

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MAMERTO SERANTE ALIAS “MAMER” LORETO
ANCHETA AND FERNANDO ANCHETA, DEFENDANTS-APPELLANTS.**

G.R. No. L-46724. July 31, 1987

Ponente: CORTES, J.

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CORTES, J.:

The judgment of the former Circuit Criminal Court of Cabanatuan City in Criminal Case No. CCC-IV-22 (75)-NE finding Mamerto Serante, Loreto Ancheta and Fernando Ancheta guilty of the crime of robbery with homicide and physical injuries and imposing the death penalty, is before this Court on automatic review. The information filed against them reads:

That on or about the 9th day of April 1975, in sitio Boring, Bo. Puncan, municipality of Carranglan, province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and mutually aiding one another, each of them with firearm, with the use of a motor vehicle, taking advantage of the nighttime, and with intent of gain, did then and there, wilfully, criminally and feloniously rob, take and carry away the amount of P20.00 in cash from the store of Lucena Alsaybar and her deceased husband, Anselmo Sicuan, to the damage and prejudice of the said owners; and on the occasion (sic) of said robbery, with intent to kill, did attack, assault and shoot said Anselmo Sicuan and Bo. Captain Eugenio A. Tambalque, while the latter was performing his duties as barrio captain of Bo. Puncan, thereby inflicting upon Anselmo Sicuan mortal gunshot wounds which caused his instantaneous death, and inflicting physical injuries to Bo. Captain Eugenio A. Tambalque.

Contrary to law.

Arraigned on November 17, 1975, all the accused pleaded NOT GUILTY. Mamerto Serante was represented by counsel de oficio while Fernando Ancheta and Loreto Ancheta were represented by counsel de parte.

The trial court found the three accused guilty of the crime of robbery with homicide and physical injuries and sentenced each of them to suffer the penalty of death. The dispositive portion of the decision is as follows:

WHEREFORE, the accused Mamerto Serante, Loreto Ancheta and Fernando Ancheta are hereby found guilty beyond reasonable doubt of the crime of robbery with homicide and physical injuries, and there being proved the aggravating circumstance of nighttime, without any mitigating circumstance to offset the same, the Court hereby sentences them to DEATH, to indemnify the heirs of the deceased, jointly and severally, in the sum of P12,000.00, for the death of the latter plus the further sum of P3,000.00, representing expenses for his burial, and to pay the cost of this suit.

In his decision the trial judge incorporated lengthy summaries of the testimonies on direct and cross-examination of three of the six witnesses for the prosecution, namely, Lucita Sicuan, daughter of the deceased Anselmo Sicuan, Lucena Alsaybar Sicuan, the widow, and Eugenio Tambalque, the barrio captain. The other prosecution witnesses presented were the medical doctor who examined the gunshot wounds found on the deceased and issued

the death certificate, the medical doctor who issued the medico-legal report on the injury suffered by Eugenio Tambalque, and T/Sgt. Felipe Guerrero who brought the accused Mamerto Serante first and later the two Anchetas to the PC Headquarters in Cabanatuan City.

Against the evidence of the prosecution the trial judge weighed the evidence presented by the defense consisting of the testimony of the three accused, of Cristina Lagaren, Jose Rimando and Brigida Ancheta to support the common defense of alibi. Documentary evidence was likewise presented as well as an additional witness who testified that the Ancheta brothers were employed by him.

The trial court found the following facts established:

On April 9, 1975, at about 10:45 o'clock in the evening, Lucita Sicuan and her cousin, Clarita Alsaybar, were tending the family store located at the National Highway at Sitio Boring, Puncan, Carranglan, Nueva Ecija. With them in the store which also housed the family quarters and a coffee shop were Lucita Sicuan's mother, Lucena Alsaybar Sicuan, her father Anselmo Sicuan, brothers Saldy, Eric and Anselmo, Jr. who were already asleep, and her uncle, Ignacio Tambalque, who was then at the place to take coffee. Three men, later identified as Mamerto Serante, Loreto Ancheta and Fernando Ancheta, entered the store and one of them bought cigarettes. Thereafter, the trio asked if they could be served food. When they were informed that no food was available, they ordered three cups of coffee.

