

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO ANDRES, ANTONIO SUMILATA, BERNARDO LARGO, ROBERTO TUGADO, RUFO ADVINCULA, RAYMUN RIOS (AT LARGE) AND JIMMY LAURENTE (A...

G.R. No. 122735. September 25, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In resolving this appeal, the Court reiterates the following doctrines: (1) the factual findings of the trial court on the credibility of witnesses and their testimonies deserve great respect; (2) positive identification prevails over denial and alibi; (3) the testimony of a single witness, if positive and credible, is sufficient to support a conviction even in a charge for murder; and (4) where the killing was qualified by treachery, as alleged in the Information, and there were no other attendant aggravating circumstances, the crime committed was murder, and the proper penalty imposable is reclusion perpetua.

The Case

On December 9, 1994, before the Regional Trial Court of San Jose, Occidental Mindoro, an amended Information[1] for murder was filed against Jimmy Laurente, Raymun[2] Rios, Rogelio Andres, Antonio Sumilata,[3] Bernardo Largo, Roberto Tugado[4] and Rufo Advincula. The Information reads:

"That on or about the 20th day of June, 1994 at around 9:50 o' clock in the evening, in the Sablayan Prison and Penal Farm, Municipality of Sablayan, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with sharp bladed instruments and with intent to kill, with treachery and evident premeditation, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said weapons one Domingo Astrande, thereby inflicting upon the latter serious wounds which caused his untimely death." [5]

On December 13, 1994, Rogelio Andres, Bernardo Largo, Roberto Tugado, Antonio Sumilata and Rufo Advincula, with the assistance of Atty. Dante V. Ramirez of the Public Attorney's Office, pleaded not guilty to the charge against them.[6] Laurente and Rios were at large.

After trial in due course, Judge Emilio L. Leachon, Jr. rendered the assailed 12-page Decision dated July 4, 1995, acquitting Advincula and finding the appellants guilty as charged. The dispositive portion of the Decision reads:

"ACCORDINGLY, therefore, the Court finds accused:

1. Rogelio Andres
2. Antonio Sumilata
3. Bernardo Largo
4. Roberto Tugado

guilty beyond reasonable doubt of the crime of murder and sentences all of them to the penalty of reclusion

perpetua to death and to indemnify the heirs of the deceased Domingo Astrande the amount of P50,000.00 plus actual burial and wake expenses amounting to P70,000.00."[7]

Hence, this appeal.[8]

The Facts

According to the Prosecution

The trial court encapsulated the prosecution's version of the facts as follows:

"Danilo de la Cruz testified x x x that on June 20, 1994, he was at the hospital of [the] Sablayan Penal Colony when at 9:50 p.m., he noticed something after he was awakened from his sleep by noise which caused him to peep at the window and saw [prisoner] Antonio Sumilata striking or stabbing prison guard Domingo Astrande; he identified the accused Sumilata inside the courtroom; that he saw Antonio Sumilata with prisoners Rogelio Andres, Bernardo Largo and Robert Tugado when accused Sumilata stabbed Domingo Astrande x x x that he also saw prisoners Jimmy Laurente and Raymun Rios with the prisoners he named but the two escaped from the Sablayan Penal Colony and are still at large up to the present; he also saw accused Andres stab guard Astrande on the chest while accused Largo held Astrande and stabbed the latter on the back; when Astrande stood up, the group rambled and helped each other in striking Astrande; that he did not see accused Rufo Advincula in the group he named; when Astrande was already lying down sprawled on the floor of the hospital, another prison guard arrived and fired a warning shot and he also saw prisoner Winston Gonzales, an attendant on duty at the hospital; then the doctor of the hospital put Astrande on the bench and inspected the body of victim Astrande; that he was not able to approach Astrande because the whole premises were padlocked x x x that his companions Ante Fernando and others in the padlocked room were later awakened by the shot fired by the guard who arrived x x x that there was a bright light coming from the tv when Astrande was assaulted and so he can recognize the people who assaulted Astrande xxx.

