PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO DELA CRUZ, DEFENDANT-APPELLANT.

G.R. No. 118967. July 14, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In every criminal conviction, identification of the accused as the perpetrator of the crime naturally becomes the starting point of every inquiry. Likewise, the credibility of the identifying witness and his testimony become crucial to any conviction.

Ernesto dela Cruz appeals from the Decision of the Regional Trial Court of Cagayan, Branch 9,[1] Criminal Case No. 09-734, the dispositive part of which reads:

> WHEREFORE, the Court hereby finds the accused guilty beyond reasonable doubt of the crime of murder defined and penalized by Art. 248 par. 1 and 5, Revised Penal Code, qualified by treachery and evident premeditation attended by the aggravating circumstance of nighttime (Art. 14, par. 6, RPC). He is sentenced to serve imprisonment of reclusion perpetua with all its accessory penalties. Only the constitutional proscription against the imposition of the death penalty for heinous crimes committed before 01 January 1994 prevents this Court from imposing the supreme penalty. He is further directed to pay the heirs of the victim P50,000.00 as indemnification of the death of the deceased, P10,000.00 for moral damages and P20,000.00 for exemplary damages with prejudice against the grant of parole or pardon, and costs.
>
> SO ORDERED.

Appellant was charged of the crime of murder set out in the information[2] as follows:

> That on or about November 2, 1991, in the municipality of Gattaran, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, ERNESTO DE LA CRUZ and two JOHN DOES, armed with two (2) long firearms, with intent to kill, with evident premeditation and with treachery, conspiring together and helping one another, did then and there wilfully, unlawfully and feloniously, shot one Aurelio Goze several times hitting him in the different parts of his body causing him injuries which caused his death.
>
> CONTRARY TO LAW.

In its order of June 25, 1992, the Municipal Trial Court of Gattaran directed the issuance of a warrant for the arrest of appellant and fixed the bailbond in the amount of P50,000.00.[3] Appellant was arrested on August 26, 1992.[4] Upon his motion, the court reduced the amount of his bailbond to P30,000.00.[5]

Before arraignment, appellant filed a motion for leave of court[6] for the reinvestigation of the case on the strength of his affidavit[7] and that was jointly executed by Emiterio Domingo and Eduardo Suldan.[8] The affidavits pointed as authors of the crime Lt. Hercules Ileto, Sgt. Ebojo and Sgt. Cauilan, a fact they claimed they had earlier failed to reveal to the authorities because Lt. Ileto had threatened them with bodily harm should they report to the police. However, on May 18, 1993, Assistant Provincial Prosecutor Bienvenido R. Miguel issued a

Resolution denying due course to the motion for reinvestigation. He stated as ground therefor the fact that Emiterio Domingo and Eduardo Suldan were "perjured witnesses" who previously revealed to the Commission on Human Rights that it was Lt. Ileto who "fired (at) Rogelio Goze (sic)," exactly "one (1) year, three (3) months and twenty (20) days after the commission of the crime."[9]

Thus, on July 13, 1993, appellant pleaded not guilty to the crime charged.[10] Thereafter, the prosecution presented evidence to prove the following facts:

Aurelio Goze, his wife Zenaida and their children lived in a 3 x 5 house made of wood with bamboo roof in Barangay Taligan, Gattaran, Cagayan. The house had an extension called pataguab that had a door aside from the door of the main house. In the evening of November 2, 1991, a gas lamp located at its southwest corner lit the house.[11]

At around 11:00 o'clock that evening, someone kicked open the door of the main house. Two persons forcibly took Aurelio while appellant, whom Zenaida recognized as the second degree cousin of deceased with whom he had a land dispute, waited downstairs. Zenaida was by the stairs and barely two (2) meters away from appellant. She lighted another lamp and placed it opposite the stairs inside the house. By the moonlight, Zenaida saw these persons take Aurelio to a place that was around thirty (30) meters to the east of their house. There, appellant shot Aurelio with a long firearm. His companions, who also had long firearms, then followed in shooting Aurelio.[12]

In the morning, the barangay captain reported the incident to the police. In response to the questioning made by the police, Zenaida identified appellant and his two companions as the persons who shot and killed Aurelio.[13] On November 4, 1991, the body of Aurelio was laid to rest. His family spent P1,000.00 for his burial. When Aurelio was alive, he normally harvested fifteen (15) sacks of palay from the riceland he was cultivating. He left seven (7) children whose ages ranged between 4 and 17 years old.[14]

According to SPO4 Franklin Tagupa, the police investigator to whom the barangay captain reported the crime, the body of Aurelio was found on a spot that was around thirty (30) meters from the Gozes' house. Tagupa observed that there were no trees or other structures obstructing the view of the spot where the body laid as observed from the vantage point of the house.

