

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. APOLINAR DANDO, ACCUSED-APPELLANT.

G.R. No. 120646. February 14, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from a decision of the Regional Trial Court, Branch 33, Siniloan, Laguna finding PO3 Apolinar E. Dando ("accused-appellant") guilty beyond reasonable doubt of murder.

The Information filed against accused-appellant reads:

That on or about 6:19 o'clock in the evening of November 20, 1991 at Barangay M. Pandeño, Municipality of Siniloan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused while conveniently armed with a deadly weapon (cal. 45) with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot several times one CESAR CASTRO y VALMONTE with the said weapon, thereby inflicting upon him gunshot wounds on the vital parts of his body which directly caused his death, to the damage and prejudice of the surviving heirs of the victim.

That the qualifying and aggravating circumstances of treachery, evident premeditation and abuse of superior strength attended the commission of the crime.

CONTRARY TO LAW.[1]

On the same date, accused-appellant filed a motion for inhibition and for a change of venue of the case because several staff members of Branch 33, RTC of Laguna were related to the victim. On February 12, 1992, Judge Venancio M. Tarriela, the Presiding Judge of said branch, granted the motion.[2] On May 14, 1992, this Court approved the change of venue and designated Judge Jose C. Mendoza of Branch 26, RTC of Sta. Cruz, Laguna, to try and decide the case.[3]

Accused-appellant filed a petition for bail[4] which was denied after hearing on the ground that the evidence against accused-appellant is strong.[5] Accused-appellant then went to the Court of Appeals via petition for certiorari questioning the denial of his petition for bail.

Subsequently, on account of another motion for inhibition,[6] filed by accused-appellant alleging that a prosecution witness in the hearing for the petition for bail was related to a staff member of Branch 26, the case was re-raffled and transferred to Branch 28, RTC of Sta. Cruz, Laguna, presided by Judge Fernando Paclibon, Jr.

On June 18, 1993, the Court of Appeals rendered its decision dismissing accused-appellant's petition questioning the denial of his motion for bail, for lack of merit.[7]

During trial and after the prosecution witness had already rested its case, the Presiding Judge of Branch 28, RTC of Sta. Cruz, Laguna, likewise, inhibited himself from further hearing the case when accused-appellant questioned his impartiality because of his refusal to grant accused-appellant's motion to recall prosecution witness Susana

Masacupan to the witness stand as a hostile witness.[8] The case was transferred back to Branch 26, RTC of Laguna, then presided by Judge Pablo Francisco.

On May 2, 1995, the trial court rendered its decision the dispositive portion of which reads:

WHEREFORE, this Court finds the accused Apolinar Dando guilty beyond reasonable doubt of the crime of murder as charged in the information, qualified by treachery and committed with the aggravating circumstances of use of craft or disguise and evident premeditation and hereby sentences him to suffer the penalty of reclusion perpetua and to pay the heirs of Cesar Castro as follows:

- a.) the sum of P50,000.00 as death indemnity;
- b.) the sum of P1,628,000.00 for loss of earning capacity; and
- c.) the sum of P35,974.00 as reimbursement for expenses incurred in the wake and burial of the victim; and to pay the costs.

SO ORDERED.[9]

The prosecution's account of the case as narrated in the brief of the Solicitor General is as follows:

