

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESARIO SANCHEZ @ “SATUR”, REMEGIO JOSE @ “OSING”, RODRIGO ABAYAN @ “LUDRING”, FEDERICO ROBIÑOS @ “RICO”, GAUDENCIO CONTawe @ ...

G.R. No. 118423. June 16, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an appeal from the Decision[1] dated September 29, 1994, of the Regional Trial Court of Villasis, Pangasinan, Branch 50, in Criminal Case No. V-0092 finding appellants Cesario Sanchez, Remegio Jose, Rodrigo Abayan, Federico Robiños, and Gaudencio Contawe guilty of the crime of Murder and sentencing each of them to suffer the penalty of reclusion perpetua and to pay the heirs of the victim Hilario Miranda jointly and severally, the sum of P50,000.00 as indemnity, the amount of P38,000.00 as actual damages, the amount of P100,000.00 as moral damages, and attorney's fees (for the private prosecutor) in the amount of P10,000.00.

The five (5) appellants, Cesario Sanchez, Remegio Jose, Rodrigo Abayan, Federico Robiños, and Gaudencio Contawe, are all farmers and residents of Villasis, Pangasinan. They are townmates of the victim, Hilario Miranda, who was the incumbent barangay captain at the time of the stabbing incident.

The prosecution's evidence reveals that on November 23, 1986, Hilario Miranda, together with Rene Alegre, Jessie Pajimola, Romulo Marquez, Freddie Miranda, Eladio Miranda and several others, went to his fishpond to celebrate the birthday of his daughter, Grace. At around 5:00 o'clock in the afternoon, Hilario Miranda and his companions headed home to Barangay Villanueva, Bautista, Pangasinan.[2] When the group reached the provincial road at Barangay Villanueva, appellant Sanchez blocked the middle of the road[3] while the other appellants Jose, Contawe, Abayan, Robiños, and Callo were some twenty (20) to twenty-five (25) meters behind him.[4] Contawe, Robiños, and Callo were holding their bolos; Jose had his bolo sheathed on his shoulder, while Abayan was holding two (2) fist-size stones.[5] Appellant Sanchez confronted Hilario Miranda about his accusation that Sanchez was stealing ipil-ipil wood and fish.[6] Thereafter, an argument ensued. Prosecution witness Marquez testified on said incident as follows:[7]

CROSS-EXAMINATION OF PROSECUTION WITNESS ROMULO T. MARQUEZ BY ATTY. BENJAMIN RAFAEL

Q: What was the argument about?

A:

As far as I could recall, the barangay captain have (sic) known that Cesario Sanchez was stealing firewoods and fish during nighttime and when Cesario Sanchez met the barangay captain what I heard was that, in Ilocano: "Apay ngay, Capitan ta pabpabasolennak nga agtaktakaw ti ipil-ipil yo ken lames? (Why is it,

Captain, that you are blaming me of stealing ipil-ipil firewood and fish?)

Q: Were those the first words uttered by Cesario Sanchez when he met the Barangay Captain?

A: Yes, Your Honor.

Q: What was the reaction of the barangay captain when Cesario Sanchez said those words?

A: There was an immediate argument, Your Honor.

Q: What did he (victim) say?

A:

The barangay captain answered, "Agpaypayso met nga agtatakaw ka ti ipil-ipil ken agtiltiliw ka ti lames." ("It is also true that you are stealing ipil-ipil woods and you are catching fish.")

Renato Alegre, Miranda's son-in-law, tried to pacify Miranda by saying "that is enough, Manong." [8] As the argument between Sanchez and Miranda heated up, Sanchez moved back towards his companions Jose, Callo, Robiños, Contawe and Abayan, who then encircled the group of the victim in such a way that nobody could move. [9] Freddie Miranda, the victim's son, asked Abayan who was then holding two stones [10] "[w]hy are you stoning us?" [11] Abayan replied, "You from the east are boastful." [12] Jose went near one of the victim's companions (Jessie Pajimola) and told her in the Ilocano dialect "Saan kayo nga makiramraman" ("Don't interfere"). [13] Jose passed by the back of Hilario Miranda and nodded at Sanchez. Upon seeing the signal, appellant Sanchez pulled a knife from the sleeve in his left arm [14] and stabbed the victim in the stomach. [15] Freddie Miranda, the son of the victim, tried to chase Sanchez but he (Freddie) was blocked by appellant Jose who was holding his bolo in a striking position and who told him "Saan mo nga itultuloy ta sica ti sumaruno" (Don't continue or else you will be the next). [16] The other appellants were also holding their bolos in a striking position. [17] Hence, Freddie had no choice but to return to his father who was badly hurt but valiantly trying to remain standing. Freddie pulled out the weapon from his father's stomach. The weapon was later turned over to Pfc. Rodolfo Tagulao, Jr., member of the Integrated National Police of Bautista, Pangasinan. [18] Freddie Miranda and Renato Alegre hailed a passing tricycle and brought the victim to the hospital. Unfortunately, the victim died along the way.

