

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO JUMAWAN ALIAS “KIKO”; CESARIO
JUMAWAN ALIAS “SARIO”; MANUEL JUMAWAN ALIAS
“OWEL”; AND PRESENTACION JUMAWAN--MAGN...**

G.R. No. L-50905. September 23, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

On the basis of a written statement made by Vicente Recepeda on July 18, 1976, and an affidavit executed by Trinidad Alcantara on July 19, 1976, a complaint for murder was filed in the Municipal Court of Sariaya, Quezon, on July 19, 1976, by Station Commander Sisenando P. Alcantara, Jr. against Francisco Jumawan, Cesario Jumawan, Manuel Jumawan and Presentacion Jumawan for the death of Rodolfo Magnaye.

The affidavit of Trinidad Alcantara clearly states that her son Rodolfo Magnaye was married to Presentacion Jumawan albeit they had been living separately from each other. (During the trial Presentacion admitted her marriage to Rodolfo. See t.s.n., pp. 811-812.) The Station Commander can perhaps be excused for not accusing Presentacion of parricide but when the case was elevated to the Court of First Instance of Quezon where it was docketed as Criminal Case No. 1408, the Provincial Fiscal perpetuated the mistake by filing an information for murder against all the accused. The information reads:

"The undersigned Provincial Fiscal accuses CESARIO JUMAWAN alias ' Sario', MANUEL JUMA-WAN alias ' Owel', FRANCISCO JUMAWAN alias ' Kiko' and PRESENTACION JUMAWAN alias 'ESEN' of the crime of murder, defined and punished under Article 248 of the Revised Penal Code, committed as follows:

"That on or about the 19th day of June 1976, in the Municipality of Sariaya, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo (gulukan), conspiring and confederating together and mutually helping one another, with intent to kill and with evident premeditation and treachery, taking advantage of their superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said bolo one Rodolfo Magnaye alias ' Digo', thereby inflicting upon the latter a stab wound on the chest, which directly caused his death."

After a long trial and 1,211 pages of stenographic transcript, the trial court rendered the following judgment:

"Wherefore, the Court finds Cesario Jumawan, Presentacion Jumawan-Magnaye, Manuel Jumawan, and Francisco Jumawan guilty as principals beyond reasonable doubt of the crime of Murder as defined and punished under Art. 248 of the Revised Penal Code and hereby sentences each of them to suffer a penalty of life imprisonment and to indemnify jointly and severally the parents of the victim in the amount of Twenty-four Thousand (P24 ,000.00) Pesos."

The case is now before this Court on appeal.

The brief of the appellants gives the following:

"STATEMENT OF FACTS

The Accused:

Francisco Jumawan is the father of his co-accused, namely, Cesario Jumawan, Manuel Jumawan and Presentacion Jumawan.

Presentacion Jumawan was married to Rodolfo Magnaye.

Death of Rodolfo Magnaye:

As described by the lower court, 'x x x when Rodolfo Magnaye did not return home in (that) evening of 19 June 1976, his mother (Trinidad Alcantara) went to the public market to look for him on the following day. She met four (4) children who told her that they saw a man near the water. They accompanied her to the place and she recognized the dead man as her son Rodolfo Magnaye. She then proceeded to the police headquarters to report the matter. x x' (page 5, Judgment).

For the death of Rodolfo Magnaye, the accused stand charged of the crime of MURDER."

The People's brief, on the other hand, merely reproduces the trial court's findings of facts as follows:

"It appears from the evidence adduced during the trial that Rodolfo Magnaye was married on 26 January 1974 to Presentacion Jumawan, one of the accused in the above entitled criminal case. Pre-sentacion Jumawan-Magnaye left the conjugal home and stayed with her sister Sebastiana Jumawan. Rodolfo Magnaye, on the other hand, went and stayed with his mother Trinidad Alcantara.

"The mother of Mrs. Presentacion Jumawan--Magnaye made several attempts to secure the signature of Rodolfo Magnaye on a document agreeing to a separation from his wife so that both he and his wife will be free to marry again but Rodolfo Magnaye persisted in refusing to sign said document.

"On one occasion the mother of Mrs. Presentacion Jumawan-Magnaye even brought Rodolfo Magnaye and his mother to the Provincial Constabulary Com-mand to ask for the assistance of Sgt. Mortilla to assist her daughter in securing a separation from Rodolfo Magnaye but they were told by Sgt. Mortilla that it cannot be legally done.