Prosecution witness Aldwin Gemanel testified that on November 20, 1991, he went to the house located at Pandiño Street, Siniloan, Laguna of his uncle, Angelito Millares, Jr. (Junior Millares) to look for his (Gemanel's) father. Junior Millares' house was about 100 to 150 meters away from that of the victim, Cesar Castro. Upon arrival at his uncle's place, a party was on-going as it was the birthday of the former (p. 3, tsn, June 17, 1992). At the said party, gunshots were fired by appellant and Junior Millares to celebrate the occasion (p. 4, tsn, October 20, 1992 and pp. 14-15, tsn, August 26, 1993). After a few hours at the birthday party, Gemanel decided to go to his grandmother's house, a mere three (3) houses away from his uncle's house (p. 5, tsn, June 17, 1992). On the way to his grandmother's house, he saw appellant Apolinar Dando, sat on the side-car of a tricycle parked along Pandiño Street in front of Junior Millares' house and placed a white handkerchief over his face (p. 5-6, tsn, Ibid.). Though puzzled by the action of appellant, Gemanel proceeded to his grandmother's house and stayed there for almost an hour (pp. 20-21, tsn, September 22, 1993). When Gemanel went out of the house, he saw appellant get off the tricycle with the handkerchief covering his face and walk towards the direction of the town plaza (pp. 30-31, tsn, Ibid.). At that time, Gemanel followed appellant and then he (Gemanel) entered a bakery to buy bread (pp. 28-29, tsn, Ibid.). While inside the bakery, Gemanel heard a shot, so he ran outside to look where the shot came from (p. 36, tsn, Ibid.). Thereupon, he saw appellant with the same white handkerchief covering his face, firing three (3) more shots at Cesar Castro, who was standing on the street in front of his (Castro's) house. After the fourth shot appellant ran towards the "paraanan" or alley, to the direction of the town plaza (pp. 37-43, tsn, Ibid.).

Gemanel rushed home and told his mother what he had just witnessed (p. 53, tsn, September 22, 1993). His mother then went to the crime scene while he was left to tend their store (p. 54, tsn, Ibid.). When his mother came back after about ten (10) minutes, he confided to her that he saw appellant shoot Cesar Castro (p. 54, tsn, Ibid.). His mother then advised him not to tell anyone. Then he went to the crime scene for a closer look of the victim (p. 55, tsn, Ibid.).

The following day on November 21, 1991, Gemanel was fetched by police officers from his school and was brought to the municipal building for questioning. The day after, on November 22, 1991, he executed a statement (Exhibit "A"; pp. 8-9, tsn, July 14, 1992).

Gemanel further testified that he was present when a slug was recovered from the front yard of his uncle's (Millares') house (p. 11, tsn, July 14, 1992). He personally saw the slug which was subsequently handed to Celso Castro, son of Cesar Castro. He learned that the slug found was one of those fired from the service pistol of appellant when the latter fired his gun during the birthday party of his uncle (pp. 11-12, tsn, Ibid.).

Susan Masakupan, 29 years of age, married and a resident of Pandiño Street, Siniloan, Laguna, corroborated the testimony of Gemanel. She testified that on or about 6:00 o'clock in the evening of November 20, 1991, while she was getting dry clothes hanging at their clothesline located at their front yard, a man wearing a white polo shirt with designs and a pair of khaki pants and had a handkerchief covering his face passed by. Surprised with the man's covered face, her gaze followed the man until the latter stopped by victim Cesar Castro. Thereupon the man shot Cesar Castro and when the latter fell down, the man continued on shooting at Cesar Castro two (2) or more shots. After the additional shots, the man ran towards an alley (pp. 2-5, tsn, July 21, 1992).

SPO4 Efren Palma, Deputy Station Commander of the PNP, Siniloan, Laguna, testified that three (3) slugs and three (3) empty shells were recovered from the crime scene on the night of November 20, 1991 (p. 6, tsn, October 5, 1992).

Josue Flores, property custodian of the PNP, Siniloan, Laguna, testified that he issued to appellant, who is a member of PNP, Siniloan, Laguna, (one 1) service firearm, which was a caliber .45 pistol, Remington, with serial number 1945012 (pp. 3, 5 and 7, tsn, August 11, 1992).

Florentino Rañada, a member of the Central Intelligence Service of Siniloan, Laguna, testified that he received from the Siniloan, Laguna police station the following specimens:

- one (1) slug .45 caliber ammunition;
- three (3) pieces slug for .45 caliber ammunition;
- three (3) pieces empty shells for a .45 caliber ammunition;
- one (1) piece caliber Remington pistol with serial number 1945012.

and issued a receipt for them (Exhibits "E" and "E-1"; pp. 17-20, tsn, August 11, 1992).

Rañada further testified that one (1) slug of a .45 caliber pistol recovered from the body of the victim, which was turned over to him by Arvee Castro, brother of the victim (pp. 27-28, tsn, Ibid.) has [sic] sent together with the above specimens to the PNP crime laboratory for ballistic examination (p. 30, tsn, Ibid.).

