

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL H. SESBREÑO, ACCUSED-APPELLANT.

G.R. No. 121764. September 09, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision dated August 15, 1995, of the Regional Trial Court, of Cebu City, Branch 18, in Criminal Case No. CBU-31733, finding herein appellant, Raul H. Sesbreño, guilty of the crime of murder and sentencing him to reclusion perpetua, for the death of one Luciano Amparado.

Appellant has been a practicing lawyer for over thirty (30) years. Admitted to the Bar on March 17, 1966,[1] he has achieved prominence in Cebu. The victim, Luciano Amparado, was a porter of William Lines, Inc., a shipping company also based in Cebu.

On June 9, 1993, the Regional Director of the National Bureau of Investigation (NBI), Region 7, filed a complaint against Sesbreño. Taking into consideration the gravity and other circumstances of the offense, City Prosecutor Jufelinito R. Pareja created a committee of three assistant prosecutors to conduct the preliminary investigation.[2]

On September 2, 1993, the committee charged Sesbreño with murder, allegedly committed as follows:

“That on or about the 3rd day of June 1993, at about 1:00 o’clock early dawn, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a firearm, with treachery and evident premeditation, with deliberate intent to kill, did then and there attack, assault, and shot one Luciano Amparado, hitting him at the vital parts of his body, thereby causing upon him the following physical injuries, to wit:

“SHOCK SECONDARY TO GUNSHOT WOUND OF THE CHEST, POSTERO-LATERAL ASPECT, RIGHT SIDE,”

as a consequence of which said Luciano Amparado died few hours thereafter.

“CONTRARY TO LAW.”[3]

No bail was recommended. On September 2, 1993, appellant was arrested.

On September 3, 1993, the very day that the case was raffled to the trial court, appellant filed a Motion To Quash Warrant of Arrest And/OR to Grant Bail. The motion was treated as urgent and immediately set for hearing the next day. But the hearing did not push through due to the fact that it was Saturday, and there was no prosecutor available. The hearing on the bail application was then reset to September 6, 1993.[4]

Subsequently, the prosecution filed an Opposition to the Urgent Application for Bail. It prayed the accused’s application for bail be denied after a summary hearing; or, alternatively, the application be considered during the regular trial, after the arraignment of the accused.

The prosecution presented both testimonial and documentary evidence in connection with the said Opposition. Later, the trial court denied the application for bail in a Resolution dated December 28, 1993. It reads in part:

“After a careful analysis of the evidence adduced by the prosecution, the Court is of the well-considered view and so holds that the evidence against the accused is strong. As such the accused has lost his constitutional right to bail for it was determined after hearing that the evidence of guilt against him is strong. To forfeit the constitutional right to bail in capital offenses, it is enough that the evidence of guilt is strong (*Pareja v. Hon. Amador E. Gomez*, G.R. No. L-19733, July 31, 1962). The prosecution witnesses in the case at bar positively identified the herein accused as the author of the crime charged and that the weapon used in perpetrating the offense is the same as that owned by the accused as could be gleaned from their testimonies and more particularly that of the ballisticsian.”[5]

Before appellant could be arraigned, he dispensed with the services of his counsel.

Upon arraignment, appellant, acting as his own counsel, entered a plea of “not guilty” to the charge in CBU No. 31733 for Murder.

Trial on the merits ensued. Pursuant to Sec. 5, Rule 114 of the 1985 Rules on Criminal Procedure, the evidence presented at the bail hearings was automatically reproduced at the trial.

As summarized by the trial court the prosecution’s version of the case is as follows:

“...Prosecution witness Christopher Yapchangco declared that while he and Luciano Amparado were walking along Almaciga St. (Exh. “L-2”), they saw Atty. Raul H. Sesbreño at the balcony of his house which was well-lighted (Exh. “L-1”). They passed by and as they walked along Almaciga St. at a distance of around 5 meters, more or less, from the gate of Atty. Raul H. Sesbreño, they heard the screeching sound of a gate coming from their back. Immediately, he turned his head towards his back and saw Atty. Raul H. Sesbreño standing in the middle of Almaciga St. in front of his gate and aiming his long firearm towards them. From where Atty. Sesbreño stood to the place of Christopher Yapchangco and Luciano Amparado were, there was nothing that could obstruct their view. Atty. Sesbreño first fired 2 shots and he continued to fire at them. Luciano Amparado was hit and asked that he be brought to the hospital. There was no other person who shot except Atty. Sesbreño (TSN, Cabatingan, 9/27/93). Another Prosecution witness Rizaldy Rabanes testified that from his house to the house of Atty. Sesbreño, there was nothing that could obstruct the view (TSN, page 12, Arnaez, 9/29/93). At about 1:00 o’clock dawn on June 3, 1993, he heard two (2) shots. He saw two (2) persons running towards his house. He then saw Atty. Raul Sesbreño standing at the middle of Almaciga Street fronting his gate and aiming his firearm and firing in succession at the two (2) persons whom he recognized as Christopher Yapchangco and Luciano Amparado. Yapchangco was running in a zigzag manner on the right side of Almaciga St. while Luciano Amparado was running in the same manner on the left side of the road. His house was hit by a bullet and his child was almost hit. Later, Christopher Yapchangco helped the wounded Luciano Amparado by carrying him on his shoulder. While Yapchangco was carrying Luciano Amparado, he saw Erwin Parune and Demeter Encina following them and helped Yapchangco by holding the feet of Luciano Amparado...”[6]

