PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE BIÑAS @ NESTOR BIÑAS, ACCUSED-APPELLANT.

G.R. No. 121630. December 08, 1999

Ponente: YNARES_SANTIAGO, J.

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YNARES_SANTIAGO, J.:

At about 9:00 p.m. in the evening of July 14, 1992, Crisanto Suarez was at home with his wife and seven (7) children when someone called and asked him to come out as he was hiding a firearm. Crisanto, however, kept silent. As he knelt down beside a table and lighted a kerosene lamp, a man barged into the house and shot him in the face. The gunman then rushed out and was seen fleeing with two (2) other companions.

For the fatal shooting of Crisanto Suarez y Dangan, Jose Biñas @ Nestor Biñas, together with two other unidentified persons described only as John Doe and Peter Doe were charged with Murder in an Information[1] which alleges –

> "That on or about July 14, 1992, in the Municipality of Sara, province of Iloilo, Philippines and within the jurisdiction of this Court, the above-named accused, conspiring, confederating and helping one another armed with firearms, with deliberate intent and decided purpose to kill by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot Crisanto Suarez y Dangan with the firearm which one of the accused was then provided, inflicting gunshot wounds on the victim's brain and cervical spine which caused his death immediately thereafter.
>
> CONTRARY TO LAW."

Upon arraignment, accused assisted by counsel, entered a plea of "not guilty" to the crime charged.[2]

The case then proceeded to trial after which the court a quo rendered judgment[3] against the accused, the dispositive portion of which reads:

> "WHEREFORE, premises considered, there being sufficient proof establishing the guilt of the accused, Jose Biñas alias "Nestor Biñas", of the crime of murder with which he is charged beyond the shadow of doubt, he is hereby pronounced guilty thereof and is sentenced to suffer the penalty of Reclusion Perpetua and the accessory penalties as provided in Article 41 of the Revised Penal Code, and he is also directed to indemnify the family of the victim the amount of P50,000.00 and to pay the costs.
>
> SO ORDERED."

Dissatisfied, accused interposed this appeal alleging that –

> I

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF EMMA SUAREZ AND CRIS SUAREZ, SAID TESTIMONIES BEING INCREDIBLE INSOFAR AS THE IDENTITY OF THE ACCUSED-APPELLANT IS CONCERNED.

II
THE LOWER COURT ERRED IN NOT GIVING ANY CREDENCE TO THE TESTIMONIES OF THE WITNESSES FOR THE DEFENSE AND IN NOT ACQUITTING THE ACCUSED.

The prosecution's version of the incident is summed thus by the Solicitor General in the People's brief:

> "About 9:00 o'clock in the evening of July 13, 1992, Crisanto Suarez, his wife Emma, and their seven (7) children were all asleep at their house in Sara, Iloilo, when they heard a man beckoning from outside.[4] The man was calling for Crisanto, saying "Agi, come out here, you are hiding some firearm[s]"[5] Crisanto kept silent, but Emma prodded him to go out and check who was it.[6] Crisanto then got up, went out and knelt beside a table to light a kerosene lamp.[7] As he was lighting the lamp, a man suddenly appeared and shot him on the face.[8] Emma saw the face of the gunman who quickly went out and fled with two (2) other companions who were waiting outside.[9] Their son Cris gave chase, but to no avail.[10] They brought Crisanto to the hospital, but he was declared "dead on arrival."[11]
>
> A few days after the incident, Police officer Rene Castillo of the Iloilo PNP, went to the Suarez home and asked Emma to go with him to the Sara police headquarters to identify the man suspected of killing her husband.[12] At the police station, Emma positively identified Jose Biñas alias "Nestor Biñas" as the same person who shot and killed Crisanto.[13]"

Accused-appellant gave a conflicting account of what happened. He denied having perpetrated the charge against him averring that he does not know the victim and that he only came to know the victim's wife when he was already arrested and put in jail.[14] As culled from his testimony, as early as July 1984, he fled Barangay Pasig, Sara, Iloilo and went to Alicia, Zamboanga del Sur to avoid reprisal for shooting one Tony Apaso.[[15]] In Alicia, accused-appellant stayed with his uncle Eulogio Tilog for nearly a year helping the latter harvest palay and other crops.[16] It was sometime in 1985 that he started cultivating a two-hectare farm, also located in Alicia, Zamboanga del Sur which belonged to Rudy Castor.[17]Since he went to Zamboanga del Sur, accused-appellant never went to Sara and was visited on two occasions by his wife in Alicia particularly in 1988 and 1990.[18]

On July 25, 1992, accused-appellant received a letter from his wife telling him to come home to settle his case with Tony Apaso.[19] On August 1, 1992, accused-appellant, together with Jerril Castor, the son of his landlord who originally also came from Sara, Iloilo, left Alicia, Zamboanga del Sur and boarded a jeep bound for the town of Imelda also situated in the province.[20] From there, they rode a bus going to Ipil and from Ipil, they boarded another bus going to Dipolog.[21]

When they arrived in Dipolog, they proceeded to the wharf and at 6:00 p.m., boarded the ship "Don Joaquin" which was headed for Dumaguete City, Negros Oriental.[22] Upon their arrival in Dumaguete City at 11:00 p.m., they proceeded to the Ceres Terminal and headed for Victorias, Negros Occidental arriving there at 10:00 a.m. of August 2, 1992.[23] In Victorias, they went to the Daanbanua wharf where they rode a motor launch going to Culasi, Ajuy, Iloilo and from there, they proceeded to Sara arriving there at past 4:00 p.m.[24]

Upon their arrival at Sara, Iloilo, accused-appellant learned that his case with Tony Apaso was settled before the Barangay Captain of Pasig[25] and that thereafter the same was eventually dismissed by the Third Municipal Circuit Trial Court of Sara in an order dated August 31, 1992 in Criminal Case No. 141-S.[26] He was arrested by the police on August 14, 1992 for being implicated in the murder of Crisanto Suarez.[27]

Jerril Castor corroborated accused-appellant's story testifying that he came to know the latter in November 1984 when the latter went to his uncle who lived in the Castor land located in Alicia, Zamboanga del Sur.[28] Accused-appellant first lived with his uncle but in 1985, he tilled a two-hectare portion of the land owned by Jerril's father[29]and lived in a house which was twenty (20) meters away from Jerril's place.[30]