After coffee was served them, Mamerto Serante went towards the kitchen to wash his hands. Told that there was no water, he went back to his place at the table, prepared his coffee, and the trio talked in whispers. Fernando Ancheta who was armed with a gun, then stood up and positioned himself at the door while Mamerto Serante went to the kitchen, drew his firearm and told everybody not to move otherwise, he would shoot them.

Loreto Ancheta, who was also armed, ordered Anselmo Sicuan, Lucita Sicuan, Lucena Alsaybar Sicuan, Clarita Alsaybar, and Ignacio Tambalque to the family sleeping quarters. Once they were inside, Mamerto Serante pointed his gun at them while Loreto Ancheta ordered them to lie flat on their stomachs. Mamerto Serante then asked where the money was and being told where, took it from the tin can on top of the stereo. Thereafter, Mamerto Serante and Loreto Ancheta dragged Anselmo Sicuan out of the sleeping quarters.

Eugenio Tambalque, barrio captain of Puncan, Carranglan, Nueva Ecija was on patrol duty with his councilman. Having seen a jeep going in the direction of the Sicuans' store they were proceeding there when they met Anselmo Sicuan who told him that there were notorious persons (masasamang tao) in his store. In front of the store Eugenio Tambalque directed his flashlight on the man holding a pistol whom he recognized as Mamerto Serante. At this juncture, Serante asked who he was. Tambalque answered, "JUSTICIA KAMI." (I am authority.)

When Tambalque saw Mamerto Serante raise his arm to fire his gun, the former shouted, "Mamer" and almost immediately Serante fired, grazing Tambalque's right forehead, then fired again hitting Tambalque on the right palm. As he fell flat on the ground, other shots followed. Anselmo Sicuan who was then behind Tambalque was mortally hit. Thereafter, Mamerto Serante and his other companions fled.

Dr. Dolores Maglanoc, the Rural Health Officer of Carranglan, Nueva Ecija, examined the cadaver of Anselmo Sicuan and issued her report with the following findings:

The cadaver sustained 4 gunshot wounds, one located at the 4th intercostal space left close to the sternum as point of entrance and no visible point of exit. The diameter of the wound was about 1-2 cm. There are three gunshot wound (sic) of the iliac region right side, about 2-3 inches interval. Point of entrance of each wound was about 1-2 cm. in diameter. There was also visible point of exit of the back nor any part of the body (sic).

There is the presence of abrasion with contusion over the right cheek about 4-5 inches in length. [Rollo, p. 15].

Eugenio Tambalque first went to the San Jose Hospital at San Jose City where he was treated by Dr. Dolores de Leon whose medico-legal certificate states:

- Gunshot wound, thru and thru
- POE 1 cm., hypothenar eminence, hand, (R)
- POX 2 cm., dorsal aspect, in between
- 4th and 5th metacarpal bones, hand, (R)
- Grazing wound, 3" fronto-temporal, (R)
- [Rollo, p, 17].

Tambalque later went to the Philippine Constabulary Headquarters at Baloc, Sto. Domingo, Nueva Ecija to report the incident.

Given a mission order by their Intelligence Officer, T/Sgt. Felipe Guerrero together with T/Sgt. Romulo Octavio proceeded to Barrio Puncan for surveillance work. They conferred with Barrio Captain Eugenio Tambalque who informed them about the killing of Anselmo Sicuan by Mamerto Serante, a resident of Digmala, Bongabon, Nueva Ecija. They also interviewed the daughter and widow of the deceased Sicuan. Afterwards, they went to the house of barrio councilman Domingo Pascual of Digmala, Bongabon, Nueva Ecija and fetched Mamerto Serante whom they brought to the Philippine Constabulary headquarters at Cabanatuan. In the course of the investigation there, Serante disclosed that his companions were Fernando Ancheta and Loreto Ancheta. The Anchetas were then picked up from Digmala, Bongabon, Nueva Ecija and brought to the PC Headquarters at Cabanatuan City.