"Between 5:00 and 6:00 o'clock in the afternoon of 19 June 1976 while Trinidad Alcantara was in her house, her son Rodolfo Magnaye was dressing up and told her that he was going to the public market because his wife asked him to fetch her. He asked his mother to prepare food because they are going to talk about their lives. He left home at about 6:00 o'clock in the evening.

"At about 9:30 o'clock in the evening of 19 June 1976 one Mr. Vicente Recepeda came from the Aglipayan fiesta in Sariaya, Quezon and after eating at the Sariling Atin eating place he went to the former BLTB station at Sariaya, Quezon. While he was in front of the public market on the way to the former BLTB station he heard the noise of pigs being butchered and being in the business of buying pigs and chicken he went to the direction of [the] slaughter house to inquire about the prices of pigs and chicken.

"Before reaching the slaughter house he heard the noise (sic) of a person being attacked by three (3) persons and a woman inside a store which was lighted. He saw accused Francisco Jumawan holding the hands of Rodolfo Magnaye while accused Manuel Jumawan was behind Rodolfo Magnaye with his arm around the neck of Rodolfo Magnaye while Cesario Jumawan was in front of Rodolfo Magnaye with his left hand holding the collar of Rodolfo Magnaye and in his right hand he was holding a small pointed bolo with which he stabbed Rodolfo Magnaye below the right nipple.

"At about 11:00 o'clock in that evening a certain Mr. Policarpio Trinidad who also came from the Aglipayan fiesta in Sariaya, Quezon was waiting in front of a gasoline station across the old station of the BLTB waiting

for a ride home when he saw Cesario Jumawan and Manuel Jumawan with Rodolfo Magnaye between them while they were crossing the national highway towards the south to a road opposite the Emil Welding Shop. They went on walking after crossing the highway. At that time the head of Rodolfo Magnaye was bowed in front while his two (2) arms were on the shoulder of Cesario and Manuel Jumawan. Rodolfo Magnaye was not walking.

"At about 11:45 o'clock in the evening of 19 June 1976 Presentacion Jumawan-Magnaye reported to Patrolman Marcial Baera and Patrolman Albufera that the store of Bastiana (Sebastiana) Jumawan where she works is threatened to be robbed by Rodolfo Magnaye. When asked by Patrolman Baera, Presentacion Jumawan-Magnaye denied being related to Rodolfo Magnaye. He went to investigate the reported attempt to rob the store of Sebastiana Jumawan and he saw one of the panels used to close the store was destroyed but nothing appears to have been taken from the store.

" Presentacion Jumawan-Magnaye and her companions Tita Dañez and Anabelle Jumawan told Patrolman Baera that they will file charges against Rodolfo Magnaye. Patrolman Baera entered the report of Presentacion Jumawan--Magnaye in the police record book.

"When Rodolfo Magnaye did not return home in that evening of 19 June 1976, his mother (Trinidad Alcantara) went to the public market to look for him on the following day. She met four (4) children who told her that they saw a man near the water. They accompanied her to the place and she recognized the dead man as her son Rodolfo Magnaye. She then proceeded to the police headquarters to report the matter.

"The two Patrolmen Baera and Albufera went to the place and they saw the dead man without a shirt and wearing black pants with white shoes. They noticed a stab wound on the lower portion of the right breast. The dead man was lying face up.

"In the afternoon of the same day Patrolman Loreto Galeon went to the store of Sebastiana Jumawan located at the public market of Sariaya to follow up the investigation of the reported attempted robbery case against Magnaye. He asked the storekeeper for permission to look at the wood panels which are used to close the store. He found traces of blood in one of the wooden panels. He reported what he saw to Sgt. Labitigan when he returned to the police headquarters.

"The following day he was ordered by the chief of police to look again at the wooden panel with traces of blood but he saw that the wooden panels were already planed (' kinatam') and the traces of blood could no longer be seen.

"On 23 June 1976, Patrolman Rodrigo Cedonio was ordered to look for Tita Dañez in Barrio Mamala, Sariaya, Quezon because Tita Dañez was allegedly in the store at the time of the alleged attempted robbery and at the time Rodolfo Magnaye was allegedly killed.