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Accused-appellant cultivated the land up to 1992 when he asked Jerril's permission to go to Sara, Iloilo.[31] The latter suggested that he and accused-appellant go together inasmuch as he planned to take a vacation at the place of his uncle who lived in Sara.[32]

Jerril narrated that he and accused-appellant left Alicia, Zamboanga del Sur at 6:00 a.m. of August 1, 1992 and took a one-hour jeep ride for Imelda.[33] From there, they proceeded to Ipil arriving there after about two (2) hours. Thereafter, they moved on to Dipolog arriving there at past 4:00 p.m. after a seven-hour trip.[34] From Dipolog, they took a boat bound for Dumaguete City, arriving there at 11:00 p.m.[35] They left Dumaguete City at around 1:00 a.m. of the next day and proceeded to Victorias, Negros Occidental arriving there at 10:00 a.m. of August 2, 1992. At 10:30 a.m., they rode a tricycle going to the Daanbanwa wharf where, at 12:00 noon, they took a motor launch bound for Culasi, Ajuy, Iloilo.[36] They arrived at Culasi at past 2:00 p.m. and from there they hiked towards the highway where they rode a Ceres bus bound for Sara.[37] They finally arrived at Sara at about 4:00 p.m.[38]

In sum, accused-appellant disputes his identification by the prosecution eyewitnesses as the assailant of the deceased. Assailing the credibility of Emma Suarez and Cris Suarez, appellant claims that their identification of him as the gunman who fatally shot Crisanto Suarez is 'highly questionable'.[39] In professing his innocence, he insists that at the time the killing took place, visibility inside the Suarez house was nil because as the eyewitnesses themselves testified "the first thing that this intruder did upon entering the house was to brush aside the kerosene lamp on top of the table in the sala, thus plunging the house into total darkness."[40]

We disagree.

The issues raised by accused-appellant boil down to the primordial question of credibility. As consistently reiterated by this Court, "...[t]he matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge[41] who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected in the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch – these can reveal if the witness is telling the truth or lying through his teeth."[42]

The trial court which had the opportunity to hear directly the testimony of the two prosecution eyewitnesses, gave credence to their assertion that they saw accused-appellant shoot the victim. Time and again, this Court has ruled that "[t]he credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted."[43] In this appeal, accused-appellant has not given this Court sufficient reasons to deviate from this doctrine.

The court a quo "... [o]bserved that while the wife and son appeared to have quite law (sic) educational attainment and intelligence, they appeared however to be frank, sincere, honest, and that they did not have any grudge, hatred or misunderstanding with the accused as for the Court to suspect them to pervert or distort the truth."[44] Indeed, their testimonies were consistent in their material points and indubitably established the identity of the triggerman as herein accused-appellant Jose Biñas.

Emma Suarez, one of the prosecution's eyewitnesses testified as follows:

> "DIRECT EXAMINATION BY ATTY. JEROME PADIOS:

Q - You mentioned earlier that you were at your residence at Barangay Sara, Iloilo at 9:00 o'clock in the evening. My question is, who were your companions at that time?

A - My husband and my seven children.

Q - What is the name of your husband?

A - Crisanto Suarez.

Q - On that particular date and time, did you notice something unusual that happened in your residence?

A - There was an incident that took place.

Q -

Tell us what was that?

A - An incident took place in our house. A man entered our house.

Q - What did this person do when he entered your house?

A - He called for my husband.

Q - When you say your husband, you are referring to Crisanto Suarez?

A - Yes, sir.

Q - What was it uttered by the person who called your husband?

A - He called my husband saying, "Agi, come out from there. You are hiding some firearm."

Q -

Who is this "Agi" referred to?

A - Crisanto Suarez, my husband.

Q - What was the reply, if any, by your husband?

A - My husband kept silent.

Q - What else happened after that?

A - It was I who answered, "Noy, just go out from there." When my husband went out, he lighted a lamp.

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Q - Was your husband able to light a lamp?

A - He was able to light the lamp but simultaneously, there was an explosion and the light of the lamp was put out.

Q -

What kind of light was that lighted by your husband?

A - A Kerosene lamp.

Q - Did you know what was the result of that explosion?

A - My husband was shot.

Q - You said that this person entered your house. Were you able to recognize that person?

A - I was able to identify his face but not his name.

Q - How were you able to recognize his face that night?

A - Because the moon was bright.

Q - Aside from the moon which you said was bright at that time you saw that person who shot your husband, tell us, was there any illumination that provided you?

A - Yes, there was a lamp.

Q -

What was that?

A - A Kerosene lamp.

Q - How far were you from your husband when your husband was shot?

A - Only near.

Q - Will you please estimate how far?

A - (Witness is illustrating a distance of about half a meter).

Q - You said you were able to identify the face of that person who shot your husband, if you see the man who

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shot your husband, will you be able to identify him?

A - Yes, I can identify him.

Q - If that person is inside the Courtroom, can you identify him?

A - He, Nestor Biñas. (Witness pointing to a person inside the Courtroom who upon being asked identifies himself as Nestor Biñas).

Q -

At the time your husband was shot by the person whom you identify inside the Courtroom, what was the position of your husband when he was shot?

A - He was kneeling in the act of lighting our lamp.

Q - After your husband was shot, what did this person whom you identify as Nestor Biñas do?

A - He ran out.

Q - How about you, what did you do?

A - I shouted for help.

Q - Aside from shouting for help, what else did you do?

A - We went down and sought help from outside.

Q - Was there any help that come after that shooting incident?

A - Yes, sir.

Q -

How long after did help come?

A - After twenty minutes later.

Q - You mentioned that you were together with your children that night. Tell us what are the names of your children?

A - Cristina, Criselda, Cris, Cristobal, Crisanto, Jr., Caren and Bralyn.

Q - That night when the incident happened, tell us if you know where this Crisanto Suarez is?

A - He was lying on the extension of the window sill known as “Berha”.

Q - You also mentioned that you were just around one-meter away from your husband when he was shot by this Nestor Biñas. Tell us what kind of firearm was used in shooting your husband?

A - A short firearm.

Q - Do you know a firearm locally known as “Pugakhang?”

A - Yes, sir.

Q -

The firearm used by the accused in shooting your husband, how was that locally known?

A - It was a short firearm. (Witness illustrating a length of about 6 to 7 inches).

Q - Will you please describe the appearance of that firearm?