In the police investigation, appellant told Tagupa that he knew "the very person who killed the victim." However, Tagupa, in his testimony to the court, admitted that he had already forgotten the name of the supposed assailant mentioned by appellant. The following day, when Tagupa interviewed him once again, appellant "withdrew his allegations" claiming that the person he had named was a member of the military and that he was afraid of retaliation. Appellant did not reveal to Tagupa the reason why he was afraid of said member of the military, saying that the reason was "confidential."[15]

The death certificate[16] shows that 42-year-old Aurelio Goze died of multiple gunshot wounds. No autopsy was conducted on the body before burial but it was later exhumed. The exhumation report[17] manifests the following:

Head:

- Fracture along occipitomastoid suture, (L)

- Comminuted fracture of mandible, (R)

Chest:

- Fracture, communited, both of 4th rib, (R)

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- Fracture, communited, body of 5th rib, (R)

- Fracture, comminuted, angle of 3rd rib, (L)

- Fracture, comminuted, angle of 4th rib (L)

The defense interposed denial and alibi. Appellant testified that at around 11:00 o'clock on the night of the killing, he was sleeping in the camp/detachment of the military in Barangay Sidem, Gattaran, Cagayan. He was told to sleep there by the soldiers on account of threat from New People's Army (NPA). He was with Emiterio Domingo, Eduardo Pagaduan, Virgilio Pagaduan, Reymundo Pagaduan and soldiers Sgt. Evangelista and Sgt. Sedano. He slept inside the camp beside Reymundo Pagaduan[18] but he was awakened by a gunshot at about 11:00 in the evening.

It was a little past 11:00 p.m. when Sgts. Evoco and Cavila (sic) arrived with Lt. Ileto. The latter gathered the men in the camp and told them to keep quiet and that, should anyone inquire about what happened, the one who would squeal would be the next victim ("isaruno" in Ilocano). Appellant did not leave the camp until 7:00 o'clock in the morning. The next time that appellant saw Lt. Ileto was at around 3:00 o'clock in the afternoon of the day after the commission of the crime. When appellant asked him why he killed his cousin, Lt. Ileto replied that he was drunk but should anyone file a complaint against him, he would pay for the value of the victim's life.[19]

Appellant admitted that there was a land dispute between him and the victim. In fact, both of them reported the matter to the Agrarian Office.[20]

When he was arrested, appellant told the arresting office, Tagupa, that someone else had killed Aurelio. This statement was not reduced into writing because he claimed to be afraid, but he promised to tell the truth in court. After his release from detention and since no action was taken on the information he had given to Tagupa, appellant went to Governor Rodolfo Aguinaldo to whom he finally revealed that soldiers were the ones responsible for killing Aurelio. The governor instructed him to go to the Commission on Human Rights Office.[21]

Appellant executed before the Commission an affidavit stating the following: that he spent the night at the time of the killing in the PNP-RSAF Detachment in Barangay Sidem, Gattaran for fear that members of the NPA would raid them; that in the morning, he learned that a man had been killed in Barangay Taligan, an adjoining barangay; that when he went home, he learned from Eduardo Suldan and Emiterio Domingo that they accompanied Lt. Hercules Ileto and Sgts. Ebojo and Emiterio Domingo to the house of one Aurelio Goze in Taligan but Suldan and Domingo were told by said PNP members to stay fifty (50) meters away from Goze's house and that said PNP members then took Rogelio from his house and shot him moments later; that in the afternoon of November 3, 1991, the people of Sidem learned that the PNP-RSAF was pulling out its detachment; that when Lt. Hercules (sic) saw appellant, the former told him not to tell the truth should an investigation be conducted and that Lt. Ileto even executed a certification to the effect that appellant slept in the detachment after learning that he was the suspect in the killing.[22]

In their joint affidavit, Emiterio Domingo and Eduardo Suldan attested to the fact that at 8:00 p.m. of November 2, 1991, they were in the house of Barangay Captain Quirino Urata having a drinking spree with Lt. Ileto, Sgts. Ebojo and Cauilan and other men; that at 10:30 p.m. Lt. Ileto invited them to go with their group; that fifty (50) meters away from the house of Aurelio Goze, they were told to stay behind by Lt. Ileto and Sgts. Ebojo and Cauilan who entered the house; that they then saw the three dragging away Aurelio, and that Lt. Ileto immediately fired at Aurelio; that Lt. Ileto and his companions brought them back to the camp where, after staying there for about thirty (30) minutes, they were told to go home.[23]

