

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO PABILLANO, BRANDO ESTANISLAO, ROLANDO BUENVIAJE, AND ALEXANDER BOADO, ACCUSED-APPELLANTS.

G.R. No. 108618. February 06, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision^[1] dated December 7, 1992 of the Regional Trial Court of San Mateo, Rizal, Branch 76, in Criminal Case No. 1643, finding appellants Fernando Pabillano, Brando Estanislao, Rolando Buenviaje and Alexander Boado guilty beyond reasonable doubt of the complex crime of robbery with homicide.

All four accused were charged under the following information:

That on or about the 22nd day of December, 1991 in the Municipality of Rodriguez, Province of Rizal Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a .38 cal. revolver and bladed weapons, conspiring and confederating together and mutually helping and aiding one another with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take, steal and carry away cash money and other personal belonging, all in the total amount of P20,000.00 belonging to one Maria Luisa Roño y Hernandez, to the damage and prejudice of the owner thereof in the aforementioned amount of P20,000.00; and that by reason and on the occasion of the robbery, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously stabbed one Jose Roño, Jr. on vital parts of his body thereby inflicting upon him mortal wounds which directly caused his death.

CONTRARY TO LAW.^[2]

The prosecution's version of the incident is summed up in the Consolidated Appellee's Brief of the Office of the Solicitor General, which we find supported by the records:

At around 7:15 o'clock in the evening of December 22, 1991, Jose Roño, Jr. and his son, Jose Roño, III were busy preparing and fixing their newly constructed house for the coming Christmas celebration at Tagaytay Drive, Metro Montaña, Rodriguez, Rizal. While the former was cleaning the floor, the latter asked his father to go with him to the sala to determine where to place some of the furniture. On their way to the sala, they were met on the hallway by three (3) of the appellants, Fernando Pabillano, who was armed with .38 caliber revolver, Rolando Buenviaje, who was armed with a knife and Brando Estanislao, who was holding a lead pipe. (TSN, Jan. 29, 1992, pp. 7-10)

Pabillano approached Jose Roño, III and poked the gun on his head and pushed him to the ground. While in that condition, somebody uttered "dapa, dapa kayo." Father and son Roño immediately lay face down. They were dragged to one of the rooms and were pushed to the mattress on the floor. Their hands were tied behind their backs and pillows and clothes were placed over their heads. Jose Roño, III's mouth was taped with a packaging tape. A few moments later, appellants demanded money. One of them went in and out of the room ransacking Roño's belongings (Id., pp. 7-12). While lying prostrate, Jose Roño, III turned his head to the left

dislodging the things piled over his head. Through the spaces between the pillows, he saw appellants Estanislao, Pabillano and Boado forcibly unscrew their stereo component from its stand and place the same inside a box (Id., pp. 15-16; TSN, Feb. 13, 1992, p. 50; TSN Feb. 19, 1992, pp. 21-22). Thereafter, Jose Roño, Jr. was brought out of the room (TSN, Jan. 29, 1992, p. 16).

After several minutes, Jose Roño, III heard his father pleading to appellants not to kill him. Jose Roño, III begged them not to harm his father but one of the appellants put more tapes on his mouth and place the dislodged pillows over his head. Thereafter, Jose Roño, III heard appellants go out and close the main door of the house (Id., pp. 7-19).

Several moments after appellants have left, Fernando Roño, older brother of Jose Roño, III, together with his wife and children arrived at the scene. They were shocked to see the hog-tied Jose Roño, III. After helping the latter, they looked for their father. They found their father inside the bathroom, his feet and hands tied together with electric cord and bathed with his own blood. The brothers rushed their father to E. Rodriguez Memorial Hospital in Marikina where he was declared dead on arrival. (Id., pp. 20-23, 27-28). He died of multiple stab wounds (Exh. "G").[3]

Upon arraignment, all four accused pleaded not guilty.[4] Trial on the merits followed.

The prosecution presented the following witnesses: (1) Jose Roño, III, son of the deceased victim Jose Roño, Jr., who gave an eyewitness account of the incident and identified all four accused as the perpetrators of the crime; (2) Fernando Roño, brother of Jose III, who narrated the events that transpired after the incident, and the amounts spent for funeral expenses; (3) Maria Luisa Hernandez, wife of the deceased Jose Roño, Jr., who testified anent the items taken from their house; (4) Dr. Valentin Bernales, Medico-Legal Officer of the National Bureau of Investigation, who performed the autopsy on the cadaver of the deceased; (5) PO2 Rolando B. Santos of the San Mateo Police Station, who conducted the investigation of the case; (6) Miriam Santeco, a neighbor of the Roños, who testified that she saw appellant Fernando Pabillano inside the Roño residence on the night of the incident in question; and (7) Maria Buena Rodriguez, who testified that she saw four persons enter the Roño residence on the night of the incident, the three of them being Boado, Estanislao and Pabillano, but the fourth person being unidentified.