A - It was a short black firearm.

Q - How about the nozzle of the firearm, will you please describe it?

A - It was not so small, just enough for the bullet to go out.

Q - At the time the incident happened, does Nestor Biñas have any companion?

A - It was only Nestor Biñas I saw inside. His two other companions were there outside.

Q - How were you able to know that this Nestor Biñas have companions outside?

A - Because I saw them.

Q -

When did you see this two other companions of Nestor Biñas before the shooting incident or after the shooting incident when Nestor Biñas ran away.

A - When they ran.

Q - Where were you at the time when you saw these two other companions of Nestor Biñas?

A - I was at the window.

Q - Aside from this Nestor Biñas and his two other companions, have you noticed of anybody else outside your house at that time?

A - It was only the three of them I saw outside and ran.

Q - How about this Cris, your son. After the incident were you able to see him?

A - I saw our son Cris go out of our door and followed the man who shot his father.

Q - When Cris, your son, followed the man who shot his father, what else happened?

A - The man looked back and aim his firearm at him, so Cris hid behind a tree.

ATTY. ARUNGAYAN:

At this juncture, Your Honor, I would like to manifest that the answer of the witness be stricken out of the record. That is merely hearsay.

COURT:

Let the witness answer. That is what she saw.

Q - What about the group of Nestor Biñas after your son Cris hid behind a tree, what else happened?

A - They ran away.

Q - That night, were you able to bring the body of the victim to the hospital?

A - Yes, we did.

Q - Was he able to reach the hospital?

A - Yes, sir.

Q - Will you tell us what happened to your husband when he reached the hospital?

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A - The doctor said he was already dead."[45]

Emma Suarez remained steadfast and unyielding on cross-examination with regard to her identification of accused-appellant as the gunman who fired at her husband despite repeated attempts of defense counsel to throw her off track and to impeach her credibility:

"CROSS EXAMINATION BY ATTY. ALFREDO ARUNGAYAN:

Q - Mrs. Suarez, you testified earlier that you saw the man who shot your husband and you could recognize his face although you do not know his name, is that correct?

A- Yes, sir.

Q - So you want to tell the Court that it is only now that you actually know when you heard the name of the person who shot your husband to be Nestor Biñas?

A- I had already come to know him while still there in our place.

Q - When?

A - For a long time already.

Q - When you say for a long time, was it on July 15, 1992?

A - Yes.

Q - How did you come to know the name of the person who shot your husband to be Nestor Biñas on July 15, 1992?

A - Although I knew his face already, it was not until the policeman told me it was the person who was in jail and I went to see him and I was able to identify that his name was Nestor Biñas.

Q -

And the police that you refer to was Rene del Castillo?

A - Yes, sir.

Q - Did you know that the parents of this Rene del Castillo is the complainant of this Nestor Biñas for trespassing to dwelling?

A - It was only later that I came to know that.

Q - Mrs. Suarez, do you also know that the real name of this Nestor Biñas is Jose Biñas, Nestor Biñas only

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being his alias?

A - I did not know his name to be Jose. I just know him to be Nestor Biñas.

Q - And it was only on that day July 15, 1992 that you knew him to Nestor Biñas?

A - Yes, sir.

FISCAL BARRIOS:

I think, at this juncture, because according too (sic) the defense counsel, the real name of Nestor Biñas is Jose Biñas, and that Nestor Biñas is only his alias, we have to ask the accused what is his real name.

COURT:

Let the accused come over.

COURT:

Q - What is your real name?`

A - Jose Biñas.

Q - This Nestor Biñas is only your alias name?

A - Yes, Your Honor.

COURT:

Alright, the motion of the prosecution for the proper correction of the name of the accused is granted. Let the record reflect that the true name of the accused is Jose Biñas and [that] Nestor Biñas is merely his alias.

ATTY. ARUNGAYAN:

May I proceed, Your Honor.

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COURT:

Counsel may proceed.

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Q - This house of yours in barangay Pasig, what kind of house is this? Is it made of concrete material or is it made of bamboo?

A - Nipa and bamboo.

Q - And, how many stories has your house?

A - Only one.

Q - When you say it is only a one-story house, is that elevated from the ground?

A - Yes, sir.

COURT:

Q - How high is the elevation from the ground?

A - About 3 feet from the ground.

ATTY. ARUNGAYAN:

Q - Now, this house of yours has it rooms?

A - It has only one bedroom.

Q - And, you and your husband are sleeping on (sic) that bedroom?

A - Outside. The children are the one’s (sic) who sleep inside the bedroom.

Q - You said that that evening of July 14, 1992 there were persons who went to your house and the accused Jose alias Nestor Biñas was able to enter your house, is that correct?

A - Yes, sir.

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Q - Where did this Nestor Biñas pass through in entering your house?

A - Through the door.

Q - Main door of the house or back door of the house?

A - Main door of the house.

Q -

And he was actually able to enter the house itself?

A - Yes, sir.

Q - You recall in connection with this case [that] you executed an affidavit on August 18, 1993, do you remember that?

A - Yes, sir.

Q - Now, in your affidavit or sworn statement, you mentioned here that that evening of July 14, 1992 you heard a voice looking for your husband, to wit : "Diin si Agi ?" Now the same person said, to wit : "May armas kano nga ginatago." Then, he told us again, to wit : "Kon hindi ka mag-gwa, madalahig ang mga bata sa sulod." Do you recall having said that in your sworn statement?

A - Yes, sir.

Q - Now, since in this statement of yours that person was asking your husband to come out of the house, do you understand correctly then that the person who was uttering those words was outside your house?

A - He was inside the house.

Q - I will clarify. You and your husband are sleeping outside of that room because according to you, it was your children who was (sic) sleeping inside the room, is that correct?

A - Yes, sir.

Q -

In other words, you and your husband were sleeping in the sala of your house, is that correct?

A - Yes, sir.

Q - And that place in the sala where you and your husband are sleeping, how far is that from the main door of your house?

A - From the place where they were sleeping to the main door is three and a half meters away, more or less.

Q - And that person who entered your house was already actually inside your house when he uttered these words, and I quote again in the dialect: “Diin si Agi? May armas kano nga ginatago. Kon hindi kamo mag-gwa, madalahig ang mga bata sa sulod.” These words was (sic) uttered by Nestor Biñas when he was already inside your house?

A - Yes, sir.

