

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELEE, VS.
JACINTO REYES Y RAMIREZ AND OSCAR SABATER,
DEFENDANTS-APPELLANTS.**

G.R. Nos. L-41537-8. February 24, 1981

Ponente: PER CURIAM: This is an AUTOMATIC REVIEW of the decision of the Circuit Criminal Court, Seventh Judicial District, in Criminal Cases numbered CCC-VII-1358 and 1359-Cavite, convicting the defendants Jacinto Reyes y Ramirez and Oscar Sabater of MURDER and sentencing them to DEATH in each of said two cases. In two separate informations dated July 11, 1973, District State Prosecutor Cornelio M. Melendres and Cavite Provincial Fiscal Narciso D. Salcedo, charged Jacinto Reyes y Ramirez and Oscar Sabater with the murder of Cavite City Mayor Manuel S. Rojas and his driver Jaime Yap, allegedly committed as follows: "That on or about February 25, 1972, in the Municipality of Bacoor, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the accused: JACINTO REYES y RAMIREZ @ OSCAR REYES @ OCA PALAKA; OSCAR SABATER and FELICISIMO JARIN y CAMPAÑA, together with other JOHN DOES, all of them conspiring and confederating together and mutually helping one another, with intent to kill, with the aid and use of motor vehicles, with treachery and evident premeditation, and taking advantage of superior strength, did then and there, wilfully, unlawfully and feloniously shoot and fire upon Cavite City Mayor Manuel S. Rojas, hitting him on different parts of his body which caused his death. CONTRARY TO LAW." (Information in CCC-VII-1358-CAVITE) "That on or about February 25, 1972, in the Municipality of Bacoor, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the accused: JACINTO REYES y RAMIREZ @ PATRICIO REYES @ OSCAR REYES @ OCA PALAKA; OSCAR SABATER and FELICISIMO JARIN y CAMPAÑA, together with other JOHN DOES, all of them conspiring and confederating together and mutually helping one another, with intent to kill, with the aid and use of motor vehicles, with treachery and evident premeditation, and taking advantage of superior strength did then and there, wilfully, unlawfully, and feloniously shoot and fire upon Jaime Yap, hitting him on different parts of his body which caused his death. CONTRARY TO LAW". (Information in CCC-VII-1359-CAVITE) Upon arraignment, both accused pleaded not guilty. Thereafter, the court proceeded with the joint trial of the two cases where the prosecution and the defense adduced their respective evidence. From the evidence presented by the prosecution, the following facts were established: that at about 1:00 p.m. of February 25, 1972, Cavite City Mayor Manuel Rojas and his driver, Jaime Yap, were ambushed at the Aguinaldo Highway, Bacoor, Cavite, while inside the mayor's car, on their way from Cavite City to Manila; that as a result of said ambush, Mayor Rojas and his driver Yap died on the spot; that after such ambush, the cadavers of said victims were taken to the National Bureau of Investigation for autopsy; that the necropsy findings of the NBI showed that the victims sustained gunshot wounds mostly on the chest and head; that the bullets were fired from a caliber .30 carbine and from an Armalite; that the trajectory of the bullets were from left to right with the exit wounds at slightly the same level in both victims; that the wounds in the heads of the two victims shattered their heads causing shock and instant death. The defendants did not controvert the prosecution's proof of corpus delicti. They did not assail the evidence of the prosecution concerning the time, place and the manner by which the mayor and his driver were killed. As stated by the trial court, the only issue raised by the defendants before it was "the identity of the ambushers as the perpetrators of the dastardly crime committed in broad daylight on a public highway." To establish the identity and participation of the accused Oscar Sabater and Jacinto Reyes as two of the ambushers or perpetrators of the killings of Mayor Rojas and his driver Yap, the prosecution presented, among others, the following witnesses: 1. VIRGILIO SOLIS, a 13-year old, Grade VI pupil of Niog Elementary School and a resident of Bo. Niog, Bacoor, Cavite, testified as follows: that at about 1:00 o'clock in the afternoon of February 25, 1972, he was at the back of the stage of Niog Elementary School with his two classmates, Angelito Sajines and Diosdado

Paraiso, playing "counting of vehicles"; that while playing, he heard successive shots and he then saw a white small car chasing another white car which was bigger in size; that the men inside the smaller car were firing at the bigger car with long firearms; that the smaller car was able to overtake the bigger car and the men inside the smaller car again fired at the bigger car; that, thereupon, the bigger car got grounded on the right side of the road and the smaller car then slowed down; that at that point, he saw the two men who fired at the bigger car looking out of the windows of the smaller car towards the direction of the bigger car; that thereafter, the two men reclined back to their seats and their car proceeded towards Manila at a fast clip; that he then looked at the car that was fired at and he saw two dead men inside the same; that he was investigated by the Philippine Constabulary and by the National Bureau of Investigation about the incident; that the N.B.I. agents asked him if he could identify the persons who shot the victims from the pictures they presented to him; that he was able to identify only the accused Oscar Sabater the first time he was presented with around twenty (20) pictures; that he was able to point to the other gunwielder, Juanito Reyes, from among the pictures presented to him by the N.B.I. agents the next time that they came back to him; that the two gunwielders were inside the courtroom and were the ones he pointed to and who responded by the names of Oscar Sabater and Jacinto Reyes. (T.S.N., Solis, November 23, 1973, pp. 3-25.) 2. ANGELITO SAJINES, a 14-year old, Grade VI pupil of Niog Elementary School and a resident of Niog, Bacoor, Cavite, testified as follows: that at about 1:00 o'clock in the afternoon of February 25, 1972, he was near the stage of Niog Elementary School with his two classmates, Virgilio Solis and Diosdado Paraiso, playing "counting of vehicles"; that while playing, he heard successive shots and when he looked at the direction of the shots, he saw a white car chasing another white car; that the car chasing the other car was smaller in size; that when the smaller car overtook the bigger car, the men inside the smaller car again fired at those in the bigger car with long firearms; that, thereupon, the bigger car stopped at the right side of the road; that the smaller car then slowed down and two persons looked out of the smaller car towards the direction of the car they fired at; that, thereafter, the smaller car sped away; that he then went to the store to drink water; that after a while, he returned to the school compound; that shortly thereafter, he went to the scene of the incident where he saw two men with shattered faces; that he stayed there until the bell rang; that the persons who shot the victims were the ones he pointed to in the courtroom who, when asked, answered by the names of Oscar Sabater and Jacinto Reyes. (T.S.N., Sajines, December 12, 1973, pp. 2-19.) 3. BENJAMIN CAACBAY, a 23-year old preacher of the Bible Baptist Church and a resident of Cavite City testified as follows: that on February 25, 1972, at about 12:00 o'clock noon, while walking along A. del Rosario Street, Cavite City, he noticed a car which made a U-turn and parked in front of a house numbered 453; that one person alighted from the car and entered the house; that shortly thereafter, the person returned to the car with a long firearm; that the person took the back seat of the car and the driver of the car then drove the same towards Manila Boulevard; that as he was only about three arms-length from the said person when the latter returned to the car, he was able to see the face of said person and of the driver of the car; that said person and driver were the ones he pointed to at the courtroom who, when asked, responded by the names of Oscar Sabater and Jacinto Reyes, respectively. (T.S.N., Caacbay, December 26, 1973, pp. 73-87.) With the foregoing positive identification by witnesses Virgilio Solis and Angelito Sajines of the accused Oscar Sabater and Jacinto Reyes as the persons who shot Mayor Manuel Rojas and his driver Jaime Yap and with the corroborating testimony of Benjamin Caacbay, as well as the un rebutted evidence as to the time, place and manner of death of the victims which coincided with the testimony of Solis and Sajines, the prosecution sought the conviction of the accused. Defendants Oscar Sabater and Jacinto Reyes both interposed the defense of alibi. They both denied participation in the crime and claimed that they were somewhere else at the time of its commission. Defendant Oscar Sabater testified that on February 25, 1972, at about 9:00 o'clock in the morning, he went to the Hall of Justice of Cavite City to secure the services of Atty. Jesus Dator for his two friends who were charged of homicide and whose case was re-investigated on that day; that after the reinvestigation, which lasted for about 3 hours, he and Atty. Dator dropped by the office of Fiscal Evaristo Gabriel where they stayed for about 3 minutes and then proceeded to the Pagoda restaurant to eat their lunch; that at about 1:30 p. m., a certain Ding Kambing arrived and informed them that Mayor Rojas had been ambushed; that thereupon, Atty. Dator left him at the restaurant. (T.S.N., Sabater, September 2, 1974, pp. 3-19.) To corroborate Oscar Sabater's testimony, Atty. Jesus Dator, a practicing lawyer and a resident of Tanza, Cavite, was presented as a witness. He testified that sometime in February, 1972, he was at the Hall of Justice of Cavite City where he represented a friend of defendant Oscar Sabater in the reinvestigation of a criminal case; that at