"Patrolman Cedonio was informed by the mother of Tita Dañez that she had not gone to her home at barrio Mamala. She accompanied Patrolman Cedonio in trying to locate Tita Dañez. They first went to the store of Sebastiana Jumawan which turned out to be closed on that day. They then went at Muntingbayan, Tayabas, Quezon where they were able to find Tita Dañez together with Francisco Jumawan, Bienvenido Jumawan and Rosita Abratiga.

"Mr. Cesario Jumawan, one of the accused in the above entitled criminal case and a brother-in-law of the victim, set up the defense of alibi when he testified that between 3:00 and 4:00 o'clock in the afternoon of 19 June 1976 he was at Barrio Sampaloc, Sariaya, Quezon which is more or less three (3) kilometers away from the poblacion of Sariaya, Quezon. He went home to Barrio Pili of the same town early in the afternoon of the following day. He did not go anywhere else since 3:00 to 4:00 o'clock in the afternoon of 19 June 1976 up to and until he returned to Barrio Pili.

"Mr. Manuel Jumawan, another accused in the above entitled criminal case who is also a brother-in-law of the

victim, likewise set up the defense of alibi when he testified that on 19 June 1976 he was in his house at Barrio Pili, Sariaya, Quezon which is about five (5) kilometers from the poblacion of Sariaya, Quezon. He went to bed at about 7:00 o'clock in the evening of 19 June 1976. He woke up at about 6:30 o'clock in the morning.

"He further claims that he suffers from an abnormality of the left arm which he cannot raise in a normal way and that he was suffering from said disability since childhood when he fell from a cow continuously up to the present.

"Said accused presented a medical certificate, Exhibit 7, issued by Dr. Concepcion dela Merced, a radiologist of the National Orthopedic Hospital certifying to the fact that Manuel Jumawan is negative for fracture dislocation and that he suffers from a deformity of the proximal and left humerus probably from a previous fracture. There is no showing that Manuel Jumawan is incapable of raising his left arm around the neck of Rodolfo Magnaye whose actual height was not established by the evidence nor was Dr. Concepcion dela Merced presented to testify on her findings.

" Presentacion Jumawan-Magnaye claims that in the evening of 19 June 1976 she was in the store of Sebastiana Jumawan together with Anabelle Jumawan and Tita Dañez when she heard a person who wanted to enter the store. She shouted 'thieves' (' magnanakaw'). In response to her shouts several people arrived and chased the person who wanted to enter the store. She then went to the house of Sebastiana Jumawan where hats are being made and where her father Francisco Jumawan was staying that night.

"While she was in the house where her father was staying, their adjoining neighbor, a certain Mateo Diamante informed her that the person being chased by several men was Rodolfo Magnaye. She, however, did not talk with any of the persons who chased her husband nor does she know any of them. She then went with her father, Francisco Jumawan, to report the matter to the police whom they met at the Filipina Restaurant.

"While Presentacion Jumawan-Magnaye gave the name of Rodolfo Magnaye as the suspect in the attempted robbery, she did not reveal to the investigating policemen that he was her husband even if she was asked why they knew his name, neither did she inform the police that her husband was chased by several persons nor did she give the direction where her husband supposedly ran.

"The two policemen, Patrolmen Baera and Albufera, actually went to the store of Sebastiana Jumawan and after looking at the store, these two patrolmen told Presentacion Jumawan-Magnaye that because nothing happened they will continue the investigation on the next day.

"None of those who allegedly chased her husband that evening was even presented as a witness.

"Mr. Francisco Jumawan, who is the father of his three (3) other co-accused, likewise set up the defense of alibi when he testified that in the evening of 19 June 1976 at about 8:00 o'clock more or less he was alone in the house of Sebastiana Jumawan situated near the former garage of the BLTB in Sariaya, Quezon and that he was awakened only when his daughter Presentacion woke him up to tell him that someone was trying to enter the store of Sebastiana Jumawan."

In a brief which is more noteworthy for legal rhetoric rather than a critical analysis of the evidence, the appellants claim that the trial court committed the following errors:

"THE LOWER COURT ERRED IN NOT FOCUSING OBJECTIVELY AND IMPARTIALLY THE EVIDENCE FOR THE PROSECUTION EVEN AS IT FOCUSED SUBJECTIVELY AND UNFAIRLY ON SUPPOSED WEAKNESS OF THE EVIDENCE FOR THE DEFENSE.