Q - And then, you were also sleeping inside your house when the accused in a distance of three and a half meters away from you and your husband uttered those words?

A - Yes, sir.

COURT:

Q - In reference to the main door of the house, where was that accused when he uttered those words?

A- He was there. (Witness posting herself by the door with her back obliquely towards the main door when she was calling for Agi)

ATTY. ARUNGAYAN:

Q - And that was the time there was a kerosene lamp lighted inside the sala of your house?

A - There already was a lamp which we were lighting and which he brushed aside and which fell from where we were placing it and so, its light went out.

Q - By the way, that kerosene lamp where was that situated in relation to you and your husband?

A - It was on top of the table far from us.

Q - About how many meters from you, more or less?

A - A distance of about three and a half meters away.

COURT:

Q - In relation to the door, where was the table situated where the lamp was put?

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A - Far from the door. (Witness illustrating the distance from the main door to the table where the lamp was placed about three and a half meters in line with the main door)

Q - Which came first, the accused uttering these words that he said or the brushing aside of that lamp?

A – The first that took place was the uttering of the words, diin si Agi . . . and the brushing aside of the light.

Q -

Immediately after?

A - Yes, sir.

Q - At that time, when this person whom you said is the accused uttered these words, Diin si Agi, etc., that was the time you were awakened and knew the person of the accused inside the house or were you already awake before that?

A - I had already awakened before that.

Q - Since you had already awakened when this accused spoke, were you able to notice when the accused entered your house or were you already awakened when the accused was already inside your house?

A - He was already inside the house when I noticed.

Q - Was your husband also awake when you noticed the presence of the accused inside your house or was your husband still asleep?

A - He was also awake.

Q - By the way, that lamp which was on top of the table, the light coming from the kerosene lamp on the table reached the place where you and your husband was or were lying down such that you and your husband can be seen clearly?

A - Yes, sir.

Q -

Were you using a mosquito net?

A - Yes, sir.

Q - Now, despite of the (sic) presence of the mosquito net you can still be seen clearly inside the mosquito net?

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ATTY. PADIOS:

I object . . .

COURT:

Sustained.

COURT:

Q - While you were inside the mosquito net, can you see the person outside particularly when he is near the door?

A - I removed the mosquito net and he could be seen from under.

Q - What do you mean when you say that after getting the mosquito net you can see him form under. Where is that under you refer [to]?

A - Below, under the house.

Q -

You mean that the accused went under your house?

A- Our house has a stairway and then, there is an elevated floor. We were sleeping on the sala."[46]

Cris Suarez, the other prosecution eyewitness continued where Emma Suarez' testimony left off testifying as follows on direct examination:

"Q - Now, on July 14, 1992 at 10:00 in the evening where were you?

A - I was inside our house.

Q - Where is this house of yours located?

A - In Asi.

Q - What municipality?

A - Sara, Iloilo.

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Q - At 9:00 in the evening, tell us if you have noticed anything in your residence on July 14 1992?

A - Yes, sir.

Q - What was that?

A - A man entered our house.

xxx xxx xxx

Q - When he entered, what else did he do?

A - He blew out the lamp on the table.

Q - At that time where were you exactly inside your house?

A - On the extended portion of the window sill where I was lying.

ATTY. ARUNGAYAN:

"Berja" is usually known for grills in windows and other opening[s] of the house, your Honor.

COURT:

Clarrify (sic) that. The court wants to known (sic) what he means by grill or grills or sill which serve as window sill.

ATTY. PADIOS:

Q - When you said "berja", please tell us what do you mean by "Berja"?

A – It is a kind of flooring.

COURT:

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Q - Where is this “berja” or flooring situated?

A - It is inside our house.

Q - Which part of the house is that situated?

A - Near the door.

COURT:

Proceed.

ATTY. PADIOS:

Q - When this person entered your house and put off the light, what did you do after that?

A - He called for father.

Q -

When he called your father, what did he tell your father?

A - He said, “Agi, may armas ka?” (Agi do you have firearms?)

Q - And what did your father do?

A - Father did not answer right away. He remained silent for some time.

Q - And what did this person do when he called your father and your father did not answer?

A - He said, “If you do not go down from there, your children will be involed (sic).”

Q - And what did your father do after hearing that plea of the person who enrered (sic) your house?

A - He said, “Migs, let us light the lamp first so that it will be bright.

Q - Was your father able to light the lamp he was referring to?

A - Yes, sir.

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Q -

Where was that lamp situated during that time?

A - On the door.

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Q - The door you are referring to where the lamp is situated and which was lighted by your father, was it situated on the ground floor or second floor?

A - Upstairs.

Q - Do you know where your father and mother were sleeping at that time?

A - Yes, sir.

Q - Whereat?

A - Upstairs.

xxx xxx xxx

Q -

After your father lighted the lamp at the door at the second floor of your house, hat happened next?

A - He shot father.

Q - Who shot your father?

A - That man who entered.

Q - Was your father hit?

A - Yes, sir.

Q - Whereat?

A - On his left face. (Witness pointing to his left face near the nose.)

Q - What about that man, what did he do after shooting your father?

A - He ran.

Q -

And what did you do?

A - I followed.

Q - Were you able to catch up with him?

A - No, sir.

Q - Why?

A - Because he pointed his gun at me.

Q - When he pointed his gun at you, was he inside the house or outside the house?

A - Outside the house.

Q - Because this person pointed this gun at you what did you do?

A - I hid beside the tree.

Q -

You said this person, when he entered your house, destroyed the door of your house? Tell us, were you able to see this person?

A - Yes, sir.

Q - When he shot your father, were you able to see him?

A - Yes, sir.

Q - Can you still recognize his face if you can see him?

A - Yes, sir.

Q - If he is inside the court room, will you please point to him?

A - Yes, sir. That man there, at the back of the other man. (Witness pointing to a person inside the courtroom who when asked identified himself as Jose Biñas.)"[47]

Cris Suarez likewise remained consistent and unwavering that he saw the gunman despite being subjected to a gruelling cross-examination by defense counsel:

"ATTY. ARUNGAYAN:

Q - Mr. Suarez, you said that this house of yours is composed of two (2) storeys. Please tell the Court how high is the second storey of your house from the ground?

A - About this high. (Witness illustrating a height of about five (5) feet and five (5) inches from the floor of the courtroom.)

Q - In entering your house, do I understand that there are two (2) doors?