"Ante Fernando testified that x x x he was in the hospital watching tv from the window of their room; the tv was around two arms length from the window of his room; that he and prisoner Danilo de la Cruz were watching tv from the window of their room and later he went to sleep only to be awakened by shouts from the outside "Alis diyan, matamaan ka!" which forced him to stand up and when he peeped at the window, he saw prisoners Laurente and Rios with knives [run] away from the dead body of prison guard Domingo Astrande together with accused Andres and Tugado; he saw Astrande lying down face downward; when he saw Laurente, he was holding a bolo and Rios a long knife; he was able to recognize the accused he named: Andres, Largo, Tugado, Laurente and Rios because he was very near them and there was [a] bright light coming from the tv x x x he said that he did not see accused Antonio Sumilata at the scene of the stabbing of guard Astrande; he did not see any participation [of] accused Andres, Largo and Tugado in the stabbing of Astrande except accused Laurente and Rios who both ran away, as they were only standing and did not do anything.

"Herbert Diada testified that x x x on June 20, 1994 at around 9:50 p.m., he was inside their ward in the hospital of the colony when trouble broke out and guard Astrande was killed; he pointed to all the accused he identified in court as responsible for killing prison guard Astrande together with accused Laurente and Rios who escaped from prison; all the accused he named helped one another in striking, stabbing and killing Astrande while the latter was watching tv; the tv was located in front of Astrande when the latter was killed; he heard Astrande shouting "Maawa kayo sa akin" and he started to run away but he could not do anything for the accused he named already surrounded him; he saw accused Simulata [stab] Astrande with a small knife while accused Andres was holding a bolo; accused Laurente and Rios were carrying knives; that all of the accused helped one another in stabbing, striking and killing Astrande; in the case of accused Largo, he used a "balila" or a night stick in striking the neck of Astrande; he was only around two arms length when he saw the stabbing incident; that inside their ward, he saw Cuden, Tabar, dela Cruz and Ante Fernando beside him watching tv at the window of the ward which was around two arms length from the window; that all the accused were seated talking to each other and watching tv when suddenly they ganged up on Astrande x x x that he also saw

accused Laurente and Rios stab the victim Astrande before they ran away x x x he testified that he could not help Astrande because their ward was padlocked x x x.

"Nicomedes Tabar testified that x x x on June 20, 1994 at about 9:50 p.m. he was inside the hospital watching tv together with prison guard Astrande who was lying down on the bench; that he saw some [of the] accused stab Astrande specially accused Laurente, Rios, Tugado and Andres, who were armed with knives [stab] Astrande; that he also saw accused Simulata carrying a knife but did not see him stab Astrande; that accused Largo was holding a "balila" night stick and he hit Astrande on the neck x x x that he was only around two (2) arms' length when he saw the stabbing incident x x x that he saw accused Laurente [stab] Astrande six (6) times while Rios stabbed the victim three (3) times on the face and back of Astrande; that he also saw Simulata holding a knife but did not see him stab Astrande x x x.

"Dr. Vicente Barreto[9] Jr. testified that x x x the victim Astrande could have been hacked by five to six weapons or sharp instruments; that he made the autopsy at 1:00 a.m. of June 21, 1994 x x x the victim Astrande sustained 27 [hack] and incised wounds, 13 of which were on the back and the remaining fourteen (14) wounds on the frontal side of the body of Astrande.