The principal defense of the accused is outright denial. He alleged that while he was present at the place and time of the incident in question, it was not he who shot the victim but an unidentified person. His version of the incident was summarized by the trial court as follows:

“...[O]n June 3, 1993 at past midnight he heard noises coming from the store of his wife. He roused from bed and peeped through the window overlooking the store. He saw that the door of his wife’s store was already forced open and three persons jumped down over the fence from the store carrying bags loaded with stolen items. Outside the premises of his house by the roadside right in front of the store, he saw Luciano Amparado and Christopher Yapchangco obviously acting as look out (sic). He went down bringing along a sharp Samurai

sword which was the only weapon available in his possession at that time as his .38 cal. Revolver was left in his office. He opened the gate of his house to confront the robbers and shouted at them to return the stolen goods by saying: “Hoy, iuli nang inyong kinawat.” Three of the robbers who turned out to be Erwin Parune, Demeter Encina and Juanito Tanghian started to run towards Lutao-lutao when Luciano Amparado told them to run away by saying “SIBAT”. He attempted to block the three but Luciano Amparado shouted to him, saying : “Ayaw na sila babagi. Dugay na baya ming nagdumot batok nimo kay nagpasaka ka ug mga kaso batok kanamo”. Then Luciano Amparado shot him twice using a .22 caliber pistol. He was not hit. The third time that Luciano squeezed the trigger, the pistol did not fire. He surmised that Luciano must have ran out of bullets or that his pistol jammed. He was not hit because he ducked down to the ground behind the trunk of a decorative palm tree. Seeing Luciano Amparado forcing open his gun, he stood up but Christopher Yapchangco shot him with an Indian Pana. He ducked down again. He saw Luciano Amparado and Christopher Yapchangco walked (sic) fast towards Lutao-lutao. The companions of the two, namely, Erwin Parune, Demeter Encina, Juanito Tangihan, Boy Rabanes and others threw stones at him but failed to hit him because he ducked down on the same spot where he ducked down when Luciano Amparado shot him with a .22 cal. pistol. At the corner of Tugas-Alamaciga Streets an unidentified person with a companion shouted: “Hoy, aya ni iapil ug bato kay wal miy labot”, followed by the word “Ayay”. The said unidentified person who was standing at the elevated portion of the gutter of corner Almaciga-Tugas Streets who was taller than Luciano Amparado, shot Luciano Amparado two times xxx hitting him on the right side below the armpit.”[7]

After the parties had rested their respective case, the trial court rendered the assailed judgment, the dispositive portion of which reads:

“WHEREFORE, premises considered, the Court finds the accused, Raul H. Sesbreño, guilty beyond reasonable doubt, as principal, for the crime of Murder, defined and penalized by Article 248 of the Revised Penal Code, and sentences him to suffer the penalty of RECLUSION PERPETUA, with the inherent accessory penalties provided by law; to indemnify the heirs of the deceased, Luciano Amparado, in the amount of P50,000.00; and to pay the costs.

“SO ORDERED.”[8]

Before us, appellant raises now the following assignment of errors:

1.

THE TRIAL COURT GROSSLY ERRED IN NOT FOLLOWING THE PROCEDURE FOR RAFFLE OF CASES PER SECTION 7, RULE 22, RULES OF COURT.

2.

THE TRIAL COURT GROSSLY ERRED WHEN HON. ARRIESGADO REFUSED TO DISQUALIFY HIMSELF FROM TRYING THIS CASE WHILE, IN COMPARISON, HE INHIBITED HIMSELF IN TRYING OR HEARING THE COMPANION CASE, CBU-31734.

3.

THE TRIAL COURT GROSSLY ERRED IN DISREGARDING OR IGNORING EVIDENCES OF SUBSTANCE AND IMPORTANCE WHICH, IF CONSIDERED, WOULD ALTER THE RESULTS OR DECISION IN THIS CASE.

4.

THE TRIAL COURT ERRED IN RELYING ON SPECULATIONS, SURMISES OR CONJECTURES IN ARRIVING AT ITS CONCLUSIONS WHICH ARE CONTRADICTED BY THE EVIDENCE ON RECORD.

5.

THE TRIAL COURT ERRED IN FAILING OR REFUSING TO CONSIDER THE REASONS OF THE ACCUSED-APPELLANT THAT THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND THE SHADOW OF A SINGLE DOUBT OR FAILED TO TRAVERSE THE CONSTITUTIONAL AND STATUTORY PRESUMPTION OF INNOCENCE OF THE ACCUSED.

6.

THE TRIAL COURT ERRED IN REFUSING TO RESOLVE THE MOTION TO STRIKE OUT THE TESTIMONY OF MONICA AMPARADO WHICH WAS NOT SUBJECTED TO CROSS-EXAMINATION.

7.

THE TRIAL COURT ERRED IN REFUSING TO DISQUALIFY THE PRIVATE PROSECUTORS FROM APPEARING IN THIS CASE DUE TO THE NON-PAYMENT OF FILING FEES FOR CIVIL CLAIMS FOR DAMAGES AND SINCE MONICA AMPARADO DID NOT ENGAGE THE LEGAL SERVICES OF THE PRIVATE PROSECUTORS.

8.