Susan R. Jalla, PNP officer and criminologist, testified that she conducted a ballistic examination on the specimens submitted (Exhibits "H", "I", "J" and "K"; pp. 11-13, tsn, Ibid.).

She issued a certification (Exhibit "N") stating: "... microscopic examination, MS-1, MRS-1, MRS-15 revealed the same individual characteristics as the test bullets and test cartridges, respectively fired from the above-mentioned firearm" (p. 17, tsn, Ibid.).

Dr. Priscilla Realeza, Rural Health Physician of Pakil, Laguna, testified that she conducted a postmortem examination on the cadaver of Cesar Castro. She issued an Autopsy Report (Exhibits "R" and "R-1") finding that the victim sustained eleven (11) gunshot wounds (pp. 6-7, tsn Ibid.) and that one (1) bullet slug was extracted from his body (p. 12, tsn, Ibid.).[10]

Accused-appellant, on the other hand, gave the following version of the incident: On November 20, 1991, he was a member of the Philippine National Police (PNP) with the rank of PO3 and detailed as security to the mayor of Siniloan, Laguna. At around one o'clock in the afternoon of that day, he arrived at the house of Junior Millares who was then celebrating his birthday. He participated in a drinking spree up to three o'clock in the afternoon. On that occasion, there was no firing of a gun. He did not bring his gun to the birthday party because he was not in a habit of bringing his gun when he attended such occasions.[11] When he left the party, he went straight home and slept. He woke up at around midnight because of an upset stomach and vomitted. He went back to sleep and woke up the second time in the morning of November 21, 1991, changed his clothes, ate his breakfast and went to work

at around eight o'clock in the morning.[12] It was only on November 22, 1991 that he learned from his wife that the Chief of Police and the Mayor were looking for him and that he was a suspect in the killing of Castro. After eating his supper, he went to the municipal building where the Chief of Police informed him that he was a suspect in the killing of Castro and was placed under technical arrest. He surrendered his firearm for ballistic examination to show that he had nothing to do with the killing. Thereafter, he did not know what happened to the said firearm.[13]

The testimony of accused-appellant as to his whereabouts during the time the crime was committed was supported by his wife Herminia Dando who testified before the trial court that on November 20, 1991 she went home at 4 o'clock in the afternoon to cook their supper. Less than an hour later, her husband arrived, went to the sala and slept until the next morning. They had breakfast together and after that, they went to their respective places of work.[14]

Accused-appellant assigns the following errors committed by the trial court, to wit:

I

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDIT TO THE TESTIMONY OF PROSECUTION WITNESS ALDWIN GEMANEL THAT ACCUSED APPELLANT APOLINAR DANDO WAS THE ASSAILANT WHO SHOT THE VICTIM CESAR CASTRO.

II

THE TRIAL COURT ERRED IN FINDING THAT THE EMPTY SHELLS AND SLUGS SUBMITTED FOR BALLISTIC EXAMINATION WERE THOSE RECOVERED FROM THE SCENE OF THE CRIME AND ONE SLUG FROM THE BODY OF THE VICTIM AND CAME FROM THE SERVICE FIREARM OF THE ACCUSED APPELLANT.

III

THE TRIAL COURT ERRED IN FAILING TO CONSIDER THE PHYSICAL EVIDENCE CONSISTING OF EMPTY SHELLS AND SLUGS PRESENTED BY THE PROSECUTION AS TAINTED OR POLLUTED, AND HIGHLY UNRELIABLE.

IV

THE TRIAL COURT ERRED IN CONCLUDING THAT THE TESTIMONY OF ALDWIN GEMANEL AND THE BALLISTIC EXAMINATION OF THE SERVICE FIREARM OF ACCUSED APPELLANT CONSTITUTED PROOF BEYOND REASONABLE DOUBT OF THE GUILT OF THE ACCUSED FOR THE CRIME OF MURDER.

V

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AND IN SENTENCING HIM TO SUFFER THE PENALTY OF RECLUSION PERPETUA AND TO PAY THE HEIRS THE SUM OF P1,620,000.00 FOR LOSS OF EARNING CAPACITY OF THE VICTIM, AND OTHER DAMAGES.[15]

The first and third issues shall be dealt with together as they are interrelated.