A - Yes, sir.

Q - There is a main door and another door which is presumably at the kitchen of your house?

A - The other one is upstairs.

xxx xxx xxx

Q -

Mr. Suarez, you said that that man entered your house through the side of the door. If you are facing that place, tell the Court, which side of the door did the man entered (sic)? Did he pass through the left side or at the right side of the door?

A - To the left side of the door.

Q - You said that there was a lamp that was lighted that evening, where was that lamp placed?

A - On top of the table.

Q - And this table where was this located? Upon entering your house, where is that table in entering your house?

A - Near the stairway.

Q - You refer to the stairway, to what you call the stairway to the second floor of your house?

A - Yes, sir.

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Q - That table where the lighted lamp was placed, how far is that from the main door upon entering your house?

INTERPRETER:

Witness illustrating a distance of about 3 ½ ft. from the door of the courtroom.

COURT:

Was that lamp situated in front of the door or at the side of the door?

A - On the side.[48]

xxx xxx xxx

ATTY. ARUNGAYAN:

Q - Mr. Suarez, in that position of the "berja as you described where you were lying. Where was your head leading to? Was it towards the door or towards the inside?

A - My head was towards the door.

Q - When that person entered your house, you were awake. Is that correct?

A - Yes, sir.

Q - By the way, that light which you said was on top of the table or a distance of 3 ½ meters from the door. Did the light of the kerosene lamp reach the place where you were lying down?

A - Yes, sir.

Q -

And when that person entered your house, you saw him and he likewise saw you?

A - Yes, sir.

COURT:

Q - Actually, what were you doing when that man entered?

A - I was awake.

Q - Were you still lying, sitting or walking?

A - I was lying on my side.

COURT:

Proceed.

ATTY. ARUNGAYAN:

Q -

And you were facing towards the light on the table?

A - I was facing the door.

Q - Which door? The main door of your house?

A - I had my face towards the main door.

xxx xxx xxx

Q - When that man entered your house, did he simply say, “Agi, may armas ka da?” or did he say “Diin si Agi?”

A - He asked, “Agi, do you have firearms?”

Q - The place where your father Agi and your mother were lying in that sala on the second floor as you said, is that visible to the one who entered the house?

A - No, sir.

Q - They cannot be seen?

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A - Yes, sir.

Q -

Did I understand correctly from you that on the second floor there is a staircase?

A - Yes, sir.

Q - And then going up the staircase, is there a shutter to the door and is that open?

A - There is a shutter.

Q - And that night, was that shutter close (sic) or open?

A - Open.

Q - When you said that your parents were sleeping on the doorway in going to the second floor, why did you say that they cannot be seen from the main door of the main house when one enters the house?

A - There is still the wall.

Q - There is no window?

A - There is a window.

Q -

How many?

A - Three (3) windows.

Q - Is there a window towards the main door of the main house?

A - Yes, sir.

xxx xxx xxx

Q - When your father said, “Migs, anay ka, sindihan ta ang suga para masanag.” Where was your father?

A - Near the door.

Q - You refer to the door on the second floor?

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A - Yes, sir.

Q - And where was this man who entered your house when your father said, “Migs, anay ka, sindihan ta ang suga para masanag.” Where was this man?

A - On top of the stairs.

Q -

Now, Mr. Suarez, at the time your father said, those words, “Migs, anay ka sindihan ta ang suga para masanag”, that man was already on top of the stairs? You mean to say that he was already standing on the second floor?

A - He was standing on the top rung of the stairs.

Q - At the time when your father said, “Migs, anay ka, sindihan ta ang suga para masanag.” What actually did your father do?

A - He rose.

Q - And what did he do after rising?

A - He then lighted the lamp.

xxx xxx xxx

Q - Mr. Suarez, that “berja” where you were lying near the main door. Please tell the Court if you could see your father and mother lying down on the second floor?

A - Yes, sir.

xxx xxx xxx

COURT:

Supposing that is the “berja” (referring to the table inside the courtroom) where you were lying on. Will you please show to the Court the place or portion of the “berja” near the door where your parents were lying at that time?

A - The part of the floor where my parents were lying at that time can be seen directly from the “berja” where I was lying on.”[49]

He stood firm in his testimonial declarations despite being grilled by the trial court itself and asked additional questions by defense counsel:

"COURT:

Q - What was your distance from your father at the time he was shot by the accused?

A - (Witness illustrating a distance of about 2 ½ meters away, more or less)

Q - What was your father actually doing when he was shot by the accused?

A - He was kneeling.

Q - Aside from the fact that he was kneeling, was he doing anything else?

A - He was lighting a lamp.

Q - Was he able to light the lamp when he was shot?

A - Yes, sir.

Q -

Now at that time did you identify by face the one who shot your father?

A - Yes, sir.

Q - Now, you said that you followed the accused when he out of your house and then he pointed a gun at you. At the time the accused pointed the gun at you, what was your distance from him?

A - (Witness illustrating a distance of about 5 to 6 meters more or less.)

Q - Was there anything that obstruct[ed] your view from the accused when he was pointing the gun at you?

A - No, Your Honor.

Q - At that time, where were the other companions of Nestor Biñas?

A - They had ran away (sic).

xxx xxx xxx

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ATTY. ARUNGAYAN:

xxx xxx xxx

Q - Mr. Suarez, the person who shot your father was standing on the stairway going to the second story of the house at the time your father was shot, correct?

A - Yes, sir.

Q - Now, you were able to see this person standing ... I will reform. Now, immediately after the shot was fired, this person who shot your father immediately ran away and you also ran out of the house, correct?

A - Yes, sir.

Q - And the kerosene lamp had just been lighted when that shot rang out which hit your father, is that correct?

A - The lamp was already lighted.

Q - Precisely, the lamp was already lighted but, it was just (sic) been lighted when the shot rang out, is that correct?

A - Yes, sir.

Q -

As a matter of fact, when the shot rang out, that light was again put out, correct?

A - Yes, sir.

Q - And so, it was dark all over again inside the house?

A - Yes, sir.

Q - By the way, you said that when this Nestor Biñas ran out from your house you followed him but he pointed a gun at you causing you to hid[e] behind a tree. But when asked by this Court you said there was nothing that obstruct[ed] or stop[ped] your way between you and Nestor Biñas when he pointed his gun at you?

A - Yes, sir.