On September 1, 1987, 3rd Assistant Provincial Fiscal Jaime V. Veniegas charged Cesario Sanchez, Remegio Jose, Rodrigo Abayan, Federico Robiños, Eugenio Contawe, and Basilio Callo with the crime of Murder under the following Information: [19]

The undersigned hereby accuses REMEGIO JOSE @ "GODING", RODRIGO ABAYAN @ "LUDRING", FEDERICO ROBIÑOS @ "RICO", GAUDENCIO CONTawe @ "GODING" of the crime of MURDER committed as follows:

"That on or about the 23rd day of November 1986, in the afternoon, at Barangay Villanueva, Municipality of

Bautista, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with CESARIO SANCHEZ @ "SATUR" and BASILIO CALLO who are still at-large, conspiring, confederating and mutually helping one another, did then and there with intent to kill and with treachery and evident premeditation, wilfully, unlawfully and feloniously attack, assault and strike HILARIO MIRANDA thereby inflicting upon him the following wounds:

" x x x

- Stabbed wound, about 3.5 cm., bleeding, midaxillary line, left, subcostal border, 19 cm. deep.

x x x

which wounds directly caused the death of said Hilario Miranda.

Contrary to Art. 248 of the Revised Penal Code.

Villasis, Pangasinan, September 1, 1987."

Of the six (6) accused, only four (4) were initially arrested and brought to trial, namely Rodrigo Abayan, Gaudencio Contawe, Federico Robiños, and Remegio Jose. Accused Basilio Callo eluded arrest and remains at-large up to present. Before promulgation of sentence, appellant Cesario Sanchez was arrested on March 26, 1991. The trial court suspended promulgation of sentence pending trial of appellant Cesario Sanchez.

Upon arraignment, the four (4) appellants Abayan, Contawe, Robiños and Jose, duly assisted by respective counsels, entered a plea of "not guilty." Appellant Sanchez later entered a plea of "not guilty."

During trial, the prosecution presented six (6) witnesses: (1) Dr. Nestor C. Pascual, Municipal Health Officer of Bautista, Pangasinan; (2) Cpl. Abdiel Agustin of the INP of Bautista, Pangasinan; (3) Freddie C. Miranda, the victim's son; (4) Romulo T. Marquez; (5) Jessie C. Pajimola; and (6) Mrs. Rufina C. Miranda, the victim's widow.

Dr. Nestor C. Pascual, the Municipal Health Officer of Bautista, Pangasinan, testified that he performed a post-mortem examination on the cadaver of Hilario Miranda and found the cause of death to be "cardiorespiratory failure due to hypovolemic shock" resulting from the bleeding wound due to the "stab wound." [20]

Cpl. Abdiel Agustin testified that he conducted the investigation of the death of Hilario Miranda upon a report given by OIC Police Corporal Amado Santiago. [21] He identified the weapon (Exhibit "F") which was submitted on the night of November 23, 1986 to Patrolman Rodolfo Tagulao Jr., another member of the INP-Bautista, Pangasinan. He testified that he attempted to contact the suspects (appellants Sanchez, Jose, Contawe, Abayan, Robiños and Callo), but despite diligent efforts, he could not locate them. He left word with their respective wives to come to the office (police station) for their statements, but they did not report to him. An informer later told him that appellants were all in hiding. [22]

Romulo T. Marquez, one of the companions of the victim, testified that appellant Sanchez confronted the victim regarding the theft of some wood and fish, and thereafter, a heated argument ensued. Appellants surrounded their group and Sanchez stabbed the victim in the stomach. He drew a sketch of the relative positions of the assailants and the victim. [23] His testimony was corroborated by the testimonies of Freddie Miranda and Jessie Pajimola.