Appellant claims that it took one year, three months and twenty days before he reported to the Commission on Human Rights the actual perpetrators of the crime because the soldiers kept on returning to the place and, like Domingo and Suldan, he was afraid.[24]

Suldan confirmed the contents of his affidavit when he testified. According to him, he was attracted to the house of Barangay Captain Quirino Oreta because of people singing there. He, together with Emiterio Domingo, joined the group that included Lt. Ileto, Sgts. Cauilan and Ebojo, and Oreta and his son. They had a drinking session. Later, Lt. Ileto's group invited them to a house in Barangay Taligan. Suldan and Domingo were not able to accompany the others to the house because they were told to stay behind. Two of the soldiers entered the house, brought out someone and proceeded to the place where Suldan and Domingo were left behind. Lt. Ileto and his companions proceeded to a certain distance and shot the man who turned out to be Aurelio Goze. From a distance of 20 meters, Suldan saw Lt. Ileto shoot Aurelio. Thereafter, they went back to the camp in Barangay Sidem where he saw Sgt. Barogan, Sgt. Siddayao, Peralta, Roger Pagaduan, Ernesto dela Cruz, Fermin Espiritu, Warlito Orata and Raymundo Pagaduan. Lt. Ileto then gathered all of them and warned them "not to talk about what happened."[25]

Edwin Abig, the barangay captain of Taligan, heard of the shooting incident from a barangay councilman. He immediately reported the incident to the military camp at Barangay Sidem. He went to the crime scene with soldiers to conduct an investigation. Abig was two (2) meters away when the soldier named Sedano who was with Sgt. Cauilan asked the victim's wife who killed her husband. The wife did not give an answer "because she did not know anything."[26] The following day, Abig interviewed the wife in front of the chapel where the body of the victim was brought. She told him that she did not know who shot her husband.[27]

On March 15, 1994, the trial court rendered a judgment of conviction based on the following findings:

> From the record, it appears that on the evening of 02 November 1991, the accused together with two others whose identities remain unknown, went to the house of the deceased and his widow herein private complainant Zenaida Goze at Barangay Taligan, Gattaran, Cagayan. The three (3) forcibly entered the house and brought down the deceased. A few moments later, shots were heard. The accused is known and famililar to the private complainant being the second cousin of the deceased. The following morning, the deceased's remains were found not far from his house.
>
> The evidence for the accused on the other hand consisting of the testimonies of Reymundo Pagaduan, Edwin Abig, Eduardo Suldan and the accused himself Ernesto de la Cruz. In essence, the accused claims that he was then at the time alleged in the information, inside the local headquarters of the citizens armed force for the geographical unit (CAFGU) at Sidem, Gattaran, Cagayan asleep, having been requested to keep company for the army component of the detachment. At about 11:00 p.m. that same evening (02 November 1991), he was awakened by shots. Thereafter, the Commanding Officer one Lt. Ileto together with others arrived. They were advised to keep quiet about the matter otherwise, they would also be killed. When accused allegedly confronted him the following day why Lt. Ileto told him that the deceased was drunk (pp. 15-18, tsn 08 December 1993). Accused further testified that Emiterio Domingo told him it was Lt. Ileto who shot and killed the deceased. Emiterio Domingo was not presented. It was not explained why.
>
> From the evidence presented, the Court is satisfied and so holds that the prosecution was able to establish the guilt of the accused beyond reasonable doubt. The prosecution's witnesses testified in a direct and straightforward manner. Their story rings the bell of truth. In contrast, the evidence for the defense presented an incredible story completely unacceptable to the Court. To be credible, not only must the story be believable; it must come from a credible witness (People v. Alfonso, G.R. No. 78954, 18 June '90).[28]

Through a counsel de oficio,[29] appellant assigns in this appeal the following errors:

I
THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT.

II

ASSUMING, BUT ONLY FOR THE SAKE OF ARGUMENT, THAT THE ACCUSED CANNOT BE ACQUITTED, THE TRIAL COURT NONETHELESS ERRED IN FINDING THE EXISTENCE OF THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION, AND THE GENERIC AGGRAVATING CIRCUMSTANCE OF NIGHTTIME.

III

THE TRIAL COURT, ASSUMIING AGAIN ARGUENDO THAT THE ACCUSED CANNOT BE ACQUITTED, ERRED IN PASSING JUDGMENT ON HIM "WITH PREJUDICE AGAINST THE GRANT OF PAROLE OR PARDON.