For its part, the defense presented each of the appellants with the witnesses to support their respective alibi on the night of December 22, 1991, as comprehensively summarized by the trial court:

- Alexander Boado - On December 22, 1991, he was in Divisoria. He and his friend, Ben Arcoles, left San Mateo, Rizal at 7:00 a.m. and went to Romeo Carangian's house in Claro M. Recto, Tondo, Manila and drank beer there until 12:00 noon. Then they went to the cockpit and stayed there until 4:00 p.m., returned to Romeo's house and again drank beer. At 7:00 p.m., he and Ben went home, arriving in Cubao at past 8:00 p.m. from where they took a ride to Maly arriving in Maly at 10:00 p.m., and then to Marang.

Boado further alleged that he was arrested by the police on December 25, 1991 at around 4:30 a.m. He was told to board the mobile car where he saw Buenviaje, Estanislao and Golay seated. They were brought to the headquarters where, together with Pabillano, and another person from Montalban, they were told to fall in line, face left, face right. A person was told to point but he was hesitant and was assured by Lt. Peloneo that he will be responsible. He (Boado) was not pointed to by anybody. The following day, Lt. Peloneo took him out from jail, handcuffed him and placed black plastic bag on his head and something in his mouth. He was brought to a hill near Litex where he was told to lie face down and to admit. He asked for pity because he did not know anything about the killing but Lt. Peloneo fired shot on his left side, then put ten (10) pieces of hot pepper in his mouth, which he was made to chew and swallow. Thereafter, he was brought to Amity just after the small jail. He was asked to admit and to produce the effects of the robbery or else his case will be more serious. His head was placed on the edge of the table and was covered with a piece of cloth on which they poured water

little by little. They pounded him with the barrel of an armalite on his stomach, then poured beer on the cloth. They choked him and placed bullets between his fingers and squeezed it. They electrocuted his organ twice. They offered him P10,000.00 to cooperate but he did not accept.

He and other suspects were brought to Marikina for inquest, then to Pasig. He talked to Atty. Garillo and showed the latter his marks. He knows Buenviaje by face because everyday they go to the market and they have to pass by Buenviaje's house. He also knows Pabillano only by face because he sees him (Pabillano) playing dama. He had not been with either Pabillano or Estanislao prior to December 22, 1991. They were not his friends. He had a medical check up at Montalban Health Center on December 28, 1991.

Bienvenido Arcoles testified for Boado and corroborated the latter's claim that they were in Divisoria on December 22, 1991 at around 10:00 a.m.; that they went to Romeo's house and brought rooster for cockfighting, then had a drinking spree; that they went to a cockpit after eating at 12:00 noon, and stayed there until 4:00 p.m.; then back to Romeo's house where they had drinking spree again until 7:00 p.m.; that they boarded jeep to Cubao, arrived in Cubao at 8:00 p.m., bought medicines, then took bus to Plaza San Mateo, Rizal arriving thereat at 10:00 p.m., then boarded jeep to Montalban and alighted at Maly at 10:00 p.m., walked to Marang arriving thereat at 10:30 p.m.

Arcoles alleged that on December 22, 1991 from 10:00 a.m. to 10:00 p.m., he was with Boado and there was no instance when they were separated.

Romeo Carangian likewise testified in Court for Boado. He alleged that on December 22, 1991 at 10:00 a.m., Boado was with Ben in their (Carangian's) house at 255 Claro M. Recto, Tondo Manila. They drank beer up to 12:00 noon and then went to the cockpit and stayed there up to 4:00 p.m. They returned to his (Carangian's) house and drank beer again up to 7:00 p.m.

Augusto Cruz, Jr. additionally testified in Court for Boado and alleged that on December 22, 1991, at about 9:30 p.m., he saw Boado near the market where he boarded the jeepney after having come from the cockpit in the San Mateo, Rizal. He and Boado alighted from the jeep and conversed while walking. They walked together for about 400 to 500 meters and parted at about 9:40 p.m. Boado was in a natural appearance and he (Cruz) did not smell if Boado drank intoxicating liquor.

- Fernando Pabillano - On December 22, 1991, at around 7:15 p.m., he was at the house of Mang Ceto at Barangay Burgos, Rodriguez, Rizal far from Metro-Montaña playing mahjong with Ruperfito Leonardo, son of Mr. Yabello, and Peding Porlas. They started playing mahjong at 5:00 p.m., more or less, and stopped at around 10:00 p.m. During the mahjong, he did not leave the place even for a single moment.