"Edna Bangbang Astrande testified that x x x it was accused Largo and Tugado who brought her husband home and [she] noticed [that] Largo and Tugado [smelled] of liquor; that she spent, more or less, P70,000.00 during the wake and burial of her husband x x x

"Pablito Cuden testified that x x x on June 20, 1994, he was in the hospital ward and when [he] looked outside the window of their ward, he was informed by one Inday that guard Astrande was killed x x x he showed to the court the floor plan of the hospital building (Exh. B) which he personally prepared; he explained and showed to the court the place where Astrande was killed and the relative position of the witnesses who testified in court and the accused in this case; that he did not personally witness the stabbing of Astrande on June 20, 1994; that after 5:00 p.m. of June 20, 1994, he saw accused Simulata, Tugado and Largo drinking gin in the attendants' quarters x x x that he did not view tv because he was tired working outside and he went to sleep but later around 10:00 p.m. he was awakened because of the noise outside and when he stood up he saw the dead body of Astrande."[10]

According to the Defense

In their Brief,[11] Appellants Rogelio Andres, Bernardo Largo and Roberto Tugado narrated their version of the facts as follows:

"Rogelio Andres testified that he [was] a detention prisoner at [the] Sablayan Prison and Penal Farm. He came from Guimbang, Nueva Ecija. He [had been] in prison for murder for more than 5 years.

"He [was] a trustee inside the prison. He guard[ed] prisoners like himself.

"On June 20, 1994, at about 6:00 p.m., he was inside the compound of the quarters. He was still there at 8:00 p.m. These quarters [were] in the guard house. At 9:50 p.m. he was still within the quarters resting. With him were his co-trustees, namely Edwin Pascua, Moises Scablanca, Alexander de la Vega and their head, Zacarias Harola.

"There was no prison guard sleeping at the security guard house.

"Nothing happened at 10:00 that night. He slept until morning.

"These quarters [were] around 300 meters away from the hospital (TSN, Jan. 31, 1995, pp. 1-6).

"Under cross examination, he said he knew his co-accused Sumilata, Largo, Tugado, Advincula, Rios and Laurente. They [were] in fact, his close friends. (TSN, Jan. 31, 1995, pp. 6-7)

"Under re-cross examination, he said the guardhouse [was] enclosed with a fence. You cannot go outside

without passing the gate of the fence. The hospital [was] outside the fence.

"The two accused who escaped were not staying in the guardhouse where he was sleeping. The two men [were] not trustees. (TSN, Jan. 31, 1995, pp. 7-9).

"Bernardo Largo testified that he [was] detained at the Sablayan Prison and Penal Farm and he was formerly a member of the CAFGU.

"He was convicted [of] the crime of parricide having killed his wife. He [had] been [in] the prison for more than one (1) year.

"He [was] an attendant at the hospital. His job [was] to follow the instructions of the doctor.

"On June 20, 1994, at around 9:00 p.m., he was inside the hospital watching television. With him were Gonzales and the victim Astrande. At around 9:50 p.m., Laurente and Rios arrived and suddenly stabbed Astrande. He (witness) was not able to move. Gonzales was just standing. Then [the] the two (2) assailants ran away.

"He and Winston Gonzales ran to the central gate. They asked help from the employees of the prison, Bong Catsuela and Sir Marlon. The duo went back to the hospital together with Winston.

"When he (witness) returned, an employee instructed him to fetch the doctor who was playing mahjong that night. He returned to the hospital together with Tabar.

"They helped carry the cadaver to the house where they washed it. Tugado was with him in washing the body.

"Then they were brought to the guard house. Tugado was still with him.

"He did [not] know about Andres. He knew him only by face. (TSN, February 1, 1995, pp. 1-6).

"Under cross examination, he said when Laurente and Rios stabbed the victim in front, his (witness) attention was focused on the tv.

"He denied that Laurente and Rios [were] his friends. These men were not employees or workers in the hospital.

"At the time of the incident, Tugado was in the medical ward because he was admitted as a patient together with Tabar.

"Laurente was the first one to stab the victim. He stabbed him many times. Rios hacked and stabbed the victim using a bolo. (TSN, February 1, 1995, pp. 6-10).

"Roberto Tugado testified that he [had been] detained at [the] Sablayan Prison and Penal Farm since 1991.

"On June 20, 1994, at around 9:00 p.m., he was sleeping in the medical ward of the prison where he was admitted.