In support of the first assigned error, appellant points out that the sole prosecution eyewitness Zenaida Goze is far from credible and convincing and, therefore, her testimony is insufficient to sustain conviction.

The testimony of a sole witness, if found convincing and credible by the trial court, is sufficient to support a finding of guilt beyond reasonable doubt.[30] It is also a fundamental legal aphorism that the conclusions of the trial judge on the credibility of witnesses command great respect and consideration especially when such conclusions are supported by evidence on record.[31] The findings of a trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge over an appellate magistrate in the appreciation of testimonial evidence. It is observed that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grueling examination.[32] Despite the paucity of the trial court's discussion on its factual findings as shown in its 4-page Decision, said findings are supported by the facts on record.[33]

On how the crime was committed, Zenaida Gore testified as follows:

Q

At around 11:00 o'clock in the evening, while you and other member(s) of your house (sic), do you know if there was any incident that happened?

A

I know, sir.

Q

What was that?

A

They kicked the door of our house to open, sir.

Q

After they kicked your door, what happened next?

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A

They forcibly took my husband, sir.

Q

To make it clear, who forcibly took your husband?

A

The two companions of Ernesto de la Cruz while he was downstairs, sir.

COURT:

Q

Why do you know that Ernesto de la Cruz was downstairs?

A

I saw him because there was light, sir.

Q

After the two companions of Ernesto de la Cruz forcibly took your husband, what happened next?

A

They shot him, sir.

Q

Who shot him?

A

Ernesto de la Cruz shot him first then followed his two companions, sir.

Q

Before this incident happened do you know already Ernesto de la Cruz?

A

I know him because he is the second degree cousin of my husband, sir.

Q

If that Ernesto de la Cruz is in court, can you point at him?

A

Yes sir. (Witness pointed to the person who stood up and gave his name, Ernesto de la Cruz).

Q

And if these two other companions of Ernesto de la Cruz are in court, can you point to them?

A

Yes, sir.

Q

Are they in court?

A

None, sir.

COURT:

Proceed.

FISCAL UNCIANO:

Q

After Ernesto de la Cruz and his two other companions, shot your husband, what happened next?

A

After shooting him, they left, sir.[34]

Zenaida's simple and straightforward answers to the questions bespeak of an honest intention to reveal the truth. This explains why the trial court found her a credible witness and gave her testimony full faith and credit. Nevertheless, to satisfy questions on Zenaida's credibility and that of her testimony, each and every contention of appellant in his brief shall be discussed.

In assailing her credibility, appellant capitalizes on the following portion of her testimony:

Q

Is it not a fact that you are pointing Ernesto de la Cruz because you don't like him or hate him?

A

Yes, sir, because we have a land dispute.

COURT:

Proceed.

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FISCAL UNCIANO:

Q

And because of this land dispute, you are pointing at him as [the] one who killed your husband?

A

I saw him, sir.

Q

Why do you say that?

A

He was always quarrelling my husband before because of that land dispute, sir.[35] (Italics supplied.)

In interpreting this portion of Zenaida's testimony, appellant contends that Zenaida pointed an accusing finger at him simply because he and her husband had a land dispute and not because she saw appellant shoot Aurelio. However, Zenaida's testimony should be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein.[36] Taken in the context of her whole testimony, Zenaida's avowed admission of her hatred of appellant did not mean that she singled him out as the assailant because of the land dispute and not because she saw him shoot her husband. On the contrary, her manifest hatred for appellant on account of the land dispute did not deter her from telling the truth. Otherwise, she would not have admitted in testimony a fact which would cast a doubt on her sincerity.

It should be noted that Zenaida was an illiterate witness[37] and, hence, her testimony must be treated with the broadest understanding without in any way sacrificing the quest for truth. As this Court once said, when an unlettered person testifies, inconsistencies in her testimony may be disregarded without impairing her credibility.[38] Thus, it is most unfair for appellant to say that Zenaida merely "assumed" that appellant was the killer because "he was the only one she knew who had a misunderstanding with her husband."[39] Under the facts on record, Zenaida's guileless testimony shows that she did witness how appellant shot her husband.

In describing Zenaida's testimony as "shifting," appellant points out an inconsistency between her testimony, on the one hand, and her declarations during the preliminary investigation at the municipal trial court, as well as her sworn statement, on the other hand, as to how she was able to see appellant. In her testimony, she said that she was beside their stairs, about two meters away from appellant when she saw him, while during the preliminary investigation she stated that she peeped through the window. This alleged inconsistency, however, is a trivial one that does not detract from the fundamental fact that Zenaida was able to see and identify appellant as one of the persons who killed her husband. It was established during trial that Goze's house was a small one and therefore the probability that the stairs were beside the window and that she saw appellant through both apertures cannot be discounted.