Pabillano alleged that before December 22, 1991, he did not know his co-accused; that he resides in Barangay Burgos which is far from Metro Montaña; that he does not know Metro Montaña; that the place where they played mahjong is about five (5) to six (6) houses from his house; that in the course of their game, he ate bread and drank coffee; that he cannot remember if any of his companions in the mahjong game stood up while playing mahjong; that he knows Estanislao only by face.

Aniceto Yabello testified for Pabillano as follows: On December 22, 1991, he was in his house which is 35 meters more or less from Pabillano's house. Playing mahjong in his house were Pabillano, Leonardo Porlas and his (Yabello's) son. The mahjong started at 5:00 p.m. and stopped at 10:00 p.m.

He did not attend to the players but he did not leave the house. At around 7:00 p.m., he bought bread from a store three (3) to four (4) blocks away from his house.

Before the players stopped, he (Yabello) was at the door. He did not go near the players but he would know if anyone of the players left the place. The players can leave the place only to answer the call of nature.

Ruperfito Leonardo likewise testified for accused Pabillano. He alleged that on December 22, 1991, at around

5:00 p.m., he played mahjong in the house of Aniceto Yabello, with Pabillano, Peding Porlas and Aniceto Yabello, Jr. They finished playing mahjong at 10:00 p.m., left the place and went to their respective homes.

Leonardo further alleged that he has known Pabillano since 1988. Pabillano is his neighbor and they became good friends. Pabillano's house is approximately five (5) to six (6) houses from the house of Yabello. He has reached Metro Montaña. He only walks when he goes to that place to buy bread but it is a little bit far, though to get there, it will not take one (1) hour, not even half an hour, only about five (5) minutes back and forth.

From the time they started playing mahjong that afternoon of December 22, 1991, he never stood up even for a few minutes, never had a break. If ever he stood up to answer the call of nature, the place he went to was just very near the back of the house where the mahjong was being played, about two (2) meters away. So it is possible that anyone of them (players) could have left the mahjong table if only to answer the call of nature. It is not possible to play with only three (3) persons so one cannot stay away long because they could not continue playing. He did not see Pabillano stand up.

- Rolando Buenviaje - On December 22, 1991, at around 6:00 p.m., he was in the store of Mang Nato at Marang, Tubo, San Mateo, Rizal, playing bingo with Rolly, Ludy and Johnny Mesa, Emelita Manzano, Lydia Manzano, Daisy Santos and Renato Manzano. They played bingo up to 8:30 p.m. From 6:00 p.m. to 8:30 p.m., he did not leave the place except to answer the call of nature. After the game, he went home, changed the flat tire of the truck, checked the fluid and put water. He left San Mateo, Rizal at 9:00 p.m. and arrived at Mandarin Hotel in Makati at 12:00 midnight. His usual travel time is one (1) hour and if there is a little traffic, 1½ hours. Traffic was very heavy at that time. He and his companions left Mandarin at 4:00 a.m. and they went home.

On December 25, 1991, at 5:00 a.m., he was at the Municipal Building of Montalban because the police said he sideswiped a child. When he arrived at the police station, Estanislao, Ariel Laranan and Alvin Santillan were there sitting outside. The policemen left and returned with Boado and Pabillano between 6:00 to 7:00 a.m.

They were brought to a big room in the headquarters and were told to line up, face left, face right, turn their backs and go near the hole of the door knob which was removed. A man was present and Tenyente Peloneo asked the man to point at Pabillano and him (Buenviaje). As they were being pointed, pictures were taken of them. The man (Roño III) pointed to Estanislao and Pabillano and said, "Iyang dalawang iyan, parang namumukhaan ko". He (Buenviaje) was not, however, pointed to by Roño. Roño pointed only to Pabillano and Estanislao.

In support of accused Buenviaje's alibi, the following testified:

a) Abraham Austria, security guard at Mandarin Hotel and assigned at the Garbage Sorter Department. He alleged that he came to know Buenviaje from the time the latter started driving the garbage pick-up at Mandarin Hotel. On December 22, 1991, he was on duty from 10:00 p.m. to 6:00 a.m. the following day. He saw Buenviaje at about past 10:00 p.m. when the latter arrived in his truck to pick up garbage at Mandarin Hotel. They have a record of Buenviaje's arrival but their records are missing. When he arrives in the hotel, Buenviaje rests in front of the pick-up, and usually has five (5) to six (6) companions. On December 22, 1991, Buenviaje left the hotel at about 4:00 a.m.

b) Renato Manzano alleged that on December 22, 1991, at 5:00 p.m., he was in the house playing bingo with Buenviaje and some others, up to 8:30 p.m.