Q - And, you said there was no obstruction?

A - Yes, sir.

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Q - What about that tree behind which you were hiding, did that not obstruct your view from seeing Nestor Biñas?

A - No, sir.

ATTY. ARUNGAYAN:

That will be all with the witness.

COURT:

Q - You said there was a moon shining that night, is that correct?

A - Yes, sir.

Q - Where was the moon at the time?

A - To the West.

xxx xxx xxx

ATTY. PADIOS:

Q - How big was the moon at the time?

A - It was first quarter."[50]

In support of his defense accused-appellant notes certain inconsistencies in the testimonies of the eyewitnesses.

He insists that the "supposed recognition by the witness of his face while inside their house could not be believed because as shown either by the circumstances or by their own testimonies, the house of the spouses Suarez was actually dark at the time of the incident."[51] Accused-appellant points out that when the man who entered the Suarez house called out saying "Agi, come out from there, your are hiding some firearms", per the testimony of Emma, he was by the door with his back obliquely towards the main door which, according to her, is about three and one-half (3 ½) meters away from where they were sleeping.[52] However, according to Cris Suarez, the first thing that this intruder did upon entering the house was to brush aside the kerosene lamp on top of the table in the sala, thus plunging the house into total darkness.

Accused-appellant then poses the question, how then could Emma Suarez say with certainty where the intruder was when he called out because it was already dark. In answer to this, Emma, replied that the moon was bright.[53] But this answer, says accused-appellant, is belied by Cris who said that at that time, no window in the house was open[54]and while there was a moon outside, it was a quarter moon[55] whose light 'would not be so

bright' and could not filter into the house because all the windows were closed.

These inconsistencies adverted to by accused-appellant to impeach the credibility of prosecution eyewitnesses Emma Suarez and Cris Suarez are hardly persuasive and will not extricate accused-appellant from his predicament.

In weighing contradictory declarations and statements, greater weight must generally be given to the positive testimonies of the prosecution witnesses than to the denials of the defendant.[56] It appears that the victim was shot shortly after he lit a kerosene lamp[57] and it has been held that the illumination from a kerosene lamp is sufficient to permit the identification of a malefactor.[58] Furthermore, the eyewitnesses were able to identify the gunman in that span of time the lamp was lit and thereafter when it was suddenly snuffed out, because a startling or frightful experience creates an indelible impression in the mind that can be recalled vividly.[59] Indeed for witnesses of criminal violence, it is even more natural to strive to see the faces and general appearance of the assailants and to observe the manner in which the crime was committed.[60]

Even were we to go along with the argument of accused-appellant that indeed all the windows of the Suarez house were closed, the construction of the house itself which is made up of nipa and bamboo[61] usually has interstices between the slats making up its walls which allows light to filter in and to permit identification. In this regard, it must be remembered that –

> "Visibility is indeed a vital factor in the determination of whether or not an eyewitnesses could have identified the perpetrator of a crime. However, it is settled that when conditions of visibility are favorable, and the witnesses do not appear to be biased, their assertion as to the identity of the malefactor should normally be accepted.[62] Illumination produced by kerosene lamp or a flashlight is sufficient to allow identification of persons.[63] Wicklamps, flashlights, even moonlight or starlight may, in proper situations be considered sufficient illumination, making the attack on the credibility of witnesses solely on that ground unmeritorious."[64]

That Emma and Cris were able to recognize the gunman, can hardly be doubted because relatives of the victim have a natural knack for remembering the face of the assailant and they, more than anybody else, would be concerned with obtaining justice for the victim by the malefactor being brought to the face of the law.[65] Indeed, family members who have witnessed the killing of a loved one usually strive to remember the faces of the assailants.[66]

As to the inconsistent statements made by the two prosecution eyewitnesses referred to by accused-appellant, it must be borne in mind that there is hardly a witness who can perfectly remember the details of a crime. Human memory is not as unerring as a photograph and a person's sense of observation is impaired by many factors including the shocking effects of a crime.[67] Certainly, a truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and the treachery of human memory.[68]

Errorless testimonies can not be expected especially when a witness is recounting details of a harrowing experience. As long as the mass of testimony jibes on material points, the slight clashing of statements dilute neither the witnesses' credibility nor the veracity of their testimony.[69] Verily -

> "... It has been our consistent ruling that minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony[70]... The witnesses testifying to the same event do not have to be consistent in every detail as differences in recollection or viewpoints or impressions are inevitable.[71] Indeed, if rights were to be lost merely because witnesses, while agreeing on the essential fact, fail to testify harmoniously on all the particulars, a very large proportion of cases involving wrongs would find no redress in law. Hence, variations in the testimony of witnesses on the same side in respect to minor, collateral, or

> incidental matters do not usually impair the weight of their united testimony to the prominent facts."[72]

In sum, the inconsistencies referred to by the defense are inconsequential. The points that mattered most in the eyewitnesses' testimonies were their presence at the locus criminis, their identification of the accused-appellant as the perpetrator of the crime and their credible and corroborated narration of accused-appellant's manner of shooting Crisanto Suarez. To reiterate, inconsistencies in the testimonies of witnesses that refer to insignificant details do not destroy their credibility. Such minor inconsistencies even manifest truthfulness and candor erasing any suspicion of a rehearsed testimony.[73] In further attempting to destroy his identification by the two eyewitnesses, accused-appellant insists that a policeman named Rene del Castillo who "was moving heaven and earth to see to it that accused-appellant is convicted"[74] orchestrated his identification. Accused-appellant claims that this policeman supplied his name to the eyewitnesses suggesting that accused-appellant, who was then already detained, was the gunman even going to the extent of telling Cris Suarez to point at him at the time he was in jail. Accused-appellant in effect says that his identification by the two eyewitnesses is doubtful because they did not know his name. As pointed out by this Court in People v. Verzosa:[75]

> "This is puerile reasoning. Identification of a person is not established solely through the knowledge of the name of a person. Familiarity with physical features particularly those of the face, is actually the best way to identify a person. One may be familiar with the face but not necessarily the name. It does not follow, therefore, that to be able to identify a person, one must first know his name.[76] Moreover, it is completely illogical to equate and limit positive identification to a knowledge of the real names of the culprits since more often than not, robbers victimize people who are complete strangers to them and who do not know them by face or name purposely to avoid being recognized and positively identified."