about 9:00 a.m., he met defendant Sabater at said hall; that the reinvestigation was terminated at about 11:30 p.m.; that from the Hall of Justice, they proceeded to the Pagoda Kitchenette to eat their lunch; that at about 1:45 p.m., a person whom they called "Kambing" came crying and told them that Mayor Rojas had been ambushed; that at that time, he was with then Vice-Mayor Edmundo de Guzman, Edmundo's brother Totoy de Guzman, Victor Ramos who was a client, a compadre, and defendant Oscar Sabater and his companion; that, thereupon, he left Pagoda, along with Victor Ramos and his compadre, and proceeded to the place where the incident took place. (T.S.N., Dator, April 8, 1974, pp. 16-26.) Evaristo Gabriel, City Fiscal of Cavite City and an uncle of defendant Oscar Sabater, was likewise presented to corroborate the testimony of said defendant. He testified that on February 25, 1972, he was in his office in Cavite City; that at about 10:00 o'clock in the morning, Atty. Jesus Dator and defendant Sabater came to his office in connection with a certain homicide case which Atty. Dator wished to be reinvestigated; that he required Atty. Dator to present first a written request for reinvestigation; and, that Atty. Dator and defendant Sabater left his office between 11:00 a. m. to 12:00 o'clock noon. Defendant Jacinto Reyes, on the other hand, testified that he was in the vacant lot adjoining the house (place unspecified) of his brother, Montano Reyes, at the time of the incident; that he arrived at the house of his brother at about 10:00 o'clock in the morning when the latter called him up and requested him to cook "tahong"; that he finished cooking at about 10:30 a.m.; that after cooking, he and his companions, namely, Montano Reyes, Estelita Cabrera (wife of Montano Reyes), Crispulo Copino, Carlito Ong and Ernesto de Asis, started eating; that after eating, they sat under a "camachile" tree and played checkers for about 2 1/2 hours; that they stopped playing checkers only when the helper of the sister of Mayor Rojas informed them, at about 1:30 p.m., that Mayor Rojas had been ambushed. (T.S.N., Reyes, September 30, 1974, pp. 3-13.) To corroborate defendant Reyes' testimony, Crispulo Copino, a 40-year old barber and a resident of Cavite City, was presented as a witness. He testified that at about 8:00 o'clock in the morning of February 25, 1972, he went to the house of Montano Reyes to massage him; that after he had massaged Montano Reyes, the latter requested him to buy "tahong"; that defendant Jacinto Reyes cooked the "tahong"; thereafter, he and his companions, namely, Montano Reyes, Monie Reyes, Erning and Carding, ate and played checkers; that while they were eating and playing checkers, a certain Solita Lansador, helper of the sister of Mayor Rojas arrived and informed them that Mayor Rojas had been ambushed. (T.S.N., Copino, October 21, 1974, pp. 3-22.) In an effort to establish impossibility of identification of the accused by eyewitnesses Virgilio Solis and Angelito Sajines at the time of the shooting, the defense presented as a witness Diosdado Paraiso; a 14-year old classmate of Solis and Sajines whom they mentioned in their testimonies as their companion at the time of the incident. Upon request of Atty. Apolinar Fojas, counsel for the defendants, part of the direct examination of Diosdado Paraiso was conducted at the back of the stage of Niog Elementary School, Niog, Bacoar, Cavite, the place where he and his two classmates, Solis and Sajines, were playing when the shooting occurred. Diosdado Paraiso pointed to the spot where he was standing when he heard the shots and the place where the same originated. He testified that his companions Solis and Sajines, were near him when he saw the shooting. He, however, admitted that he ran away upon seeing the shooting and, consequently, he did not see the car when it passed at the nearest point from where he was standing at the time he saw the same; neither did he see where Solis and Sajines were at that precise moment. Both prosecution and defense presented witnesses other than those above-mentioned but their testimonies need not be discussed herein as they have no vital relevance to the issue raised in this review. Impressed by the categorical, positive and definite identification of the defendants, the trial court gave credence to the testimonies of the prosecution's eyewitnesses and rejected the alibi interposed by the defendants which it considered to be flimsy and unsatisfactory. Consequently, the trial court rendered a decision on May 16, 1975, convicting the defendants of Murder and sentencing them to suffer the penalty of Death in each of the two cases. The dispositive portion of the decision reads as follows: "WHEREFORE, finding the accused, namely: Jacinto Reyes and Oscar Sabater both GUILTY beyond reasonable doubt, of the crime of Murder, as defined under Article 248 of the Revised Penal Code, as charged in the information, the Court hereby sentences them to suffer the penalty of DEATH in each of the above-entitled cases; to indemnify the heirs of the victims in the amount of P40,000.00, jointly and severally; to pay moral damages in the amount of P20,000.00 and another P20,000.00 as exemplary damages, jointly and severally also; and to pay their proportionate shares of the costs." In their appeal, both defendants make the following assignment of errors: "I "THE LOWER COURT ERRED IN HOLDING THAT THE PROSECUTION HAS ESTABLISHED THE IDENTITY AND PARTICIPATION OF THE TWO

ACCUSED, OSCAR SABATER AND JACINTO REYES, JR. @ PALAKA AS TWO OF THE AMBUSHERS AND PERPETRATORS OF THE KILLING OF MAYOR ROJAS AND THE LATTER'S DRIVER JAIME YAP, THROUGH THE TESTIMONIES OF VIRGILIO SOLIS AND ANOTHER WITNESS WHO SAW THE ACTIVITIES OF THE TWO ACCUSED IMMEDIATELY PRIOR TO THE PERPETRATION OF THE KILLING.