The following day, Fernando Ancheta, Loreto Ancheta, Mamerto Serante and several other persons were made to line up. The widow and the daughter of the victim identified the three accused as the persons who entered their store on April 9, 1975 and perpetrated the robbery, the killing of Anselmo Sicuan and the infliction of serious physical injuries on Tambalque.

The defense presented testimonial and other evidence to prove that on the night of April 9, 1975 the accused Mamerto Serante, 26 years old, Loreto Ancheta, also 26, and Fernando Ancheta, 28 years old, were in Digmala, Bongabon, Nueva Ecija in Loreto's house because his infant son was very ill. The trial judge in his decision referred to the theory of the defense thus:

Against the foregoing evidence of the prosecution, the defense presented as witnesses the following: Cristina Lagaren, Jose Rimando, the three accused and Brigida Ancheta, who unravelled the following theory of the case:

The accused Loreto and Fernando Ancheta are brothers while the other accused, Mamerto Serante, is their cousin. These three (3) were former residents of barrio Piot, Carranglan, Nueva Ecija, until the year 1970 when they transferred to barrio Digmala, Bongabon, Nueva Ecija where they leased farm lands from Marcelino Veneracion. Aside from farming, Loreto and Fernando Ancheta are tractor operators from (sic) Marcelino Veneracion pay P300.00 and P250.00 monthly, respectively. The three (3) accused are also contract workers in digging canals that irrigate the ricefields of their landlord as well as other landowners in Digmala.

On April 9, 1975, more particularly in the evening, the accused were all in the house of Loreto Ancheta at Digmala whose three-month-old child was very ill. Together with neighbors, they watched over the child who was attended to by the local "herbolaria", Cristina Lagaren. It was then eve of the town fiesta of Bongabon but they could not go to the town. During the evening, the three (3) accused were in the house, except that at about 9:00 o'clock, Mamerto Serante was called by his wife to attend to her needs as the latter has just delivered a

baby boy two (2) days before. In the late afternoon of the same day, Fernando Ancheta and Mamerto Serante even went to the house of Domingo Pascual for whom they were working, digging irrigation canals, to secure a "vale" in order to defray expenses of the sick child but that their employer had gone to Bongabon to attend the town fiesta.

Aside from the above, the defense also presented as Exhibit 7 an unnumbered resolution of the Sangguniang Nayan of Digmala dated April 15, 1975, passed after the arrest of the three (3) accused, to the effect that they were in Digmala on April 9, 1975 working on their canal-digging contract with Domingo Pascual, and requesting that the authorities of Bongabon to intercede in behalf of the three (3) accused as they were only the victims of suspicion.

Also presented to prove that the wife of the accused Mamerto Serante gave birth to a baby boy on April 7, 1975 was Exhibit 8, which is a certification from the office of the local civil registrar of Bongabon to the effect that Mario L. Serante, child of Mamerto Serante and Gregoria Lopez was born on April 7, 1975. The birth was reported to the local civil registrar of Bongabon on April 18, 1977, the date when the said certificate was issued. [See Exhibit F].

It is quite clear from the above that the accused have adopted a common defense of alibi . . . [Decision, August 8, 1977, pp. 13-21].

In their separate briefs the appellants do not dispute the facts that on the night of April 9, 1975 Anselmo Sicuan was shot dead and Eugenio Tambalque suffered physical injuries but they raise the following simplified issue:

Have all-important elements of positive identification, conspiracy, nighttime, robbery and homicide been established beyond reasonable doubt? [Rollo at pp. 122 and 166].

They contend that "the prosecution failed to survive the gauntlet of reasonable doubt."

