

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE SION @ “JUNIOR,” JOHNNY JUGUILON, EDONG SION, FELIX SION @ “ELLET,” AND FEDERICO DISU @ “MIGUEL,” ACCUSED. FELIPE SION @...

G.R. No. 109617. August 11, 1997

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In its decision[1] in Criminal Case No. D-10796 dated 20 January 1993, but promulgated on 8 February 1993, Branch 44 (Dagupan City) of the Regional Trial Court of the First Judicial Region decreed as follows:

WHEREFORE, the Court finds accused Felipe Sion alias “Junior” and Federico Disu alias Miguel Disu guilty beyond reasonable doubt as principals of the crime of Murder pursuant to Article 248 of the Revised Penal Code, and in view of the attendance of the aggravating circumstance of cruelty which is not offset by any mitigating circumstance, the two accused are hereby sentenced to suffer the penalty of Reclusion Perpetua, and to indemnify jointly the heirs of the victim the sum of P50,000.00 and to pay the costs of the proceedings.

Accused Felipe Sion alias “Junior” and Federico Disu alias Miguel Disu are ordered to pay jointly the heirs of the victim the sum of P11,910.00 as actual damages.

SO ORDERED.

Felipe Sion alias “Junior,” whose full name is Felipe Rodriguez Sion, Jr.[2] (hereafter appellant Sion), and Federico Disu alias “Miguel” (hereafter appellant Disu), seasonably appealed therefrom to this Court[3] in view of the penalty imposed.[4]

The case against appellants commenced with the filing of a criminal complaint for Murder[5] on 19 November 1991 in Criminal Case No. 2141 (SF-91) before the Fourth Municipal Circuit Trial Court of San Fabian-San Jacinto in the Province of Pangasinan. Charged with appellants therein were Johnny Juguilon, Edong Sion, Felix Sion alias “Ellet,” and “four (4) other John Does.” After appropriate preliminary examination, Judge Sergio Garcia of said court issued a warrant for the arrest of the accused. No bail was fixed for their temporary liberty.[6] However, the warrant was served only on appellant Disu, while the rest then remained at large. Upon appellant Disu's motion for bail, to which Asst. Provincial Prosecutor Restituto Dumlao, Jr., recommended that bail be fixed at P40,000.00 for said accused only, the court fixed said accused's bail at such amount; and upon filing and approval of the bail bond, appellant Disu was ordered released.[7] Subsequently, one Atty. Fernando Cabrera filed, for the rest of the accused, a motion to reduce the bail from P40,000.00 to P20,000.00.[8] As Provincial Prosecutor Dumlao agreed to a reduction of P10,000.00, the court granted the motion and fixed bail at P30,000.00. None of them, however, filed a bail bond.

For failure of the accused to submit the required counter-affidavits, the Municipal Circuit Trial Court, finding probable cause against all the accused for the crime of murder on the basis of the evidence for the prosecution,

ordered the transmittal of the record of the case, including the bail bond of accused Federico Disu, to the Office of the Provincial Prosecutor of Pangasinan for appropriate action.[9]

On 21 January 1992, an Information[10] was filed with the Regional Trial Court (RTC), First Judicial Region, in Dagupan City, Pangasinan, against appellants Sion and Disu and Johnny Juguilon, Edong Sion, Felix Sion alias "Ellet," and four (4) unidentified persons (designated as John, Peter, Richard and Paul Doe), accusing them of the crime of murder committed as follows:

That on or about October 16, 1991 in the evening at Brgy. Bindow, municipality of San Fabian, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with stones and a bladed weapon conspiring, confederating and mutually helping one another with intent to kill with treachery and evident premeditation did, then and there wilfully, unlawfully and feloniously hurl with stones, attack and stab Fernando Abaoag inflicting upon him the following injuries:

- stab wound 1½ inches in width, 9 inches in depth between 10-11 ICS, mid axillary area slanting upwards hitting the left lobe of the lung
- stab wound right lateral side of the neck 1½ , inch in depth
- stab wound 1½ inches in width, 1½ in depth mid scapular area, left
- contusion superimposed abrasion left eyebrow

which caused his instant death, to the damage and prejudice of his heirs.

CONTRARY to Art. 248, Revised Penal Code.

The information was docketed as Criminal Case No. D-10796 and assigned to Branch 44 thereof.

On 2 June 1992, accused Sion was arrested.[11] Then on 10 June 1992, the RTC annulled and voided the bail earlier granted to appellant Disu by MCTC Judge Sergio Garcia for lack of proper hearing, denied the motion for bail filed by appellant Sion and ordered their detention in jail.[12]

Since only appellants Sion and Disu were arrested, the case proceeded against them only. Upon arraignment, both pleaded not guilty to the charge and waived pre-trial.[13]

The prosecution's witnesses were: Cesar and Felicitas Abaoag, the brother and the wife of the victim, respectively; Dr. Leopoldo Manalo, San Fabian Municipal Health Officer; Rosendo Imuslan, barangay captain of Barangay Bindow; and SPO1 Ricardo Abrio. On the other hand, the defense presented as its witnesses appellant Disu; appellant Sion; Corazon Sion, wife of appellant Sion; and Dr. Leopoldo Manalo.