THE TRIAL COURT ERRED IN ADMITTING PROSECUTION EVIDENCE NOT PROPERLY IDENTIFIED IN OPEN COURT AND NOT SUBJECTED TO CROSS-EXAMINATION.

9.

THE TRIAL COURT GROSSLY ERRED IN NOT APPLYING PAR. 1, SECTION 12, BILL OF RIGHTS, 1987 CONSTITUTION, IN RELATION WITH PAR. 2, SECTION 14, ARTICLE III, CONSTITUTION (ON RIGHT TO BE HEARD “BY HIMSELF AND COUNSEL”), PAR. C, SECTION 1, RULE 115, RULES ON CRIMINAL PROCEDURE (RIGHT TO “DEFEND IN PERSON AND BY COUNSEL AT EVERY STAGE OF THE PROCEEDINGS FROM THE ARRAIGNMENT TO THE PROMULGATION OF THE JUDGMENT”); AND SECTION 7, RULE 116, RULES ON CRIMINAL PROCEDURE.

10.

ASSUMING WITHOUT ADMITTING THAT THE PENAL CONVICTION OF THE ACCUSED IS NOT A REVERSIBLE ERROR, STILL, THE TRIAL COURT GROSSLY ERRED IN NOT TAKING INTO ACCOUNT SECTION 19(1), ARTICLE III, CONSTITUTION ABOLISHING THE DEATH PENALTY and IN NOT APPLYING THE JURISPRUDENCE IN PEOPLE vs. ALCANTARA, 163 SCRA 788-789; PEOPLE vs. NOLASCO, 163 SCRA 629-630 AND PEOPLE vs. MABUHAY, 185 SCRA 681.

11.

THE TRIAL COURT GROSSLY ERRED IN CONCLUDING THAT TREACHERY AND EVIDENT PREMEDITATION WERE PROVEN BY THE PROSECUTION EVEN IF THERE IS NO EVIDENCE TO SUPPORT SUCH CONCLUSION OR THAT THE SAME WAS BASED ON SPECULATIONS, SURMISES AND CONJECTURES OR ASSUMPTIONS WITHOUT EVIDENTIARY SUPPORT.

In addition, appellant also submits the following for consideration of the Court:

12.

THE TRIAL COURT ERRED IN RELYING ON THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE PROOF THAT THEY WERE ACTUATED BY ULTERIOR AND IMPROPER MOTIVES OR THAT THEIR TESTIMONIES ARE NOT CREDIBLE FOR BEING CONTRARY TO HUMAN EXPERIENCE AND KNOWLEDGE.

13.

THE TRIAL COURT ERRED IN DENYING THE ACCUSED-APPELLANT (HIS RIGHT) TO SPEEDY TRIAL AND SPEEDY DISPOSITION OF HIS CASE.

14.

THE TRIAL COURT ERRED IN DISMISSING THE CONTEMPT CHARGES FILED BY APPELLANT AGAINST RADIO ANNOUNCERS WHO WERE TRYING TO INFLUENCE THE TRIAL COURT INTO CONVICTING THE APPELLANT.[9]

Appellant submits that Assigned Errors 3, 4, 5, 8, 11, and 12 may be consolidated and discussed together because the issues all boil down to whether or not the prosecution has sufficiently overcome the constitutional presumption of innocence of the accused.[10]

Considering these assigned errors, the pertinent issues could be summed up as follows:

1. Were appellant's fundamental rights, including his right to due process of law, violated in this case because:

- (a) there was no speedy trial and disposition of the case?
- (b) the trial judge erred in refusing to disqualify himself from hearing the case?
- (c) the trial court erred in refusing to re-raffle the case?
- (d) the trial court erred in refusing to disqualify the private prosecutors?
- (e) there was publicity prejudicial to accused?

2. Was the right to counsel of the accused violated?

3. Is the evidence presented by the prosecution sufficient to overcome the presumption of innocence of the accused, and to prove him guilty beyond reasonable doubt?

4. Is the penalty imposed on appellant correct?

We shall now discuss these issues in seriatim.

Article III, Section 14 of the Constitution provides:

“(1) No person shall be held to answer for a criminal offense without due process of law;”

“(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf....

Appellant anchors, firstly, his claim that due process was violated because his right to speedy trial was violated. However, the records of this case reveal that bail hearings started on September 27, 1993, and terminated on November 8, 1993. He was arraigned on January 11, 1994. The prosecution presented its first post-bail hearings witness on the same day. The defense presented its first witness on June 7, 1994. The decision of the lower court was promulgated on August 15, 1995. With this chronology, in our view, no undue delay could be imputed, much less persuasively shown, against appellee and the trial court.

Appellant also claims the trial court ignored various Supreme Court Circulars ordering judges to decide cases

within ninety days from the inception of trial.[11] This is not quite accurate. The ninety-day period applies only after the case is submitted for decision, not from the start of the trial.[12]

If the trial appeared lengthy, it was largely due to the number of witnesses presented, 13 for the prosecution and 15 for the defense. Appellant himself took the witness stand a total of 76 times, including 21 times on rebuttal alone. As observed by the trial court:

"...The manner of presenting his defense, undertaken by himself alone without the proper advice of a defense counsel, had contributed largely to the prolonged trial of the case." [13]

Whether intentional or not, appellant's conduct of his own trial contributed to time-consuming tussles in the lower court. How could the accused complain of delays, where he himself caused them? [14]

Appellant also alleges that his right to a speedy disposition of his case was violated. He claims that the trial judge gave preference to a civil case, as against his right as a detention prisoner to have his case given preference pursuant to R.A. 6033.[15] This is unfounded, to say the least. The hearing of the civil case ahead of his case happened only once.[16]

Appellant likewise claims the trial judge was partial, biased, and prejudiced because he refused to disqualify himself from hearing this case while he inhibited himself from trying its companion case. But as held in *Velez v. Court of Appeals*, 34 SCRA 109 (1970), mere imputation of partiality or bias is not a ground for inhibition.

