?

A

-

"Masama yung tingin nila sa amin."

Q

-

Now when you noticed that these two men were "masama ang tingin sa inyo", what did you decide to do instead?

A

-

We just continue our direction, sir, and we hanged there, sir.

Q

-

Where did you stand by?

A

-

Riprap, sir.

Q

-

For the information of the Honorable Court, what is a riprap?

A

-

Pertaining to cement dike, sir.

Q

-

How far was this from the pansitan of Aling Dolores? Okay, from the place where you are sitting, how far is the riprap?

A

-

The distance of about ten (10) meters, sir.

Q

-

Now what were your positions while at the riprap? Were you standing at the riprap or were you sitting?

A

-

We were seated, sir.

Q

-

And what direction were you facing when you were seated at the riprap?

A

-

We were facing at the direction of the "pansitan", sir.

x x x

Q

-

Whom did you notice if you noticed anybody at all?

A

-

I noticed a stranger in the place, in the riprap, in front of us, sir.

Q

-

To be clear, where was this stranger sitting when you saw him?

A

-

At the corner of the street, sir.

x x x

Q

-

While you were sitting at the riprap, you noticed this stranger and who was also sitting in a squatting position at the street, who else did you notice around other than that stranger?

A

-

The two male persons on a motorcycle, sir.

Q

-

And how far were they from where you were sitting at the riprap?

A

-

They were far, sir.

x x x

Q

-

Aside from these two motorcycle riding men, who else did you notice around at that time?

A

-

No other, sir.

x x x

Q

-

If you know, do you know one person by the name Rowell Endrinal?

THE COURT:

Witness may answer.

A

-

Yes, sir, he is "Guapo".

x x x

Q

-

On February 11, 2004, have you had the occasion to see Guapo"?

A

-

Yes, sir.

Q

-

And where did you see him?

A

-

Behind us, sir.

Q

-

What do you mean behind us?

A

-

He was behind us exercising, sir.

Q

-

He was behind you when you were seated in the riprap, is that what you mean?

x x x

A

-

Yes, sir.

x x x

Q

-

Since he was behind you, how were you able to see him and in fact saw him exercising?

A

-

Because we looked that direction, sir, and it was there that we saw him, sir.

Q

-

Now you said you stayed there for a few minutes at the riprap, you were able to see two men on a motorcycle, you were able to see Guapo exercising. What did you decide to do after a few minutes at the riprap?

A

-

We went back at the basketball court of the PNR Site, sir.

Q

-

You proceeded to return to PNR Site to play basketball?

A

-

Yes, sir.

Q

-

When you were about to leave or while you were walking away already, what happened if anything happened?

A

-

We heard multiple gunshots, sir.

Q

-

You heard it personally?

A

-

Yes, sir.

Q

-

How many gunshots did you hear?

A

-

Three, sir.

Q

-

And when you heard those gunshots, what did you do?

A

-

"Bago kami umalis, napatingin kami sa lalaki, bumunot siya. Nilagay nya yung baril sa harapan nya galing sa likod."

Q

-

Okay, for clarity, you are referring to the man who was seated on the street?

A

-

Yes, sir.

x x x

Q

-

You said you saw him draw a gun from his back and placed it in front. How did you know that it was a gun?

A

-

Because I saw it, sir.

Q

-

Did you know what kind of gun was that?

A

-

Yes, sir.

Q

-

What kind of gun was that?

A

-

A 45, sir.

Q

-

Now, did this happen before the gunshots or after?

A

-

Before I heard the gunshots, sir.

Q

-

Now, we go to the point where you heard gunshots. When you heard the gunshots what direction did you look at?

A

-

We looked back from where we were seated, sir.

Q

-

And what did you see?

A

-

We saw two men running, sir, passing us by and they were somewhat trying to hide the gun in placing in front of them.

Q

-

You said you saw two men running passed you or passing you by after you heard gunshots, did you recognize these two men?

A

-

Only one, sir, the one eating in the "Pansitan".

x x x

FISCAL LIBAN:

Q

-

You said a while ago that two men passed by you, running. Okay, I asked you, if you recognized any of these two men?

A

-

Yes, sir.

Q

-

And who were these two men that then passed you?

A

-

One of them, sir, was eating the pansit, sir.