His house is in Marang, Tubo, San Mateo, Rizal, and is about two (2) kilometers from Metro Montaña. On December 25, 1991, Buenviaje's brother requested him to get the Hi-Ace from Montalban because Buenviaje was arrested for having sideswiped a child with the Hi-Ace.

c) Daisy Santos alleged that on December 22, 1991, 5:00 p.m., she went to Renato Manzano's house to play bingo. Her house is just at the back of Manzano's house. She played bingo with Joni, Ludy and Rolly Mesa,

Emelita and Renato Manzano and Buenviaje. They stopped playing at 8:30 p.m. because Buenviaje had to go to his work. She did not see Buenviaje leave the place. She was sure nobody left during the game because of the bet and because of that, she would know who was not present. She came to know that Buenviaje was arrested on December 25, 1991 and Buenviaje's brother told her that Buenviaje sideswiped a child but Buenviaje's brother did not tell her when the sideswiping incident took place.

d) Rodolfo Buenviaje, brother of accused Buenviaje, alleged that Buenviaje is the driver of one of his trucks that gets garbage from the hotels. On December 22, 1991, 8:00 p.m., he was in his house and noticed that the front tire of Buenviaje's truck was flat. He asked a helper to call Buenviaje from the bingo place. Rolando arrived at 9:00 p.m. and changed a flat tire and then left for Mandarin Hotel. Later, Rolando's helper arrived and informed him that they were taken at the checkpoint by Montalban Police. He went to the Municipal Hall of Montalban and was informed that Rolando sideswiped a child. He left the Hi-Ace near the Municipal Hall with Rolando and brought the truck. He came to know that Rolando was implicated in the Roño case on December 26, 1991 at 7:00 p.m. thru Rolando's wife.

- Brando Estanislao alleged that on December 22, 1991, between 2:00 to 3:00 p.m., he attended the meeting of the For the Boys Club at the house of Reynaldo Miralles in Burgos, Montalban, Rizal. After the meeting, he and other members of the club had a drinking session up to 9:00 p.m. They did not leave the place. On December 25, 1991, at 2:00 a.m., after having come from the church in Montalban, he passed by a mobile car and the policemen called him and told him that their chief, Marietto Valerio, wanted to talk to him. He was asked who his companions were in entering Roño's house but he told them that he did not know anything about that. He was brought to the Municipal Building. At 5:00 a.m., Buenviaje alighted from the mobile car and at 6:00 a.m., Pabillano and Boado alighted from the mobile car.

They entered a room in the Municipal Hall and were told to fall in line, face left, face right, while the following were watching: Rufino Ayson, Rolando Santos and Jose Roño, who was peeping through the window.

A person who did not testify in Court, pointed to Pabillano, then to Buenviaje, and then to Ariel Laranan. When Roño pointed to Pabillano, the latter did not do or say anything.

When he denied again that he did not know anything about the crime, Rolando Santos mauled him, boxed him on his stomach, chest and back. He was mauled for about five (5) hours.

Valerio forced him to sign the papers that were typed by the police. Then they handcuffed him. Virgilio San Jose told him that if he would not admit to the Fiscal that it is his signature on the document, "Yayariin ako".

On December 26, 1991, 10:00 p.m., reporters arrived in the jail. He (Estanislao) told them that he had no knowledge about the case and that he was forced to sign the paper because he was mauled by Rolando Santos and Marietto Valerio. The following day, Valerio asked him why he told the reporters that way and he said because it's the truth. Valerio boxed him several times, lasting for about ten (10) minutes.

He has known Buenviaje, Pabillano and Boado for a long time already but only by their faces. He does not know their full names nor their nicknames.

From the place of their meeting to Metro Montaña, it will take more than thirty (30) minutes by walking, around ten (10) minutes if you will take a ride.

He sustained no injuries but he was mauled. They filed complaint before the NBI against Valerio, Rolando Santos, Lt. Cabal and Lt. Peloneo. The NBI came and investigated him and he told them what happened. NBI, however did not come back anymore.

Philip Zipagan testified for accused Estanislao. He alleged that on December 22, 1991, he was at the meeting of For the Boys Club of which he is Vice-President, in the house of Reynaldo Miralles in Burgos, Montalban, which is about 1,000 meters from Metro Montaña. Estanislao was among those who attended the meeting

which lasted until 3:00 p.m. Thereafter, they had merry making and drinking spree which ended at past 9:00 p.m. During the drinking spree, Estanislao was with them.