Moreover, declarations at the preliminary investigation which are conducted to determine the existence of a probable cause and to secure the innocent against hasty, malicious and oppressive prosecution,[40] should not be equated with testimonies before the court. Probable cause merely implies probability of guilt and should be determined in a summary manner.[41] While the transcripts of a preliminary investigation may form part of the records of the case, testimony taken at the trial on the merits of the case where the adverse party has the full opportunity to cross-examine the witness and to ferret out the truth, deserves more credence. Similarly, as this

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Court has held a number of times, sworn statements that are taken ex parte, are generally incomplete and therefore, discrepancies between statements made on the witness stand and those in an affidavit do not necessarily discredit the witness. Affidavits are generally subordinated in importance in open court declarations because they are oftentimes not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired.[42]

Appellant asserts that Zenaida could not have seen what she claimed she saw because she was very nervous. To prove this point, appellant quotes this portion of her cross-examination:

Q

And at that time you were frightened and you went for a personal necessity and you immediately urinate[d] there in your urinating pan?

A

Yes, sir.[43]

But the fact that the witness was gripped with fear does not prove he failed to recognize the assailants.[44]

Now to the issue of illumination of the crime scene. Appellant asserts that while Zenaida testified that the house was already lighted, she subsequently testified that she lighted a lamp thereby contradicting her first statement.

The issue of illumination of the crime scene or visibility is indeed indispensable in the identification of a criminal offender.[45] However, contrary to appellant's allegation, it was established without contradiction that there was sufficient light to enable Zenaida to recognize appellant.

Zenaida testified that their house was lighted when two intruders kicked open its door. The same light allowed her to recognize appellant who was downstairs.[46] When the court asked her what she did when appellant and his two companions brought out her husband and she answered that she lighted a gas lamp,[47] it did not necessarily imply that the house was previously unlighted. Zenaida's answer to the court's question should be considered in light of her testimony on cross-examination that she lighted another lamp which she placed opposite the stairs.[48] However, when the intruders dragged her husband downstairs, she took with her the original gas lamp.[49]

That Zenaida was able to recognize appellant by the light of the gas lamp is not farfetched. This Court has ruled that illumination produced by a kerosene lamp, like a "gasera" or "lampara" is sufficient for the identification of persons.[50] Identification was, likewise, facilitated by the fact that Zenaida was familiar with the features of appellant who was her husband's cousin. Thus, in one case, the Court held that the distance of 40 to 45 meters of the witness from the crime scene, taken by itself, may lead the Court to entertain doubts on the accuracy of what a witness has observed but once a person has gained familiarity with another, identification becomes quite an easy task even from a considerable distance.[51] That the crime transpired at night is immaterial because Zenaida first saw appellant when he was barely two (2) meters away from her.

It was, therefore, unnecessary for the defense to belabor the point that the crime happened outside the lighted house under a moonless night, in an effort to contradict Zenaida's testimony regarding the position of the moon in relation to her.[52] In fact, appellant, for the first time, submitted before this Court a certification from the Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA) to the effect that at 11:00 p.m. of November 2, 1991 "there was no moon in the sky for an observer situated at Brgy. Taligan, Gattaran, Cagayan" because the last quarter occurred at 3:10 p.m. on October 30, 1991 and the new moon at 7:11

p.m. on November 6, 1991.[53] Suffice it to say that to admit that certification as a piece of evidence this late in the proceedings would be most unfair to the prosecution which was not given an opportunity to examine its contents and rebut them. The Rules of Court and jurisprudence decree that "(t)he court shall consider no evidence which has not been formally offered.[54] But even if we are to take judicial notice of the laws of nature as evidenced by the certification,[55] the fact is, moon or no moon, the witness identified accused as the assailant by other means to the satisfaction of the Court.

Zenaida was thus able to observe how her husband was shot at a distance of thirty (30) meters with only the light from the gas lamp aiding her vision. She testified that as soon as the malefactors had taken her husband to a distance of around thirty meters from their house, appellant shot him and appellant's companions followed suit. No one of the three malefactors, most especially appellant, even tried to dissuade his companions from committing the crime. Zenaida's unrebutted testimony, consequently, proves beyond a shadow of doubt that conspiracy attended the commission of the crime. For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence; it is sufficient that at the time of the commission of the offense, all the accused had the same purpose and were united in its execution.[56] Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident.[57]

Appellant contends that there are "too many blanks" in Zenaida's testimony.[58] He argues that despite the intrusion of armed men into their house and the abduction of her husband, the fact that she remained inside her house and waited until morning before attending to the body of her dead husband, strengthens the proposition that she could not have seen how the crime was perpetrated.