Q

-

How about the other one?

A

-

The one at the corner seated at the riprap, sir.

Q

-

When you say the person at the riprap you are referring to the same person who tried to transfer his gun who was seated on the street?

A

-

Yes, sir.

Q

-

Now, you said a while ago that one of the two men was trying to conceal something in his shirt?

A

-

Yes, sir.

Q

-

Okay, who of the two was trying to conceal something?

A

-

The one seated on the corner of the riprap, sir.

Q

-

Since you recognized these two persons, would you be able to recognize them again if you will be given a chance?

A

-

Yes, sir.

Q

-

First we go to a person whom you saw at the "pansitan" who was eating and who passed you by. Take a look

around at the court room and tell us if you see him here now?

THE COURT:

Who was here?

A

-

The one who was seated at the corner of the riprap, sir.

FISCAL LIBAN:

So he is here, can you please point him to us if he is around?

A

-

He is, sir.

Q

-

Top (sic) him on his shoulder?

(Witness pointing to a person who identified himself as Clarito Arizobal.)"[30]

Despite relentless cross-examination, Dolores and Raul never wavered in the material details of their respective testimony. Hence, the trial court is correct in holding that "(H)ere, there is no doubt that the fact of the crime exists given the affirmative and credible declaration of the witnesses for the prosecution about its occurrence. These testimonies are corroborated by the testimony of the NBI doctor who conducted the autopsy of the deceased as well as the ballistic report." No evil motive has been imputed against these prosecution witnesses for testifying against appellant.

Settled is the rule that where there is no evidence, as in this case, to indicate that the prosecution witnesses were actuated by improper motive, the presumption is that they are not so actuated and that their testimonies are entitled to full faith and credit.[31] Also, jurisprudence holds that if an accused had really nothing to do with a crime, it would be against the natural order of events and of human nature, and against the presumption of good faith, that a prosecution witness would falsely testify against him.[32] Furthermore, it is unlikely that these witnesses could relate all the details of the crime with clarity and lucidity if they had not actually witnessed the killing of Rowell Endrinal.

Anent the second assignment of error – i.e., that the prosecution failed to establish evident premeditation, we sustain the trial court's holding that the killing of Rowell Endrinal was qualified by the aggravating circumstance of evident premeditation.

The elements of evident premeditation are: (1) a previous decision by the appellant to commit the crime; (2) an overt act/acts manifestly indicating that the appellant clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution sufficient to allow appellant to reflect upon the consequences of his acts.[33] Here, we find that all the foregoing elements are present.

In holding that the killing of Rowell Endrinal was attended by evident premeditation, the trial court rationalized,

and we agree, that the evidence of the prosecution establishes the fact that prior to the day of the shooting of Rowell Endrinal, the gunman and his companions frequented PNR Site. These frequent visits, about four (4) times, were noticed by Dolores Raña as she went about vending pancit for breakfast. The frequent visits made by the gunman and his companions unmistakably indicate that the gunman conducted surveillance of the place of the execution of the planned assassination and that he was casing the target of the assassination. The purpose of surveillance or casing is to determine the pattern of movements of the target of assassination and to spot his weak points or vulnerability as to ensure the execution of an assassination. The frequent visits therefore show that the gunman-assailant took time and persisted in the achievement of a purpose, that is, to kill Rowell Endrinal. Thus, there is more than sufficient evidence that establishes the killing of Rowell Endrinal as a well-planned or evidently premeditated act on the part of the gunman and his unidentified cohorts.

On the appellant's defenses of alibi and denial, suffice it to say, that said defenses cannot prevail over the positive identification by the eyewitnesses who had no improper motive to falsely testify against him.[34] It is negative and self-serving, and cannot be given greater evidentiary weight over the testimonies of credible witnesses who testified on affirmative matters.[35] On top of their inherent weakness, alibi and denial become less plausible as defenses when they are not corroborated by any defense witness, as in the present case.[36]

The trial court sentenced appellant to suffer the penalty of reclusion perpetua. Under Article 248 of the Revised Penal Code, as amended by Section 16, Republic Act No. 7659, the penalty for murder is reclusion perpetua to death. The presence of the aggravating circumstance of evident premeditation qualifies the killing to murder. There being no aggravating or mitigating circumstance present, the imposition of reclusion perpetua, pursuant to Article 63, paragraph 2 of the Revised Penal Code, is correct.