The evidence for the prosecution as established by the testimonies of its witnesses is partly summarized by the Office of the Solicitor General in the Brief for the Appellee, as follows:

On or about 7:00 o'clock in the evening of October 16, 1991, Cesar Abaoag was at the barangay road in front of his house situated in Bindow, San Fabian, Pangasinan. He was with his elder brother Carlos Abaoag and Ricardo Manuel (p.6, TSN, August 20, 1992) when all of a sudden, Ronnie Manuel arrived coming from the west complaining that he was being chased by Felipe Sion and Johnny Juguilon (p.7, TSN, id.). On that same occasion, Fernando Abaoag also arrived at the scene. He said to Ronnie, "why Ronnie, you are making trouble again." The latter answered, "I am not making trouble uncle because while I was inside the house of Eling Alcantara, Felipe Sion and Johnny Juguilon were trying to stab me. (p.8, TSN, id.). Seconds later, Felipe Sion and Johnny Juguilon appeared and started throwing stones. Fernando Abaoag told them to stop throwing stones but before they desisted and left, one of them uttered "even you Andong, you are interfering, you will also have your day, vulva of your mother, you Abaoag[s]" (pp. 9-10, id.) Apparently, the utterance was directed

against Fernando Abaoag whose nickname is Andong.

Subsequently thereafter, at about 9:00 o'clock on that same evening, Cesar Abaoag while inside his house lying down on his bed heard the sound of stone throwing at the nearby house of his brother Fernando. He went out to see who were throwing stones (p.14, TSN, id.). When already near the house of Lolly Galdones, Cesar Abaoag saw his brother Fernando already outside his house. He also saw Johnny Juguilon, one of the members of the group of stone throwers, hurl a big stone against Fernando. Upon being hit on the left eyebrow, Fernando turned his back towards Felix Sion, Edong Sion and Miguel Disu who were also throwing stones towards his direction. On the other hand, appellant Felipe Sion, who was near the victim, with a very sharp double bladed dagger, stabbed Fernando, first on the left side just below the armpit, then on the left waistline and finally on the right side of the neck below the jaw (pp. 18-19, TSN, id.).

Cesar tried to extend help to his brother but Miguel Disu hurled a stone on him which landed on his right side below the armpit. When he heard Felipe Sion shouting to his companions saying, "we will also kill Cesar," Cesar desisted in helping his brother (pp. 22-23, TSN, id.). Instead, he ran to his brother's house and informed Felicitas, the wife, about the helpless condition of Fernando (pp. 22-23, TSN, id.) Upon being informed, Felicitas, accompanied by Carlos Abaoag, went to the place of the incident. The assailants were no longer there. She only saw her husband lying prostate on the ground very weak in the state of dying. When she inquired what happened, Fernando answered "naalaak" which in English means "I was hit" (pp. 4-5, TSN, July 27, 1992). Fernando told his wife that his assailants were Felipe Sion, Miguel Disu, Edong Sion, Johnny Juguilon and Felix Sion (p.6, TSN, id.)

The victim was rushed to St. Blaise Hospital in San Fabian but he was pronounced dead on arrival (pp. 24-25, TSN, August 20, 1992).

Dr. Leopoldo Manalo, a Municipal Health Officer of San Fabian, Pangasinan conducted post mortem examination (Exh. A) on the body of the victim. The result of his findings showed that Fernando Abaoag sustained the following injuries, to wit:

- "1) stab wound 1½ inches in width, 9 inches in depth between 10-11, ICS, mid axillary area slanting upwards hitting the left lobe of the lung
- 2) stab wound right lateral side of the neck 1½ inches in width, 1½- inch in depth
- 3) stab wound 1½ inches in width, 1½ in depth mid scapular area, left
- 4) contusion superimposed abrasion left eyebrow."

Dr. Manalo further testified that the stab wounds were caused by a sharp-pointed instrument, possibly a dagger, with the first wound hitting the lower lobe of the left lung causing severe bleeding and its eventual collapse. He determined the cause of death to be hemorrhagic shock secondary to multiple stab wounds.[15]

Barangay Captain Imuslan testified that he and Kagawad Fernando Gatchalian, on the night of the incident, found a small bolo and a bloodied double-bladed weapon (dagger) near the scene of the crime.[16] Cesar Abaoag recognized this weapon as the one used by appellant Sion in stabbing the victim.[17] On her part, Felicitas Abaoag declared that she spent more than P11,000.00 for the wake and burial of her husband whose death saddened her, she being left alone to take care of their children.[18]

In his defense, appellant Sion, brother and cousin of accused Edong[19] Sion and Felix Sion alias "Ellet," respectively, admitted that on the night in question, he participated in a stone-throwing incident and "free-for-all rumble" between his group (the Sions and Johnny Juguilon) on one hand, and the Abaoags and Manuels, on the other. However, he professed his innocence, claiming that it was his brother Edong Sion and Johnny Juguilon who stabbed the victim.[20] His version of the incident was summarized by the trial court, thus:

On October 16, 1991 at about 7:00 p.m., he, together with Johnny Juguilon went to the house of Eling Alcantara as he wanted to talk with his son, his friend. Ronnie Manuel was already there when they arrived. While at the place, Johnny Juguilon and Ronnie Manuel came out and started fighting with each other. Ronnie Manuel ran and proceeded to the place of his cousin. He was pacifying Johnny Juguilon and Ronnie Manuel but Johnny Juguilon threw stones at Ronnie Manuel. At this point, Fernando Abaoag intervened in the quarrel saying, "vulva of your mother Johnny, you are too much, you will also have your day." Johnny Juguilon answered "vulva of your mother Andoy, do not interfere because you are not our enemy." After the verbal exchange, he took Johnny Juguilon to their (Sion's) house....At about 9:00 p.m., that same evening, they stoned their house, its sides and the stairs. He and Idong and Johnny Juguilon looked for Cesar Abaoag, Ronnie Manuel, Ricky Manuel, Andong Abaoag and two (2) other companions. They were at the place of Marta Soriano. After that, they still threw stones towards them. There was a free for all rumble between Ronnie Manuel, Ricky Manuel, the Abaoags and Idong Sion, Johnny Juguilon, Ellet Sion and himself, in front of the house of Loly Galdones. He denied the testimony of Cesar Abaoag that he stabbed Fernando Abaoag three times and before he was stabbed Johnny Juguilon stoned him (Fernando Abaoag). It was Idong Sion and Johnny Juguilon who stabbed Fernando Abaoag. After Fernando Abaoag was stabbed, they ran away. His group also ran away. He went home and rushed towards Johnny Juguilon because he was stabbed. He brought Juguilon to the St. Blaise Clinic and Hospital. He did not report the incident to Barangay Captain Rosendo Imuslan. On October 17, 1:00 p.m., he presented himself to Kagawad Lagman who brought him to the Police Station. ...[21]

In his defense, appellant Disu offered denial and alibi. He declared that he had no participation in the killing of Fernando Abaoag, and during the whole night of 16 October 1991, while the quarrel, stoning and stabbing incidents in question were taking place, he was resting and sleeping in the house of his employer, Felicidad Gatchalian, after driving the latter's jeepney the entire day. However, before proceeding home from work that afternoon, he went to the store of Oping Juguilon to buy cigarettes and dropped by the house of appellant Sion where he stayed for about five minutes. He only learned about the killing the following morning when he was told that he was one of the suspects. He was arrested about a month after the incident.[22]

On rebuttal, Cesar Abaoag refuted the testimony of appellant Sion. Cesar asserted that neither his brothers, the Manuels nor himself threw stones at Sion's house; there was no free-for-all fight between the Sions and the Abaoags; Johnny Juguilon and Edong Sion merely threw stones at, but did not stab Fernando Abaoag; and it was only appellant Sion who stabbed Fernando Abaoag.[23]

After the conclusion trial, the court granted appellants' motion to file a memorandum within fifteen days. Despite the extension given, appellants' counsel did not file the memorandum. Thus, in its order of 11 December 1992, the trial court declared the case submitted for decision.[24]

On 8 February 1993, the trial court promulgated its decision,[25] the dispositive portion quoted in the introductory paragraph of this ponencia.

As to the culpability of appellants Sion and Disu, the trial court found:

The defense of accused Federico Disu alias Miguel Disu and Felipe Rodriguez Sion, Jr. deserve scant consideration. Cesar Abaoag narrated in detail how his brother Fernando Abaoag was stoned by accused Johnny Juguilon, Federico Disu and Felix Sion and how accused Felipe Sion stabbed Fernando Abaoag three times. Cesar Abaoag saw Johnny Juguilon throw stone hitting the left eyebrow of Fernando Abaoag, and when his brother (Fernando Abaoag) turned left, accused Federico Disu alias Miguel Disu, Idong Sion and Felix Sion simultaneously threw stones toward him (Fernando Abaoag). Then, at a distance of two (2) meters, Cesar Abaoag saw accused Felipe Sion stab Fernando Abaoag three times, hitting the left side below the armpit, then on the left waistline and the right side of the neck below the jaw of the deceased with the use of a sharp double bladed dagger.

Cesar Abaoag could not be mistaken in the identification because he was two meters away when he saw the accused Felipe Sion stab his brother, and, moreover, there was a light illuminating the place of the incident coming from the houses of Marta Soriano and Loly Caldones. Cesar Abaoag identified the dagger (Exhibit D).

The narrations of Cesar Abaoag are bolstered by the testimony of Dr. Leopoldo Manalo, the doctor who conducted the postmortem examination on the cadaver of Fernando Abaoag. Dr. Manalo stated that “stab wound 1½ inches in width, 9 inches in depth between 10-11 ICS, mid-axillary area slanting upwards hitting the left lobe of the lung” is located below the left armpit. The second stab wound, “stab wound right lateral side of the neck 1½ inches in width, 1½ in depth”, is located at the right side of the neck at the back. The doctor stated that the wounds were caused possibly by a dagger.

Finally, it is well to quote the statement uttered by Fernando Abaoag in the presence of Felicitas Abaoag, to wit: “naalaak, which means, I was hit, take note of this because I cannot survive these injuries of mine”. Fernando Abaoag told Felicitas Abaoag, Felipe Sion, Miguel Disu, Idong Sion, Johnny Juguilon and Felix Sion stabbed him. (2-12 tsn July 27, 1992). This is a dying declaration because it was made under a consciousness of impending death (Section 37, Rule 130, Rules of Court).[26]

The trial court likewise found that conspiracy was duly established by the prosecution, thus:

As stated in the decision, accused Johnny Juguilon threw stone, hitting the left eyebrow of Fernando Abaoag, and Edong Sion, Felix Sion and Federico (Miguel) Disu simultaneously threw stones upon the deceased, while accused Felipe Sion alias “Junior” stabbed him (victim) three times, resulting in the latter’s death.[27]