"THE CONSTITUTIONAL GUARANTEE THAT THE ACCUSED ARE PRESUMED INNOCENT OF THE CRIME CHARGED AND ARE ENTITLED TO A RIGHT TO A DAY IN COURT CANNOT BE OVERTURNED BY THE DOCTRINE THAT APPELLATE COURTS ARE NOT PRONE TO DISTURB THE FINDINGS OF THE TRIAL COURT WITH RESPECT TO THE CREDIBILITY OF WITNESSES.

"THE LOWER COURT ERRED IN NOT FINDING AND TAKING INTO SERIOUS ACCOUNT THE FATAL WEAKNESSES OF THE EVIDENCE FOR THE PROSECUTION IN TERMS OF IMPRO-BABILITIES, GROSS INCONSISTENCIES AND IRRECONCILABLE CONTRADICTIONS.

"THE LOWER COURT ERRED IN GIVING CREDIT AND CREDENCE TO THE TESTIMONIES OF THE STAR PROSECUTION WITNESS CONSIDERING THE GLARING WEAKNESS THEREOF, EVEN AS THE LOWER COURT CONVENIENTLY DENIED THE DEFENSE REASONABLE OPPORTUNITY OF THE PROSECUTION WITNESSES.

"THE LOWER COURT ERRED IN ITS ERRONEOUS APPROACH TO AND APPLICATION OF THE PRINCIPLES CONCERNING THE DEFENSE OF ALIBI IN THE CASE AT BAR. SPECIALLY IN THE LIGHT OF THE FACT THAT THERE WAS NO POSITIVE IDENTIFICATION OF ACCUSED AND ALSO THAT THE PROSECUTION FAILED TO EFFECTIVELY REBUT THE DEFENSES OF ALIBI WHICH WOULD HAVE BEEN EASY TO DO IF SUCH DEFENSES WERE REALLY CONCOCTIONS."

The foregoing assignment of errors can be reduced to the simple proposition whether the evidence against the accused, independent of their alibis, has overcome the presumption of innocence in their favor and created a moral certainty as to their guilt.

Except for Vicente Recepeda and Policarpio Trinidad, the appellants do not question the credibility of the witnesses for the prosecution. Hence, the testimony of these witnesses deserves scrutiny.

Vicente Recepeda was 67 years old, jobless and a resident of Lucena City when he first testified on April 29, 1977. He testified that on June 19, 1976, he went to Sariaya, Quezon, to attend the Aglipayan fiesta; he arrived there at about 5:00 o'clock and thereafter did the following: listened to the music and singing, went to the Aglipayan church and the "perya," ate at a restaurant, and walked to the public market where there was a former BLTB station. While he was waiting for a trip to Lucena, he heard the shriek of pigs being killed so he walked toward the butchers for the purpose of asking the price of pigs since he was then engaged in the business of buying and selling pigs. In fact, at one time Rodolfo Magnaye, the deceased, tied the feet of a pig which he had bought. He was not able to talk to the butchers because an unusual event intervened which in his own words was:

"Q. At about 9:30 o'clock in the evening of June 19, 1976, do you remember where were you?

A. Yes sir.

Q. Where were you on that particular date and hour?

A. I was in the public market of Sariaya, Quezon, sir.

Q. While you were in the market of Sariaya, Quezon, on that particular date and hour, do you remember if there was any unusual incident that you witnessed?

A. There was, sir.

Q. What was that unusual incident that happened on that particular place and hour?

A. I saw a person being attacked by three persons, sir.

Q. What else did you see there on that particular occasion, aside from a person being attacked by three persons?

A. There was a woman who ordered the three persons to stab and kill the person being attacked by these three persons, sir.

Q. Where in particular in the public market of Sariaya, Quezon did you see this incident happen?

A. Inside the store within the public market of Sariaya, Quezon, sir.

Q. Did you recognize, or did you come to know these three persons whom you said were inside the store within the public market of Sariaya, Quezon at about 9:30 o'clock in the evening of June 19, 1976?

A. I recognize their faces, sir.

Q. Did you come to know their names later on?

A. Yes sir.

Q. What is the name of the woman whom you said was there on that particular occasion?

A. Presentacion Jumawan, sir.

Q. If you will see that Presentacion Jumawan again, will you be able to identify her?

A. Yes, sir.

Q. Will you please look around the courtroom and point to Presentacion Jumawan if she is here.

A. She is here sir.

Q. Please point her out to this Honorable Court.

A. That one sir.

ATTY. ALCALA:

May we respectfully ask if your honor please that the person pointed to by the witness identify herself.