Accused-appellant assails the testimony of Aldwin Gemanel alleging that it was marred by inconsistencies and was incredible, therefore, unworthy of belief. Among these inconsistencies, according to accused-appellant, are:

1. Gemanel testified that there was a birthday party attended by accused-appellant in the house of his (Gemanel's) uncle, Junior Millares, and there he saw accused-appellant pull out his gun and fire a shot

downward on the floor. However, Millares himself testified that accused-appellant merely gave to him the gun and it was he (Millares) who fired two shots. Then he handed the gun to another guest, Agustin Salinas, who likewise fired said gun twice and then it was returned to accused-appellant.[16]

2. Gemanel testified that moments before the shooting of Castro, he saw accused-appellant in front of the house of Millares putting a handkerchief to cover his face and then going inside the tricycle to rest. However, during the summary examination by the Municipal Judge who conducted the preliminary investigation, he testified that he saw accused-appellant on board the tricycle sleeping.[17]

3. Gemanel testified that he was barely one house away from the place of the shooting when he heard a shot. When he looked at the place where the shot came from, he saw a man already sprawled on the ground and the man, whose face was covered by a handkerchief, fired two (2) more shots at the victim and left passing through a pathway. In other words, there were three (3) shots fired. Later, he changed his testimony stating that there were four (4) shots fired.[18]

4. Gemanel testified that after the shooting, he approached the victim then he went to his mother telling her that Castro was shot without naming the assailant. He later testified that after the shooting, he went home to his mother and revealed to her the identity of the assailant as Apolinar Dando. Then he went back to the scene of the crime and saw that policemen were already investigating the incident. When asked by the police investigator, he told him right then and there that it was accused-appellant who shot the victim.[19]

The foregoing inconsistencies are but minor details and they do not discredit the positive identification of accused-appellant as the perpetrator of the crime. The testimony of Gemanel on the events that transpired on November 20, 1991 was clear, straightforward and consistent. Thus:

DIRECT-EXAMINATION BY FISCAL:

Q:

On November 20, 1991, where were you?

WITNESS:

A:

I was on Pandeño Street, Siniloan, Laguna, sir.

Q:

In what particular place in Brgy. Pandeño?

A:

About the middle of that area, sir.

Q:

You were at the middle part of that area. Will you kindly tell to this Honorable Court your point of reference as to the place where you were at the time?

A:

What I am saying is that I am at the middle of Pandeño Street, sir.

FISCAL:

Q:

And when you said you were at the middle portion of Pandeño Street, will you tell this Honorable Court the nearest house where you were at the time?

WITNESS:

A:

Cesar Castro's house, sir.

Q:

And what are you doing then?

A:

None, sir, I was then going to my grandmother's house.

Q:

And were you able to proceed to the house of your grandmother?

A:

Yes, sir.

Q:

But prior to proceeding to the house of your "lola" did you go to any other place?

A:

Yes, sir.

Q:

Where?

A:

To my uncle Junior's house, sir, where there was a drinking spree.

Q:

Do you know why there was a drinking spree at the time?

A:

Yes, sir, it was my uncle Junior's birthday.

Q:

What was your purpose in going to the place of your uncle's birthday?

A:

I was going to look for my father, sir.

Q:

Did you. . .while you were there, by the way, where is the house of your uncle located?

A:

On Pandeño Street, sir.

Q:

How far from your house, how many houses apart?

A:

About 15 houses, sir.

Q:

What is the full name of your uncle Junior?

A:

Junior Millares, sir.

Q:

While you were there at the birthday celebration of your uncle Junior, what did you notice thereat?

WITNESS:

A:

There was a firing of gun, sir.

Q:

Do you know the person who fired his gun at the time?

A:

Yes, sir, Polly Dando.

Q:

Do you know Polly Dando personally?

A:

Yes, sir.

Q:

Do you know the real name of Polly Dando?

A:

Yes, sir, Apolinario Dando.

Q:

Where did you see Apolinario Dando fired his gun?

A:

Under the table pointing downwards, sir.

Q:

Do you know the caliber used by Dando?

ATTY. RAGAZA:

Incompetent, your Honor.

COURT:

Objection noted, if he knows.