 "II "THE LOWER COURT ERRED IN FINDING BOTH ACCUSED JACINTO REYES AND OSCAR SABATER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AS DEFINED IN ARTICLE 248 OF THE REVISED PENAL CODE, THEREBY SENTENCING BOTH ACCUSED TO DEATH PENALTY IN BOTH CASES, ONE FOR THE DEATH OF MAYOR MANUEL ROJAS AND THE OTHER OF HIS DRIVER JAIME YAP, AND SENTENCING THEM TO PAY THE SEVERAL AMOUNTS SPECIFIED IN THE DECISION APPEALED FROM AND COSTS." I. RE: FIRST ASSIGNMENT OF ERROR - The appellants contend that the prosecution failed to establish their identity as the perpetrators of the crime for the following reasons:

FIRSTLY, that the prosecution's eyewitnesses, Virgilio Solis and Angelito Sajines, were merely instructed by the NBI agents to identify the defendants as the ones who shot and killed Mayor Rojas and his driver; SECONDLY, that it was physically impossible for the prosecution's eyewitnesses to identify the assailants from the place where they were standing in view of their distance from the assailants; and, THIRDLY, that so many vehicles were travelling along the stretch between the firing spot and the place where the prosecution's eyewitnesses were standing that it was impossible for said eyewitnesses to have had a clear view of the assailants. By alleging that the prosecution's eyewitnesses were merely instructed by the NBI agents to identify the defendants as the ones who shot and killed Mayor Rojas and his driver, the appellants have, in effect, accused said government agents of using their official function of criminal investigation in tampering with the proper administration of justice. We consider such a serious accusation to be unfair to the government agents concerned and to be legally untenable not only because of its lack of basis but also because of the presumption established in Section 5(m), Rule 131 of the Rules of Court, that "official duty has been regularly performed." The appellants merely inferred the alleged irregularity from the fact that eyewitnesses Virgilio Solis and Angelito Sajines were placed under NBI custody for about three months. But placing said eyewitnesses under NBI custody was a necessary precaution to protect the lives of said barrio lads who were easy preys to the unscrupulous activities of the criminal elements who did not hesitate to kill even a city mayor in broad daylight in a public place and who, expectedly, were out to erase the last vestiges of their crime. The allegation that Virgilio Solis and Angelito Sajines were merely instructed by the NBI agents to identify the defendants as the ones who shot and killed Mayor Rojas and his driver ultimately raises the issue of credibility of said eyewitnesses. Significantly, the appellants failed to discredit said eyewitnesses as the trial court considered the latter's testimonies to be credible. And We find no reason to disturb the conclusion of the trial court not only because of the well-settled rule that "when the issue is one of credibility of witnesses, appellate courts will generally not disturb the finding of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial" (People v. Mercado, et al., G.R. Nos. L-39511-39513, April 28, 1980, citing: People v. Garcia, 89 SCRA 440; People v. Gargoles, 83 SCRA 282; People vs. Pascual, 80 SCRA 1; People v. Ancheta, 60 SCRA 333; People v. Boduso, 60 SCRA 60; People v. Cardenas, 56 SCRA 631; People v. Carandang, 52 SCRA 259; People v. Espejo, 36 SCRA 400), but more so because We have painstakingly reviewed the testimonies of the said eyewitnesses and are, Ourselves, convinced of their credibility. We are particularly impressed by the fact that despite their tender ages of 13 and 14 years old, respectively, Virgilio Solis and Angelito Sajines have survived the grilling cross-examination of the defense counsel without incurring contradictions on any material point of their testimonies. They remained categorical, positive and definite in their identification of the two accused, Jacinto Reyes and Oscar Sabater, as the ones who shot and killed Mayor Rojas and his driver. We, thus, entertain no doubt that the appellants were indeed the assailants of Mayor Rojas and his driver. The second point raised by the appellants concerns the alleged impossibility of identification of the assailants by eyewitnesses Solis and Sajines in view of the distance between the spot where the assailants were and the place where the witnesses were standing at the time. In support of such allegation, appellants quoted the following portions of the transcript of stenographic notes of the hearing held on May 13, 1974, at the Niog Elementary School, Niog, Bacoar, Cavite, to wit: "COURT: "There is a man but you cannot identify his face." (p. 9, tsn, May 13, 1974) "COURT: "But could the parties agree that at that distance,

that person or man could be seen but you could not identify the person? "ATTY FOJAS: "Yes, your honor." (P. 9, id). xxx xxx xxx "COURT: "The court will agree to that, although a person could be identified if you are familiar with his face." (pp. 59-60, tsn, May 13, 1974)." (Appellants' Brief, p. 129.) But the foregoing observations of the trial court are irrelevant to the question of whether it was physically possible for eyewitnesses Virgilio Solis and Angelito Sajines to have recognized the assailants from the spot where said witnesses were standing at the time of the incident. For it must be noted that the aforesaid observations of the trial court did not concern the prosecution witnesses as they referred to the distance between the assailants and another person - defense witness Diosdado Paraiso who was with Virgilio Solis and Angelito Sajines. Paraiso testified that Solis and Sajines were somewhere near him at the precise time of the shooting, and, consequently, at about the same distance from the assailants, nevertheless, such testimony of Paraiso and the court's observation that it was impossible to identify a person at that distance did not render incredible Solis' and Sajines' identification of the assailants since said eyewitnesses never claimed to have recognized the assailants when the latter were still that far from them, i.e., when the assailants were still actually firing at their victims. Both Solis and Sajines testified that they were able to identify the assailants only after the actual shooting and later the car of the victims had been grounded on the right side of the road and the assailants' car had passed by the same with assailants looking out of the window of the car towards the direction of the victims. Thus, Angelito Sajines testified: "FISCAL SALCEDO: Q Which of the two cars is smaller? A The smaller car is the car where the firing came from. Q After the smaller car had overtaken the bigger one and as you said the bigger car was again fired upon, what happened to the bigger car? A The bigger car stopped at the right side going towards Manila. Q And what about the smaller car, what happened to it? A The . . . As the smaller car left slowly I saw two persons peep at the window to see the bigger car they fired at. Q Did you see the two persons who looked out of the window of the smaller car? ATTY. GALVAN Objection, your Honor, on the ground that the question is leading. COURT Overruled. Answer the question. A Yes, sir." (T.S.N., Sajines, December 12, 1973, pp. 8-10; italics supplied.) Similarly, Virgilio Solis testified - "FISCAL SALCEDO xxx xxx xxx Q After the smaller car had overtaken the bigger car and the smaller car fired again, what happened to the bigger car, if you know? A The bigger car got grounded (napasadsad) on the roadside, sir. Q What shoulder of the canal did the car, the bigger car get grounded? A Sa may bandang kanan po, sir. Q In what direction was this bigger car proceeding? When it was grounded? A The bigger car was proceeding towards Manila when it was grounded. Q After the bigger car, as you said was grounded on the right side of the road towards Manila, what happened to it? A The smaller car slowly proceeded towards Manila. Q As this smaller car was proceeding slowly towards Manila, what did you see, if any? A I saw two persons peeping on the car towards the direction where they fired. Q And then . . . COURT Q When you said looking or peeping, do you mean looking or peeping with their heads out or just inside the car looking? A They put out their faces from the window, sir." (TSN, Solis, November 23, 1973, pp. 7-9; italics supplied.) To prove impossibility of identification of the assailants by eyewitnesses Solis and Sajines, the defense should have established: (1) the exact spot where the said eyewitnesses were standing at the time that the assailants looked out of the window of their car; (2) the distance between the eyewitnesses and the assailants; and (3) the impossibility of identifying the assailants at the distance. Unfortunately, the defense witness Paraiso did not even know where Solis and Sajines were at the time the assailants passed in front of the place where the three of them were standing when they saw the assailants firing at their victims since he admitted that he ran away when he heard the shooting. Thus, Paraiso testified: "Q Did you look at the car as it was passing at the nearest point from where you were in its going towards the direction of Manila? A No, sir. Q How about your two (2) mentioned companions, did you notice if they looked at the car as it passed the nearest point from your place? A I did not see them anymore. Q When you saw that the car was passing towards the direction of Manila, did you move from the place where you were as pointed to a while ago? A When I saw that there was shooting, I ran away." (T.S.N., Paraiso, May 13, 1974, pp. 17-18; italics supplied.) Since the appellants failed to prove physical impossibility of their identification by eyewitnesses Solis and Sajines, We find no reason to doubt the positive, definite and categorical testimonies of said eyewitnesses that they indeed saw the killers of Mayor Rojas and his driver and recognized them from the pictures presented to them by the NBI agents. Both Solis and Sajines testified, on cross-examination, that they were about twenty (20) meters from the