COURT:

Ask the person to identify herself.

INTERPRETER:

What is your name?

A. Presentacion Jumawan.

INTERPRETER:

The person pointed to by the witness your honor, identified herself as Presentacion Jumawan.

ATTY. ALCALA:

And what is the name of the person whom you said was being attacked by the three men on that particular occasion inside the store?

A. Rodolfo Magnaye, sir.

Q. And what are the names of the three persons attacking Rodolfo Magnaye, will you please state it before this Honorable Court?

A. Yes, sir, one is Francisco Jumawan, Manuel Jumawan and the other one is Cesario Jumawan.

Q. That Francisco Jumawan whom you said was one of the persons attacking Rodolfo Magnaye, on that particular occasion, will you be able to recognize him if you will see him again?

A. Yes, sir.

Q. If this Francisco Jumawan is inside the courtroom, will you please point him out before this Honorable Court?

A. Yes, sir.

Q. Please do so.

A. That one sir.

ATTY. ALCALA:

Your honor please may we ask that the person pointed to by the witness identify himself.

COURT:

Ask the identity of the person pointed to by the witness.

INTERPRETER:

What is your name?

A. Francisco Jumawan.

INTERPRETER:

The person pointed to by the witness your honor identify himself as Francisco Jumawan.

Q. And that person whom you said the name as Manuel Jumawan will you be able to recognize him if you will see him again?

A. Yes, sir.

Q. Please look around the courtroom and point out to this Honorable Court if Manuel Jumawan is here inside the courtroom.

A. Yes, sir, that one.

ATTY. ALCALA:

May we ask Your Honor that the person pointed to by the witness be made to identify himself.

COURT:

Ask the person pointed to by the witness to identify himself.

INTERPRETER:

What is your name?

A. Manuel Jumawan.

INTERPRETER:

The person pointed to by the witness Your Honor identified himself as Manuel Jumawan.

Q. And that person whom you mentioned is named Cesario Jumawan, will you be able to identify him if you will see him again?

A. Yes, sir.

Q. Please look around the courtroom and point to this Honorable Court the person whom you said is Cesario

Jumawan.

A. That one sir.

ATTY. ALCALA:

May we request your honor that the person pointed to by the witness identify himself.

COURT:

Ask the person pointed to by the witness to identify himself.

INTERPRETER:

What is your name?

A. Cesario Jumawan.

INTERPRETER:

The person pointed to by the witness identify himself as Cesario Jumawan, Your Honor.

Q. that occasion what was Francisco Jumawan doing at that time you saw him?

A. was standing besides Rodolfo Magnaye and holding his hands.

Q. Who was holding his hands?

A. Francisco Jumawan was holding the hands of Rodolfo Magnaye, sir.

Q. How about Manuel Jumawan, what was he doing?

A. Manuel Jumawan was at the back of Rodolfo Magnaye with his arm around the neck of Rodolfo Magnaye, sir.

Q. How about Cesario Jumawan, what was he doing on that particular occasion?

A. He was in front of Rodolfo Magnaye, his left hand is holding the collar of Rodolfo Magnaye and his right hand holding a bolo, sir.

Q. How about Presentacion Jumawan, what was she doing on that particular occasion?

A. She was standing inside the store ordering the three persons to stab and kill Rodolfo Magnaye, sir.

Q. What happened when Presentacion Jumawan give that order?

A. Rodolfo Magnaye was stabbed, sir.

Q. Who stabbed Rodolfo Magnaye on that occasion?

A. Cesario Jumawan, sir.

Q. At that time that Cesario Jumawan stabbed Rodolfo Magnaye on that particular occasion, what were Francisco Jumawan and Manuel Jumawan doing?