The grounds for disqualification or inhibition of judges provided for in Section 1, Rule 137, Rules of Court are as follows:

SECTION 1. Disqualification of judges — No judge or judicial officer shall sit in any case in which he or his wife or child, is pecuniarily interested as heir, legatee, creditor, or otherwise or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

None of the grounds above was cited to support the trial judge's disqualification. None was applicable to him. Though the Rule provides other just and valid grounds on which a judge may disqualify himself, they are addressed to his sound discretion, and there was no abuse of said discretion. We can only conclude that the trial judge, contrary to appellant's claim, did not err in refusing to inhibit himself in the case at bar.

That the trial judge opted to believe the prosecution's evidence rather than that of the defense is not a sign of bias.[17]

Appellant's assertion that the trial court erred in refusing to agree to re-raffle the case is, in our view, baseless. There is no showing that appellant raised the issue of lack of notice of raffle at the earliest opportunity. The appellant first filed his Motion for Re-Raffle of Case or Transfer of Case to Another Branch of the RTC of Cebu City only on January 25, 1994.[18] It was filed after appellant was already arraigned, and after the prosecution had presented its first witness. In fact, the trial court already issued a Resolution denying his application for bail.[19] Appellant had willingly and actively participated in these proceedings before the trial court.[20] By actively participating thereon, appellant is now deemed estopped from complaining that the proceedings were technically defective for want of a notice of the raffle of his case. To say the least, appellant's claim comes too late to be of any merit.

On the matter of disqualifying private prosecutors, it must be stressed that the interest of the private complainant is limited to the civil aspect of the case.[21] Even if the trial court had allowed the presence of private prosecutors, it did not affect the criminal aspect of the case. The records clearly show that the public prosecutor remained in full control during the trial. As provided in Section 5, Rule 110, Rules of Court, the case was prosecuted under the direction and control of the public prosecutor. Nothing on record shows that he lost control and direction of the prosecution of the case just because of the presence of private prosecutors.

Further, the appellant alleges that certain members of media with whom he had a “long-standing battle, were pressuring the trial court to convict the accused.”[22] He states that these media men “attended the promulgation of the judgment to insure the success and satisfaction of their desire for revenge against the appellant”,[23] and that adverse publicity influenced the trial court into convicting the appellant.[24] He now faults the trial court for refusing to declare these journalists in contempt of court.

However, the court’s refusal to find said media practitioners in contempt is not a reversible error that would warrant the acquittal of the accused. It was entirely within the discretion of the trial court to determine whether or not the media personnel concerned were guilty of contempt. Besides, a thorough review of the records yields no sufficient basis to show that pervasive publicity unduly influenced the court’s judgment. Before we could conclude that appellant was prejudiced by hostile media, he must first show substantial proof, not merely cast suspicions. There must be a showing that adverse publicity indeed influenced the court’s decision, as held in *Webb v. De Leon*, 247 SCRA 653 (1995) and *People v. Teehankee*, 249 SCRA 54 (1995).

“[T]o warrant a finding of prejudicial publicity there must be allegation and proof that the judges have been unduly influenced, not simply that they might be, by the barrage of publicity.”[25]

“Pervasive publicity is not per se prejudicial to the right of an accused to fair trial. The mere fact that the trial of appellant was given a day-to-day, gavel-to-gavel coverage does not by itself prove that the publicity so permeated the mind of the trial judge and impaired his impartiality. For one, it is impossible to seal the minds of the members of the bench from pre-trial and other off-court publicity of sensational criminal cases. The state of the art of our communication system brings news as they happen straight to our breakfast tables and right to our bedrooms. These news form part of our everyday menu of the facts and fictions of life. For another, our idea of a fair and impartial judge is not that of a hermit who is out of touch with the world. We have not installed the jury system whose members are overly protected from publicity lest they lose their impartiality. x x x Our judges are learned in the law and trained to disregard off-court evidence and on-camera performances of parties to a litigation. Their mere exposure to publications and publicity stunts does not per se infect their impartiality.

“At best appellant can only conjure possibility of prejudice on the part of the trial judge due to the barrage of publicity that characterized the investigation and trial of the case. In *Martelino, et al. v. Alejandro, et al.*, we rejected this standard of possibility of prejudice and adopted the test of actual prejudice as we ruled that to warrant a finding of prejudicial publicity, there must be allegation and proof that the judges have been unduly influenced, not simply that they might be, by the barrage of publicity. In the case at bar, the records do not show that the trial judge developed actual bias against appellant as a consequence of the extensive media coverage of the pre-trial and trial of his case. The totality of circumstances of the case does not prove that the trial judge acquired a fixed opinion as a result of prejudicial publicity which is incapable of change even by evidence presented during the trial. Appellant has the burden to prove this actual bias and he has not discharged the burden. (*Italics in the original*)”[26]

Absent a persuasive showing by the appellant that publicity prejudicial to his case was responsible for his conviction by the trial judge, we cannot accept his bare claim that his conviction ought to be reversed on that ground.