assailants when the latter looked out of the window of their car (see: t.s.n., Solis, November 29, 1973, p. 51; Sajines, December 21, 1973, p. 90). And judicial notice can be taken of the fact that at that distance, a person can, indeed, be identified. The appellants finally argue in support of the first assignment of error, that so many vehicles were travelling along the stretch between the firing spot and the place where the prosecution's eyewitnesses were standing - thereby making it impossible for them to have a clear view of the assailants. However, no convincing proof was presented to support such allegation. On the contrary, We consider it unnatural for the assailants of Mayor Rojas and his driver to have fired at the latter when possible witnesses to their misdeed were passing by. II. RE: SECOND ASSIGNMENT OF ERROR - Alleging that the appellants' alibi has been strongly corroborated and that their motive in killing Mayor Rojas and his driver has not been established by the prosecution, they finally contend that the lower court erred in finding them guilty beyond reasonable doubt of the crime of murder. We find as completely applicable to the case at bar Our ruling in *People v. Mercado, et al.* (G.R. Nos. L-39511-13, April 28, 1980), where We held that - "The trial court correctly ruled that alibi is a weak defense not only because it is easy to fabricate (*People v. Zapatero*, L-31960, August 15, 1974, 58 SCRA 450; *People v. Dereje*, L-31155, April 22, 1974, 56 SCRA 554; *People v. Mori*, L-23511 and L-23512, January 31, 1974, 55 SCRA 382; *People v. Ragas*, L-29393, March 29, 1972, 44 SCRA 152) but also because human memory on dates or days is frail, and unless the day is an extraordinary or unusual one for the witness, there is no reasonable assurance of its correctness. (*People v. Dasig*, 93 Phil. 618 [1953]). Furthermore, for alibi to prosper, it is not enough to prove that the accused were somewhere else when the crime was committed but it must likewise be demonstrated that it was physically impossible for them to have been at the scene of said crime at the time of its commission. (*People v. Dueño*, L-31102, May 5, 1979, 90 SCRA 23; *People v. Cortez*, L-311106, May 31, 1974, 57 SCRA 308; *People v. Baylon*, L-35785, May 29, 1974, 57 SCRA 114; *People v. Turalba*, L-29118, February 28, 1974, 55 SCRA 697; *People v. Diaz*, L-24002, January 21, 1974, 55 SCRA 178; *People v. Esmael*, L-28533, February 24, 1971, 37 SCRA 601.) "But apart from the foregoing weaknesses which inhere in the defense of alibi, its inability to exculpate the herein accused-appellants from the crime of which they stand charged basically emanates from the applicability to the case at bar of the fundamental juridical dictum that the defense of alibi cannot prevail over the positive identification of the accused by credible witnesses as the authors of the crime. (*People v. Artieda*, L-38725, May 15, 1979, 90 SCRA 144; *People v. Caoile*, L-31104, November 15, 1974, 61 SCRA 73; *People v. Sudoy*, L-33572, October 10, 1974, 60 SCRA 174; *People v. Abletas*, L-33304, July 31, 1974, 58 SCRA 241; *People v. Aquino*, L-27184, May 21, 1974, 57 SCRA 43; *People v. Diaz*, L-24002, January 21, 1974, 55 SCRA 178; *People v. Dorico*, L-31568, November 29, 1973, 54 SCRA 172; *People v. Carandang*, L-31012, August 15, 1973, 52 SCRA 259; *People v. Merila*, L-32785, May 21, 1973, 51 SCRA 31; *People v. Olden*, L-27570 and L-27571, September 20, 1972, 47 SCRA 45; *People v. Tanjahali Gajali*, L 28534, July 31, 1972, 46 SCRA 130; *People v. Kipte*, L-26662, October 30, 1971, 42 SCRA 198; *People v. Cuaton*, L-31570, August 30, 1971, 40 SCRA 386; *People v. Bagasala*, L-26182, May 31, 1971, 39 SCRA 236; *People v. Mercado*, L-30298, March 30, 1971, 38 SCRA 168; *People v. Esmael*, L-28533, February 24, 1971, 37 SCRA 601.)" In the case at bar, eyewitnesses Virgilio Solis and Angelito Sajines corroborated each other in positively and categorically identifying both appellants as the authors of the crime. They supplied the court with a clear and complete account of how the appellants, acting in concert, shot and killed their victims with high-powered firearms and, with the use of their motor vehicle, sped away from the scene of their crime after looking out of the windows of their car to see if their prey had been killed. Appellants alibi simply cannot prevail over such positive testimonies of disinterested eyewitnesses who, incidentally, should be commended for their courage in testifying against such lawless elements of our society. The last point raised by the defense counsel concerns the inability of the prosecution to establish the motive of the defendants in killing Mayor Rojas and his driver. But as correctly pointed out by the Solicitor-General, motive need not be established in the case at bar. For settled is the rule that when the accused has been positively identified, proof of motive is not indispensable for conviction. (*People v. Veloso*, L-33132, August 6, 1979, 92 SCRA 515; *People v. Dueño*, L-31102, May 5, 1979, 90 SCRA 23; *People v. Pajanado*, L 26458, January 30, 1976, 69 SCRA 172; *People v. Harila*, L-32785, May 21, 1973, 51 SCRA 31.) The trial court ordered the appellants "to indemnify the heirs of the victims in the amount of P40,000.00, jointly and severally; to pay moral damages in the amount of P20,000.00 and another P20,000.00 as exemplary damages, jointly and severally also x x x." However, none of the heirs of the victims testified during the trial in order to justify an award in excess of

the jurisprudential amount of P12,000.00 for the death of each victim. WHEREFORE, the judgment of the court a quo sentencing the appellants "to suffer the penalty of DEATH in each of the above-entitled cases [Nos. CCC-VII-1358 and 1359, Cavite]" is hereby affirmed but modified in respect of the civil indemnity in that they are ordered to pay, jointly and severally, P12,000.00 to the heirs of Manuel S. Rojas and Jaime Yap. Costs de oficio. SO ORDERED. Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro and Melencio-Herrera, JJ., concur. Teehankee, J., separate opinion. Barredo, J., concurs as to the question of damages, the issue may be taken up in an appropriate civil action. Fernando, C.J., did not take part. SEPARATE OPINION TEEHANKEE, J.