Except for the appellant Serante who assigned as error the trial court's assumption of jurisdiction in trying this case, the appellants raised six identical assignments of errors which can be simplified as follows:

- I. That the trial court erred in pronouncing that the accused had been positively identified;
- II. That there being no concrete finding of conspiracy, the trial court erred in holding that all three appellants are responsible for all the acts of only one alleged perpetrator;
- III. That the trial court erred in holding that robbery had been in fact clearly established;
- IV. That the trial court erred in considering nighttime as an aggravating circumstance;
- V. That the trial court erred in turning down the appellants defense of alibi; and
- VI. That the trial court erred in not considering and taking into account every circumstance favoring the innocence of the appellants.

Appellant Mamerto Serante maintains that the lower court erred in assuming jurisdiction of the case because with the declaration of martial law, the case should have been tried by the military courts, not the civil courts. There is no merit to this assignment of error. It was only after the lower court's adverse decision on the merits that appellant questioned the jurisdiction of the said court. As We held in *Dalman v. City Court of Dipolog City*, [G.R. Nos. L-63194-96, January 21, 1985, 134 SCRA 243], "the question of jurisdiction was never raised in said case before the trial court. It cannot be done at this stage and level." More importantly, this Court in the case of *Olague et al. v. Military Commission No. 34* (G.R. Nos. 54558 and 69882, May 22, 1987), squarely dealt with the question of jurisdiction of military courts over civilians, stating in unequivocal terms that:

* * *

We take this opportunity to reiterate that as long as the civil courts in the land are open and functioning, military tribunals cannot try and exercise jurisdiction over civilians for offenses committed by them. Whether or not martial law has been proclaimed throughout the country or over a part thereof is of no moment. . . .

* * *

The first common assigned error avers absence of positive identification.

In the case of Mamerto Serante the trial judge found that the barrio captain, Eugenio Tambalque had positively identified Serante as these excerpts from his testimony indicate:

Q. When the man appeared what happened?

A. I directed my flashlight to the person, Sir.

Q. Did you recognize that man?

A. At first I noticed that the person was carrying a pistol and then he asked me who I am and I said that I am authority (Justicia Kami) and before he raised the gun I directed the light to his face and I recognized him.

* * *

Q. When you recognized him . . . You said you recognized him, now, can you tell his name?

A. Mamerto Serante, sir.

Q. After you recognized him what happened?

A. That is it, sir, when I recognized him he raised his gun and he fired and I was hit here (witness pointing to his right forehead).

Q. After hitting you at the right side of your forehead, what happened?

A. He fired his gun again and I was hit here (witness showing his right palm) because I was about to strike him with my wooden (sic) club. But then, I was not able to do so because he was quite far . . . (TSN, September 13, 1976, pp. 95-96).

Tambalque knew Mamerto Serante and the members of his family even before the events of the evening of April 9, 1975 because the latter's father is his in-law [TSN, September 13, 1976, p. 106, October 19, 1976, p. 125].

Positive identification was likewise made by witness Lucita Sicuan. Prior to April 9, 1975 she had often seen Mamerto Serante:

Q. Now, this accused Mamerto Serante, you have not known him yet prior to April 9, 1975, is it not?

A. I know him already, sir, only I do not know his name.

Q. Now, how many times have you seen this accused Mamerto Serante prior to April 9, 1975?

A. I often see him at barrio Puncan because he was then a worker at the fishpond of the barrio captain.

Q. When was that when you saw him working at the fishpond of the barrio captain?

A. In the month of February, sir.

Q. In 1975?

A. Yes, sir, between February and March.

Q. How far is the place of the fishpond of the barrio captain where this Mamerto Serante was working to the store where you were?