He (Zipagan) went home ahead of the group at 9:00 p.m. Left in the house were Estanislao, Reynaldo Miralles, Melvin Silva and others.

When he came to know that Estanislao was involved in this case, he went with their neighbors, including Reynaldo Miralles, to the Municipal Building and held "people power". He joined them because he knew that Estanislao was with him on the night of December 22, 1991.

Reynaldo Miralles likewise alleged that Estanislao was with them attending the meeting of the For the Boys Club on December 22, 1991, between 2:00 to 3:00 p.m., and thereafter, had a drinking spree up to 9:00 p.m. During that span of time, Estanislao did not leave the place.

They held "people power" the day following December 25, 1991 when they came to know that Estanislao was involved in the incident of December 22, 1991.

Atty. Regino Garillo additionally testified for Estanislao and alleged that on December 26, 1991, at 10:00 a.m., he was fetched by Gorgonia Boado to proceed to Montalban Police Station. At the police station, he was requested by Estanislao's auntie to talk to Estanislao. Estanislao confided to him that he had nothing to do with the accusation imputed against him and he said this in the presence of the Station Commander.[5]

In its judgment rendered on December 7, 1992, the trial court convicted all four appellants of the crime charged, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding herein accused Fernando Pabillano, Brando Estanislao, Rolando Buenviaje and Alexander Boado guilty beyond reasonable doubt of the complex crime of Robbery with Homicide as defined and penalized under Article 294, par. 1 of the Revised Penal Code, and sentencing each of them to suffer the penalty of reclusion perpetua, to indemnify the heirs of Jose Roño, Jr. in the amount of P30,000.00 for the death of Jose Roño, Jr., P55,000.00 as actual and compensatory damages, P20,000.00 as compensatory damages for the stolen properties if restitution is no longer possible, P50,000.00 as moral damages, and to pay the costs.

SO ORDERED.[6]

Hence, this appeal. Appellants filed separate briefs, ascribing the following errors to the trial court:

ASSIGNMENT OF ERRORS for APPELLANT BUENVIAJE:

I

THE LOWER COURT ERRED IN RULING THAT ACCUSED-APPELLANT BUENVIAJE WAS POSITIVELY IDENTIFIED BY THE PROSECUTION WITNESSES.

II

THE LOWER COURT ERRED IN RULING THAT THE RECORD OF BUENVIAJE'S ARRIVAL AT MANDARIN HOTEL ARE MISSING.

III

THE LOWER COURT ERRED IN RULING THAT THE DEFENSE OF ACCUSED-APPELLANT BUENVIAJE IS NOT CREDIBLE.

IV

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF PAT. ROLANDO SANTOS REGARDING THE STATEMENT OF BRANDO ESTANISLAO WHICH WAS TAKEN IN VIOLATION OF SECTION 12, ARTICLE III OF THE 1987 CONSTITUTION.

V

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT BUENVIAJE.[7]

ASSIGNMENT OF ERRORS for APPELLANT PABILLANO:

I

THE LOWER COURT ERRED IN NOT ENTERTAINING DOUBT TO THE TESTIMONY OF PO2 ROLANDO SANTOS AS REGARDS THE INVESTIGATION CONDUCTED, WHICH LED THEM TO ZERO-IN [ON] THE IDENTITY OF HEREIN ACCUSED-APPELLANT FERNANDO PABILLANO PRIOR TO THE LATTER'S ARREST.

II

THE LOWER COURT ERRED IN RULING THAT THE PROSECUTION WITNESS, JOSE ROÑO, III, POSITIVELY IDENTIFIED THE ACCUSED-APPELLANT FERNANDO PABILLANO WITHOUT THE BENEFIT OF RIGID ESTABLISHMENT OF THE REQUIRED MORAL CERTAINTY.

III

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES MIRIAM SANTECO AND MARIA BUENA RODRIGUEZ.

IV

THE LOWER COURT ERRED IN RULING THAT THE DEFENSE PUT-UP BY THE ACCUSED-APPELLANT FERNANDO PABILLANO IS NOT CREDIBLE.

V

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF PO2 ROLANDO SANTOS REGARDING THE STATEMENT OF BRANDO ESTANISLAO WHICH WAS TAKEN IN VIOLATION OF SECTION 12, ARTICLE III OF THE 1987 CONSTITUTION.