Rufina C. Miranda testified that her husband was earning an income of P100,000.00 per annum derived from the fishpond, agricultural land holdings and employment with National Irrigation Authority (NIA), and that she spent a total of P38,000.00 as funeral expenses. [24]

On the other hand, the defense presented Alberto Parcasio and Pedro Soriano as common witnesses. The four (4) appellants, Abayan, Robiños, Contawe and Jose testified on their behalf, while appellant Sanchez likewise took

the stand on his behalf.

Alberto Parcasio testified that while he was taking care of his granddaughter in his yard (some 15 meters from the incident), he saw Sanchez stab the victim and then run away. He claimed that he did not see appellants Abayan, Robiños and Contawe within the vicinity of the crime but only saw them after the victim was already loaded in the tricycle. He only saw appellant Jose half an hour after the incident.[25]

Pedro Soriano, a bystander, testified that while he was in the yard of appellant Contawe, he saw Hilario Miranda assault Sanchez after which Sanchez stabbed the victim. Soriano then entered his house because he became afraid of what was happening.[26]

Appellants Abayan, Robiños and Contawe, testifying on their behalf, claimed that they were mere bystanders in the affray and that they were included in the complaint for the sole reason that they belonged to the Liberal Party, while the victim belonged to the rival Nationalista Party.[27]

Appellant Abayan testified that while he was on the provincial road on the way to get his cow, from a distance of some 30 meters away, he saw Sanchez stab the victim on the stomach and then run away. He saw Freddie Miranda chase Sanchez while some people called for a tricycle. He denied holding two stones and attempting to throw them at the victim. He denied surrounding the group of the victim and claimed that he never saw Romulo T. Marquez in the vicinity of the crime. He further denied going into hiding after the incident.[28]

Appellant Robiños testified that while he was pumping water in front of his house some thirty (30) meters from the incident, he saw Sanchez stab the victim in the stomach. He was afraid to get near because Freddie Miranda was holding the knife and might run amuck. He claims he was included in the complaint because he failed to support the victim's candidacy during the previous elections.[29]

Appellant Contawe testified he was with Pedro Soriano, watching over his grandchildren in his house some fifteen (15) meters away from the incident when he saw Sanchez stab the victim in the stomach.[30] Then he saw Sanchez run to his (Sanchez') house some twenty (20) meters away.[31] He claimed that he was included in the complaint because he refused to support the candidacy of the victim in the previous elections.[32]

Appellant Jose testified that while he was cooking in the kitchen, he heard a woman's voice saying "Ay Natayen" ("Somebody died"). He went out and saw the victim being held by the latter's son-in-law. He asked Freddie Miranda what happened, and the latter told him to get a ride. After the victim was loaded on the tricycle, he then returned to his cooking. He denied the testimonies of Freddie Miranda, Jessie Pajimola and Romulo Marquez that he was one of those who surrounded the victim and his companions and that he was the one who gave the signal to Sanchez to stab the victim.[33]

The prosecution presented Cpl. Rodolfo Tagulao of the INP-Bautista, Pangasinan, and Romulo T. Marquez as rebuttal witnesses.

Cpl. Rodolfo Tagulao, warrant officer of the INP-Bautista, Pangasinan, testified that he attempted to serve the warrant of arrest on appellants by going to their respective residences four times but he failed to apprehend any of the appellants. When an alias warrant of arrest was issued by the Regional Trial Court, appellants appeared before him and informed him that they had already posted their respective bail bonds.[34]

On May 4, 1989, the prosecution filed its Formal Offer of Evidence which was duly admitted by the court.