Relatedly, on the second issue, it must be pointed out that appellant has been a practicing lawyer of long standing. Initially, he was assisted by counsel of his choice in this case. But he later terminated the services of his counsel due to disagreements. He then took full control of his defense.

As manifested in his motion regarding the Order dated December 28, 1993 (Bail Application), he asked the trial court to:

“3. PLEASE NOTE that the undersigned is taking COMPLETE CONTROL in his defense in the two (2) cases (CBU-31373 and CBU-31734) since he now realizes that it is to his best interest and advantage that does so under right under par. c, Sec. 1, Rule 115, Rules on Criminal Procedure and his lawyers are being subjected to pressure.”[27]

Before his arraignment on January 11, 1994, the trial court asked clarification from appellant, to wit:

ATTY. SESBREÑO:

Appearing as counsel in my own behalf

COURT:

Who are (sic) representing you in these cases?

ATTY. SESBREÑO:

Your Honor please, I am taking full control of the proceedings, Your Honor particularly the presentation of my own testimony but with respect with other witnesses that may be presented by my lawyer. I fully understand the contents, the lateral import and allegations in the information. I would like to make it of record that in entering a plea of not guilty to such information I would make it clear that I am not waiving my right to present my rebuttal evidence in the application for bail which it is under Section 5 of Rule 114 which supposed to be a separate hearing from the formal trial on the merits. That I have not agreed to have a joint hearing for the application for bail and of the formal trial on the merits. I have not also waive (sic) my right to question to issuance of the warrant of arrest of Section 2 of the Bill of Rights.

COURT:

But we have to arraign you because under the 1985 Rules on Criminal Procedure as amended there is no such thing as waiver of the arraignment. Necessarily, under the rules or whatever category is that crime charged the accused must be arraigned even for Physical Injuries. So, under the set-up we have to conduct an arraignment in both cases.

ATTY. SESBREÑO:

That is the prerogative of the Court. My only statement to be made it (sic) of record that I have never waive (sic) those right (sic) which I just stated.

COURT:

Well, waiver or no waiver, the law clearly and explicitly provides that only waiver (sic) which are not contrary to law, morals, and public policy are considered or countenance (sic) in Court. All waivers which will run counter to public policy, morals and the law, they are all considered waivers which are null and void. All those things will be taken into considerations (sic). Statutes as well as jurisprudence, the Court is taking care of all those things. Arraigned (sic) the accused. But before going into this, are you really sure with the magnitude of the charged against you will never solicit the assistance of counsel as you did before?

ATTY. SESBREÑO:

I have sought the assistance of counsel. I know the saying that a lawyer who acts as his own counsel is a fool, Your Honor. I would be a big fool if I will allow myself to be represented (by) a lawyer who maybe (sic) pressured.

COURT:

I have already stated in my order that insofar as this Presiding Judge is concerned there was no observation of such pressure within the four (4) walls of this Court. I don't know outside the four (4) walls of this Court. But I would like to tell all and sundry that insofar as the alleged pressure is concerned, the Court noted no such pressure within the four (4) corners of this room.

ATTY. SESBREÑO:

The pressure that I made on myself and this counsel will be testified on the witness-stand (sic) when my turn comes, underoath (sic).

COURT:

To repeat, you do not want the assistance of any other counsel even possibly with (sic) the assistance of the PAO lawyer?

ATTY. SESBREÑO:

There is no need, Your Honor because under paragraph 6, Section 1, Rule 150 the accused can act as his own counsel and at his option can seek the assistance of another lawyer. I fully understand (sic) the import of the information.

COURT:

So you have chosen despite the proddings of this Court that you have to solicit the assistance of counsel as you did before. That you are waiving tjos (sic) right to be assisted by counsel.

ATTY. SESBREÑO:

That is correct.

COURT:

Let us arraigned (sic) the accused. Let it be placed on record (that) despite the proddings of this Court, the accused wanted to act as counsel for himself.

COURT: (to accused)

Does this imply that even the new counsel you have included in your pleadings as Atty. Crisologo R. Monteclar he is never your lawyer?

ATTY. SESBREÑO:

He is my lawyer but as I said I am taking full control of this (sic) proceedings. I will take legal consultation with my lawyers if the need arises.

COURT:

Are we made to understand that henceforth, there shall be no more notices to be sent to these lawyers because you are now taking full control of these cases against you?

ATTY. SESBREÑO:

Notice to me will be notice to them. I (will) just request, Your Honor additional notices when necessary to the additional lawyers. I think that is the legal procedure on the matter.

COURT:

You may now arraign the accused in both cases.[28]

Despite admonitions of the trial court, he persisted in his decision to try his own case. The record shows appellant, acting as his own counsel, filed the notice of appeal. To allege now that his right to be assisted by counsel was violated is to bend the truth too far. In *Gamboa v. Cruz*,[29] we held that the substantial and constitutional right of the accused to counsel is not violated where he was represented by a member of the Bar. Appellant chose to be represented in this case by a prominent and competent member of the Bar, namely himself, even if there were other available counsel like Atty. Crisologo Monteclar. Appellant is now estopped from claiming that the trial court violated his right to be represented by counsel of his own choice. Note that he also brushed aside the court's offer of assistance by another counsel, a PAO lawyer. He declared there was no need therefor.