VI

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT FERNANDO PABILLANO.[8]

ASSIGNMENT OF ERRORS for APPELLANT BOADO:

THE TRIAL COURT GRAVELY ERRED IN FINDING ALEXANDER BOADO GUILTY BEYOND REASONABLE DOUBT OF ROBBERY WITH HOMICIDE DESPITE FAILURE BY THE PROSECUTION TO ESTABLISH BEYOND REASONABLE DOUBT HIS PRESENCE AT THE CRIME SCENE DURING THE COMMISSION THEREOF.[9]

ASSIGNMENT OF ERRORS for APPELLANT ESTANISLAO:

(A)

THE HONORABLE TRIAL COURT ERRED IN SO FINDING THAT APPELLANT-ACCUSED BRANDO ESTANISLAO WAS POSITIVELY IDENTIFIED BY EYEWITNESS JOSE ROÑO, III.

(B)

THE HONORABLE TRIAL COURT ERRED IN SO FINDING THAT THE SAME ACCUSED WAS POSITIVELY IDENTIFIED BY EYEWITNESS MA. BUENA RODRIGUEZ.[10]

Essentially, appellants dispute their identification as the malefactors by Jose Roño, III and other witnesses for the prosecution. Appellants argue that since the alleged crime happened so fast, Roño couldn't have clearly seen the faces of the perpetrators. They also allege that Roño's identification of appellants during the police line-up was unreliable and not credible. Appellants further assail the testimonies of witnesses Rodriguez and Santeco, claiming that they couldn't have clearly seen and remembered the faces of appellants on the night of the incident. Appellants also contend that the police investigation conducted by PO2 Rolando Santos was so procedurally

flawed that the trial court should not have allowed and relied on his testimony bearing on it.

The issues for our consideration are thus:

- 1) Which will prevail, the positive identification of appellants as the perpetrators of the crime by the prosecution witnesses, or the respective alibis of appellants?
- 2) Did the trial court commit reversible error in giving credence to the testimony of PO2 Rolando Santos regarding the statement of Brando Estanislao, which was allegedly taken in violation of Section 12, Article III of the 1987 Constitution?

The core issue here is the credibility of witnesses. The elementary rule is when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court.[11] This is because the trial court is deemed to be in a better position to decide the question of credibility, because it heard the witnesses and observed their behavior and manner of testifying.[12] The trial court's appreciation of the evidence will not be disturbed on appeal unless there is good reason for doing so.[13]

Alibi which suffices to acquit an accused of a criminal charge must be that which shows that it was physically impossible for him to be at the crime scene at the time of the commission of the crime.[14] As a rule, it is not enough to prove that the accused was somewhere else when the crime was committed. But it must likewise be demonstrated that it was physically impossible for him to have been at the scene of the crime.

Appellants Pabillano and Estanislao alleged that they were both in Barangay Burgos, in the Municipality of Rodriguez, Rizal, at the time the crime was committed. Appellant Buenviaje claimed he was in San Mateo, a town adjacent to Rodriguez. However these places, where appellants said they were at the time the offense was committed, cannot be said to be of such a distance as to render it impossible for them to have been at the scene of the crime. Appellant Estanislao admitted that Metro Montaña, where the crime took place, is accessible by motor vehicle from his alleged whereabouts on the night of the incident.[15] From San Mateo, it only takes a fifteen-minute jeepney ride to reach Metro Montaña.[16] From Burgos, it takes less than a 10-minute walk to enter Metro Montaña.[17] Tested by the rule enunciated in *People vs. Villonez*, 298 SCRA 566 (1998), each appellants' alibi does not suffice to exculpate the accused.

Furthermore, the trial court found the testimonies by witnesses for the defense less than convincing. Said the trial court in its decision:

Pabillano's witness Aniceto Yabello alleged that Pabillano was then playing mahjong with Leonardo Porlas and his (Aniceto's) son. Admittedly, however, although he did not leave the house, he was not attending to the players (TSN, p. 13, July 29, 1992), did not go near the players and at 5:00 p.m., went to feed his chickens (Ibid, p. 15). Under the circumstances, therefore, the possibility that Pabillano could have left the place without his (Aniceto's) knowledge, cannot be discounted.

Estanislao's witnesses Philip Zipagan and Reynaldo Miralles, both alleged that Estanislao was in the meeting of the For the Boys Club and had drinking spree with the other members of the club who attended the meeting, up to 9:00 p.m. No credible proof was however offered to show that there was indeed such meeting and drinking spree, as admittedly, the attendance sheet may be lost already (TSN, p. 12, October 1, 1992). The pictures presented purportedly depicting the drinking spree, are not competent proof, there being no equal showing that the pictures were actually shot or taken on the date of the subject incident itself. And, while both witnesses claimed to have joined an alleged 'people power' in the Municipal Hall protesting Estanislao's incarceration, it is beyond comprehension why none of those who participated therein, including Zipagan and Miralles, ever gave their statements to the police (TSN, pp. 15-16, October 1, 1992; TSN, p. 18, October 7, 1992). Staging a protest action is not in consonance with a non-execution of statements under oath touching on

the same subject as the subject of the protest action, particularly as sworn statements cannot but be known to be in better position to convince, the affiants thereof correlatively assuming the risk of prosecution upon proof of falsity of their statements.