"He stood up when he heard a 'kalabugan'. He saw Laurente and Rios hacking and stabbing Domingo Astrande who was sitting next to the tv. He (witness) was inside the medical ward.

"Domingo Astrande was the guard on duty at the hospital.

"When he saw the incident, he was shocked and could not talk. He saw the two men [run] away.

"Then, he saw Gonzales and Largo going out of the hospital and he followed. They fetched an employee, Sir Marlon Oare, in the compound. Then, they returned to the hospital.

"The employees instructed Largo and Gonzales to fetch the doctor. When Dr. Barreto arrived, he told them to

bring the cadaver of the victim to the house. There they washed and cleaned the body and changed his clothes. He was with Largo and Astrande's wife.

"Then Mr. Gangat picked them up and they were brought to the guard house.

"The next morning, Andres was picked up also and brought to Brigade 4 (TSN, March 1, 1995, pp. 1-6).

"Under cross examination, he said that Bondying or Diada [was] the 'aso-aso' of the employees. (TSN, March 1, 1995, pp. 6-9)."[12]

In his separate Brief,[13] Appellant Antonio Sumilata presented this unusually short statement of facts:

"That all the accused except Rufo Advincula [were] all prisoners serving their respective sentences in the Sablayan Penal Farms, located in Occidental Mindoro.

"That the deceased Domingo Astrande [was] an employee of the said Sablayan Penal Farm as a prison guard.

"That on the night of June 20, 1994, at around 9:50 p.m., prison guard Domingo Astrande, while viewing television inside the building with some of the prisoners, was stabbed and killed by Raymun Rios and Jimmy Laurente and after the killing, they immediately ran away, [and] up to now are still at large.

"On September 19, 1994, an [I]nformation [for] murder was filed by Provincial Prosecutor Gorgonio D. Olarte and on December 9, 1994, an amended Information was filed by the prosecution."[14]

The Trial Court's Ruling

In finding appellants guilty of murder, the trial court explained:

"As to the rest of the accused, they [deserve] to be convicted for their culpable part in the stabbing, hacking and killing of the victim, Domingo Astrande. The chief of the hospital at the Sablayan Prison and Penal Farm, Dr. Vicente Barreto, testified that around five (5) to six (6) sharp instruments were used in inflicting the 27 incised and [hack] wounds sustained by the deceased Domingo Astrande. Since there are only seven (7) accused in this case with the accused Rufo Advincula out of the picture, the testimony of the doctor would show that five (5) or six (6) persons helped each other in killing the victim. All accused were seen in the vicinity or scene of the crime by all prosecution witnesses except the widow of the victim and Dr. Barreto. All prosecution witnesses saw the actual participation of all accused except Rufo Advincula, who were around with knives and 'balila'.

"The five (5) accused in this case: Laurente, Rios, Tugado, Largo, Simulata and Andres are all hardened criminals, serving and facing long sentences for conviction [for] either rape, murder, homicide, parricide and illegal possession of firearms. All the accused in this case, except for Rufo Advincula, are friends and close to each other and with their presence at the scene of the crime armed with knives and "balila" and their actual participation testified to by the prosecution witnesses, conspiracy among the accused could easily be deduced from their presence and actual participation in the commission of the crime. With thirteen (13) wounds on the back of the victim, it could easily be deduced that there was treachery in the commission of the crime which would elevate it to the crime of murder, a heinous crime, covered by the new law reimposing the death penalty. Also present [was] the aggravating circumstance of superior strength considering that six (6) persons helped each other in the commission of [the] crime of murder which could be absorbed by the qualifying circumstance of treachery."