On March 26, 1991, appellant Sanchez was arrested by the police. Trial as to him commenced, and he called prosecution witness Dr. Nestor Pascual and defense witness Alberto Parcasio as his witnesses, who reiterated their earlier testimonies. Appellant Sanchez, testifying on his behalf, admitted that he stabbed Miranda, but claimed

that it was in self-defense. He testified that while he was on his way to Obillo to thresh palay, he was met by the victim and his companions who were drunk. The victim commanded his companions to maul him because he (Sanchez) voted for Cory (Aquino) in the last presidential elections. He tried to evade them but somebody met him and the victim's group surrounded him.[35] The victim boxed him three times and ordered his (the victim's) son to get the gun. It was then that he turned around and stabbed the victim with his bolo.[36] He then ran away and spent the night in the ricefields.[37] He claimed that he did not see any of his co-accused at the locus criminis.[38]

On September 29, 1994, the trial court rendered a decision[39] finding all appellants, except Callo who remains at-large, guilty of Murder. The dispositive portion of the decision states:

"WHEREFORE, this Court finds the accused Cesario Sanchez, Remegio Jose, Rodrigo Abayan, Federico Robiños and Eugenio Contawe a.k.a. "Gaudencio" guilty beyond reasonable doubt of the crime of murder and hereby sentences each of the said accused to suffer the penalty of imprisonment of reclusion perpetua and to pay to the heirs of Hilario Miranda, jointly and severally, the sum of P50,000.00 as indemnity for the life of said Hilario Miranda; the amount of P38,800.00 as actual damages; the amount of P100,000.00 as moral damages, and attorney's fees (for the private prosecutor) in the amount of P10,000.00.

Costs against all the accused jointly and severally.

SO ORDERED."

Hence, appellants now interpose their respective appeals. Appellants Jose and Contawe assign the following errors:

I.

THE LOWER COURT ERRED IN HOLDING THAT THE ACCUSED CONSPIRED IN CAUSING THE DEATH OF HILARIO MIRANDA.

II.

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF MURDER.

III.

THE LOWER COURT ERRED IN GIVING CREDENCE TO TESTIMONY OF THE PROSECUTION WITNESS, ROMULO MARQUEZ, FREDDIE MIRANDA AND JESSIE PAJENIDA (sic).

Appellants Abayan and Robiños claim that -

I.

THE TRIAL COURT ERRED IN CONSIDERING THE TESTIMONIES OF THE PROSECUTION WITNESSES AS THESE WERE NOT OFFERED IN THE MANNER REQUIRED BY THE RULES.

II.

THE TRIAL COURT ERRED IN CONVICTING APPELLANTS BASED ON A FINDING OF CONSPIRACY.

III.

THE TRIAL COURT ERRED IN FINDING AND DECLARING THAT THE APPELLANTS ACTED IN UNITY TO ACHIEVE A COMMON DESIGN TO ELIMINATE AND KILL HILARIO MIRANDA.

IV.

THE TRIAL COURT ERRED IN NOT ACQUITTING THE APPELLANTS RODRIGO ABAYAN AND FEDERICO ROBIÑOS OF THE CRIME OF MURDER.

For his part, appellant Sanchez assigns the following errors:

I.

THE LOWER COURT ERRED IN NOT APPRECIATING THE ACCUSED' (sic) EVIDENCE SHOWING SELF-DEFENSE.

II.

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED CESARIO SANCHEZ AND IMPOSING UPON HIM THE PENALTY OF RECLUSION PERPETUA.

In sum, appellants raise the following pertinent issues: first, whether or not the trial court erred in giving credence to the testimony of prosecution witnesses Romulo Marquez, Freddie Miranda and Jessie Pajimola. Second, even assuming that these witnesses are credible, whether or not the trial court erred in considering their testimonies as these were not offered in the manner required by the Rules of Court. Third, whether or not the lower court erred in finding that conspiracy existed among accused-appellants. Fourth, whether or not appellant Cesario Sanchez acted in self-defense.

Appellants Jose and Contawe contend that the uniformity of the testimonies of the prosecution witnesses Romulo T. Marquez and Freddie C. Miranda indicate that their testimonies were coached and should be disbelieved. On the contrary, however, we find the testimonies of these witnesses straightforward, credible, and replete with details of the commission of the crime, as shown in several sketches of the respective positions of the assailants at the time of the incident.[40] These witnesses never wavered in the face of rigorous cross-examination by the respective counsels of the appellants. Furthermore, the material points in their testimonies, particularly the identities of the assailants, were corroborated by the testimony of prosecution witness Jessie Pajimola.