In support of his contention that Zenaida could not have observed the commission of the crime, appellant argues that the extension of the house called pataguab was an enclosed place.[59] That contention, however, is not supported by evidence. Appellant merely inferred it from Zenaida's testimony that the extension had a door distinct from the door of the main house.[60] However, if appellant's penchant for inferences were to be pursued, it is not remote to similarly infer that the extension might have had an "entrance" that was not necessarily blocked by a door or that its wall would not obstruct the view outside the house on account of the established fact that the Goze's kitchen had no walls.[61]

Zenaida's behavior of leaving her husband unattended after he was shot is not contrary to human experience and would not necessarily imply that she did not see her husband being shot.[62] Not every witness to a crime can be expected to act reasonably and conformably to the expectations of everyone.[63] Different persons have different reactions to similar situations.

As the defense insinuated at the trial, Zenaida could not have positively identified appellant because she was then so nervous that she even urinated. A nerve-wracking experience would not necessarily cause blockage of vision. On the contrary, the witness would focus his attention on the unusual occurrence creating an indelible impression in the mind that the witness can recall vividly.[64]

Zenaida's failure to go down to the yard to attend to her husband after he was shot was not without reason. She naturally feared for her life and those of her children that she opted to remain inside her house.

That no complaint was lodged against appellant's companions despite Zenaida's certainty that she could recognize them does not affect her credibility.[65]

Failure of the police and the prosecution to apprehend the malefactors should not be taken against Zenaida. It was not her fault that appellant's companions have remained at large.

The question of whether or not she in fact revealed the identities of the malefactors when the barangay captain and the soldiers went to her house the day after the commission of the crime is a matter that was sufficiently proved during trial. Zenaida testified to the effect that she informed the investigating authorities that appellant was one of the perpetrators of the crime. If indeed she kept mum about the identity of her husband's killer, that was not an unnatural reaction. Fear for one's life is a valid explanation for a witness' failure to immediately notify the authorities of the identity of the malefctors. Such failure does not necessarily affect, much less, impair the credibility of the witness.[66] At any rate, SPO4 Franklin Tagupa would not have a reason to investigate appellant the day after the commission of the crime if Zenaida had not, in fact, revealed his identity as one of the malefactors.

Appellant's contention that the prosecution's omission to present an autopsy report, ballistic examination report and other reliable scientific reports to match physical evidence with Zenaida's testimony constituted "loose ends" that derailed the prosecution's case[67] is devoid of merit. Those reports would have been indispensable had there been no credible eyewitness to the crime as they would only be corroborative in nature. Thus, the non-presentation of the weapon in a murder case is not fatal to the prosecution's case because of the positive identification of the accused by an eyewitness.[68] The prosecution has established beyond reasonable doubt, through the credible testimony of Zenaida, the identity of that appellant as one of the perpetrators of the crime. Because of the positive identification by Zenaida, appellant's alibi and denial were rendered unworthy of credit.[69] Moreover, appellant's alibi was not established in accordance with law. It is well-settled that in order for an alibi to prevail, the defense must establish by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that he was somewhere else.[70] As borne out by the records, the defense was not able to prove that it was physically impossible for appellant to have been at the crime scene. Appellant was allegedly in Barangay Sidem which is located in the same municipality of Gattaran, the site of the crime. The fact that the crime scene and the place where appellant claimed to be at during the crucial days of the perpetration of the crime are shown by appellant's own admission that he allegedly heard the gunshot that killed Aurelio.

Another effort at exculpation, appellant points to Lt. Ileto and Sgts. Ibujo (Ebojo) and Cauilan as the perpetrators of the crime. He contends that Emiterio Domingo and Eduardo Suldan would not have risked their lives in executing affidavits against those police officers or soldiers if they were not telling the truth.[71] However, a scrutiny of their affidavits and Suldan's testimony betrays their hollowness. It is simply illogical and incredible that they would be invited by the three police officers to witness a murder.

Appellant now rues the fact that the prosecution "never so much as tried to disprove the existence of Lt. Hercules Ileto."[72] The prosecution was not bound to disprove a fact that was not, in the first place, satisfactorily established. While it may be true that those persons indeed exist, this fact was for the defense to establish.