It then appreciated against appellants (a) the qualifying circumstance of treachery because the “attack was so sudden that the victim had no time to defend himself;” and (b) the generic aggravating circumstance of cruelty, because “there were three stab wounds” and the first wound -- which “caused severe bleeding and collapse of the lung” and the death of Fernando Abaoag -- “was deliberately augmented by inflicting the other wounds which are unnecessary for its commission.”[28] It did not, however, appreciate evident premeditation, for lack of “substantial” evidence;[29] nor give the benefit of voluntary surrender in favor of appellant Sion since his surrender was merely “forced by circumstances” as he “presented himself to Kagawad Lagman because he was suspected as one of the persons who stabbed the victim.”[30]

Appellants, through counsel, seasonably filed their Notice of Appeal.[31]

In their eight-page Appellants' Brief, filed by counsel de officio Atty. Iris L. Bonifacio,[32] appellants plead for their acquittal, contending that the trial court erred: (1) in convicting them of murder; (2) in taking into account the aggravating circumstance of cruelty; (3) in ruling that conspiracy was established; (4) in not appreciating the presence of voluntary surrender; and (5) in disregarding the defense of appellant Sion that it was Edong Sion and Johnny Juguilon who were responsible for the death of Fernando Abaoag.

In support of their first assigned error, appellants attack the identification made of them by prosecution witnesses. They claim that if witness Cesar Abaoag actually saw appellant Sion stab the victim, then Cesar should have immediately informed Felicitas Abaoag, the victim’s wife, of this fact. Cesar's failure was then unusual and unnatural. Then, too, Felicitas Abaoag's testimony on her husband's alleged dying declaration was “not specific” as far as the assailants' identities were concerned because the victim merely said “naalaak” (“I was hit”), without identifying appellant Sion as the one who stabbed him; and, her claim that her husband identified all the five (5) accused as the ones who “stabbed” him is “an impossibility.” Moreover, the prosecution witnesses were limited to relatives of the victims; “other vital witnesses” -- such as Marta Soriano, Lolly Galdones or Eling Alcantara -- should have been presented to corroborate the “biased” testimonies of Cesar and Felicitas Abaoag.

Appellants further contend that: (1) there was no treachery since the stabbing of the victim was not “sudden;” (2)

cruelty was not proven because "there is no clear testimony" that the first stab wound was fatal and the second and third wounds were "unnecessary"; (3) conspiracy cannot be deduced from the mere fact that all the accused threw stones at the victim before the stabbing; (4) appellant Sion voluntarily surrendered even before the police started investigating the case when he was not yet a suspect; and (5) appellant Sion could not have testified that it was Edong Sion and Johnny Juguilon who stabbed the victim if such were not true, considering that the former is his brother and the latter his barriomate; and (6) appellant Sion bore no grudge against the victim and did not escape.

On the other hand, the Office of the Solicitor General, in its Brief for the Appellee, supports the trial court's findings and conclusions, except as to the appreciation of cruelty, which it concedes to be erroneous.

Our careful review of the record of the evidence adduced by the parties convinces us that prosecution witness Cesar Abaoag positively identified appellants as being present during the incident in question and saw appellant Sion stab the victim thrice. As correctly found by the trial court:

Cesar Abaoag could not be mistaken in the identification because he was two meters away when he saw the accused Felipe Sion stab his brother, and, moreover, there was a light illuminating the place of the incident coming from the houses of Marta Soriano and Loly Caldones. Cesar Abaoag identified the dagger (Exhibit D).

Cesar Abaoag also saw the rest of the accused, including appellant Disu, throwing stones at the victim. He was definite, however, that it was only accused Johnny Juguilon who was able to hit the victim at the left eyebrow. The three stab wounds inflicted by appellant Sion and the injury at the left eyebrow caused by the stone thrown by Juguilon jibed with the post mortem findings of Dr. Manalo as he described the injury on the left eyebrow as "contusion superimposed abrasion left eyebrow."^[33] If Cesar had any ulterior motive to testify against appellant Disu, he could have declared that it was Disu, and not Juguilon, who hit the victim with a stone. Cesar then honestly narrated what he observed.

That Cesar did not at once inform Felicitas Abaoag that it was appellant Sion who stabbed her husband, was not proof, as appellants suggest, that Cesar was absent from the crime when it was committed. Cesar's presence was admitted by appellant Sion himself on direct examination, thus:

Q Did you see Cesar Abaoag on that occasion anywhere near Fernando Abaoag when you said he was stabbed by Johnny Juguilon and Idong Sion?

A Yes, sir.^[34]

Furthermore, Cesar satisfactorily explained his failure to forthwith inform Felicitas of this fact. At that time, Cesar himself was running away from the accused who had hit him with a stone. His pressing concern then was to get someone to help his wounded brother; besides, he was scared of accused Felix Sion, uncle of appellant Sion, who was a "notorious" character in their neighborhood.^[35] It is settled that delay in divulging the name of the perpetrator of a crime, if sufficiently explained, does not impair the credibility of the witness nor destroy its probative value.^[36] In any event, in his sworn statement^[37] which was submitted on 22 October 1991 before Judge Sergio Garcia, he narrated what he had witnessed and mentioned appellants Sion and Disu as among the perpetrators of the crime.

The identifications of appellants and their co-accused were further bolstered by the declaration made by the victim to his wife, Felicitas Abaoag. The trial court correctly characterized this as a "dying declaration,"^[38] having been made under the consciousness of impending death. The victim was already weak when his wife saw him and he knew that he would not survive the injuries he sustained; he even died a few minutes later while on the way to the hospital.^[39] When Felicitas saw her husband, he told her what had happened to him, who caused his injuries and that he did not expect to live, thus:

Q

What happened next after that when you met your husband?