Appellants Jose and Contawe contend that since the judge who rendered the decision was not the one who heard the testimonies of the witnesses, said judge was not in a position to observe the demeanor of the witnesses and their manner of testifying and therefore, not in a position to gauge their credibility. Appellants then proceeded to invoke our ruling in *People v. Bautista*, 236 SCRA 102, 106-107 (1994), wherein we held that:

"It is obvious that these are factual conclusions of the trial court which are ordinarily respected on appeal owing to the position of the trial judge who personally saw and heard the witnesses testify. This rule, however, need not apply in its full rigor to the case at bench, where two judges conducted the trial and the decision was eventually written by a third."

However, appellants conveniently overlooked the succeeding paragraph of the same decision wherein we affirmed the factual findings of the lower court, stating thus:

"Still, Judge Dizon-Capulong, while recognizing this handicap, concluded that the trial was properly conducted by her predecessors and that the prosecution was able to sufficiently establish the culpability of the accused-appellant."

Indeed, while the incumbent judge of the trial court did not hear Romulo Marquez, Freddie Miranda and Jessie Pajimola testify, there is nothing in their testimonies as recorded in the transcript of stenographic notes which would render their testimonies suspicious and unbelievable. On the other hand, we find their testimonies to be consistent with, and corroborate, each other in respect of the main incident and the identities of all the accused. A thorough and careful review of the entire records of the case has not convinced us to depart from the factual findings of the lower court.

Further, the defenses of appellants consist of denial and alibi. The prevailing rule is that alibi, being the weakest of all defenses as it is easy to fabricate and difficult to disprove, cannot prevail over and is worthless in the face of

the positive identification by the accused.[41] The established doctrine requires the accused to prove not only that he was at some other place at the time of the commission of the crime, but that it was physically impossible for him to have been present at the locus criminis or its immediate vicinity.[42] This, appellants miserably failed to do. In fact, all of them admitted to being within a thirty-meter radius from the locus criminis when the killing occurred, hence it was not physically impossible for them to have participated in the commission of the crime, and thereafter dispersed in order to avoid any further entanglement in the case.

Appellants Abayan and Robiños further contend that the trial court should have disregarded the testimonies of the prosecution witnesses since these were not offered at the time when the witnesses were called to testify, as required by Section 34 of Rule 132 of the Revised Rules of Court which provides:

"SEC. 34. Offer of evidence. -The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

Section 35 of the same Rule further requires that the offer must be made at the time the witness is called to testify. Thus -

"SEC. 35. When to make offer. -As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing."

Appellants contend that the testimonies of the prosecution witnesses were not formally offered as required by the Rules, and therefore should not have been considered by the trial court. Indeed, a perusal of the transcript of stenographic notes will show that no formal offer of testimonial evidence was made prior to or after the testimonies of the prosecution witnesses. However, the transcripts also reveal that in spite of the lack of formal offer of the testimonial evidence, appellants failed to object to the presentation of such evidence, and even subjected the prosecution witnesses to a rigorous cross-examination.[43] Thus, in *People v. Cadocio*, 228 SCRA 602, 609 (1993) and *People v. Java*, 227 SCRA 668, 679-680 (1993), we had occasion to rule that:

"Indeed, Section 34, Rule 132 of the Revised Rules of Court requires that for evidence to be considered, it should be formally offered and the purpose specified. This is necessary because a judge has to rest his findings of fact and his judgment only upon the evidence formally offered by the parties at the trial. (*People v. Pecardal*, G.R. No. 71381 [1986]).

Under the new procedure as spelled out in Section 35 of the said rule which became effective on July 1, 1989, the offer of the testimony of a witness must be made at the time the witness is called to testify. The previous practice was to offer the testimonial evidence at the end of the trial after all the witnesses had testified. With the invocation, the court is put on notice whether the witness to be presented is a material witness and should be heard, or a witness who would be testifying on irrelevant matter or on facts already testified to by other witnesses and should therefore, be stopped from testifying further.

In the case at bar, we note that Pastor Valdez was not one of the witnesses originally intended to be presented by the prosecution. He was merely called to the witness stand at the latter part of the presentation of the prosecution's evidence. There was no mention why his testimony was being presented. However, notwithstanding that his testimony was not formally offered, its presentation was not objected to either. Section 36 of the aforementioned Rule requires that an objection in the course of the oral examination of a witness should be made as soon as the grounds therefore shall become reasonably apparent. Since no objection to the admissibility of evidence was made in the court below, an objection raised for the first time on appeal will not be considered. (*Asombra v. Dorado*, 36 Phil. 883)." (*italics supplied*)

Thus, the failure of the defense to interpose a timely objection to the presentation of the prosecution's testimonial evidence results in the waiver of any objection to the admissibility thereof. Appellants' belated invocation of the strict interpretation of the Rules of Evidence to suit their purposes is clearly misplaced.