But that is as far as this Court is willing to agree with the decision of the regional trial court. On the second assigned error, the Court is convinced by appellant's plea that the crime is merely homicide aggravated by the circumstance of abuse of superior strength, which circumstance was not alleged in the information but nevertheless proved during trial.

The qualifying circumstance of treachery was not established. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[73] Two things must be proved: 1) the employment of means of execution that gives the victim no opportunity to present a defense; 2) the means and mode of attack must be consciously adopted.[74]

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Treachery cannot be presumed. It is necessary that the existence of the qualifying circumstance should be proven as fully as the crime itself.[75] In the case at bar, there is no proof that the execution or mode of attack was consciously adopted.[76] According to the testimony of the widow, the armed men were first looking for rice before they barged into their house. It is, therefore, possible that the decision to shoot the victim was a spur of the moment resolution, sudden and unexpected. In view of the paucity of evidence to prove the contrary, this Court cannot sustain a finding of the existence of treachery.

The prosecution has sufficiently established the existence of the aggravating circumstance of abuse of superior strength. What should be considered is not that there are three, four or more assailants against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense.[77] It is indispensable for the prosecution to show that the attackers cooperated in such a way as to secure advantage of their superiority in strength. In this case, the number of attackers, the fact that they were armed, the number and extent of gunshots sustained by the victim and the manner of the killing confirm the presence of this aggravating circumstance.

The Court, likewise, agrees with appellant that evident premeditation was not satisfactorily proven in this case. Neither was the generic aggravating circumstance of nighttime established by the prosecution. For nocturnity to be considered as aggravating circumstance, the accused must intentionally seek the cover of darkness for the purpose of committing the crime. If the place is lighted well enough for the offenders to be recognized, nocturnity or nighttime cannot be said to be an aggravating circumstance.[78]

The killing, not being qualified by anyone of the circumstances alleged in the information, the crime committed is Homicide punishable under Article 249 of the Revised Penal Code by Reclusion Temporal. With the presence of the generic aggravating circumstance of abuse of superior strength and the application of the Indeterminate Sentence Law, the proper imposable penalty is an indeterminate sentence of Prision Mayor, as minimum to the maximum of reclusion temporal, as maximum. The award of P50,000.00 as civil indemnity was correctly granted by the trial court considering that civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of the crime. The presence of one aggravating circumstance does not only warrant imposing penalty in its maximum period but justify as well the award of exemplary damages pursuant to Art. 2230 of the Civil Code. The amount of P20,000 is reasonable.[79] An award of P50,000 as moral damages is also justified as provided in Art. 2217 of the Civil Code. The victim's death caused his family mental anguish and serious anxiety.[80]

With respect to the third assigned error, the trial court's ruling that appellant should serve the corresponding penalty and pay damages to the victim's heirs but "with prejudice against the grant of parole or pardon," is totally uncalled for. It is the President’s prerogative whether or not to pardon or parole, but subject to the limitations imposed by the Constitution.[81]

The manner by which counsel de oficio presented with zeal before this Court appellant's plea for exoneration is laudable. He deserves commendation from this Court. It should be emphasized, however, that criminal cases are not resolved on the vigor of appellant's plea for exculpation in the face of proof beyond reasonable doubt, established by the prosecution that the accused is the perpetrator of the crime.

WHEREFORE, the Decision in Criminal Case No. 09-734 of the Regional Trial Court of Cagayan, Branch 9, is hereby AFFIRMED with the modification that appellant is found guilty of the crime of HOMICIDE, aggravated by abuse of superior strength, and is hereby sentenced to suffer an indeterminate prison term from 12 years of prision mayor, as minimum, to 20 years of reclusion temporal, as maximum. Accused is further ORDERED to indemnify the heirs of Aurelio Goze in the amount of P50,000.00 as indemnity, P50,000.00 as moral damages and

P20,000.00 as exemplary damages. The provision disqualifying appellant from executive clemency is deleted.

Let a copy of this Decision be furnished the Department of Interior and Local Govenments and the Department of Justice in order that appellant's co-conspirators shall be apprehended and brought to Court to stand trial. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Presided by Judge Emerito M. Agcaoili.

[2] Rollo, p. 8.

[3] Records, p. 22.

[4] Id., at 23.

[5] Id., at 26.

[6] Id., at 58.

[7] Exhibit 2.

[8] Exh. 1.

[9] Id., at 73.

[10] Id., at 85.

[11] TSN, August 11, 1993, pp. 4-9.

[12] TSN, August 4, 1993, pp. 6-13; August 11, 1993, pp. 16-18.

[13] TSN, August 4, 1993, pp. 14-15.

[14] Id., at 17-19.