A

I immediately asked him what happened to him.

Q

And what was the answer of Fernando Abaoag?

A

He said, “naalaak,” which means, I was hit.

COURT:

Q

Did you ask him why he said “naalaak”?

A

He said he was stabbed and he was injured.

Q

What do you mean by word “naalaak”?

A

I was hit.

COURT:

Proceed.

PROSECUTOR DUMLAO

Q

Do you know the reason why he was hit?

A

What I understand is that in the course of his pacifying the trouble between his nephew and the rest, he was stabbed, sir

Q

Aside from the statement of your husband Fernando Abaoag that he was hit, what else did he say, if you know?

A

He said, take note of this because I know I cannot survive with these injuries of mine.

COURT:

Q

What else did he tell you aside from that?

A

He said, remember that in case I cannot survive with the injuries that I sustained, the men who stabbed me are Felipe Sion, Miguel Disu, Idong Sion, Johnny Juguilon and Felix Sion, sir.[40] (underscoring supplied)

We find these statements given by the victim to his wife to have met the requisites of a dying declaration under Section 37 of Rule 130 of the Rules of Court, viz: (a) death is imminent and the declarant was conscious of that fact; (b) the preliminary facts which bring the declaration within its scope must be made to appear; (c) the declaration relates to the facts or circumstances pertaining to the fatal injury or death; and (d) the declarant would have been competent to testify had he survived.[41] Dying declarations are admissible in evidence as an exception to the hearsay rule because of necessity and trustworthiness. Necessity, because the declarant's death renders impossible his taking the witness stand, and it often happens that there is no other equally satisfactory proof of the crime; and trustworthiness, for it is "made in extremity, when the party is at the point of death and every hope of this world is gone; when every motive to falsehood is silenced, and the mind is induced by the most powerful consideration to speak the truth.[42] We find no ulterior motive on the part of Felicitas to fabricate the declarations of her husband.

We likewise find to be without basis appellants' claim that all the prosecution witnesses were biased due to their relation to the victim's family. Plainly, witnesses Imuslan (the barangay captain) and Dr. Manalo were not related to the victim, while the relationship of witnesses Cesar Abaoag and Felicitas Abaoag to the victim, as brother and wife, respectively, neither disqualified them as witnesses nor rendered their testimony unworthy of belief. It is not to be lightly supposed that relatives of the deceased would callously violate their conscience to avenge the death of a dear one by blaming it on persons whom they believe to be innocent thereof.[43] A witness' relationship to a victim, far from rendering his testimony biased, would even render the same more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit.[44]

Neither was the failure of the prosecution to present other witnesses, such as those mentioned by the appellants, fatal to the cause of the People. It is well-settled that the decision as to who to present as witnesses for the prosecution is addressed to the sound discretion of the prosecutor handling the case and the non-presentation of certain witnesses by the prosecution is not a plausible defense.[45] The prosecution is not obliged to present all possible witnesses, especially if their testimony will only serve to corroborate that of another eyewitness' testimony, in which case the former may very well be dispensed with considering that the testimony of a single witness, if credible and positive to prove the guilt of the accused beyond reasonable doubt, would suffice.[46]

The trial court correctly rejected appellant Sion's defense that it was not he who stabbed the victim, but his brother Edong Sion and Johnny Juguilon, both of whom fled after the incident. Constituting a mere denial of Cesar Abaoag's positive testimony that it was appellant Sion who stabbed the victim, such must fail in light of the settled rule of evidence that positive testimony is stronger than negative testimony.[47] Moreover, the claim was made rather late in the day, casting serious doubt as to its veracity. From the time that appellant Sion presented himself to Kagawad Lagman and the police authorities on 17 October 1991, and during his subsequent incarceration, he never told anyone nor made any statement that he was not the one who stabbed the victim; he did not even so inform his close relatives, not even his wife who visited him in jail.[48] Also, during the preliminary investigation, when he had the opportunity to submit counter-affidavits and other evidence to refute the charges, he did not care to dispute the statements of Felicitas and Cesar Abaoag identifying him and detailing his participation in the crime.[49] He raised this claim for the first time only during his testimony in court almost one (1) year after the stabbing incident and his initial surrender, and notably, only after the hope of apprehending Idong Sion and Johnny Juguilon, together with the other accused, already seemed remote. Such failure to

immediately disclose the information as soon as he was implicated in the crime and his prolonged silence on a vital matter hardly inspire belief, being unnatural and inconsistent with ordinary habits of men and common experience.

That appellant Sion did not flee, unlike his brother Edong and Johnny Juguilon, neither proved his innocence. Non-flight -- unlike flight of an accused which validly serves as a badge of guilt -- is simply inaction which may be due to several factors; hence, it should not be construed as an indication of innocence.[50]

Appellant Sion's claim of lack of ill-feeling or grudge against Fernando Abaoag was belied and contradicted by his admission in court that just before the stabbing of the victim, he and his co-accused hurled stones at and fought with the Abaoags, including Fernando, whom he blamed for allegedly stoning his house.[51] It is also belied by his actuation and utterance made earlier in the evening of 16 October 1991 when Fernando Abaoag interfered in the quarrel between appellant Sion and Fernando's nephew, Ronnie Manuel, which prompted appellant Sion and Johnny Juguilon to curse and warn Fernando, thus: "even you Andong [Fernando Abaoag] you are interfering, you are siding with your nephew Ronnie Manuel, you have also your day.... you Abaoags." [52] Appellant Sion also admitted that he "had an ill-feeling towards" Ronnie Manuel, the victim's nephew, because "he was making trouble" inside his jeepney "5 days before the incident." [53]

In light of the positive identification of appellants, appellant Disu's alibi must fail.