The trial court also debunked Sumilata's assertion that he was maltreated to force him to confess his participation in the crime:

"The defense allegation of accused Simulata that he was subjected to third degree or corporal punishment by prison guard does not hold water, because he could not show any medical certificate to that effect when easily, he could have subjected himself to medical examination at the prison and penal farm hospital. No doctor in the

Sablayan Penal Colony Hospital testified that accused Simulata was treated for injuries he suffered in the hands of prison guards. The testimony of Winston Gonzales for and in behalf of accused Simulata does not, and could not help the latter because they are considered to be very close friends staying in the attendants' quarters of the hospital for quite some time with Winston Gonzales reputed to be "gay". The testimony of Winston Gonzales could easily be considered as biased and slanted in favor of accused Simulata.

xxx xxx xxx"[15]

The Assigned Errors

Appellants Andres, Largo and Tugado fault the trial court with the following:

I

"The trial court erred in giving credence to the testimonies of the prosecution witnesses and disregarding the evidence for the defense.

II

"The trial court erred in finding the accused guilty beyond reasonable doubt of the crime of murder."

Appellant Sumilata, on the other hand, advances the following contentions:

I

"[T]he Honorable Presiding Judge erred in not giving due course to the fact that the appellants did not run away despite the opportunity to do so and especially if there was conspiracy.

II

"[T]he Honorable Presiding Judge erred in not giving credence to the testimony of Appellant Antonio Sumilata.

III

"[T]hat the Honorable Presiding Judge erred in not giving credence to the testimony of prosecution witnesses Nicomedes Tabar and Ante Fernando. Likewise, the defense testimony of Winston Gonzales.

IV

"[T]he Honorable Presiding Judge erred in not considering that the prosecution failed to prove the guilt of accused Antonio Sumilata beyond reasonable doubt."

The four appellants raise arguments revolving around essentially two points: first, the credibility of the witnesses and the sufficiency of the evidence presented by the prosecution; and second, the characterization of the crime committed.

The Court's Ruling

The appeal is devoid of merit.

First Issue: Credibility of Witnesses and Sufficiency of Evidence

Countless times we have ruled that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. This is because the trial court is in a better position to decide the question of credibility, having seen and heard the witnesses themselves and observed their behavior and manner of testifying.[16] In the present case, the Court finds no reason to disturb the factual findings and conclusion of the trial court.

Alleged Inconsistencies

Appellants Andres, Largo and Tugado argue in their Brief that the lower court erred in giving credence to the testimonies of the prosecution witnesses, even if the same were inconsistent in alleged "material points." First, Prosecution Witnesses Danilo dela Cruz and Herbert Diada identified all the appellants as the perpetrators of the crime, but Ante Fernando, another prosecution witness, implicated only Laurente and Rios. Second, Dela Cruz maintained that he alone noticed the stabbing incident, as the other inmates with him were asleep, but Diada and Pablo Cuden also claimed that they were awake at the time. Third, Dela Cruz declared that the door of the medical ward was padlocked, but Nicomedes Tabar asserted that it was open. Fourth, Tabar, in his sworn statement, pointed to Laurente and Rios as the malefactors, but he contradicted himself during the trial when he identified all the appellants as the culprits.

The arguments do not persuade. The alleged inconsistencies disclose no material discrepancies which destroy the credibility of the prosecution witnesses. First, the testimonies of Dela Cruz, Diada and Fernando may all be true -- Dela Cruz and Diada saw all the appellants participating in the crime, while Fernando witnessed only Laurente and Rios running away from the crime scene. It must also be noted that Fernando did not see the fracas that led to Astrande's death.[17]

Second, that Dela Cruz failed to notice that the other inmates were also able to observe the stabbing incident does not necessarily taint his credibility. Apparent conflict in testimonies of eyewitnesses in describing an occurrence may be due to differences in observation and memory which do not necessarily imply falsehood on their part.[18] Also, it has been held that the recollection of different witnesses with respect to time and place and other circumstances of a criminal event would naturally differ in various details.[19]

Third, the alleged conflict between Tabar's testimony and his sworn statement does not denigrate the credibility of the said witness. It has been held that "an affidavit taken ex parte is judicially considered to be almost incomplete and often inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected circumstances necessary for his accurate recollection of the subject." [20]

In any event, a careful perusal of appellants' arguments reveals that the alleged inconsistencies refer only to minor details[21] and not to the crux of the case -- that each of the appellants participated in the killing of Domingo Astrande. It bears emphasis that the testimonies of the prosecution witnesses put the appellants at the scene of the crime. Moreover, the witnesses declared that appellants were not passive observers. Dela Cruz and Diada positively identified all of them as the perpetrators of the attack. Fernando also saw Andres, Largo and Tugado beside or near the dead body of Astrande. Tabar further declared that these three were among those who stabbed Astrande; and that Sumilata, who was holding a knife, was near Astrande's body.