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PER CURIAM:

This is an AUTOMATIC REVIEW of the decision of the Circuit Criminal Court, Seventh Judicial District, in Criminal Cases numbered CCC-VII-1358 and 1359-Cavite, convicting the defendants Jacinto Reyes y Ramirez and Oscar Sabater of MURDER and sentencing them to DEATH in each of said two cases.

In two separate informations dated July 11, 1973, District State Prosecutor Cornelio M. Melendres and Cavite Provincial Fiscal Narciso D. Salcedo, charged Jacinto Reyes y Ramirez and Oscar Sabater with the murder of Cavite City Mayor Manuel S. Rojas and his driver Jaime Yap, allegedly committed as follows:

"That on or about February 25, 1972, in the Municipality of Bacoor, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the accused: JACINTO REYES y RAMIREZ @ OSCAR REYES @ OCA PALAKA; OSCAR SABATER and FELICISIMO JARIN y CAMPAÑA, together with other JOHN DOES, all of them conspiring and confederating together and mutually helping one another, with intent to kill, with the aid and use of motor vehicles, with treachery and evident premeditation, and taking advantage of superior strength, did then and there, wilfully, unlawfully and feloniously shoot and fire upon Cavite City Mayor Manuel S. Rojas, hitting him on different parts of his body which caused his death.

CONTRARY TO LAW."

(Information in CCC-VII-1358-CAVITE)

"That on or about February 25, 1972, in the Municipality of Bacoor, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the accused: JACINTO REYES y RAMIREZ @ PATRICIO REYES @ OSCAR REYES @ OCA PALAKA; OSCAR SABATER and FELICISIMO JARIN y CAMPAÑA, together with other JOHN DOES, all of them conspiring and confederating together and mutually helping one another, with intent to kill, with the aid and use of motor vehicles, with treachery and evident premeditation, and taking advantage of superior strength did then and there, wilfully, unlawfully, and feloniously shoot and fire upon Jaime Yap, hitting him on different parts of his body which caused his death.

CONTRARY TO LAW".

(Information in CCC-VII-1359-CAVITE)

Upon arraignment, both accused pleaded not guilty. Thereafter, the court proceeded with the joint trial of the two cases where the prosecution and the defense adduced their respective evidence.

From the evidence presented by the prosecution, the following facts were established: that at about 1:00 p.m. of February 25, 1972, Cavite City Mayor Manuel Rojas and his driver, Jaime Yap, were ambushed at the Aguinaldo Highway, Bacoor, Cavite, while inside the mayor's car, on their way from Cavite City to Manila; that as a result of said ambush, Mayor Rojas and his driver Yap died on the spot; that after such ambush, the cadavers of said victims were taken to the National Bureau of Investigation for autopsy; that the necropsy findings of the NBI showed that the victims sustained gunshot wounds mostly on the chest and head; that the bullets were fired from a caliber .30 carbine and from an Armalite; that the trajectory of the bullets were from left to right with the exit wounds at slightly the same level in both victims; that the wounds in the heads of the two victims shattered their heads causing shock and instant death.

The defendants did not controvert the prosecution's proof of corpus delicti. They did not assail the evidence of the prosecution concerning the time, place and the manner by which the mayor and his driver were killed. As stated by the trial court, the only issue raised by the defendants before it was "the identity of the ambushers as the perpetrators of the dastardly crime committed in broad daylight on a public highway."

To establish the identity and participation of the accused Oscar Sabater and Jacinto Reyes as two of the ambushers or perpetrators of the killings of Mayor Rojas and his driver Yap, the prosecution presented, among others, the following witnesses:

1. VIRGILIO SOLIS, a 13-year old, Grade VI pupil of Niog Elementary School and a resident of Bo. Niog, Bacoor, Cavite, testified as follows: that at about 1:00 o'clock in the afternoon of February 25, 1972, he was at the back of the stage of Niog Elementary School with his two classmates, Angelito Sajines and Diosdado Paraiso, playing "counting of vehicles"; that while playing, he heard successive shots and he then saw a white small car chasing another white car which was bigger in size; that the men inside the smaller car were firing at the bigger car with long firearms; that the smaller car was able to overtake the bigger car and the men inside the smaller car again fired at the bigger car; that, thereupon, the bigger car got grounded on the right side of the road and the smaller car then slowed down; that at that point, he saw the two men who fired at the bigger car looking out of the windows of the smaller car towards the direction of the bigger car; that thereafter, the two men reclined back to their seats and their car proceeded towards Manila at a fast clip; that he then looked at the car that was fired at and he saw two dead men inside the same; that he was investigated by the Philippine Constabulary and by the National Bureau of Investigation about the incident; that the N.B.I. agents asked him if he could identify the persons who shot the victims from the pictures they presented to him; that he was able to identify only the accused Oscar Sabater the first time he was presented with around twenty (20) pictures; that he was able to point to the other gunwielder, Juanito Reyes, from among the pictures presented to him by the N.B.I. agents the next time that they came back to him; that the two gunwielders were inside the courtroom and were the ones he pointed to and who responded by the names of Oscar Sabater and Jacinto Reyes. (T.S.N., Solis, November 23, 1973, pp. 3-25.)

2. ANGELITO SAJINES, a 14-year old, Grade VI pupil of Niog Elementary School and a resident of Niog, Bacoor, Cavite, testified as follows: that at about 1:00 o'clock in the afternoon of February 25, 1972, he was near the stage of Niog Elementary School with his two classmates, Virgilio Solis and Diosdado Paraiso, playing "counting of vehicles"; that while playing, he heard successive shots and when he looked at the direction of the shots, he saw a white car chasing another white car; that the car chasing the other car was smaller in size; that when the smaller car overtook the bigger car, the men inside the smaller car again fired at those in the bigger car

with long firearms; that, thereupon, the bigger car stopped at the right side of the road; that the smaller car then slowed down and two persons looked out of the smaller car towards the direction of the car they fired at; that, thereafter, the smaller car sped away; that he then went to the store to drink water; that after a while, he returned to the school compound; that shortly thereafter, he went to the scene of the incident where he saw two men with shattered faces; that he stayed there until the bell rang; that the persons who shot the victims were the ones he pointed to in the courtroom who, when asked, answered by the names of Oscar Sabater and Jacinto Reyes. (T.S.N., Sajines, December 12, 1973, pp. 2-19.)

3. BENJAMIN CAACBAY, a 23-year old preacher of the Bible Baptist Church and a resident of Cavite City testified as follows: that on February 25, 1972, at about 12:00 o'clock noon, while walking along A. del Rosario Street, Cavite City, he noticed a car which made a U-turn and parked in front of a house numbered 453; that one person alighted from the car and entered the house; that shortly thereafter, the person returned to the car with a long firearm; that the person took the back seat of the car and the driver of the car then drove the same towards Manila Boulevard; that as he was only about three arms-length from the said person when the latter returned to the car, he was able to see the face of said person and of the driver of the car; that said person and driver were the ones he pointed to at the courtroom who, when asked, responded by the names of Oscar Sabater and Jacinto Reyes, respectively. (T.S.N., Caacbay, December 26, 1973, pp. 73-87.)

With the foregoing positive identification by witnesses Virgilio Solis and Angelito Sajines of the accused Oscar Sabater and Jacinto Reyes as the persons who shot Mayor Manuel Rojas and his driver Jaime Yap and with the corroborating testimony of Benjamin Caacbay, as well as the un rebutted evidence as to the time, place and manner of death of the victims which coincided with the testimony of Solis and Sajines, the prosecution sought the conviction of the accused.