At any rate, it can be readily seen from the quoted excerpts of the testimonies of Emma and Cris that the inconsistencies pointed out by accused-appellant hardly dents the unanimity and the uniformity of their declarations that he shot the victim in the face at close range. Given the foregoing fact, it has been ruled that the credibility of such witnesses is not impaired where there is a consistency in relating the principal occurrence and the positive identification of the assailant.[77] In any case, the records bear out the fact that during the trial both Emma Suarez and Cris Suarez were able to clarify their averments and despite the grueling cross-examination they were both subjected to, they managed to consistently and credibly maintain their version of what actually happened.

All told, an overall scrutiny of the records of this case leads us to no other conclusion but the correctness of the trial court in holding that accused-appellant is guilty of murder. What remains to be determined is whether the elements of the crime of murder has been established.

At the time the crime was committed on July 14, 1992, murder was punishable by reclusion temporal in its maximum period to death.[78]

Treachery is alleged in the information charging accused-appellant of the crime. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[79] The essence of alevosia is a swift and unexpected attack on the unarmed victim without the slightest provocation on the victim's part.[80] The fact that treachery may be shown if the victim is attacked from behind does not mean it can not also be appreciated if the attack is frontally launched.[81] Even a frontal attack can be treacherous when it is sudden and the victim is unarmed.[82] In this case, the suddenness of the shooting without the slightest provocation from the victim who was unarmed and had no opportunity to defend himself, clearly qualified the crime with treachery.[83]

Given the prevailing facts of the case, the aggravating circumstances of nighttime and dwelling must likewise be

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appreciated in the perpetration of the crime considering that nighttime facilitated the commission of the felony and the evidence shows that accused-appellant and his cohorts took advantage of the darkness to successfully consummate their nefarious plan.[84] Dwelling on the other hand is clear from the forcing open of the main door[85] of the Suarez house and the violation of the sanctity of privacy of the victim's home by trespassing therein with violence or against the will of the owner.[86] It has been said in this regard that –

> "The home is a sort of sacred place for its owner. He who goes to another's house to slander him, hurt him or do him wrong, is more guilty than he who offends him elsewhere."[87]

It, however, is unnecessary to consider evident premeditation although this has likewise been alleged in the information for the trial court itself did not consider this circumstance much less discuss its presence or absence in the case under scrutiny. In any event for evident premeditation to be appreciated, there must be proof, as clear as the evidence of the crime itself, of the following elements thereof, to wit: 1.] the time the accused decided to commit the crime; 2.] an overt act manifestly indicating that he clung to his determination; and, 3.] sufficient lapse of time between the decision and the execution to allow the accused to reflect upon the consequence of his act.[88]

In this case, the records are bereft of any evidence of any of the above requisites of evident premeditation. There is absolutely no proof of the time accused-appellant decided to commit the crime. Neither is there any showing how the accused-appellant Jose Biñas planned the killing of Crisanto Suarez. Nor is there any showing how much time elapsed before executing his plan. Absent all these, evident premeditation can not be appreciated.[89]

Neither may conspiracy be inferred from the facts of the case. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[90] The existence of a conspiracy may be inferred and proved through acts of the accused that point to a common purpose, a concert of action and a community of interest.[91] There is no evidence in this case that accused-appellant conspired with his other two unidentified companions to kill the victim. The fact alone that these two unidentified companions waited outside when accused-appellant barged into the house of the victim can not support a conclusion that they shared in the criminal intent of accused-appellant to kill the victim.

Considering the presence of two aggravating circumstances with no mitigating circumstance, the maximum penalty of death would be imposable under Article 63 of the Revised Penal Code.[92] However, since the offense was committed during the suspension of the imposition of the death penalty and prior to its re-imposition under Republic Act No. 7659, the imposable penalty is reclusion perpetua.[93] This penalty is single and indivisible, thus, it shall be imposed regardless of any attending aggravating or mitigating circumstances.[94]

The civil indemnity awarded by the trial court must likewise be sustained as the same is in accordance with prevailing case law.[95]

WHEREFORE, the Decision appealed from is AFFIRMED in all respects.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Record, p. 1.

[2] Ibid., p. 29.

[3] Id., pp. 115-123.

[4] TSN, 23 April 1993, p. 19.

[5] Ibid., p. 20.

[6] Ibid.

[7] Id., p. 21.

[8] TSN, 21 May 1993, p. 8; 23 April 1993, pp. 20-21.

[9] TSN, 23 April 1993, p. 21.

[10] TSN, 21 May 1993, p. 8.1

[11] TSN, 23 April 1993, pp. 10, 24.

[12] Ibid., p. 24.

[13] Id., p. 25.

[14] TSN, 8 April 1994, pp. 13-14.

[15] Ibid., pp. 3-4, 16.

[16] Ibid., p. 4.

[17] Id., pp. 4-5.

[18] Id., p. 5.

[19] Id., pp. 10, 18.

[20] Id., pp. 6-7, 19.

[21] Id., p. 7.

[22] Id., p. 8.

[23] Id., pp. 8-9.

[24] Id., p. 9.

[25] Id., pp. 10-11.

[26] Id., pp. 10-13; Exhibits 1 & 2.

[27] Id., pp. 20, 24-25.

[28] TSN, 8 February 1994, pp. 3-4.

[29] Ibid., pp. 3-5.

[30] Id., p. 5,

[31] Id., p. 6.

[32] Id., pp. 5-6.

[33] Id., p. 9.

[34] Id.

[35] Id., p. 10.

[36] Id., pp. 11-12.

[37] Id.

[38] Id., p. 12.

[39] Appellant's brief, p. 12

[40] Appellant's brief pp. 9, 10.

[41] People v. Tacipit, 242 SCRA 241 [1995]; People v. Sarabia, 266 SCRA 471 [1997].

[42] People v. Mayor Antonio L. Sanchez, et al., G.R. Nos. 121039-45, 25 January 1999, citing People v. Espinosa, 180 SCRA 393 [1989]; People v. Leonardo Bihison y Silencio, et al., G.R. No. 132024, 17 June 1999, p. 20.