Granting arguendo that the testimonies of Diada and Tabar should not be given much weight, because the former was allegedly close[22] to the prison employees and the latter gave conflicting statements, such circumstances would not negate the fact that the appellants were positively identified by Danilo dela Cruz as follows:

"xxx xxx xxx

Q

Will you tell us what incident happened on June 20, 1994?

A

Yes, sir.

Q

What incident happened?

A

That night, I was awakened by the noise I heard and after that, I peeped [through] the window.

Q

When you peeped [through] the window of the hospital, what happened, if any.

A

I saw Antonio Simulata striking Astrande.

Q

You said Simulata [struck] Astrande[;] where is Simulata now? (Witness pointed to a person who identified himself as Antonio Simulata.)

Q

You said Antonio Simulata [struck] your guard Astrande[;] what kind of strike was used by Simulata?

A

After striking Astrande, he stabbed him at once.

Q

You said that you saw the striking of Astrande, who were the companions of Simulata?

A

He was with Rogelio Andres. (Witness pointed to a person who identified himself as Rogelio Andres.)

Q

Aside from the person who identified [himself] as Rogelio Andres, who were his companions?

A

Bernardo Largo, sir. (Witness pointed to a person who identified himself as Bernardo Largo.)

Q

Who else was with Simulata at that time?

A

Robert Tugado, sir. (Witness pointed to a person who identified himself as Robert Tugado.)

Q

Aside from the person you pointed [to], who were with Simulata at the time?

A

Laurent and Rios[;] they escaped.

xxx xxx xxx

Q

After Simulata [struck] Astrande, who [struck] him?

A

Andres stabbed Astrande.

Q

Where was Astrande hit by Andres?

A

He was hit on the chest.

Q

How about Largo, what did he do?

A

He also stabbed Astrande while Astrande was lying down[;] he was [struck] by Simulata.

Q

How about this Largo, what did he do?

A

While Astrande was lying down near the tv, he stabbed Astrande while holding him.

Q

Was Astrande hit at the time by Largo?

A

Yes, sir.

Q

Where?

A

At the back.

Q

How about Largo, what did he do?

A

When Astrande [stood] up it was the time when the group rambled and they help[ed] each other in striking Astrande.

xxx xxx xxx

COURT

Q

In short, you can fully identify those persons coming from the hall when you peeped [through] the window

because of the light?

A

I can [recognize] them because the light reflected from the [TV] was bright.

xxx xxx xxx"[23]

The foregoing testimony clearly proves that Appellants Sumilata, Largo, Andres and Tugado participated in the commission of the crime. They were present at the crime scene, and they helped each other in attacking Astrande to death.

Evidence Against Sumilata

Appellant Sumilata contends that the lower court erred in not giving credence to the testimonies of Winston Gonzales and Prosecution Witnesses Ante Fernando and Nicomedes Tabar, which allegedly exculpated him from any wrongdoing. He avers that there was no reason for Gonzales, Fernando and Tabar to testify falsely in his behalf. As has been discussed, Fernando testified that he observed Laurente and Rios running away from the dead body of Astrande. Tabar, on the other hand, stated that he saw Sumilata holding a knife, but did not see him stab Astrande.