Defendants Oscar Sabater and Jacinto Reyes both interposed the defense of alibi. They both denied participation in the crime and claimed that they were somewhere else at the time of its commission.

Defendant Oscar Sabater testified that on February 25, 1972, at about 9:00 o'clock in the morning, he went to the Hall of Justice of Cavite City to secure the services of Atty. Jesus Dator for his two friends who were charged of homicide and whose case was re-investigated on that day; that after the reinvestigation, which lasted for about 3 hours, he and Atty. Dator dropped by the office of Fiscal Evaristo Gabriel where they stayed for about 3 minutes and then proceeded to the Pagoda restaurant to eat their lunch; that at about 1:30 p. m., a certain Ding Kambing arrived and informed them that Mayor Rojas had been ambushed; that thereupon, Atty. Dator left him at the restaurant. (T.S.N., Sabater, September 2, 1974, pp. 3-19.)

To corroborate Oscar Sabater's testimony, Atty. Jesus Dator, a practicing lawyer and a resident of Tanza, Cavite, was presented as a witness. He testified that sometime in February, 1972, he was at the Hall of Justice of Cavite City where he represented a friend of defendant Oscar Sabater in the reinvestigation of a criminal case; that at about 9:00 a.m., he met defendant Sabater at said hall; that the reinvestigation was terminated at about 11:30 p.m.; that from the Hall of Justice, they proceeded to the Pagoda Kitchenette to eat their lunch; that at about 1:45 p.m., a person whom they called "Kambing" came crying and told them that Mayor Rojas had been ambushed; that at that time, he was with then Vice-Mayor Edmundo de Guzman, Edmundo's brother Totoy de Guzman, Victor Ramos who was a client, a compadre, and defendant Oscar Sabater and his companion; that, thereupon, he left Pagoda, along with Victor Ramos and his compadre, and proceeded to the place where the incident took place. (T.S.N., Dator, April 8, 1974, pp. 16-26.)

Evaristo Gabriel, City Fiscal of Cavite City and an uncle of defendant Oscar Sabater, was likewise presented to corroborate the testimony of said defendant. He testified that on February 25, 1972, he was in his office in Cavite

City; that at about 10:00 o'clock in the morning, Atty. Jesus Dator and defendant Sabater came to his office in connection with a certain homicide case which Atty. Dator wished to be reinvestigated; that he required Atty. Dator to present first a written request for reinvestigation; and, that Atty. Dator and defendant Sabater left his office between 11:00 a. m. to 12:00 o'clock noon.

Defendant Jacinto Reyes, on the other hand, testified that he was in the vacant lot adjoining the house (place unspecified) of his brother, Montano Reyes, at the time of the incident; that he arrived at the house of his brother at about 10:00 o'clock in the morning when the latter called him up and requested him to cook "tahong"; that he finished cooking at about 10:30 a.m.; that after cooking, he and his companions, namely, Montano Reyes, Estelita Cabrera (wife of Montano Reyes), Crispulo Copino, Carlito Ong and Ernesto de Asis, started eating; that after eating, they sat under a "camachile" tree and played checkers for about 2 1/2 hours; that they stopped playing checkers only when the helper of the sister of Mayor Rojas informed them, at about 1:30 p.m., that Mayor Rojas had been ambushed. (T.S.N., Reyes, September 30, 1974, pp. 3-13.)

To corroborate defendant Reyes' testimony, Crispulo Copino, a 40-year old barber and a resident of Cavite City, was presented as a witness. He testified that at about 8:00 o'clock in the morning of February 25, 1972, he went to the house of Montano Reyes to massage him; that after he had massaged Montano Reyes, the latter requested him to buy "tahong"; that defendant Jacinto Reyes cooked the "tahong"; thereafter, he and his companions, namely, Montano Reyes, Monie Reyes, Erning and Carding, ate and played checkers; that while they were eating and playing checkers, a certain Solita Lansador, helper of the sister of Mayor Rojas arrived and informed them that Mayor Rojas had been ambushed. (T.S.N., Copino, October 21, 1974, pp. 3-22.)

In an effort to establish impossibility of identification of the accused by eyewitnesses Virgilio Solis and Angelito Sajines at the time of the shooting, the defense presented as a witness Diosdado Paraiso; a 14-year old classmate of Solis and Sajines whom they mentioned in their testimonies as their companion at the time of the incident. Upon request of Atty. Apolinar Fojas, counsel for the defendants, part of the direct examination of Diosdado Paraiso was conducted at the back of the stage of Niog Elementary School, Niog, Bacoar, Cavite, the place where he and his two classmates, Solis and Sajines, were playing when the shooting occurred. Diosdado Paraiso pointed to the spot where he was standing when he heard the shots and the place where the same originated. He testified that his companions Solis and Sajines, were near him when he saw the shooting. He, however, admitted that he ran away upon seeing the shooting and, consequently, he did not see the car when it passed at the nearest point from where he was standing at the time he saw the same; neither did he see where Solis and Sajines were at that precise moment.

Both prosecution and defense presented witnesses other than those above-mentioned but their testimonies need not be discussed herein as they have no vital relevance to the issue raised in this review.

Impressed by the categorical, positive and definite identification of the defendants, the trial court gave credence to the testimonies of the prosecution's eyewitnesses and rejected the alibi interposed by the defendants which it considered to be flimsy and unsatisfactory. Consequently, the trial court rendered a decision on May 16, 1975, convicting the defendants of Murder and sentencing them to suffer the penalty of Death in each of the two cases. The dispositive portion of the decision reads as follows:

"WHEREFORE, finding the accused, namely: Jacinto Reyes and Oscar Sabater both GUILTY beyond reasonable doubt, of the crime of Murder, as defined under Article 248 of the Revised Penal Code, as charged in the information, the Court hereby sentences them to suffer the penalty of DEATH in each of the above-entitled cases; to indemnify the heirs of the victims in the amount of P40,000.00, jointly and severally;

to pay moral damages in the amount of P20,000.00 and another P20,000.00 as exemplary damages, jointly and severally also; and to pay their proportionate shares of the costs."

In their appeal, both defendants make the following assignment of errors:

"I

"THE LOWER COURT ERRED IN HOLDING THAT THE PROSECUTION HAS ESTABLISHED THE IDENTITY AND PARTICIPATION OF THE TWO ACCUSED, OSCAR SABATER AND JACINTO REYES, JR. @ PALAKA AS TWO OF THE AMBUSHERS AND PERPETRATORS OF THE KILLING OF MAYOR ROJAS AND THE LATTER'S DRIVER JAIME YAP, THROUGH THE TESTIMONIES OF VIRGILIO SOLIS AND ANOTHER WITNESS WHO SAW THE ACTIVITIES OF THE TWO ACCUSED IMMEDIATELY PRIOR TO THE PERPETRATION OF THE KILLING.

"II

"THE LOWER COURT ERRED IN FINDING BOTH ACCUSED JACINTO REYES AND OSCAR SABATER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AS DEFINED IN ARTICLE 248 OF THE REVISED PENAL CODE, THEREBY SENTENCING BOTH ACCUSED TO DEATH PENALTY IN BOTH CASES, ONE FOR THE DEATH OF MAYOR MANUEL ROJAS AND THE OTHER OF HIS DRIVER JAIME YAP, AND SENTENCING THEM TO PAY THE SEVERAL AMOUNTS SPECIFIED IN THE DECISION APPEALED FROM AND COSTS."