[43] People v. Estanislaw Jaberto y Teloy, G.R. No. 128147, 12 May 1999, pp. 11-12, citing People v. Oliano, 287 SCRA 158 [1998]; People v. Gaorana, 289 SCRA 652 [1998]; People v. Bersabe, 289 SCRA 685 [1998]; People v. Tulop, 289 SCRA 316; People v. Castillo, 289 SCRA 213 [1998]; People v. Siguin, G.R. No. 126517, 24 November 1998; People v. Sta. Ana, 291 SCRA 188 [1998]; People v. Villamor, 284 SCRA 184 [1998]; People v. Bahatan, 285 SCRA 282 [1998].

[44] RTC Decision, p. 7; Rollo, p. 22.

[45] TSN, 23 April 1993, pp. 19-24.

[46] TSN, 23 April 1993, pp. 24-30; Italics supplied.

[47] TSN, 21 May 1993, pp. 4-10; Italics supplied.

[48] Ibid., pp. 10, 12-13.

[49] Id., pp. 16-23.

[50] TSN, 27 May 1993, pp. 9, 11-12; Italics supplied.

[51] Appellant's brief, pp. 13-14.

[52] TSN, 23 April 1993, p. 28.

[53] Ibid., p. 20.

[54] TSN, 21 May 1993, p. 3.

[55] Ibid., p. 18.

[56] People v. Guiamil, 277 SCRA 658 [1997], citing People v. Lorenzo, 200 SCRA 207 [1991].

[57] TSN, 27 May 1993, p. 9.

[58] People v. Roberto Gonzales y Mendoza @ "Bobbit", G.R. No. 130507, 28 July 1999, p. 12, citing People v. Pallarco, 288 SCRA 151 [1998].

[59] 59 People v. De Guia, 280 SCRA 141 [1997], citing People v. Daquipit, 240 SCRA 314 [1995].

[60] People v. Apongan, 270 SCRA 713 [1997], citing People v. Gomez, 251 SCRA 455 [1995].

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[61] TSN, 23 April 1993, p. 26.

[62] People v. Cogonon, 262 SCRA 693 [1996].

[63] People v. Fabregas, Jr., 261 SCRA 436 [1996].

[64] People v. Pablo Adoviso, G.R. Nos. 116196-97, 23 June 1999, p. 9, citing People v. Villaruel, 330 Phil. 79 [1996]; Italics supplied.

[65] People v. Bundang, 272 SCRA 641 [1997], citing People v. Escoto, 244 SCRA 87 [1995].

[66] People v. Cawaling, 293 SCRA 267 [1998], citing People v. Ramos, 260 SCRA 402 [1996].

[67] People v. Canales, G.R. No. 126319, 12 October 1998, 297 SCRA 667

[68] People v. Ebrada, G.R. No. 122774, 25 September 1998, 296 SCRA 353, citing People v. Paule, 261 SCRA 649 [1996].

[69] People v. Elmer Heredia @ Boll Jack, et al., G.R. No. 110001, 28 July 1999, p. 13, citing Antonio v. Court of Appeals, 273 SCRA 328 [1997].

[70] People v. Quel, 279 SCRA 145 [1997]; People v. Padilla, 242 SCRA 629 [1995].

[71] People v. Fabros, 214 SCRA 694 [1992].

[72] People v. Bonifacio Rada, et al., G.R. No. 128181, 10 June 1999, p. 13, citing People v. De Gracia, 264 SCRA 200 [1996]; Italics supplied.

[73] People v. Romeo Mallari y Sanchez, G.R. No. 103547, 20 July 1999, p. 11, citing People v. Grefaldia, G.R. Nos. 121631-36, 30 October 1998.

[74] Appellant’s brief, p. 13.

[75] 294 SCRA 466 [1998].

[76] People v. Reception, 198 SCRA 670 [1991].

[77] People v. Alfonso Patalin, Jr., et al., G.R. No. 125539, 27 July 1999, citing Sumalpong v. Court of Appeals, 268 SCRA 764 [1997].

[78] “Article 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 if committed with any of the following attendant 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. xxx”

[79] Article 14, par. 16, Revised Penal Code.

[80] People v. Romeo Belaro, G.R. No. 99869, 26 May 1999, citing People v. Lascota, 275 SCRA 591 [1997]; People v. Quinao, 269 SCRA 495 [1997] and People v. Ombrog, 268 SCRA 93 [1997].

[81] People v. Guillermo, G.R. No. 113787, 28 January 1999.

[82] People v. Chavez, 278 SCRA 230 [1997]; People v. Dansal, 275 SCRA 549 [1997]; People v. Tampon, 258 SCRA 115 [1996].

[83] People v. Rodolfo Atrejenio y Libanan, G.R. No. 120160, 13 July 1999, p. 17, citing People v. Taclan, G.R. No. 123109, 17 June 1999.

[84] People v. Alfonso Patalin, Jr., et al., supra, citing People v. Apduhan, Jr., 24 SCRA 798 [1968].

[85] TSN, 21 May 1993, pp. 5, 10-12.

[86] Reyes L.B., The Revised Penal Code, Vol. I, 1998 ed., p. 335, citing dissenting opinion of Villareal J. in People v. Ambis, 68 Phil. 635 [1939].

[87] Reyes, Revised Penal Code, supra., p. 335, citing Viada, 5th ed. Vol. II, pp. 323-324.

[88] People v. Rodrigo Maldo, et al. G.R. No. 131347, 19 May 1999, citing People v. Castillo, 289 SCRA 213 [1998]; People v. Albao, 287 SCRA 129 [1998]; People v. Sumalpong, supra; People v. Quinao, supra,; People v. Pedro Academia, Jr. y Baldado, @ “Jun”, G.R. No. 129251, 18 May 1999.

[89] People v. Bahenting, G.R. No. 127659, 24 February 1999.

[90] Article 8, par. 2, Revised Penal Code

[91] People v. Andres, G.R. No. 122735, 25 September 1998, 296 SCRA 318, citing People v. Palomar, 278 SCRA 114 [1997]; People v. Dinglasan, 267 SCRA 26 [1997]; People v. Cabiles, Sr., 258 SCRA 271 [1996].

[92] Article 63. Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied. xxx”

[93] People v. Pulusan, 290 SCRA 353 [1998].

[94] People v. Abdul, G.R. No. 128074, 13 July 1999; People v. Demetrio Nunez y Dubduban, G.R. No. 128875, 8 July 1999; Article 63, Revised Penal Code.

[95] People v. Rodrigo Mangahas, G.R. No. 118777, 28 July 1999, p. 23, citing People v. Espanola, 271 SCRA 689 [1997].

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