These contentions are not convincing. Sumilata's identity as one of the killers of Astrande was sufficiently established by Danilo dela Cruz, who had witnessed the killing of Astrande. Nothing was shown to prove that dela Cruz was motivated by any ill motive or bias in giving his testimony, and the Court has held that "an affirmative testimony is far stronger than a negative testimony, especially when it comes from the mouth of a credible witness." [24]

Sumilata's Denial and Alibi

Sumilata likewise avers that the court a quo was wrong in not giving credence to his denial and alibi -- he had claimed that he was already asleep at the attendants' quarters when the commotion happened. To bolster his defense, he said that he was maltreated to force him to confess to the crime, but he remained steadfast in his denial.

His denial and alibi fail in light of the positive identification made by the prosecution witnesses -- he was after all, only "ten arms' length" away from the locus criminis, and it was therefore not physically impossible for him to have been at the scene of the crime at the time of its commission. It is an oft quoted doctrine that positive identification prevails over denial and alibi. [25]

While the maltreatment to which Sumilata was subjected, if true, must be condemned and addressed in the proper forum, his conviction was not based on any confession or admission illegally obtained. Hence, the alleged violation of his constitutional rights is immaterial to the disposition of this case. Allegations of impropriety during custodial investigation are relevant and material only to cases in which an extrajudicial admission or confession extracted from the accused is the basis of conviction. [26]

Other Circumstances

Appellant Sumilata further posits that the trial court should have considered certain circumstances: [27] First, unlike Laurente and Rios, the appellants did not escape despite their opportunity to do so. Second, he had no reason or motive to kill the victim, because he was about to finish serving his sentence. Third, the victim having been a prison guard, the testimonies of the other prisoners could have been tainted with ulterior consideration, force and intimidation.

These arguments do not persuade. That the appellants did not escape or flee from the crime scene does not conclusively show their innocence.[28] In *People v. Layno*,^[29] the Court held that "there is no law or principle which guarantees that non-flight per se is proof, let alone conclusive proof, of one's innocence and, as in the case of alibi, such a defense is unavailing when placed astride the undisputed fact that there is positive identification of the felon."

Equally unavailing is Sumilata's contention that he had no motive in killing Astrande. Motive is not an element of murder. It has been held that proof of motive is not necessary where there is a clear and positive identification of the accused,^[30] as in this case.

Just as unacceptable is appellant's imputation of improper motive on the part of the prosecution witnesses. Because the deceased was a prison guard, Sumilata contends that the prosecution witnesses, who were prisoners, had been induced to testify or coerced to do so. Other than appellant's allegation, however, no proof was presented to substantiate this claim. In fact, the trial judge, who was able to observe the said witnesses during trial, gave credence to their testimonies. The self-serving allegations of Appellant Sumilata do not justify a modification of the trial judge's assessment.

The foregoing considered, we find that the prosecution has proven the appellants' guilt beyond reasonable doubt.

Conspiracy

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.^[31] The existence of 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.^[32] That there was a conspiracy in the killing of Astrande can be seen from the way the appellants attacked him, as testified to by Danilo dela Cruz, and as can be seen from the wounds the victim suffered. We have held that numerous wounds in the body of the victim indicate a plurality of assailants.^[33]

Second Issue: Murder or Homicide?

Appellants Andres, Largo and Tugado assert that, even assuming that they had indeed killed Astrande, they can only be found guilty of homicide, not murder, because treachery was not conclusively proven.^[34] They maintain that the testimonies of the prosecution witnesses did not even reveal how the attack began.^[35]

The crime committed was murder, not homicide. The trial court correctly held that treachery, which was alleged in the Information, qualified the killing of Domingo Astrande. The essence of treachery is a sudden and unexpected attack without the slightest provocation on the part of the person attacked.^[36] There is treachery where the attack on the unarmed victim was sudden, unexpected, with neither warning nor provocation,^[37] as in the present case.