I. RE: FIRST ASSIGNMENT OF ERROR -

The appellants contend that the prosecution failed to establish their identity as the perpetrators of the crime for the following reasons: FIRSTLY, that the prosecution's eyewitnesses, Virgilio Solis and Angelito Sajines, were merely instructed by the NBI agents to identify the defendants as the ones who shot and killed Mayor Rojas and his driver; SECONDLY, that it was physically impossible for the prosecution's eyewitnesses to identify the assailants from the place where they were standing in view of their distance from the assailants; and, THIRDLY, that so many vehicles were travelling along the stretch between the firing spot and the place where the prosecution's eyewitnesses were standing that it was impossible for said eyewitnesses to have had a clear view of the assailants.

By alleging that the prosecution's eyewitnesses were merely instructed by the NBI agents to identify the defendants as the ones who shot and killed Mayor Rojas and his driver, the appellants have, in effect, accused said government agents of using their official function of criminal investigation in tampering with the proper administration of justice. We consider such a serious accusation to be unfair to the government agents concerned and to be legally untenable not only because of its lack of basis but also because of the presumption established in Section 5(m), Rule 131 of the Rules of Court, that "official duty has been regularly performed." The appellants merely inferred the alleged irregularity from the fact that eyewitnesses Virgilio Solis and Angelito Sajines were placed under NBI custody for about three months. But placing said eyewitnesses under NBI custody was a necessary precaution to protect the lives of said barrio lads who were easy preys to the unscrupulous activities of the criminal elements who did not hesitate to kill even a city mayor in broad daylight in a public place and who,

expectedly, were out to erase the last vestiges of their crime.

The allegation that Virgilio Solis and Angelito Sajines were merely instructed by the NBI agents to identify the defendants as the ones who shot and killed Mayor Rojas and his driver ultimately raises the issue of credibility of said eyewitnesses. Significantly, the appellants failed to discredit said eyewitnesses as the trial court considered the latter's testimonies to be credible. And We find no reason to disturb the conclusion of the trial court not only because of the well-settled rule that "when the issue is one of credibility of witnesses, appellate courts will generally not disturb the finding of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial" (People v. Mercado, et al., G.R. Nos. L-39511-39513, April 28, 1980, citing: People v. Garcia, 89 SCRA 440; People v. Gargoles, 83 SCRA 282; People vs. Pascual, 80 SCRA 1; People v. Ancheta, 60 SCRA 333; People v. Boduso, 60 SCRA 60; People v. Cardenas, 56 SCRA 631; People v. Carandang, 52 SCRA 259; People v. Espejo, 36 SCRA 400), but more so because We have painstakingly reviewed the testimonies of the said eyewitnesses and are, Ourselves, convinced of their credibility. We are particularly impressed by the fact that despite their tender ages of 13 and 14 years old, respectively, Virgilio Solis and Angelito Sajines have survived the grilling cross-examination of the defense counsel without incurring contradictions on any material point of their testimonies. They remained categorical, positive and definite in their identification of the two accused, Jacinto Reyes and Oscar Sabater, as the ones who shot and killed Mayor Rojas and his driver. We, thus, entertain no doubt that the appellants were indeed the assailants of Mayor Rojas and his driver.

The second point raised by the appellants concerns the alleged impossibility of identification of the assailants by eyewitnesses Solis and Sajines in view of the distance between the spot where the assailants were and the place where the witnesses were standing at the time. In support of such allegation, appellants quoted the following portions of the transcript of stenographic notes of the hearing held on May 13, 1974, at the Niog Elementary School, Niog, Bacoor, Cavite, to wit:

"COURT:

"There is a man but you cannot identify his face."

(p. 9, tsn, May 13, 1974)

"COURT:

"But could the parties agree that at that distance, that person or man could be seen but you could not identify the person?"

"ATTY FOJAS:

"Yes, your honor." (P. 9, id).

xxx xxx xxx

"COURT:

"The court will agree to that, although a person could be identified if you are familiar with his face." (pp. 59-60, tsn, May 13, 1974)."

(Appellants' Brief, p. 129.)

But the foregoing observations of the trial court are irrelevant to the question of whether it was physically possible for eyewitnesses Virgilio Solis and Angelito Sajines to have recognized the assailants from the spot where said witnesses were standing at the time of the incident. For it must be noted that the aforesaid observations of the trial court did not concern the prosecution witnesses as they referred to the distance between the assailants and another person - defense witness Diosdado Paraiso who was with Virgilio Solis and Angelito Sajines. Paraiso testified that Solis and Sajines were somewhere near him at the precise time of the shooting, and, consequently, at about the same distance from the assailants, nevertheless, such testimony of Paraiso and the court's observation that it was impossible to identify a person at that distance did not render incredible Solis' and Sajines' identification of the assailants since said eyewitnesses never claimed to have recognized the assailants when the latter were still that far from them, i.e., when the assailants were still actually firing at their victims. Both Solis and Sajines testified that they were able to identify the assailants only after the actual shooting and later the car of the victims had been grounded on the right side of the road and the assailants' car had passed by the same with assailants looking out of the window of the car towards the direction of the victims. Thus, Angelito Sajines testified:

"FISCAL SALCEDO:

Q Which of the two cars is smaller?

A The smaller car is the car where the firing came from.

Q After the smaller car had overtaken the bigger one and as you said the bigger car was again fired upon, what happened to the bigger car?

A The bigger car stopped at the right side going towards Manila.

Q And what about the smaller car, what happened to it?

A The . . . As the smaller car left slowly I saw two persons peep at the window to see the bigger car they fired at.

Q Did you see the two persons who looked out of the window of the smaller car?

ATTY. GALVAN

Objection, your Honor, on the ground that the question is leading.

COURT

Overruled. Answer the question.

A Yes, sir."

(T.S.N., Sajines, December 12, 1973, pp. 8-10; italics supplied.)

Similarly, Virgilio Solis testified -

"FISCAL SALCEDO

xxx xxx xxx

Q After the smaller car had overtaken the bigger car and the smaller car fired again, what happened to the bigger car, if you know?

A The bigger car got grounded (napasadsad) on the roadside, sir.

Q What shoulder of the canal did the car, the bigger car get grounded?

A Sa may bandang kanan po, sir.

Q In what direction was this bigger car proceeding? When it was grounded?

A The bigger car was proceeding towards Manila when it was grounded.

Q After the bigger car, as you said was grounded on the right side of the road towards Manila, what happened to it?

A The smaller car slowly proceeded towards Manila.

Q As this smaller car was proceeding slowly towards Manila, what did you see, if any?

A I saw two persons peeping on the car towards the direction where they fired.

Q And then . . .

COURT

Q When you said looking or peeping, do you mean looking or peeping with their heads out or just inside the car looking?

A They put out their faces from the window, sir."

(TSN, Solis, November 23, 1973, pp. 7-9; italics supplied.)

To prove impossibility of identification of the assailants by eyewitnesses Solis and Sajines, the defense should

have established: (1) the exact spot where the said eyewitnesses were standing at the time that the assailants looked out of the window of their car; (2) the distance between the eyewitnesses and the assailants; and (3) the impossibility of identifying the assailants at the distance. Unfortunately, the defense witness Paraiso did not even know where Solis and Sajines were at the time the assailants passed in front of the place where the three of them were standing when they saw the assailants firing at their victims since he admitted that he ran away when he heard the shooting. Thus, Paraiso testified:

"Q Did you look at the car as it was passing at the nearest point from where you were in its going towards the direction of Manila?