Appellants were convicted of murder on the theory of conspiracy. It is well-settled that conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.[44] Proof of the agreement need not rest on direct evidence, as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. The rule is that conviction is proper upon proof that the accused acted in concert, each of them doing his part to fulfill the common design to kill the victim. In such case, the act of one becomes the act of all, and each of the accused will thereby be deemed equally guilty of the crime committed.[45] The proof of conspiracy is perhaps most frequently made by evidence of a chain of circumstances.[46] Thus, we find that the following facts, pieced together, indubitably prove the existence of conspiracy:

- (1) The presence of appellants on the provincial road at the north end of Barangay Villanueva, armed with bolos and stones. Abayan was holding two fist size stones, while the Contawe, Jose and Remigio were holding their bolos in a striking position;
- (2) The act of appellant Sanchez in confronting the victim while Abayan, Contawe, Jose and Remigio were surrounding the victim's companions indicates concert of actions of the appellants;
- (3) The act of Jose during the confrontation in moving from one side of the road to the other while, and while passing at the back of the victim, giving the go-signal to appellant Sanchez, who after seeing the signal, stabbed the victim;
- (4) The act of Jose in blocking the way of Freddie Miranda in chasing Cesario Sanchez;
- (5) The fact that all the accused fled town after the incident without satisfactory explanation for their absence.

As can be gleaned from the above circumstances, appellants acted together with one purpose and design to kill Hilario Miranda. While only one of them dealt the fatal stab wound, all of them are liable for the killing of the victim.

It is true that conspiracy, like the crime itself, must be proven beyond reasonable doubt and one's mere presence in the crime scene does not make an accused a conspirator. However, the co-accused were not merely present in the crime scene, they directly participated in the criminal design of appellant Sanchez by their concerted acts. Indeed, for collective responsibility among the herein accused to be established it is not necessary or essential that there be a previous plan or agreement to commit the assault; it is sufficient that at the time of the aggression all the accused by their acts manifested a common intent or desire to attack the victim, so that the act of one accused became the act of all.[47]

As to appellant Sanchez' claim of self defense, it is basic that for self-defense to prosper, the following requisites must concur: (1) there must be unlawful aggression by the victim; (2) that the means employed to prevent or repel such aggression were reasonable; and (3) that there was lack of sufficient provocation on the part of the person defending himself.[48] The justifying circumstance of self-defense "is an affirmative allegation that must be proven with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it." [49] Where the accused has admitted that he is the author of the death of the deceased, it is incumbent upon the appellant, in order to avoid criminal liability, to prove this

justifying circumstance (self-defense) claimed by him, to the satisfaction of the court. To do so, he must rely on the strength of his own evidence, and not on the weakness of the prosecution for even if it were weak, it could not be disbelieved after the accused admitted the killing.[50] And more so when his co-appellants themselves categorically testified that they saw appellant Sanchez stab the victim, without corroborating his claim of self-defense. In addition, the prosecution witnesses, in clear and concise language, positively and steadfastly maintained that appellant together with his five companions, armed with bolos in a striking position, surrounded the victim and his companions, whereupon Sanchez stabbed the victim in the stomach. Moreover, the conduct of the appellant Sanchez is not consistent with one who killed in self-defense. The accused's flight from the scene of the crime is a strong indication of guilt.[51] Flight is a badge of guilt when it is done to escape from the authorities or to escape prosecution.[52] In this case, appellant Sanchez himself testified that after the killing, he ran away and hid in a banana plantation for three (3) hours.[53] Then when it was dark, he went home but he found that his wife and child had already left because their house was stoned by some persons. Appellant Sanchez then spent the night in the ricefield because he was afraid of persons roaming around.[54] While appellant claims that he then stayed in his house for three days and even sent Rodolfo Doctor to the police station to tell them of his intention to surrender, and that said person came back and advised him to go away because he would be salvaged,[55] such testimony is unbelievable in the light of the testimony of Cpl. Abdiel Agustin that he went to the houses of all appellants four times but could not locate them.[56]