It is settled that alibi is a weak defense for it is easy to concoct and fabricate; it cannot prevail over and is worthless in the face of the positive identification by credible witnesses that an accused perpetrated the crime.[54] We are unable to discern any plausible reason, and appellant Disu does not offer any, why he should be falsely implicated by Cesar Abaoag and mentioned in the victim's dying declaration as one of the victim's assailants, if appellant Disu was not actually present during the incident and had no participation in the commission of the crime. As to his motive or lack thereof, appellant Disu claims that he had no misunderstanding with Fernando Abaoag or his family.[55] However, Felipe Sion, Jr., disclosed that appellant Disu was close to the Sion clan, which explains why appellant Disu sympathized with and joined the Sions and Juguilon in assaulting the victim: Federico Disu was Sion Jr.'s jeepney conductor for five (5) months, the latter teaching the former how to drive for three (3) months; and when Disu became a driver himself, they had the same route and saw each other every day at the poblacion.[56] Disu even admitted that in the afternoon of 16 October 1991, after 5:00 p.m., he "dropped by" the house of Felipe Sion, which he often did before.[57]

We now rule on the presence or absence of conspiracy. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[58] Direct proof of a previous agreement to commit a crime is not necessary; it may be deduced from the mode and manner in which the offense was perpetrated, or inferred from acts of the accused themselves when such point to a joint purpose and design, concerted action and community of interest.[59] Once conspiracy is established, the act of one is the act of all.[60]

In this case, appellants and the other accused were already at the barangay road of Bindow, near the houses of Lolly Galdones and Marta Soriano, when Fernando Abaoag, who was looking for the persons who just stoned his house several times, and Cesar Abaoag, arrived. Immediately, Johnny Juguilon threw a stone at Fernando hitting him on the left eyebrow; then, Edong and Felix Sion and appellant Disu, "simultaneously" threw stones, also at Fernando. As Fernando turned away from his assailants, appellant Sion "rushed" and stabbed the victim three (3) times, even as the latter raised his arms saying, "I will not fight back." When Cesar Abaoag tried to help his brother Fernando, appellant Disu threw and hit Cesar with a stone. Appellant Sion then commanded his companions to also kill Cesar, prompting the latter to run away. Then the assailants fled, leaving behind a small bolo and a dagger. The confluence of their acts indubitably manifested a community of interest and unity of

purpose and design to take Fernando Abaoag's life.

We also find to be unsupported by evidence, appellants' claim, through the testimony of appellant Sion, that the fatal stabbing of Fernando Abaoag was a result of a "free-for-all rumble," thereby possibly tempering their liability to that of causing death in a tumultuous affray under Article 251 of the Revised Penal Code, which carries a penalty lower than that for homicide.[61] In this case, it was ascertained beyond doubt that appellant Sion inflicted the fatal stab wounds; hence this claim must be rejected.

Having resolved appellants' liability for Fernando Abaoag's death, we now rule on the circumstances attendant to the commission of the crime.

In convicting appellants of murder, the trial court considered the qualifying circumstance of treachery, opting to disregard the qualifying circumstance of evident premeditation, which was likewise alleged in the information. Here, as the prosecution failed to prove the essential elements of evident premeditation, viz: (a) the time when appellants determined to commit the crime; (b) an act manifestly indicating that they clung to their determination; and (c) a sufficient lapse of time between such determination and execution to allow them to reflect upon the consequences of their act.[62]

We disagree, however, with the trial court's finding as regards the qualifying circumstance of treachery. Under the law, there is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly or specifically to ensure its execution, without risk to himself arising from the defense which the offended party might make.[63] We find no clear and convincing evidence of treachery. Cesar Abaoag's testimony as to how his brother was attacked lacks sufficient detail showing conclusively that the mode and manner of the assault rendered the victim entirely defenseless. He merely testified that when he and his brother proceeded west of the barangay road of Binday, he saw Johnny Juguilon stone his brother and hit him on the left eyebrow. Fernando Abaoag then turned to the left with his back towards Felix Sion, Edong Sion, Miguel Disu and the four (4) other unidentified companions, who then "simultaneously" threw stones at Fernando. "Seconds later," Cesar saw appellant Sion holding a very sharp double bladed dagger and stab his brother three (3) times; Fernando Abaoag, when stabbed, "was just standing and said 'I will not fight.'"[64] They were six (6) meters away from Johnny Juguilon when the latter first hurled a stone at Fernando which signaled the other accused to do the same.[65]

Considering therefore the distance between the assailants and the victim when the attack commenced, and the fact that there were two (2) waves of stoning which preceded the stabbing of the victim, these should have sufficiently forewarned him of the greater danger which loomed and prompted him to escape. Moreover, in light of the absence of clear details showing conclusively that the stabbing was inflicted from behind or the victim was entirely helpless when stabbed, we are not prepared to conclude that the attack was "so sudden and unexpected" as to render the victim entirely defenseless. Treachery cannot qualify the killing to murder when the victim was forewarned of the attack by the assailant, or when the attack was frontal, or the attack was not so sudden as to have caught the deceased completely unaware.[66] Furthermore, the evidence does not disclose that the means of execution were deliberately or consciously adopted by appellants.