WITNESS:

A:

Yes, sir.

FISCAL:

Q:

Will you tell this Honorable Court the caliber?

A:

A .45 caliber, "yung lapad", sir.

Q:

Have you already seen a gun of that caliber?

A:

Yes, sir.

Q:

Where?

A:

On TV and on posters, sir.

x x x

Q:

After that, where did you go?

A:

I went to my grandmother, sir.

Q:

Where is the house of your grandmother located?

A:

Also on Pandeño Street, sir.

Q:

How far from the house of your uncle Junior?

A:

Three houses away, sir.

Q:

What did you do in the house of your lola?

A:

I entered the house, sir.

Q:

After that, what else happened?

A:

I went out, sir.

Q:

Where did you go?

A:

On the street, sir.

Q:

Were you alone at the time?

A:

Yes, sir.

Q:

While you were on the street, did you notice of any unusual incident?

A:

Yes, sir.

Q:

What was that incident?

A:

I saw Polly boarded a tricycle, sir.

Q:

When you said Polly Dando boarded a tricycle, you mean to say Dando went somewhere else?

WITNESS:

A:

No, he merely sat on board a tricycle which was parked there, sir.

Q:

This tricycle has a driver?

A:

None, sir.

Q:

What else did you notice?

A:

I saw Polly Dando placed a handkerchief over his face, sir.

x x x

FISCAL:

Q:

Do you know the color of the handkerchief?

A:

Yes, sir, white with small drawings.

Q:

Will you tell this Honorable Court the attire used by the accused Apolinario Dando?

A:

He was wearing a white polo shirt, sir, and a khaki pants.

Q:

After you saw Apolinar Dando sat on a tricycle and put a handkerchief on his face, what else happened?

WITNESS:

A:

He merely rested for a short while, sir.

Q:

After that, what happened?

A:

I left, sir.

Q:

You mean to say after you saw Apolinar sat on a tricycle and put a handkerchief on his face and rested for a while, you went to your lola's house?

A:

Yes, sir.

Q:

After that, where did you proceed?

A:

I merely stayed on the street, sir.

Q:

And again, while there on the street, did you again notice any unusual incident?

A:

Yes, sir.

Q:

What was that incident?

A:

Polly Dando got off the tricycle,sir.

Q:

Where did he go?

A:

Towards the plaza, sir.

Q:

And what did you do?

A:

I followed Polly, sir.

Q:

Up to what point did you follow him?

A:

About 2 houses, sir.

Q:

While following Dando, what happened next?

A:

I entered a bakery, sir.

Q:

What was your purpose in going to that bakery?

A:

I was going to buy bread, sir.

Q:

Were you able to buy bread?

A:

No, sir.

FISCAL:

Q:

Where did you proceed after that?

A:

I heard a shot, sir.

Q:

What did you do. . .

ATTY. RAGAZA:

I moved to strike out the answer for not being responsive.

COURT:

Sustained.

FISCAL:

Q:

While you were at the bakery, what else happened?

WITNESS:

A:

I heard a shot, sir.

Q:

What shot did you hear?

A:

A gun shot, sir.

Q:

When you heard that gunshot, what did you do?

A:

I went beside the street, sir.

Q:

What did you find out?

A:

I saw Cesar Castro already sprawled on the ground, sir.

Q:

Was Cesar Castro alone at the time?

A:

Yes, sir.

Q:

And do you know what was the cause of Cesar's falling to the ground?

ATTY. RAGAZA:

Incompetent, your Honor, he already saw Cesar already sprawled on the ground.

COURT:

May answer. We will see the answer.

WITNESS:

A:

No, sir.

FISCAL:

Q:

At that precise moment when you heard the gunshot and you go (sic) to the street to find out where the shot came from, where was Apolinar Dando at the time?

ATTY. RAGAZA:

There is no testimony that Apolinar Dando was present at the time.

COURT:

There was no testimony that Apolinar Dando was there. The fiscal was asking where was Apolinar at the time. He was not asking why he was there. He did not assume.

WITNESS:

A:

I saw him walked a few steps and then fired his gun at Cesar, on his side, sir.

x x x

Q:

After you saw Apolinar for the second time at the sprawled body of Cesar, what else happened?