A. Around eight or ten meters away, sir.

Q. And what is the name of that barrio captain whom you said hired the services of Mamerto Serante?

A. Barrio Captain Eugenio Tambalque, sir.

Q. And how long was this fishpond of the barrio captain finished?

A. More or less one month, sir.

Q. And after the construction of that fishpond you have not seen the accused Mamerto Serante?

A. No more, sir, not until that night when they came and robbed our house, sir. (TSN, January 6, 1976, pp. 22-24).

Witness Lucena Alsaybar vda. de Sicuan also positively identified Mamerto Serante for having resided in Sitio Boring while working for Eugenio Tambalque (T.S.N. March 31, 1976, pp. 10-11).

The defense questions the reliability of the identification of the appellants in that the prosecution witnesses saw the three accused being released from their detention cells before they were identified in the line-up and that the P.C. officer told Lucita Sicuan and Lucena Alsaybar the names of Fernando and Loreto Ancheta. The case of *People v. Cruz* (G.R. L-24424, March 30, 1970, 32 SCRA 181), is cited to support the appellants contention that the identification made was unreliable. The defense also claims, secondly, that it could have been Leano Serante, Mamerto Serante's brother who could have committed the crime since the family of the victim and Leano were not in good terms. Indeed, according to the appellants, the prosecution's evidence failed for it did not disclose any motive why the three farmers would travel more than 3 hours away from home, just to commit a P20.00 robbery.

The Court finds nothing irregular in the manner the appellants were identified. The evidence shows that the appellants were made to line up at the Philippine Constabulary Camp at Cabanatuan along with other persons [TSN, Feb. 1, 1977, p. 10]. Thereafter, the prosecution witnesses entered the room one by one and identified each of the three appellants as the perpetrators of the crime [Id. at pp. 20-22]. Whether or not the names of the two appellants (Anchetas) were supplied by someone else would not matter as long as the appellants were the ones identified directly by the witnesses. The facts obtaining in the case of *People v. Cruz* are different. There, the accused was picked up by the policeman and made to walk in the presence of the identifying witnesses. In the case at bar, the appellants were placed in a "line-up" in order to test the accuracy of the witnesses' memory.

As the trial court found, there were circumstances present to prove that Lucena and Lucita Sicuan recognized and remembered the faces of all the appellants; and for Eugenio Tambalque to positively identify Mamerto Serante. Firstly, the Sicuan family and Eugenio Tambalque had known Mamerto Serante long before the incident happened. The father of Mamerto is the in-law of Eugenio Tambalque. Mamerto is the cousin-in-law of Lucena Sicuan. Secondly, the coffee shop was well-lighted with a Coleman lamp and the appellants stayed there for about fifteen minutes before the robbery and killing took place. Finally, Eugenio Tambalque who was familiar with Mamerto Serante's face and physical features focused his flashlight on the face of the latter.

The trial court stressed the positive identification of the accused by the witnesses Lucita Sicuan, Lucena Alsaybar Sicuan and Eugenio Tambalque.

. . . These witnesses testified to the effect that the accused stayed inside their coffee shop for about 15 minutes before they announced the hold-up and they never broke down despite extensive and intensive cross-examination by two (2) over-zealous and cross-examination-happy defense attorneys. Add to this the

identification of the accused Mamerto Serante by barrio captain Eugenio Tambalque who was familiar with his face and physical features and the Court cannot but be convinced that the three (3) accused were the persons who held-up the Sicuans, killed Anselmo Sicuan and caused the injuries of barrio captain Eugenio Tambalque. (Decision, August 8, 1977, p. 16).

The next issue refers to the existence of robbery as raised by the appellants. Was it but a concoction, a fabrication? The taking of money was emphatically mentioned by the widow and the daughter. Only the widow, Lucena Alsaybar vda. de Sicuan testified as to the amount [TSN, March 31, 1976, p. 15]. Appellants claim that while during the direct examination, she testified that it was Loreto Ancheta who took the money, on cross-examination, she declared that it was really Mamerto Serante who took the money from the tin can. The trial judge who observed the conduct and manner of this witness under direct and rigid cross-examination gave full credence to her testimony. As the Solicitor General pointed out, inconsistencies are due to innocent mistakes. The exact sequence of startling events, crowded into a brief period of time and productive of excitement and confusion, is accurate memory; and in the reiterated narration of such occurrences, in the examination in chief or on cross-examination, the most candid witnesses sometimes make mistakes and fall into apparently confused and inconsistent statements, which, however, should not affect their credibility [People v. Albapara, et al., G.R. No. 25001, March 15, 1968, 22 SCRA 1043].