The essential requirements of due process in this jurisdiction are well established, viz:

- (1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it;
- (2) Jurisdiction must be lawfully acquired over the person of the defendant or property which is the subject of the proceeding;
- (3) The defendant must be given an opportunity to be heard; and
- (4) Judgment must be rendered upon lawful hearing.[30]

In *People v. Castillo, et al.* 76 Phil. 72, 87, we ruled that if an accused has been heard in a court of competent jurisdiction, and proceeded against under the orderly process of law, and only punished after inquiry and investigation, upon notice to him, with opportunity to be heard, and a judgment awarded within the authority of the constitutional law, then he has had a due process.

Applying the aforementioned test to the circumstances of the instant case, the Court finds no breach of appellant's fundamental rights, including his right to due process and to counsel, which would justify reversal of the assailed decision.

On the crucial third issue, we must inquire now whether the prosecution has overcome the presumption of innocence in favor of the accused. Otherwise stated, is the evidence presented by the prosecution sufficient to prove his guilt beyond reasonable doubt?

The victim's companion, Christopher Yapchangco, as witness for the prosecution, testified under oath as follows:

ATTY. DURANO:

Now while you were walking along Almaciga Street with Luciano Amparado, can you tell us what happened?

A: While we were already at a distance of five (5) meters, more or less, from the gate of the house of Raul Sesbreno we heard screeching sound of the gate of Atty. Sesbreno

Q: From where you were walking along that Almaciga Street heading towards Lutao-Lutao from what side did you hear the screeching sound of the gate?

A: At our back.

Q: When you heard that screeching sound of the gate on what side did you turn around while you were along

Almaciga Street?

INTERPRETER:

Witness indicating by turning his head towards the back.

ATTY. DURANO:

When you turned your head towards the gate, would you kindly tell the Honorable Court what happened, if anything?

A: So, we saw Atty. Sesbreno aiming his long firearm towards us.

Q: When you saw Atty. Raul Sesbreno aiming his rifle towards you, as far as you can recall how far were you and Luciano Amparado to Raul Sesbreno?

A: Five (5) meters, more or less.

Q: From the place where you saw Atty. Sesbreno aiming his rifle was there anything between you and Atty. Sesbreno that could obstruct your view?

A: No, sir, there was none.[31]

x x x

Q: When you saw Atty. Sesbreno aiming his rifle at you, what happened, if any, please tell the Honorable Court?

A: Simultaneously two (2) shots being fired we ran immediately.[32]

x x x

Q: While you were running in a zigzag manner and Amparado also running in a zigzag manner, will you please tell the Honorable Court, what happened next?

A: I saw Luciano Amparado running in a staggard (sic) manner.[33]

Q: While you were running in a zigzag manner at that very point in time you saw Luciano Amparado staggering where was Atty. Sesbreno in relation to you?

A: He was at our back.

Q: Would you kindly tell the Honorable Court what he was doing while he was at your back?

A: He was still standing aiming his rifle towards us.[34]

x x x

Q: What happened while you were running in a zigzag manner and Luciano Amparado staggering towards (the) a corner?

A: We were even shot by Atty. Sesbreno with two (2) firing gun (sic).

Q: After that what happened?

A: And I aided Luciano Amparado who was at that time running in a staggered (sic) manner.[35]

x x x

Q: While you helped Luciano Amparado and in fact you noticed the part of his back was hit, what happened after that?

A: Luciano Amparado told me by saying he was hit and please bring me to the hospital.

Q: In effect, what did you do?

A: And I heard a continuous firing of the gun.

Q: From what direction in relation to you from where you were did you hear continuous firing of the gun?

A: At our back.[36]

While appellant argues that Yapchangco admitted that he never saw who fired the gun shots, because he was busy running and did not look back, on record is Yapchangco's declaration that there was no person other than appellant who fired a firearm. As held in *People v. Salveron*,^[37] if an eyewitness saw the accused with a rifle, seconds after the gunshot and after the victim fell to the ground, the reasonable conclusion thereon is that the appellant killed the victim.

Another eyewitness, Rizaldy Rabanes, also identified appellant as the one who fired at Amparado and Yapchangco:

Q: Going back to the question, during the time you were attending your 6-month baby (who was) teething, was there anything unusual that happened?

A: Yes, there was.

Q: Could you kindly please tell the Honorable Court?

A: At that time, I heard two (2) shots. So, I stood up and I peeped through my window and there was simultaneous firing of a gun. So, I immediately opened my window. Then, I saw two (2) persons running towards my house and also then I saw Atty. Raul Sesbreno aiming a firearm and fired (sic) it rapidly, and he did not even know that my house was hit and my house was shaken.[38]

x x x

Q: Who were those two (2) people running towards your house?

A: Yapchangco and Luciano Amparado.[39]

Further, prosecution witness Edwin Parune testified that he and his companion, Demeter Encina, saw Amparado totter, after being shot, towards the bougainvillea plant at the side of Almaciga Street. There Amparado eventually fell on the ground, face upward. Parune also declared he and Encina saw appellant in the middle of the street, carrying a long firearm while going towards the gate of his house. They saw Yapchangco approach the fallen Amparado and lift him. Parune and Encina then helped Yapchangco bring Amparado to the hospital where he died.[40]

With such wealth of details, we cannot fault the trial court for giving credence to the testimony of the prosecution's witnesses. Moreover, we must concede that generally, the trial judge is in a better position to decide on questions of credibility of witnesses and materiality of the evidence presented.^[41] Findings of the trial judge who had the fullest opportunity to observe the demeanor of the witnesses and to assess their credibility are entitled to the highest degree of respect.^[42] Factual findings of the trial court, if adequately supported by the records of the case, will generally not be disturbed by the appellate courts on appeal.^[43] We see no reason now to depart from this rule. The voluminous records of this case support the factual findings of the trial court. On these findings we must now rely, unless it could be shown that the trial judge overlooked or ignored material facts on record that would contradict these findings, or change the resulting conclusions.