Equally lame is the reason of Buenviaje, corroborated by his witnesses Renato Manzano and Daisy Santos that he (Buenviaje) was playing bingo on December 22, 1992, from 5:00 to 8:30 p.m. in Manzano's house which is two (2) kilometers, more or less, from Metro Montaña (TSN, p. 16, August 19, 1992). With several persons allegedly present and participating in the game, it was not impossible for Buenviaje to have left the place without the knowledge of said witnesses, particularly as admittedly, even without Buenviaje, the game could continue (TSN, p. 5, August 20, 1992). The alleged bet in the game (Ibid, p. 4), which was not even shown to have been huge, could not have deterred Buenviaje or anybody taking part therein, from leaving the place even in the middle of the game, for more important things.

Buenviaje's witnesses Abraham Austria and Rodolfo Buenviaje, accounted for circumstances that apparently transpired after the subject incident and hence, are inconsequential as far as Buenviaje's defense of alibi is concerned, particularly as it appears that Buenviaje was not arrested on the day of the subject incident itself.[18]

For his part, appellant Boado likewise interposed the defense of alibi, claiming that he was in Tondo, Manila at the time of the incident. However, his testimony and those of his corroborative witnesses bore badges of untruthfulness. They are notably too detailed as to time and place, to the point of synchronicity. As noted by the trial judge:

In the case of accused Boado and his witnesses, their testimonies with respect to the time when certain alleged uneventful circumstances transpired, are observably too exact and consistent as to raise doubt thereon and create the probability of orchestration particularly considering the absence of proof or showing of their ('witnesses') respective bases for such positive awareness and/or determination of the time or the hour when the uneventful circumstances transpired, like the time they had a drinking spree, the time when they went to and arrived at the cockpit, the time they left the cockpit, the time they left the house of Romeo Carangan, the time when they arrived in Cubao, the time they arrived in Maly and their respective homes. Complete uniformity in details could be a badge of untruthfulness and lack of spontaneity (Peo. vs. Bazar, 162 SCRA 609; Peo. vs. Egas, 137 SCRA 188; Peo. vs. Manalo, 135 SCRA 84). The testimonies of two (2) or more witnesses would be under a serious cloud if their declarations tallied in their minutest details, for then, that would not be natural. That would indicate that the testimonies were rehearsed. (Peo. vs. Ferrera, 151 SCRA 113).[19]

Faced with the positive identification of appellants as the perpetrators of the crime, their alibi cannot prevail. Alibi is a weak defense, and that it should be rejected when the identity of the accused is sufficiently and positively established by eyewitnesses to the offense.[20] As found by the trial court:

Jose Roño, III, himself a victim, positively identified the four (4) accused as the persons who committed the crime in their (Roño's) house on December 22, 1991. Roño was about 2 ½ meters from the three (3) persons whom he identified as Pabillano, Estanislao and Buenviaje. When he first saw them in the lighted hallway of their house (TSN, p. 24, February 13, 1992; TSN, pp. 7, 46, February 20, 1992), he observed them for six (6) to seven (7) seconds (TSN, p. 30, February 13, 1992). And when lying down, with the things on his head having been moved after he turned his face to the left (TSN, p. 37, February 13, 1992), he saw Pabillano, Estanislao and Boado placing the stereo inside the box (Ibid. p. 40, TSN, p. 22, February 19, 1992).

Equally credible was Maria Buena Rodriguez's positive identification of Pabillano, Estanislao and Boado as the persons whom she saw enter[ing] Roño's house on the night in question. She saw the faces of the said three (3) accused by reason of the street light and from a distance of approximately two (2) meters. She did not however see the face of the 4th person because the latter's back was turned against the light, but she observed

the 4[th] man to have a mannerism that whenever his hair falls down, he kept on putting it up (TSN, pp. 34, 41, 43, May 28, 1992).

Miriam Santeco positively identified accused Pabillano as the person she saw inside the house of the Roños. She saw Pabillano inside Roño's house from a distance of twelve (12) to fifteen (15) meters, through a vacant lot between her house and Roño's house, hence no obstruction of view. Roño's house was well-lighted and she saw Pabillano seemingly ill at ease (palinga-linga). She looked at that person intensely for about two (2) seconds, that's why his impression stuck to her mind (TSN, pp. 4, 8, 11, 14, April 22, 1992).