The small amount of the money and the fact that the appellants did not take the wrist watches and the stereo of the family do not negate the existence of robbery. The arrival of the barrio captain and the councilman and the shooting that followed interrupted whatever plans the appellants might have had and made them abruptly flee the scene of the crime. With regard to the failure of the appellants to cover their faces, as the Solicitor General puts it, it is not unusual that robberies are committed with reckless boldness. The evidence establish beyond reasonable doubt that the crime of robbery was committed by the appellants. The homicide and physical injuries the occurrence of which the appellants do not dispute, were committed on the occasion of that robbery.

Finally, on the issue of conspiracy, appellants Fernando and Loreto Ancheta assail the lower court's decision holding all the appellants responsible for the acts of only one perpetrator. They contend that the trial court, disregarding the constitutional presumption of innocence in their favor, proceeded to impose collectively the supreme penalty of death based on presumptive conspiracy and granting for the sake of argument that they were inside the store, mere presence at the scene of the crime is not proof of culpability. The appellants likewise stress that "One will search each page of the decision in vain for one statement or finding that will suggest, even presumptively, that the appellants conspired to commit the crime charged. Not even an allusion or scant intimation."

The Court is not persuaded by the appellants' contention. The information specifically charges that the accused committed the crime of robbery with homicide and physical injuries conspiring and mutually aiding one another. The dispositive portion of the decision states that "the accused Mamerto Serante, Loreto Ancheta and Fernando Ancheta are hereby found guilty beyond reasonable doubt of the crime of robbery with homicide and physical injuries ..." Conspiracy is established in the case by positive testimonial evidence of acts done in concert to carry out an unlawful design: that all three arrived together at the victim's store; that they conversed with each other in low whispers; that Loreto Ancheta armed with a gun herded the members of the family into the sleeping quarter; and that while Mamerto Serante pointed his gun at the family and ordered them to lie flat on their stomach, Fernando Ancheta, with gun in hand, positioned himself at the door of the coffee shop; that Loreto Ancheta and Mamerto Serante dragged Anselmo Sicuan out of the sleeping quarter and brought him outside the coffee shop. Prosecution witness Eugenio Tambalque testified that besides Serante, whom he recognized, he also saw another person whom he did not recognize running away from the scene of the crime; this person fired shots before he ran towards the bridge at barrio Boring. These facts taken together establish beyond reasonable doubt that the

appellants acted in concert, with a common design.

For conspiracy to exist it is enough that at the time the offense is committed, the participants had the same purposes and were united in its execution as may be inferred from the attendant circumstances. This court has repeatedly ruled that conspiracy may be inferred from the acts of the accused themselves when such point to a joint purpose and design. [People v. Catao, 107 Phil. 861 (1960); People v. Estrada, 130 Phil. 108, 22 SCRA 111; People v. Alcantara, L-26867, June 30, 1970, 33 SCRA 812].

Conspiracy having been proved, the act of one conspirator becomes the act of all; and it is of no moment that not all the accused participated in the actual commission of every act constituting the crime [People v. Paredes, et al., 133 Phil. 633 (1968), 24 SCRA 635]. The case of People v. Bautista, et al. [G.R. No. 23303, 20 May 1969, 28 SCRA 185], is squarely in point, where this Court held that all the conspirators are equally guilty of the offense although only one of them actually committed the act of demanding money in a charge of robbery with homicide. Proof of prior agreement to commit the offense is not required since conspiracy legally exists if at the time of the commission of the offense, the accused had the same criminal purpose and acted in unison to execute it [People v. Beltran, et al., G.R. Nos. 37168--69, September 13, 1985, 138 SCRA 521].