A. Francisco Jumawan was holding the hands of Rodolfo Magnaye with his arms around the neck of Rodolfo Magnaye, sir.

Q. What happened to Rodolfo Magnaye when he was stabbed by Cesario Jumawan on that occasion?

A. He was hit by the stab, sir.

Q. Where was Rodolfo Magnaye hit by the stab of Cesario Jumawan on that occasion?

A. Under the right nipple, sir. Below the right nipple.

Q. What did Rodolfo Magnaye do on that particular occasion after he was hit?

A. He said, why did you stab me.

Q. What did you do after that?

A. I left, sir.

Q. While you were walking away did you hear anything?

A. Yes, sir.

Q. What did you hear?

A. A voice of a woman shouting, thief, thief.

Q. What did you do when you heard the shout of a woman?

A. I hurriedly walked away, sir.

Q. Did you finally came to know what happened to Rodolfo Magnaye as a result of that incident?

A. Yes, sir.

Q. What happened to him?

A. He died, sir." (t.s.n ., pp. 494-509.)

Policarpio Trinidad was 28 years old and a laborer at the time he first testified on June 27, 1977. He testified that he knew Manuel Jumawan, Cesario Jumawan and Rodolfo Magnaye; that on June 19, 1976, at about 11:00 p.m., he was in Sariaya, Quezon, near the old station of the BLTB; and on that occasion he saw the aforesaid persons thus:

"Q. Will you please describe before this Honorable Court their position when you saw them?

A. Their hands were on the shoulders of each other.

Q. And who was in the middle?

A. Rodolfo Magnaye, sir.

Q. Will you please tell this Honorable Court the appearance of Rodolfo Magnaye when you saw him being in the middle of Cesario Jumawan and Manuel Jumawan on that occasion?

A. His head falls and his two hands were on the shoulder of Cesario Jumawan and Manuel Jumawan.

Q. Did you see where these persons were going on that particular occasion when you said you saw them?

ATTY. CUARTOY:

Objection Your Honor, that has already been answered, that they are going out of the old BLTB station.

COURT:

Witness may answer.

A. They cross the highway, sir.

Q. In what particular place did they go when they cross the highway?

A. They went to the road opposite the Emil Welding Shop, sir.

Q. Did you see on that particular occasion whether Rodolfo Magnaye was walking?

A. He was not walking and he cannot step his feet, sir.

Q. When they went to that place, near the Emil Welding Shop, did they go any further?

A. They proceeded walking, sir.

Q. Where did you go upon seeing them?

A. I went directly to my house, sir."

(t.s.n ., pp. 628-631.)

The testimony of Vicente Recepeda linked to that of Trinidad Alcantara and Policarpio Trinidad shows that the four appellants conspires and cooperated in the assassination of Rodolfo Magnaye.

The victim and his wife had a rendezvous in the evening of June 19, 1976, in order to discuss the fate of their marriage. While it is not known if they actually conversed, the purpose of the rendezvous was in fact accomplished; the marriage was terminated by the murder of the husband.

The report to the police by Presentacion that Rodolfo Magnaye had attempted to rob the store of Sebastiana Jumawan was a crude diversionary tactic to enable Cesario and Manuel to transfer the cadaver to another place.

The alibis of Francisco, Cesario and Manuel are for naught.

Francisco claimed that in the evening of June 19, 1976, he was in the house of Sebastiana Jumawan, not in her store. Cesario said that while his residence was Barrio Pili, Sariaya, on the night of June 19, 1976, he and his wife were in Barrio Sampaloc, Sariaya, visiting his brother Benigno Jumawan and they did not return to Pili until the next day. Manuel said that on the night of June 19, 1976, he was in his house at Barrio Pili.

These alibis cannot prevail for the following reasons: (a) Francisco, Cesario and Manuel were positively identified to be at the scene of the crime by Vicente Recepeda and Cesario and Manuel were similarly identified by Policarpio Trinidad; and (b) the places where they claimed to be were not far from the scene of the crime so that it was not impossible for them to be there. Sebastiana Jumawan's house where Francisco was supposed to be is within walking distance from the former's store. Barrio Sampaloc, where Cesario claimed he was, is only about three kilometers from the poblacion of Sariaya. Barrio Pili, where Manuel said he slept that night, is about five kilometers from the same poblacion.

Presentacion should have been accused of parricide but as it is, since her relationship to the deceased is not alleged in the information, she, like the others, can be convicted of murder only qualified by abuse of superior strength.

Although not alleged in the information, relationship as an aggravating circumstance should be assigned against the appellants. True, relationship is inherent in parricide, but Presentacion stands convicted of murder. And as to the others, the relationships of father-in-law and brother-in-law aggravate the crime. (Aquino , Penal Code, Vol. I. p. 406 [1976].)

The penalty for murder with an aggravating circumstance is death. However, for lack of necessary votes, the penalty is reduced to reclusion perpetua.

WHEREFORE, the judgment of the court a quo is hereby affirmed in toto. No costs.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

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