A No, sir.

Q How about your two (2) mentioned companions, did you notice if they looked at the car as it passed the nearest point from your place?

A I did not see them anymore.

Q When you saw that the car was passing towards the direction of Manila, did you move from the place where you were as pointed to a while ago?

A When I saw that there was shooting, I ran away."

(T.S.N., Paraiso, May 13, 1974, pp. 17-18; italics supplied.)

Since the appellants failed to prove physical impossibility of their identification by eyewitnesses Solis and Sajines, We find no reason to doubt the positive, definite and categorical testimonies of said eyewitnesses that they indeed saw the killers of Mayor Rojas and his driver and recognized them from the pictures presented to them by the NBI agents. Both Solis and Sajines testified, on cross-examination, that they were about twenty (20) meters from the assailants when the latter looked out of the window of their car (see: t.s.n., Solis, November 29, 1973, p. 51; Sajines, December 21, 1973, p. 90). And judicial notice can be taken of the fact that at that distance, a person can, indeed, be identified.

The appellants finally argue in support of the first assignment of error, that so many vehicles were travelling along the stretch between the firing spot and the place where the prosecution's eyewitnesses were standing - thereby making it impossible for their to have a clear view of the assailants. However, no convincing proof was presented to support such allegation. On the contrary, We consider it unnatural for the assailants of Mayor Rojas and his driver to have fired at the latter when possible witnesses to their misdeed were passing by.

II. RE: SECOND ASSIGNMENT OF ERROR -

Alleging that the appellants' alibi has been strongly corroborated and that their motive in killing Mayor Rojas and his driver has not been established by the prosecution, they finally contend that the lower court erred in finding them guilty beyond reasonable doubt of the crime of murder.

We find as completely applicable to the case at bar Our ruling in *People v. Mercado, et al.* (G.R. Nos.

L-39511-13, April 28, 1980), where We held that -

"The trial court correctly ruled that alibi is a weak defense not only because it is easy to fabricate (People v. Zapatero, L-31960, August 15, 1974, 58 SCRA 450; People v. Dereje, L-31155, April 22, 1974, 56 SCRA 554; People v. Mori, L-23511 and L-23512, January 31, 1974, 55 SCRA 382; People v. Ragas, L-29393, March 29, 1972, 44 SCRA 152) but also because human memory on dates or days is frail, and unless the day is an extraordinary or unusual one for the witness, there is no reasonable assurance of its correctness. (People v. Dasig, 93 Phil. 618 [1953]). Furthermore, for alibi to prosper, it is not enough to prove that the accused were somewhere else when the crime was committed but it must likewise be demonstrated that it was physically impossible for them to have been at the scene of said crime at the time of its commission. (People v. Dueño, L-31102, May 5, 1979, 90 SCRA 23; People v. Cortez, L-311106, May 31, 1974, 57 SCRA 308; People v. Baylon, L-35785, May 29, 1974, 57 SCRA 114; People v. Turalba, L-29118, February 28, 1974, 55 SCRA 697; People v. Diaz, L-24002, January 21, 1974, 55 SCRA 178; People v. Esmael, L-28533, February 24, 1971, 37 SCRA 601.)

"But apart from the foregoing weaknesses which inhere in the defense of alibi, its inability to exculpate the herein accused-appellants from the crime of which they stand charged basically emanates from the applicability to the case at bar of the fundamental juridical dictum that the defense of alibi cannot prevail over the positive identification of the accused by credible witnesses as the authors of the crime. (People v. Artieda, L-38725, May 15, 1979, 90 SCRA 144; People v. Caoile, L-31104, November 15, 1974, 61 SCRA 73; People v. Sudoy, L-33572, October 10, 1974, 60 SCRA 174; People v. Abletas, L-33304, July 31, 1974, 58 SCRA 241; People v. Aquino, L-27184, May 21, 1974, 57 SCRA 43; People v. Diaz, L-24002, January 21, 1974, 55 SCRA 178; People v. Dorico, L-31568, November 29, 1973, 54 SCRA 172; People v. Carandang, L-31012, August 15, 1973, 52 SCRA 259; People v. Merila, L-32785, May 21, 1973, 51 SCRA 31; People v. Olden, L-27570 and L-27571, September 20, 1972, 47 SCRA 45; People v. Tanjahali Gajali, L 28534, July 31, 1972, 46 SCRA 130; People v. Kipte, L-26662, October 30, 1971, 42 SCRA 198; People v. Cuaton, L-31570, August 30, 1971, 40 SCRA 386; People v. Bagasala, L-26182, May 31, 1971, 39 SCRA 236; People v. Mercado, L-30298, March 30, 1971, 38 SCRA 168; People v. Esmael, L-28533, February 24, 1971, 37 SCRA 601.)"

In the case at bar, eyewitnesses Virgilio Solis and Angelito Sajines corroborated each other in positively and categorically identifying both appellants as the authors of the crime. They supplied the court with a clear and complete account of how the appellants, acting in concert, shot and killed their victims with high-powered firearms and, with the use of their motor vehicle, sped away from the scene of their crime after looking out of the windows of their car to see if their prey had been killed. Appellants alibi simply cannot prevail over such positive testimonies of disinterested eyewitnesses who, incidentally, should be commended for their courage in testifying against such lawless elements of our society.

The last point raised by the defense counsel concerns the inability of the prosecution to establish the motive of the defendants in killing Mayor Rojas and his driver. But as correctly pointed out by the Solicitor-General, motive need not be established in the case at bar. For settled is the rule that when the accused has been positively identified, proof of motive is not indispensable for conviction. (People v. Veloso, L-33132, August 6, 1979, 92 SCRA 515; People v. Dueño, L-31102, May 5, 1979, 90 SCRA 23; People v. Pajanado, L 26458, January 30, 1976, 69 SCRA 172; People v. Harila, L-32785, May 21, 1973, 51 SCRA 31.)

The trial court ordered the appellants "to indemnify the heirs of the victims in the amount of P40,000.00, jointly and severally; to pay moral damages in the amount of P20,000.00 and another P20,000.00 as exemplary damages, jointly and severally also x x x." However, none of the heirs of the victims testified during the trial in order to

justify an award in excess of the jurisprudential amount of P12,000.00 for the death of each victim.

WHEREFORE, the judgment of the court a quo sentencing the appellants "to suffer the penalty of DEATH in each of the above-entitled cases [Nos. CCC-VII-1358 and 1359, Cavite]" is hereby affirmed but modified in respect of the civil indemnity in that they are ordered to pay, jointly and severally, P12,000.00 to the heirs of Manuel S. Rojas and Jaime Yap. Costs de oficio.

SO ORDERED.

Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro and Melencio-Herrera, JJ., concur.

Teehankee, J., separate opinion.

Barredo, J., concurs as to the question of damages, the issue may be taken up in an appropriate civil action.

Fernando, C.J., did not take part.

SEPARATE OPINION

TEEHANKEE, J.:

I concur in the affirmance of the death penalty. The indemnity awarded the victims' heirs in the amount of P40,000.00 and the moral and exemplary damages totalling P40,000.00 likewise awarded them are justified under the provisions of Articles 2206, 2216 and 2230 of the Civil Code, under which "no proof of pecuniary loss is necessary" for the adjudication of such damages, which are "left to the discretion of the court, according to the circumstances of each case." I therefore vote also for the affirmance in full of such awards.

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