The third common error assigned relates to the trial court's ruling taking nighttime as an aggravating circumstance. We agree with the appellants that nighttime, per se, is not aggravating. In the case at bar, it does not appear that the accused purposely sought nocturnity to facilitate the commission of the crime [People v. Bato, 129 Phil. 740 (1967), 21 SCRA 1445]. Lucita and Lucena Sicuan testified that the Coleman lamp illuminated the coffee shop when the accused took their coffee and herded the family to the sleeping quarters so that they were able to see what went on and to identify the three accused.

Having considered positive identification conspiracy, and the fact of robbery we now weigh the last assigned error concerning the defense of alibi. The appellants to buttress their defense of alibi asserted that: (1) appellants Loreto and Fernando Ancheta were farming two hectares of riceland and one hectare of onion land each, while appellant Mamerto Serante had two hectares of ricelands; aside from farming, Loreto and Fernando Ancheta were tractor operators earning P200.00 and P250.00 per month, respectively; (2) April 9, 1975 was the town fiesta of Bongabon, Nueva Ecija; (3) on April 7, 1975, the wife of Mamerto Serante gave birth to a baby boy; (4) on or about April 9, 1975 appellants Mamerto Serante and Fernando Ancheta were constructing the irrigation canal of one Domingo Pascual; (5) on the night of April 9, 1975 the three-month old son of Loreto Ancheta was sick; (6) on April 15, 1975 or right after the arrest of the three defendants, the Barrio Council of Digmala, Bongabon, Nueva Ecija passed a Resolution attesting to the fact that the three accused were in Digmala, Bongabon, Nueva Ecija on the night of April 9, 1975; (7) in going to Puncan, Carranglan, Nueva Ecija from Digmala, one has to travel around 100 kilometers and consume travel time of 1-1/2 to 3-1/2 hours, more or less; and (8) curfew was then in force [Brief for the Appellants, pp. 135-138, 175-178, Rollo].

Alibi often deserves little consideration because it is "the easiest to fabricate and concoct." [People v. Contante, 120 Phil. 1447 (1964), People v. Reyes, 123 Phil. 1158 (1966) but we are not unmindful of prior rulings of this Court that one should not harbor at once a mental prejudice against a defendant who invokes the defense of alibi. Alibi to be given full faith and credit must be clearly established and must not leave any doubt as to its plausibility and verity. [People v. Sagario, 121 Phil. 1257 (1965), 14 SCRA 468; People v. Manalo, G.R. No. 45088, February 28, 1985, 135 SCRA 84]. The accused must be able to establish that he was at another place at the time the crime was committed and that it was physically impossible for him to be at the scene of the crime at the particular moment it was perpetuated. [People v. Urgel, G.R. No. 34851, February 25, 1985, 134 SCRA 483]. Alibi is not credible where prosecution witnesses directly testify on how the assault was committed and positively identified the accused as the offender [People v. Deus, G.R. No. 63729, May 31, 1985, 136 SCRA 660; People v. Rosario

and Rosario; G.R. No. 46161, February 25, 1985, 134 SCRA 496].

In the words of the trial court:

. . . the defense of alibi put up by the three (3) accused has not been proved by positive and satisfactory evidence which could reasonably merit consideration as to its truth. On the contrary, they were positively identified as the perpetrators of the crime charged in the information. . . .