As correctly pointed out by the trial court, the evidence on record does not show unlawful aggression on the part of the victim. Rather, it was appellant Sanchez who was the unlawful aggressor. He confronted the victim on the provincial road wherein, after a heated argument, he stabbed the victim. Even if the response of the victim to the query of Sanchez regarding the theft of fish and wood might have hurt the pride of Sanchez, the trial court correctly observed that "such petty question of pride does not justify the wounding and killing of Hilario Miranda." Hence, the invocation of self-defense by Sanchez must fail.

We also find that the killing of the victim was attended with treachery since the stabbing was sudden and unexpected, and the victim was not only unarmed, but was unable to defend himself. To sustain a finding of treachery, "two conditions must be present, to wit: (1) the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted." [57] These conditions were amply demonstrated in the instant case.

We also hold that the appellants in assaulting and eventually killing the victim, took advantage of their superior strength. They were six (6), armed with bolos and stones, as against the victim, who was without means of defending himself. However, when treachery qualifies the crime of Murder, the generic aggravating circumstance of abuse of superior strength is necessarily included in the former.[58]

At the time of the commission of the crime on November 23, 1986, the penalty for Murder under Article 248 of the Revised Penal Code was then reclusion temporal in its maximum period to death. Under Article 64 of the Revised Penal Code, when there is no aggravating or mitigating circumstance, the penalty shall be imposed in its medium period, which is reclusion perpetua.

As to the award of damages, the Court affirms the award of P50,000.00 as indemnity for the death of Hilario V. Miranda. However, the award of P38,000.00 as actual damages must be reduced, as the duly documented receipt for the funeral services is only P13,000.00 (Exh. "P-2"). We have held that only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victim should be allowed.[59] The award of actual damages cannot be based on the allegation of a witness without any tangible document to support such claim.[60] The Court finds the award of moral damages recoverable under Article 2219(1), in relation to Article 2206 of the Civil Code in the amount of P100,000.00 to be excessive. As moral

damages are not intended to enrich the prevailing party[61] an award of P50,000.00 as moral damages would be keeping with the purpose of the law. The award of P10,000.00 as attorney's fees appears to be reasonable and is therefore sustained.

WHEREFORE, the decision of the Regional Trial Court of Villasis, Pangasinan, Branch 50, in Criminal Case No. V-0092 finding accused-appellants Cesario Sanchez, Remegio Jose, Rodrigo Abayan, Federico Robiño and Gaudencio Contawe guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code is hereby AFFIRMED, with modification as to the award of damages as follows: accused-appellants are jointly and severally held liable for and hereby ordered to pay the heirs of the victim the amount of P50,000.00 as indemnity for the death of Hilario V. Miranda, P13,000.00 as actual damages, P50,000.00 as moral damages, and P10,000.00 as attorney's fees. Costs against accused-appellants.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Buena, JJ., concur.
Puno, J., no part. On official leave.

[1] Penned by Judge Alfonso G. Abad.

[2] TSN, July 22, 1988, pp. 6-7; TSN, November 18, 1988, p. 3.

[3] TSN, July 22, 1988, p. 27.

[4] Id. at 28.

[5] TSN, July 22, 1988, p. 8; TSN, November 18, 1988, p. 20.

[6] TSN, July 22, 1988, p. 18.

[7] TSN, July 22, 1988, pp. 17-18; TSN, August 1, 1991, pp. 15-16. Italics supplied.

[8] TSN, July 22, 1988, p. 22.

[9] TSN, July 22, 1988, p. 20; TSN, November 11, 1988, pp. 10, 20.

[10] TSN, November 11, 1988, p. 9.

[11] Id. at 6, 9.

[12] TSN, November 11, 1988, p. 6; TSN, May 20, 1993, p. 22.

[13] TSN, February 23, 1989, pp. 9, 21; TSN, April 5, 1989, p. 4.

[14] TSN, January 31, 1990, pp. 10, 11-A.

[15] Sworn statement of Jessie C. Pajimola, Exhibit "D", Rollo, p. 4; TSN, November 18, 1988, p. 11.