A:

He ran and went towards an alley, "paraanan", sir.[20]

On cross-examination, Gemanel gave substantially the same testimony:

Q:

In answer to the question of the Court in the last hearing, you said you saw Dando going to the plaza and you followed him for a distance of about 2 houses, during the time you were following, did you meet any person?

A:

None, sir.

Q:

And during all the time that you were following Dando, was he wearing a handkerchief over his face?

A:

Yes, sir.

Q:

But you did not have much interest, that is why you stop following him and stopped at a bakery?

A:

Yes, sir.

ATTY. RAGAZA:

Q:

And then you heard a shot?

WITNESS:

A:

Yes, sir.

Q:

Exactly, where were you when you heard the first shot?

A:

In the bakery about to buy bread, sir.

Q:

Where were you facing?

A:

Towards the bakery, sir.

Q:

Was there anybody attending to you in the bakery?

A:

Yes, sir.

Q:

Now, you were merely waiting for bread that you would buy in that bakery?

A:

Yes, sir, when suddenly I heard a shot.

Q:

How many shots did you hear while you were in the bakery?

A:

First, I heard one shot so I went out of the bakery and I saw Ka Cesar being shot, sir.

Q:

How many shots in all did you hear?

A:

Three, sir.

Q:

What was the interval between the first and the second shot?

A:

First, I was inside the bakery when I heard a shot so I immediately went out and saw Dando firing two shots on Ka Cesar who was already lying on the ground, sir.[21]

xxx

ATTY. BALCE:

Q:

You heard a shot and you went out and stopped at this point marked by an "x"?

A:

Yes, sir.

Q:

And it was only a gunshot that you heard?

A:

On that moment, one.

Q:

Just after the shot, did you not hear any person crying out in panic

A:

Nobody, sir.

COURT:

Q:

After that first shot, did you hear any other shot?

A:

I heard, Your Honor.

COURT:

Q:

How many shots did you hear after hearing the first shot?

A:

Three to four shots, Your Honor.

ATTY. BALCE:

I move that the last answer be placed in tagalog.

A:

"Mga tatlo o apat".

Q:

What did you say?

A:

"Tatlo po o apat".

ATTY. BALCE:

But your first answer that I heard was "tatlo bale apat."

A:

Yes, sir.

COURT:

Q:

Did you know where the shots came from?

A:

Yes, Your Honor.

Q:

Where?

A:

From the house of Ka Cesar.

COURT:

Q:

After hearing those shots, what did you observe, if any?

A:

The person with his handkerchief covering his face, was running and entered an alley, "paraanan".[22]

Well-settled is the rule that "inconsistencies on minor and trivial matters only serve to strengthen rather than weaken the credibility of witnesses for they erase the suspicion of rehearsed testimony." [23] Moreover, the alleged inconsistencies refer only to inconsequential details and not to the crux of the case – that Gemanel saw accused-appellant gun down Castro. Gemanel never wavered on this point even for a single moment. The consistency on the part of Gemanel in identifying accused-appellant as the perpetrator of the crime makes him a credible witness. His testimony cannot be discredited by a mere alibi and denial on the part of accused-appellant.

Alibi is one of the weakest defenses in criminal cases and it should be rejected when the identity of the accused is sufficiently and positively established by the prosecution.[24] Moreover, in order to overcome the evidence of the prosecution, the accused must establish not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[25] In the present case, accused-appellant failed to show that it was physically impossible for him to be at the scene of the crime when it was committed. He even admitted that his house was only about one-and-a-half kilometers away from the house of Millares,[26] which was very near the place where Castro was shot to death. Undoubtedly, the distance did not render it impossible for accused-appellant to be at the scene of the crime at the time it was committed. Accused-appellant's defense of alibi must necessarily fail.

As to the alleged inconsistency between the testimonies of Gemanel and that of Millares, we find the testimony of Gemanel to be more credible since the inconsistency lies in the affidavit and testimony of Millares himself. In his affidavit, Millares averred that he fired the gun first and then accused-appellant fired the gun twice.[27] In his testimony in court, however, he (Millares) claimed that after firing the gun, he gave the gun to Agustin Salinas.[28] Confronted with the inconsistent statements of Millares and the straightforward and categorical testimony of Gemanel, which was corroborated by that of Susana Masacupan, this Court believes and gives credence to the latter.