* * * in the instant case alibi cannot prevail over the positive identification of the accused even if the place and distance between the locus criminis and the place where the accused were allegedly situated at the time the crime was perpetrated, were taken into consideration. Travel time is not much of a problem between Bongabon and Carranglan as these two towns are both in the province of Nueva Ecija and are connected with first and second class roads. Then the distance between these two towns is not so far as to preclude the possibility that the accused were present at the scene of the crime even if it were true that they were in Digmala, Bongabon during the early evening of April 9, 1975. (Decision, August 8, 1977, pp. 15-17)

Documentary evidence presented to support the alibi of the accused consisted in the resolution of the Sangguniang Nayan of Digmala dated April 15, 1975, and a birth certificate. This unnumbered resolution allegedly passed after the arrest of the three appellants appears irregular on its face and even if regularly adopted, was based on hearsay. The birth of the son of Mamerto Serante was reported to the local civil registrar of Bongabon, on April 18, 1977, the date when said certificate was issued, or more than two years after the alleged date of birth on April 7, 1975. The flawed documentary evidence lends the alibi no support against the testimony of witnesses positively identifying the appellants.

The court a quo was not persuaded by the testimonies and the documentary evidence presented to support the defense of alibi. The Court after examination of the whole record, particularly the transcript of stenographic notes, finds that in its evaluation of the evidence presented to establish this defense, the trial court committed no error.

This case hinges on the credibility of the witnesses. It is a well-settled rule that appellate courts generally do not disturb the findings of the lower court considering that the latter is in a better position to pass upon the matter of credibility having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the hearing unless the trial court has plainly overlooked certain facts and circumstances of weight or has so misinterpreted their significance that if considered might affect the result of the case [People v. Soterol, G.R. No. 53498, December 16, 1985, 140 SCRA 400; People v. Gani, et al., G. R. No. 54181-82, October 15, 1985, 139 SCRA 301; People v. Canamo, et al., G.R. No. 62043, August 13, 1985, 138 SCRA 141; People v. Bania, G.R. No. 46524, January 31, 1985, 134 SCRA 347; People v. Espejo, et al., G.R. No. 27708, December 19, 1970, 36 SCRA 400].

It is claimed that Lucita, the daughter, and Lucena Sicuan, the widow of the victim, are biased witnesses [Brief for the Appellants, pp. 139, 179, Rollo]. This contention is devoid of merit. The mere fact that the principal prosecution witnesses are related to the victim does not prove that they were prejudiced or biased considering that their testimonies are clear, convincing and corroborated by other witnesses. Appellants also ask why Clarita Alsaybar and Ignacio Tambalque were not presented as prosecution witnesses [Brief for the Appellants, pp. 139, 179, Rollo]. The failure of the prosecution to present them as witnesses does not necessarily mean that their testimonies if presented would be adverse. The prosecution determines what witnesses are needed to prove their case and may decide not to present additional witnesses whose testimony would merely be corroborative.

And since the prosecution has positively, clearly, and convincingly established beyond reasonable doubt that appellant, Mamerto Serante, killed Anselmo Sicuan and inflicted physical injuries on Eugenio Tambalque on the occasion of robbery, failure to establish motive becomes inconsequential. No evil or bad motives having been

imputed by the appellants to the prosecution witnesses, the presumption that eyewitnesses are not actuated by improper motives holds. The absence of any evidence as to the existence of an improper motive strongly sustains the conclusion that no such improper motive existed and their testimony is worthy of full faith and credit.

The widow testified that she spent P3,000.00 for the funeral of her husband.

In the instant case there being neither aggravating nor mitigating circumstance accompanying the crime of robbery with homicide the appropriate penalty is reclusion perpetua, hence, the need to apply the provision of the 1987 Constitution abolishing the death penalty [Art. III, sec. 19(1)] does not arise.

WHEREFORE, the judgment of the trial court is hereby MODIFIED. The accused Mamerto Serante, Loreto Ancheta and Fernando Ancheta having been found guilty beyond reasonable doubt of the crime of robbery with homicide, are each sentenced to reclusion perpetua and to pay, jointly and severally, the increased indemnity of P30,000.00 to the heirs of Anselmo Sicuan, the funeral expenses in the amount of P3,000.00 and to pay the costs of the suit.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, and Sarmiento, JJ., concur.

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