The defense failed, in our view, to refute the positive identification made by the prosecution witnesses who tagged

the appellant as the one who shot the victim. These eyewitnesses' declarations are positive testimonial evidence. The appellant's denial that he was the gunman is negative testimony.[44] The positive, forthright declarations of eyewitnesses certainly outweigh the negative, self-serving denial of the accused.[45] While appellant claims somebody else shot the victim dead, appellant did not, as he could not, identify this purported gunman up to now. Surely he could not expect us to believe his claim of a gunslinger emerging from the shadows to slay the victim, without more credible proof thereon.

Appellant harps on what he perceives to be inconsistencies of the witnesses' testimony. However, they are inconsistencies on negligible details that do not destroy the credibility and veracity of the testimony offered. No improper motive appears to vitiate the sworn statement of the witnesses. Variations in the declarations of witnesses respecting incidental matters do not detract from the weight of testimony in its entirety as to material and important facts.[46] Nor do minor inconsistencies preclude the positive identification of the accused.[47] Minor inconsistencies in the testimonies of witnesses strengthen, rather than weaken, the credibility of the witnesses, as it clearly shows that the testimonies offered are neither rehearsed nor coached.[48]

But in regard to the lethal weapon used in the commission of the offense, there is no justifiable reason, in our view, for doubt or dispute. The firearm used was a .22 caliber rifle, registered in the name of appellant.

Noteworthy is the testimony of the NBI ballisticsian on record. He found that the shell marked exhibit "ES-1" and the test shell marked "TS-2" possessed sufficient identical markings to show both were fired from one and the same firearm;[49] that the size, shape, and location of the firing pin marks on the two shells were the same;[50] and that evidence shell "ES-1" and another test shell marked "TS-3" were fired from one and the same firearm.[51] The prosecution amply showed that the test shells "TS-2" and "TS-3" were test-fired from a .22 caliber rifle owned by appellant. He himself had submitted both the rifle and test bullets for re-registration during a re-registration of firearms campaign conducted by the police, with test-firing done on March 22, 1990.[52]

The ballisticsian's testimony refutes appellant's claim that there was no conclusive finding on the firearm used in the shooting of the victim, since there were no sufficient congruent striations on the evidence and test bullets. Appellant argues that there were no sufficient markings which could lead to a positive conclusion that the evidence and test bullets were fired from one and the same firearm.[53] This argument, however, is rebutted by the ballisticsian, who pointed out that the slug was copper-coated and this coating material could be easily removed.[54] Even a mere scratch of a fingernail could remove the coating, and make comparison of striations for identification purposes difficult, if not impossible. Appellant, however, could not deny the ballisticsian's conclusive findings as to the similarity of resultant markings in the evidence and test shells submitted to the trial court.

Thus, both testimonial and real evidence presented by the prosecution lead us to the firm conclusion that the presumption of appellant's innocence has been overcome and his guilt established beyond reasonable doubt. He is criminally responsible for the killing of the victim, Luciano Amparado.

However, we now come to the next inquiry in regard to the third issue. Was the killing murder as found by the trial court, or homicide as averred by the Solicitor General? According to him, the trial court erred in finding the appellant guilty of murder, because the prosecution failed to prove the qualifying circumstances of evident premeditation and treachery. On these matters, we find both the appellant's and the Solicitor General's submission meritorious.

Circumstances specifying or qualifying an offense, or aggravating the penalty therefor must be proved as conclusively as the act itself.[55] Evident premeditation is appreciated where the execution of a criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent.[56] The requisites of

evident premeditation are:

1. The time when the accused determined to commit the crime.
2. An act manifestly indicating that the accused has clung to his determination.
3. A sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.[57]

Here, these requisites were not met. There was no evidence presented as to the date and time when appellant planned to kill the victim and his companion, Yapchangco. Even if the time when the appellant had planned such killing could be determined, there is no showing that from such time up to the time when the victim and Yapchangco passed appellant's house in the wee hours of the morning of June 3, 1993, sufficient time had elapsed to allow appellant to reflect on his plan and persist in carrying it out. We cannot, based on the prosecution's evidence, sustain the finding of evident premeditation absent a conclusive showing of the constitutive elements of this vital circumstance qualifying the offense of murder.

Neither can we sustain the findings of the trial court with respect to the presence of treachery. Treachery is present when the offender employs means, methods, or forms which tend to directly and specially insure the execution of the crime, without risk to himself arising from the defense which the offended party might make.[58] The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby, ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.[59]

To be appreciated, treachery requires proof of the following:

- “1. the employment of means of execution which gives the person assaulted no opportunity to defend himself or retaliate; and
2. that said means of execution were deliberately or consciously adopted by the assailant.”[60]

In this case, the prosecution failed to prove that the means of attack used by the appellant were deliberately adopted by him to kill the victim. Yapchangco's testimony shows that he and the victim just happened to pass by the house of appellant at a time when the latter was in his balcony. There is no showing that appellant knew or expected that the victim and Yapchangco would pass by his house at that time.