When he testified in court, Gemanel was then only thirteen (13) years old and a second year high school student at Siniloan Public High School. Indeed, "the testimony of a child of sound mind is likely to be more correct and truthful than that of older persons, so that once established that he has fully understood the character and nature of an oath, his testimony should be given full credence." [29]

In the second and third issues raised in his brief, accused-appellant opines that there is no proof showing that the empty shells and slugs recovered at the scene of the crime were the same empty shells and slugs submitted for ballistic examination. According to accused-appellant, the relatives of the victim tampered with these pieces of evidence making the same tainted or polluted, therefore, unreliable.

Other than these bare allegations, however, accused-appellant failed to prove by convincing evidence any irregularity in the handling by the police officers of these particular pieces of evidence. The ballistic examination report is thus clothed with the presumption of regularity. At any rate, the presentation of weapons (or the slugs and bullets, as in this case) used and ballistic examination are not prerequisites for conviction.[30] The corpus

delicti and the positive identification of accused-appellant as the perpetrator of the crime are more than enough to sustain his conviction.

Anent the fifth issue, accused-appellant contends that the trial court erred in convicting him for murder and awarding in favor of the victim's heirs the sum of P1,620,000.00 for his loss of earning capacity and other damages.

Article 248 of the Revised Penal Code reads:

Art. 248. Murder. – Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death[31] if committed with any of the following circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

x x x

5. With evident premeditation.

x x x

The essence of treachery is that the attack comes without a warning and in a swift, deliberate and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[32] In this case, accused-appellant, whose face was covered by a handkerchief, approached the victim, who was merely standing by the gate in front of his house, and shot him. The victim was undoubtedly caught unaware and had no chance of putting up any defense. Clearly, treachery attended the commission of the crime since the attack, although frontally, was no less sudden and unexpected, giving the victim no opportunity to repel it or offer any defense of his person.[33]

The trial court further established that there was evident premeditation and that accused-appellant used "craft, fraud or disguise" in committing his dastardly act:

xxx When DANDO (accused-appellant) boarded the tricycle parked in front of the residence of Angelito Millares, Jr., he did so not to rest or sleep there. He was there, with a handkerchief over his face, lying in wait for Cesar Castro to come out and stand by the gate of his house as he customarily did while taking a rest. And DANDO stayed inside the tricycle for a couple of hours, like an eagle waiting for its prey. From the parked tricycle, DANDO could clearly see the gate of Cesar Castro's house, 100 to 150 meters away. DANDO'S stay inside the tricycle lasted for about two (2) hours, a sufficient time for him to reflect on the consequences of his plan to kill Cesar Castro. And when Cesar Castro did finally come out, and stood there unarmed by the gate of his house, DANDO swiftly swooped down on his prey and triggered the burst from his service firearm which snuffed the life of his victim.[34]

Given the foregoing attendant aggravating circumstances, the trial court properly sentenced accused-appellant to suffer the penalty of reclusion perpetua. However, the amount it awarded in favor of the heirs of the victim should be modified in accordance with prevailing jurisprudence.

The trial court correctly awarded the amount of P50,000 as indemnity for the death for Cesar Castro. Said amount is awarded without need of further proof other than the death of the victim.[35] In addition, the heirs are also entitled to receive a compensation for the loss of earning capacity of the victim. The formula for computing the same as established in decided cases[36] is as follows:

Net Earning Capacity

=

Life Expectancy

x

Gross Annual Income

-

Necessary Living Expenses

The life expectancy is equivalent to two thirds (2/3) multiplied by the difference of 80 and the age of the deceased.[37] Since Castro was 47 years old at the time of his death, his life expectancy was 22 more years.[38] Celso Castro testified that his father earned P3,000.00 monthly or P36,000.00 annually from the sash factory. In addition, the victim's annual income from farming, as found by the trial court, was P53,000.00. The gross annual income of the deceased was P89,000.00. Allowing for necessary living expenses of fifty percent (50%) of his gross earnings, his total net earning capacity amounts to P979,000.00.[39]

As to the expenses actually incurred by the family of the victim for the wake and burial, Celso Castro was able to prove during trial that they incurred the sum of P39,974.00. The amount of P35,974.00 awarded by the trial court as reimbursement of funeral expenses is, accordingly, increased to P39,974.00.