Absent then of any qualifying circumstance, the crime committed was homicide as defined and penalized under Article 249 of the Revised Penal Code.

The trial court likewise erred in appreciating against appellants the generic aggravating circumstance of cruelty,[67] based solely on the fact that the victim was stabbed thrice, with the first stab wound hitting the lower left lung causing severe bleeding and its collapse. In fact, appellee concedes this error of the trial court. Cruelty cannot be appreciated in absence of any showing that appellants, for their pleasure and satisfaction, caused the

victim to suffer slowly and painfully and inflicted on him unnecessary physical and moral pain; and, the mere fact that wounds in excess of what was indispensably necessary to cause death were found on the body of the victim does not necessarily imply that such wounds were inflicted with cruelty and with the intention of deliberately intensifying the victim's suffering.[68] In the instant case, the evidence only shows that the three (3) stab wounds were delivered in succession, nothing more.

We agree with appellants that appellant Sion is entitled to the benefit of the mitigating circumstance of voluntary surrender, which requires that "the offender voluntarily surrendered himself to a person in authority." [69] Its requisites are: (a) the offender had not been actually arrested; (b) the offender surrendered himself to a person in authority or to the latter's agent; and (c) the surrender was voluntary. [70] For a surrender to be voluntary, it must be spontaneous and show the intent of the accused to submit himself unconditionally to the authorities, either: (1) because he acknowledges his guilt; or (2) because he wishes to save them the trouble and expense incidental to his search and capture. [71]

As shown by the records, in the afternoon of 17 October 1991, appellant Sion "presented" himself to Kagawad Modesto Lagman who, in turn, "escorted and surrendered" him to the police in the poblacion. [72] His admission that he surrendered because he was already suspected as one of the perpetrators of the crime does not make his surrender "forced by circumstances" as ruled by the trial court. His arrest at that time was neither imminent nor inevitable. At the time of his surrender, no warrant of arrest against him had yet been issued, the same having been issued only on 19 November 1991. [73] In fact, he was released from custody after a few days, and was ordered committed to jail only sometime in June 1992, after his motion for bail was denied by the trial court on 10 June 1992 and was thus taken into custody. [74] This subsequent fact should not diminish nor erase the favorable effect of Felipe Sion Jr.'s voluntary surrender on 17 October 1991. As has been held, whatever the accused's reason for surrendering -- either the fear of reprisal from victim's relatives or, in this case, his knowledge that he was already a suspect of the crime -- "does not gainsay the spontaneity of the surrender, nor alter the fact that by giving himself up, he saved the State the time and trouble of searching for him until arrested." [75]

We disagree with Appellee's submission that there was no voluntary surrender because appellant Sion surrendered to a mere barangay "Kagawad" or Sangguniang Barangay member, and not to the police authorities, implying that the former is not a person in authority. [76] This ignores Section 388 of the Local Government Code of 1991 which expressly provides, in part, that "[f]or purposes of the Revised Penal Code, the punong barangay, sangguniang barangay members, and members of the lupong tagapamayapa in each barangay shall be deemed as persons in authority in their jurisdictions...." [77] This law expands the definition of a person in authority under the Revised Penal Code, wherein among the barangay officials, only the barangay captain or chairman, now called Punong Barangay, is expressly considered a person in authority, as provided in Article 152 thereof. Thus, in addition to the Punong Barangay, the members of the Sangguniang Barangay, or Kagawads, and members of the Lupong Tagapayapa are now considered not merely as agents of, but as persons in authority. [78]

WHEREFORE, the challenged decision of Branch 44 (Dagupan City) the Regional Trial Court of the First Judicial Region in Criminal Case No. D-10796 is MODIFIED. As modified, appellants FELIPE SION, ALIAS "JUNIOR" or FELIPE RODRIGUEZ, JR. and FEDERICO DISU, ALIAS "MIGUEL" are hereby declared GUILTY beyond reasonable doubt, as principals, of the crime of HOMICIDE as defined and penalized in Article 249 of the Revised Penal Code, with the former entitled to the mitigating circumstance of voluntary surrender, and applying the Indeterminate Sentence Law, they are sentenced, respectively, to suffer an indeterminate penalty ranging from eight (8) years of prision mayor minimum, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal as maximum, and an indeterminate penalty ranging from ten (10) years and one (1) day of prision mayor maximum, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion

temporal minimum as maximum, with all the accessory penalties therefor, and subject to the provisions of Article 29 of the Revised Penal Code. Except as so modified, the rest of the challenged judgment stands.

Costs against accused-appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Record (OR), Criminal Case No. D-10796, 214-224; Rollo, 24-34. Per Judge Crispin C. Laron.

[2] Transcript of Stenographic Notes (TSN), 8 October 1992 (afternoon session), 2.

[3] OR, 226; Rollo, 35.

[4] Section 5(2)(d), Article VIII, Constitution; Sec. 17(3)[1], Judiciary Act of 1948; Sec. 3(c), Rule 122, Rules of Court.

[5] OR, 15-17.

[6] Id., 35-36.

[7] Id., 37-41.

[8] Id., 59.

[9] OR, 61-62.

[10] Id., 1-2; Rollo, 5-6.

[11] Id, 68.

[12] Order of 10 June 1992; OR, 87-90.

[13] Id., 91, 93.

[14] Brief for the Appellee, 3-7; Rollo, 139-143.

[15] TSN, 14 July 1992, 6-9.