In the absence of the qualifying circumstances of evident premeditation and treachery, the crime committed is not murder but only homicide.

We now come to the last issue concerning penalty. Reclusion perpetua is appropriately imposed if the conviction is for murder, but not for homicide. Under Article 249 of the Revised Penal Code, the applicable penalty for homicide is only reclusion temporal.

As there are neither aggravating nor mitigating circumstances found by the trial court or shown after a review of the records, the penalty in this case shall be fixed in its medium period of reclusion temporal, which ranges from a minimum of 14 years, 8 months and 1 day to a maximum of 17 years and 4 months. Further, applying the Indeterminate Sentence Law, the imposable penalty shall be within the range of prision mayor as a minimum to reclusion temporal in its medium period as the maximum. The range of prision mayor is from 6 years and 1 day to 12 years. The span of reclusion temporal, medium, is from 14 years, 8 months, and 1 day to 17 years and 4 months.

WHEREFORE, the assailed decision of the Regional Trial Court of Cebu City, Branch 18, in Criminal Case No.

CBU-31733 is hereby MODIFIED. Appellant Raul H. Sesbreño is hereby found GUILTY of HOMICIDE and hereby sentenced to suffer a prison term of 9 years and 1 day of prision mayor, as a minimum, to 16 years and 4 months of reclusion temporal, as a maximum, with accessory penalties provided by law, to indemnify the heirs of the deceased Luciano Amparado in the amount of P50,000.00, and to pay the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Buena, JJ., concur.

[1] 1998 Law List, p. 718.

[2] Records, Vol. I, p.4.

[3] Rollo, p. 69.

[4] Id. at 238.

[5] Records, Vol. II, p. 577.

[6] Rollo, pp. 278-279.

[7] Id. at 264-266.

[8] Id. at 295.

[9] Id. at 535-537.

[10] Id. at 537.

[11] Rollo, p. 593.

[12] Article VIII, Sec. 15 (1), (2), Constitution; Circular No. 13, July 2, 1987.

[13] Id. at 253.

[14] Domingo v. Minister of Defense, 124 SCRA 529 (1983).

[15] Ibid.

[16] Rollo, p. 798.

[17] People v. Tabarno, 242 SCRA 456 (1995).

[18] Records, Vol. II, p. 673.

[19] Records, Vol. II, p. 577.

[20] Sanchez v. Court of Appeals, 279 SCRA 647 (1997).

[21] Sese v. Montesa, 87 Phil 245 (1950); Roa v. De la Cruz, 107 Phil. 8 (1960).

[22] Rollo, p. 594.

[23] Id. at 595.

[24] Ibid.

[25] Webb v. De Leon, 247 SCRA 653, 692 (1995), citing Martelino, et al. v. Alejandro, et al., 32 SCRA 106

(1970).

[26] *People v. Teehankee*, 249 SCRA 54, 105, 107 (1995).

[27] *Records*, Vol. II, p. 562.

[28] *TSN*, Vol. IV, January 11, 1994, pp. 2-6.

[29] 162 SCRA 642 (1988).

[30] *People v. Dapitan* 197 SCRA 378, 388 (1991); *Banco Español Filipino v. Palanca*, 37 Phil. 921, 934 (1918).

[31] *TSN*, Vol. I, September 27, 1993, pp. 38-39.

[32] *Id.* at 40.

[33] *Id.* at 41.

[34] *Ibid.*

[35] *Id.* at 42-43.

[36] *Id.* at 43-44.

[37] 228 SCRA 92 (1993).

[38] *TSN*, Vol. I, September 29, 1993 (p.m.), p. 13.

[39] *Id.* at 15.

[40] *TSN*, Vol. II, October 15, 1993, pp. 22-24.

[41] *People v. Castillo*, 273 SCRA 22 (1997).

[42] *People v. Nuestro*, 240 SCRA 221 (1995); *People v. Ganido*, 240 SCRA 254 (1995).

[43] *People v. Cascalla*, 240 SCRA 482 (1995).

[44] *People v. Ondalok and Mahinay*, 272 SCRA 631 (1997).

[45] *People v. Gondora*, 333 Phil. 246 (1996).

[46] *People v. De Gracia*, 264 SCRA 200 (1996).

[47] *Sumalping v. Court of Appeals*, 335 Phil. 1218 (1997).

[48] *People v. Ondalok*, *supra*.

[49] *TSN*, Vol. III, October 21, 1993, p. 21

[50] *TSN*, Vol. III, October 22, 1993, p. 2.

[51] *Ibid.*

[52] *TSN*, Vol. I, October 7, 1994, pp. 4-6.

[53] *Rollo*, pp. 454-455.

[54] *TSN*, Vol. III, October 21, 1994, pp. 12-14.

[55] People v. Derilo, 271 SCRA 633 (1997).

[56] People v. Sol, 272 SCRA 392 (1997).

[57] People v. Realin, G.R. No. 126501, January 21, 1999, p. 14.

[58] People v. Cortes, 280 SCRA 295 (1998).

[59] People v. Vermudez, G.R. No. 119464, January 28, 1999, p. 6.

[60] People v. Piamonte, G.R. No. 91999, February 25, 1999, p. 14.

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