[16] Sworn statement of Freddie C. Miranda, Exhibit "B", Rollo, p. 2; TSN, November 11, 1988, p. 10; TSN, July 22, 1988, p. 12.

[17] TSN, November 11, 1988, p. 13. Emphasis supplied.

[18] Id at 12-13.

[19] Rollo, pp. 2-3.

- [20] TSN, January 28, 1988, pp. 3-11.
- [21] TSN, June 1, 1988, pp. 1-4.
- [22] Id. at 3-17.
- [23] TSN, July 22, 1988, pp. 8-11.
- [24] TSN, April 13, 1989, pp. 5-6, 16.
- [25] TSN, January 26, 1990, pp. 12-13.
- [26] TSN, February 2, 1990, pp. 6, 12.
- [27] TSN, March 16, 1990, pp. 10-11; TSN, May 10, 1990, pp. 10-11; TSN, May 23, 1990, pp. 8-9.
- [28] TSN, March 16, 1990, pp. 5, 8-10; TSN, March 30, 1990, pp. 18-20.
- [29] TSN, May 10, 1990, pp. 125.
- [30] TSN, May 23, 1990, pp. 5, 8.
- [31] Id. at 7.
- [32] Id. at 9.
- [33] TSN, June 1, 1990, pp. 4-5.
- [34] TSN, October 18, 1990, pp. 4-11.
- [35] TSN, February 4, 1993, pp. 6-8.
- [36] TSN, April 22, 1993, pp. 12-13, 18-19.
- [37] TSN, April 29, 1993, p. 7.
- [38] TSN, May 20, 1993, p. 3.
- [39] Rollo, pp. 47-79.
- [40] Records, p. 603.
- [41] *People v. Quiamco*, 268 SCRA 529 (1997).
- [42] *People v. Sabalones*, G.R. No. 123485, August 31, 1998, p. 49; *People v. Tulop*, 289 SCRA 316, 333 (1998); *People v. Ballesteros*, 285 SCRA 438 (1998); *People v. Sumbillo*, 271 SCRA 428, 444 (1997).
- [43] TSN, January 28, 1988, pp. 11-15; TSN, July 22, 1988, pp. 16-30; TSN, August 5, 1988, pp. 3-18; TSN, November 18, 1988, pp. 2-21; TSN, February 23, 1989, pp. 16-23; TSN, April 5, 1989, pp. 2-9.
- [44] Article 8, second par., Revised Penal Code.
- [45] *People v. Quinao, et. al.*, 269 SCRA 495 (1997).
- [46] *People v. Miranday*, 242 SCRA 620 (1995).
- [47] See *People v. Cercano*, 87 SCRA 1 (1978).
- [48] *People v. Enriquito Unarce*, 270 SCRA 756 (1997), citing *People v. Gregorio*, 255 SCRA 380 (1996); *People v. Morin*, 241 SCRA 709 (1995); *People v. Flores*, 237 SCRA 653 (1994); *People v. Gutual*, 254 SCRA 37

(1996); *People v. Bernal*, 254 SCRA 659 (1996); Article 11, No. 1, Revised Penal Code.

[49] *People v. Nacuspag*, 115 SCRA 172, 180 (1982).

[50] *People v. Picardal*, 151 SCRA 170, 176 (1987).

[51] *People v. Salcedo*, 151 SCRA 220 (1987).

[52] *People v. Cario*, 288 SCRA 404 (1998).

[53] TSN, April 29, 1993, p. 6.

[54] *Id.*, p. 7.

[55] *Id.*, p. 8.

[56] TSN, June 1, 1988, p. 3.

[57] *People v. Azugue*, 268 SCRA 711, 725 (1997).

[58] *People v. Violin, et. al.*, 266 SCRA 224 (1997); *People v. Apongan*, 270 SCRA 713 (1997); *People v. Datun*, 272 SCRA 380 (1997).

[59] *Fuentes, Jr. v. Court of Appeals*, 253 SCRA 430 (1996).

[60] *David v. Court of Appeals and People*, 290 SCRA 727 (1998).

[61] *People v. Padlan*, 290 SCRA 388 (1998); *People v. Wenceslao*, 212 SCRA 560 (1992); *People v. Quilaton*, 205 SCRA 279 (1992).

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