[16] TSN, 20 July 1992, 9-17.

[17] TSN, 20 August 1991, 20-21.

[18] TSN, 27 July 1992, 10-12.

[19] Also spelled as "Idong" in the transcripts of stenographic notes.

[20] TSN, 8 October 1992, 8-10.

[21] RTC Decision, 6-7; OR, 219-220; Rollo, 29-30.

[22] TSN, 2 October 1992, 2-10.

[23] TSN, 9 October 1992, 10-11.

[24] OR, 191.

[25] See note 1.

[26] OR, 222-223; Rollo, 32-33.

[27] Id., 223; Id., 33.

[28] OR, 223; Rollo, 33.

[29] Ibid; Ibid.

[30] Id., 223-224; Id., 33-34.

[31] Supra note 3.

[32] Rollo, 107-114. The original counsel of record for the accused, Atty. Romulo Abarcar, failed to file the required Appellants' Brief despite three (3) extensions of the period to do so, prompting this Court to subject him to disciplinary sanctions, including fine and arrest. (Rollo, 52-54, 59-70, 90-91.

[33] Exhibit "A."

[34] Supra note 2, at 10.

[35] TSN, 20 August 1992, 23; TSN, 18 September 1992, 11.

[36] People v. Villanueva, 242 SCRA 47, 57 [1995].

[37] Exhibit "K," OR, 21.

[38] Section 37, Rule 130, Rules of Court.

[39] TSN, 27 July 1992, 8-9.

[40] TSN, 27 July 1992, 5-6.

[41] People v. Pama, 216 SCRA 385, 403 [1992]; Ricardo J. Francisco, Evidence, 1993 ed., 259-261.

[42] Francisco, op cit., 257-258.

[43] People v. Boniao, 217 SCRA 653, 671 [1993].

[44] People v. Viente, 225 SCRA 361, 368-369 [1991]; People v. Enciso, 223 SCRA 675, 686 [1993].

[45] People v. Kyamko, 222 SCRA 183, 193 [1993], citing People v. Samillano, 207 SCRA 50, 55 [1992].

[46] Ibid., 193-194; People v. Ramos, 222 SCRA 557, 576 [1993].

[47] People v. Antonio, 233 SCRA 283, 299 [1994].

[48] TSN, 8 October 1992, 14-18.

[49] Resolution of 2 January 1992; OR, 64.

[50] People v. Comia, 236 SCRA 185, 195 [1994]; People v. Enciso, 223 SCRA 675, 688 [1993].

[51] TSN, 8 October 1992, 8.

[52] TSN, 27 August 1992, 6.

[53] TSN, 8 October 1992, 5.

[54] *People v. Lee*, 204 SCRA 900, 910 [1990]; *People v. Buka*, 205 SCRA 567, 584 [1992]; *People v. Florida*, 214 SCRA 227, 239 [1992].

[55] TSN, 8 October 1992, 7.

[56] TSN, 2 October 1992, 3; TSN, 9 October 1992, 2-3.

[57] TSN, 2 October 1992, 4-5; 11-16.

[58] Article 8, Revised Penal Code.

[59] *People v. Martinado*, 214 SCRA 712, 732 [1992]; *People v. Pama*, 216 SCRA 385, 401 [1992]; *People v. de la Cruz*, 207 SCRA 632, 648 [1992].

[60] *People v. Pama*, 216 SCRA 385, 401 [1992]; *People v. Rostata, Jr.*, 218 SCRA 657, 678 [1993]; *People v. Liquiran*, 228 SCRA 62, 74 [1993]; *People v. Canillo*, 236 SCRA 22, 42 [1994].

[61] The penalty prescribed in Article 251 is *prision mayor*.

[62] *People v. Boniao*, 217 SCRA 653, 672 [1993]; *People v. Cordova*, 224 SCRA 319, 347-348 [1993].

[63] Articles 14 (16), Revised Penal Code.

[64] TSN, 20 August 1992, 14, 17-18, 21-22.

[65] TSN, 18 September 1992, 7-8.

[66] *People v. Hubilla, Jr.*, 252 SCRA 471, 482 [1996]; *People v. Compendio*, 258 SCRA 254 [1996].

[67] Article 14(21), Revised Penal Code.

[68] *People v. Alban*, 245 SCRA 549, 560 [1995].

[69] Article 13 (7), Revised Penal Code.

[70] 1 Luis B. Reyes, *The Revised Penal Code* 293 (12th ed., 1981).

[71] *People v. Lee*, 204 SCRA 900, 911 [1991]; *People v. Tismo*, 204 SCRA 535, 558-559 [1991]; *People v. Devaras*, 205 SCRA 676, 694 [1992]; *People v. Gomez*, 235 SCRA 444 [1994].

[72] Exhibit "M"; OR, 149; TSN, 8 October 1992, 14-15. Kagawad Lagman's testimony on the surrender was dispensed with by the trial court since the police record of the surrender was admitted by the defense. (Order of 21 September 1992; OR, 150.)

[73] OR, 35.

[74] TSN, 8 October 1992, 17-18; TSN, 9 October 1992, 8.

[75] *People v. Clemente*, 21 SCRA 261, 268-269 [1967], cited in L.B. Reyes, *op. cit.*, at 300.

[76] Brief for Plaintiff-Appellee, 13; Rollo, 149.

[77] R.A. No. 7160 (Book III, Title 1, Chapter 2).

[78] Aquilino Q. Pimentel, *The Local Government Code of 1991*, 416 [1993].

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