As to damages, when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victims; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[37]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[38] We affirm, the award of civil indemnity given by the trial court in the amount of P50,000.00. Under the prevailing jurisprudence, the award of P50,000.00 as civil indemnity to be paid to the heirs of the victim is in order.[39]

As to actual damages, we affirm the award given by the trial court to the heirs of the victim in the amount of PhP35,000.00 as proven by receipts. Additionally, the heirs of the victim are entitled to temperate damages in the amount of P25,000.00. The award of P25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[40] Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved.[41]

Anent moral damages, the same are mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victims.[42] Therefore, we affirm the trial court's award of P50,000.00 as moral damages to be given to the heirs of the victim.

The heirs of the victim are also entitled to exemplary damages in the amount of P25,000.00, since the qualifying circumstance of evident premeditation was firmly established.[43]

WHEREFORE, the present appeal is DENIED. The Judgment dated 26 November 2012 of the Regional Trial Court of Legazpi City, Branch 3, in Criminal Case No. 19336 is AFFIRMED with MODIFICATION.

In addition to the damages awarded by the trial court, We deemed it proper to award temperate damages to the

heirs of the victim in the amount of P25,000.00 and exemplary damages in the amount of P25,000.00.

Costs de officio.

SO ORDERED.

Ybañez, E.A.[**] and Sorongon, E.D., JJ., concur.

[*] Vice J. Carandang as per Office Order No. 485-14-RSF dated November 24, 2014.

[**] As per office Order no. 485-14-RSF dated November 24, 2014.

[1] Penned by Judge Frank E. Lobrigo.

[2] Art. 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 with 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. x x x 5. With evident premeditation. x x x

[3] Rollo, p. 8.

[4] G.R. Nos. 135051-52, 4 December 2000.

[5] Judgment, paragraphs 3 & 4, p. 2.

[6] See Order at p. 72, Original Record.

[7] T.S.N., June 15, 2007; August 17, 2007.

[8] Ibid.

[9] An ammunition cartridge which Dolores Raña learned from a neighbor [Daet] who is a gunsmith.

[10] T.S.N., June 15, 2007; August 17, 2007.

[11] Criminal Investigation and Detection Group

[12] Exhibit "A".

[13] T.S.N., June 15, 2007.

[14] T.S.N., February 8, 2008.

[15] Ibid.

[16] Exhibit "C".

[17] T.S.N., February 8, 2008.

[18] T.S.N., 25 April 2008.

[19] Exhibit "K".

[20] Exhibit "L".

[21] T.S.N., 22 May 2009.

[22] Exhibit "O".

[23] T.S.N., 14 August 2009.

[24] T.S.N., 17 June 2011.

[25] Id.

[26] Crime Investigation and Detection Group of the Philippine National Police

[27] T.S.N., 17 June 2011.

[28] *People v. Simon, et al.*, G.R. No. 130531, May 27, 2004, 429 SCRA 330, citing *People v. Ave*, 391 SCRA 225.

[29] T.S.N., June 15, 2007, pp. 7-11.

[30] T.S.N., February 8, 2008, pp. 8-20.

[31] *People v. Simon*, G.R. No. 130531, May 27, 2004, 429 SCRA 330, citing *People v. Zuniega*, G.R. No. 126117, February 21, 2001, 352 SCRA 403.

[32] Id., citing *People v. Villamor*, 292 SCRA 384, 395 (1998).

[33] *People v. Garcia*, G.R. No. 153591, February 23, 2004, 423 SCRA 583.

[34] *People v. Abatayo*, G.R. No. 139456, July 7, 2004, 433 SCRA 562.

[35] Id., citing *People v. Acala*, 307 SCRA 330 (1999).

[36] *People v. Datingginoo*, 223 SCRA 331 (1993).

[37] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 740.

[38] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.

[39] *People v. Pascual*, G.R. No. 173309, 23 January 2007, 512 SCRA 385, 400.

[40] *People v. Dacillo*, G.R. No. 149348, 14 April 2004, 427 SCRA 528, 538.

[41] *People v. Surongon*, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.

[42] *People v. Bajar*, 460 Phil. 683, 700 (2003).

[43] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 740.

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