All the said three (3) witnesses who positively identified the accused established the bases for their identification and notably, their testimonies particularly in relation thereto, were not impeached.[21]

No reason or motive was adduced by appellants why any of the prosecution witnesses should falsely accuse them. Where there is no evidence to show that the principal witnesses for the State were actuated by ill-motive, their testimonies are entitled to full faith and credit.[22] The natural interest of a witness who is a relative of the victim, (such as Jose Roño, III, the son of Jose Jr.) in securing the conviction of the guilty would deter him from implicating a person other than the true culprit.[23] Jurisprudence recognizes that victims of criminal violence, such as Jose Roño, III himself, have a penchant for seeing the faces and features of their attackers and remembering them.[24] We have no reason to disturb the trial court's finding that the testimonies of the prosecution witnesses are credible, and that their identification of the appellants as the perpetrators of the crime has been reliably established.

Noteworthy, there is no law stating that a police line-up is an essential requisite for proper identification.[25] But as regards the tentative identification made by Jose Roño, III it is to be noted that while he pointed to two suspects as "parang namumukhaan ko" ("I seem to recognize their faces") referring to appellants Estanislao and Pabillano, later he also positively identified these two as among the malefactors in the course of trial.

On the testimony of PO2 Rolando Santos regarding the statement made by Brando Estanislao in the course of the latter's alleged confession, suffice it to state that the trial court did not rely on said confession but rather it relied specifically on the testimonies of the three prosecution witnesses -- namely Jose Roño, III, Maria Buena Rodriguez and Miriam Santeco -- in order to arrive at its judgment.[26] The trial court made no special mention of nor gave any special consideration to PO2 Santos and his testimony, except in enumeration of all the witnesses presented by the prosecution. Contrary to appellants' claim, PO2 Santos' testimony does not appear to have been given much credence by the court a quo.

On the matter of damages, modification is needed. The trial court awarded the amount of P30,000.00 as death indemnity to the heirs of Jose Roño, Jr. This amount must be increased to P50,000.00, pursuant to current jurisprudence. The award of compensatory damages must include (a) the amount of P54,098.00, as shown in receipts placed on record and the testimony of Fernando Roño concerning the amount spent for funeral expenses;[27] and (b) the amount of P20,000.00 for the stolen properties, where restitution is no longer possible; or a total of P74,098.00. The award of P50,000.00 as moral damages is in order. Moral damages are awarded where nervous shock, grave anxiety as well as physical harm have been inflicted.[28]

WHEREFORE, the Decision dated December 7, 1992 of the Regional Trial Court of San Mateo, Rizal, Branch 76, in Criminal Case No. 1643 finding appellants guilty of the complex crime of robbery with homicide and sentencing each of them to reclusion perpetua is **AFFIRMED WITH MODIFICATION** so that the appellants are found jointly and severally liable to indemnify the heirs of Jose Roño, Jr., in the amount of P50,000.00 as death indemnity, and to pay P74,098.00 as compensatory damages and P50,000.00 as moral damages, and the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 35-55.

[2] Id. at 6.

[3] Id. at 368 [2-5].

[4] Records, p. 14.

[5] Rollo, pp. 41-50.

[6] Id. at 55.

[7] Id. at 132-133.

[8] Id. at 247-248.

[9] Id. at 308.

[10] Id. at 75.

[11] People vs. Naguita, 313 SCRA 292, 304 (1999).

[12] People vs. Ibay, 312 SCRA 153, 168 (1999).

[13] People vs. Lim, 312 SCRA 550, 566 (1999).

[14] People vs. Villonez, 298 SCRA 566, 582 (1998).

[15] TSN, October 15, 1992, p. 22.

[16] TSN, July 29, 1992, p. 10.

[17] TSN, July 22, 1992, p. 14.

[18] Rollo, pp. 51-53.

[19] Id. at 53.

[20] People vs. Grefaldia, 298 SCRA 337, 347 (1998).

[21] Rollo, pp. 54-55.

[22] People vs. Milliam, G.R. No. 129071, January 31, 2000, p. 12, citing People vs. Leoterio, 264 SCRA 608 (1996).

[23] People vs. Dimailig, G.R. No. 120170, May 31, 2000, pp. 9-10, citing People vs. Quilang, 312 SCRA 314 (1999).

[24] People vs. Dela Cruz, 313 SCRA 189, 201-202 (1999).

[25] People vs. Peñaflorida, 313 SCRA 563, 571 (1999).

[26] Rollo, pp. 50-55.

[27] TSN, February 26, 1992, pp. 22-25; Records, pp. 162-168.

[28] People vs. Bantillan, 314 SCRA 380, 398 (1999).

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