[15] TSN, August 3, 1993, pp. 7-10.

[16] Exh. A.

[17] Exh. B.

[18] TSN, December 8, 1993, pp. 6-7, 22.

[19] Id., at 16-18, 21.

[20] Id., at 20.

[21] Id., at 11.

[22] Exh. 2.

[23] Exh. 1.

[24] TSN, December 8, 1993, p. 28.

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[25] TSN, November 9, 1993, pp. 5-15.

[26] TSN, October 13, 1993, pp. 6-16.

[27] Id., at 19-21.

[28] RTC Decision, p. 3; Rollo, p. 28.

[29] Frank Y. Tan of Tañada, Vivo & Tan.

[30] People v. Lascota, 275 SCRA 591, 600 (1997); People v. Camat, 256 SCRA 52 (1996).

[31] Ibid.

[32] People v. Victor, 292 SCRA 186, 194 (1998);

[33] See: People v. Compendio, Jr., 327 Phil. 888, 895-896 (1996).

[34] TSN, August 4, 1993, pp. 6-9.

[35] TSN, August 4, 1993, pp. 11-12.

[36] People v. San Gabriel, 323 Phil. 102, 113 (1996); People v. Natan, 193 SCRA 355 (1991); People v. Laredo, 185 SCRA 383 (1990).

[37] TSN, August 11, 1993, p. 24.

[38] People v. Salvatierra, 276 SCRA 55, 68 (1997).

[39] Appellant's Brief, pp. 15-16.

[40] Drilon v. Court of Appeals, 327 Phil. 916, 922 (1996).

[41] Webb v, Hon. De Leon, 317 Phil. 758, 789 (1995).

[42] People v. Leangsiri, 322 Phil. 226, 251 (1996) citing People v. Sarellana, 233 SCRA 31 (1994).

[43] TSN, August 11, 1993, p. 3.

[44] People v. Madera, 57 SCRA 349 (1974).

[45] People v. Mendoza, 324 Phil. 273, 289 (1996).

[46] TSN, August 4, 1993, p. 7.

[47] Ibid.

[48] TSN, August 11, 1993, pp. 16-17.

[49] Id., at 14.

[50] People v. Quiamco, 335 Phil. 988, 1002 (1997).

[51] People v. Castillo, 330 Phil. 205, 213-214 (1996).

[52] TSN, August 11, 1993, pp. 19-20.

[53] Rollo, p. 177.

[54] Republic v. Sandiganbayan, 325 Phil. 762, 787 (1996) citing Section 34, Rule 132 of the Rules of Court and

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Veran v. Court of Appeals, 157 SCRA 438 (1988); De los Reyes v. IAC, 176 SCRA 394 (1989); People v. Cariño, 165 SCRA 664 (1988).

[55] People v. Madera, 57 SCRA 349, 354 (1974).

[56] People v. Hubilla, Jr., 322 Phil. 520, 532 (1996).

[57] People v. Gregorio, 325 Phil. 689, 707 (1996) citing People v. Carizo, 233 SCRA 687 (1994).

[58] Appellant's Brief, p. 30.

[59] Appellant's Brief, p. 33.

[60] Ibid.

[61] TSN, August 11, 1993, p. 19.

[62] Appellant's Brief, p. 36.

[63] People v. Letigio, 335 Phil. 693, 705 (1997).

[64] People v. De Guia, 280 SCRA 141, 155 (1997).

[65] Appellant's Brief, p. 40.

[66] People v. Herbieto, 269 SCRA 472, 480 (1997).

[67] Appellant's Brief, pp. 53-54.

[68] People v. Padao, 334 Phil. 726, 737 (1997).

[69] People v. Herbieto, supra.

[70] People v. Dinglasan, 334 Phil. 691, 708 (1997).

[71] Appellant's Brief, p. 92.

[72] Ibid, p. 87.

[73] People v. Lacao, Sr., 301 SCRA 317, 330 (1991); People v. Aquino, 284 SCRA 369 (1998).

[74] People v. Talavar, 230 SCRA 281, 288 (1994); People v. Reyes, 287 SCRA 229 (1998).

[75] People v. Lubreo, 200 SCRA 11, 28 (1991).

[76] People v. Chua, 297 SCRA 229 (1998).

[77] People v. Gelera, 277 SCRA 450, 459 (1997).

[78] People v. Pelones, 230 SCRA 370, 390 (1994).

[79] People v. Gutierrez, Jr., 302 SCRA 643 (1999).

[80] TSN, August 4, 1993, pp. 29-33.

[81] Section 19, Article VII of the 1987 Constitution states: Except in case of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

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