WHEREFORE, premises considered, the decision of the trial court is hereby **AFFIRMED** with **MODIFICATION** that accused-appellant shall pay the heirs of the victim the following amounts:

1. death indemnity in the amount of P50,000.00;
2. compensation for loss of earning capacity in the amount of P979,000.00; and
3. reimbursement of funeral expenses in the amount of P39,974.00.

SO ORDERED.

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

[1] Records, p. 59; Rollo, p. 18.

[2] Id., at 69.

[3] Id., at 72.

[4] Id., at 74-77.

[5] Id., at 173.

[6] Id., at 176-177.

[7] C.A. G.R. SP No. 30077 penned by then Court of Appeals (now Supreme Court) Associate Justice Minerva Gonzaga-Reyes and concurred in by then Court of Appeals (now Supreme Court) Associate Justices Consuelo Ynares-Santiago and then Court of Appeals (now Supreme Court) Associate Justice Bernardo P. Pardo, Rollo, pp. 202-208.

[8] Id., at 100.

- [9] Decision, dated May 2, 1995, pp. 30-31; Rollo, 79-80.
- [10] Appellee's Brief, pp. 4-10; Rollo, pp. 208-214.
- [11] TSN, dated March 2, 1994, pp.15-16.
- [12] Id., at 17-18.
- [13] Id., at 20-26.
- [14] TSN, dated October 22, 1992, pp. 3-5.
- [15] Accused-appellant's Brief, pp. 21-22; Rollo, pp. 119-120.
- [16] Id., at 120-121.
- [17] Id., at 122-123.
- [18] Id., at 127.
- [19] Id., at 128-129.
- [20] TSN, dated June 17, 1992, pp. 2-10.
- [21] TSN, dated July 14, 1992, pp. 2-3.
- [22] TSN, dated August 27, 1993, pp. 51-53.
- [23] People vs. De Guia, 280 SCRA 141 (1997); People vs. Padilla, 242 SCRA 629 (1995).
- [24] People vs. Salvador, 279 SCRA 164, [1997].
- [25] People vs. Belo, 299 SCRA 654 (1998); People vs. Dadles, 278 SCRA 393, [1997]; People vs. Novales, 266 SCRA 569, [1997].
- [26] TSN, dated March 2, 1994, p. 43.
- [27] Records, p. 9.
- [28] TSN, dated October 20, 1992, pp. 4-9.
- [29] Marco vs. Court of Appeals, 273 SCRA 276 (1997); People vs. Vitor, 245 SCRA 392 (1995).
- [30] People vs. Florida, 214 SCRA 227 (1992).
- [31] This provision was subsequently amended by Republic Act No. 7659 increasing the penalty for murder to reclusion perpetua to death. Said law took effect on December 31, 1993 while the crime in this case was committed on November 20, 1991. Being unfavorable to accused-appellant, R.A. 7659 cannot be given retroactive effect.
- [32] People vs. Aranjuez, 285 SCRA 466 (1998); People vs. Zamora, 278 SCRA 60 (1997).
- [33] Id.; People vs. Apongan, 270 SCRA 713 (1997).
- [34] See Note 9 at 27; Rollo, p. 76.
- [35] People vs. Floro, G.R. No. 120641, October 7, 1999; People vs. Suplito, G.R. No. 104944, September 16, 1999.

[36] *Negros Navigation Co., Inc. vs. Court of Appeals*, 281 SCRA 534 (1997); *Metro Manila Transit Corporation vs. Court of Appeals*, G.R. No. 116617, 298 SCRA 495 (1998); *Fortune Express, Inc. vs. Court of Appeals, et al.*, G.R. No. 119756, March 18, 1999.

[37] *Villa Rey Transit, Inc. vs. CA*, 31 SCRA 511 (1970).

[38] $2/3(80-47)=22$.

[39]

P89,000

P44,500.00

x .50

x 22

P44,500.00 net annual income

P979,000.00 net earning capacity

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