The evidence shows that Domingo Astrande was lying on the bench, watching television, when the appellants suddenly ganged up on him.^[38] Even when the victim was already pleading for his life and trying to break free, the appellants continued their assault.^[39] Granting *arguendo* that no evidence was presented to show the start of the attack, the fact that appellants continued to stab Astrande, even when he was already pleading for his life, sufficiently proves the qualifying circumstance of treachery.^[40] That Astrande was overwhelmed by the attack can be gleaned from the fact that he suffered multiple stab wounds -- twenty-seven in all -- as confirmed by Dr. Barreto, the medicolegal officer who autopsied the body of the victim.^[41]

Abuse of superior strength, not having been alleged in the Information, can be considered merely as a generic aggravating circumstance. The lower court, however, correctly stated that this was deemed absorbed by treachery.^[42]

Murder is punishable with reclusion perpetua to death under Art. 248 of the Revised Penal Code, as amended by Republic Act 7659. Because the killing of Domingo Astrande, although qualified by treachery, was not attended by any other aggravating circumstance, the proper imposable penalty is reclusion perpetua, not "reclusion perpetua to death" as imposed by the trial court.

Damages

The Court affirms the award of P50,000 as indemnity for the death of Domingo Astrande. However, the award of P70,000 as actual damages must be reduced, as the duly documented receipts add up to only P32,000. It is a rule that an alleged pecuniary loss must be established by credible evidence before actual damages may be awarded.[43]

WHEREFORE, the appeal is DENIED. The assailed Decision is hereby AFFIRMED with the MODIFICATION that Appellants Rogelio Andres, Bernardo Largo, Roberto Tugado and Antonio Sumilata are sentenced to reclusion perpetua. The award of actual damages is hereby reduced to P32,000.

SO ORDERED.

Davide, Jr. (Chairman), Bellosillo, Vitug, and Quisumbing, JJ., concur.

[1] This amended Information, signed by Provincial Prosecutor Gorgonio D. Olarte, superseded the earlier Information for murder dated September 9, 1994, filed against the seven accused and Winston Gonzales, who was later on presented as a defense witness.

[2] Sometimes spelled as "Raymund" in the records.

[3] The surname also appears as "Simulata."

[4] Spelled as "Lugado" in the amended Information.

[5] Rollo, p. 9.

[6] Record, p. 39.

[7] Decision, pp. 11-12; rollo, pp. 31-32.

[8] Notice of Appeal, filed on August 14, 1995, was signed by Atty. Dante V. Ramirez for Andres, Largo and Tugado and by Atty. Ernesto F. Jaravata for Appellant Sumilata (record, p. 219). The case was deemed submitted for resolution on April 13, 1998, when the Court received the Consolidated Brief for the Appellee. The filing of a reply brief was deemed waived, as none was filed within the reglementary period.

[9] Spelled as "Barrito" in the records.

[10] Decision, pp. 2-6; rollo, pp. 22-26.

[11] Signed by Attys. Reynold S. Fajardo, Arceli A. Rubin, Amelia C. Garchitorena and Teresita S. de Guzman of the Public Attorney's Office.

[12] Brief for Appellants Rogelio Andres, Bernardo Largo and Roberto Tugado, pp. 16-20; rollo, pp. 64-68.

[13] Signed by Atty. Ernesto F. Jaravata.

[14] Brief for Appellant Antonio Sumilata, pp. 1-2; rollo, pp. 115-116.

[15] Decision, pp. 10-11; rollo, pp. 30-31.

[16] *People v. Talingting*, GR No. 107747, October 20, 1997; *People v. Jagolingay*, GR Nos. 117399-117400, Oct. 16, 1997; *People v. Guia*, GR No. 123172, Oct. 2, 1997; *People v. Talisic*, 278 SCRA 517, September 5, 1997; *People v. Azugue*, 268 SCRA 711, February 26, 1997.

[17] TSN, January 23, 1995. Direct examination of Ante Fernando:

"xxx xxx xxx

Q And what did you notice when you stood up?

A I saw two persons with knives run away.

Q You said that you saw Rios and Jimmy Laurente running away with knives, where did they come from?

A They came from the dead body.

Q Who was that dead body?

A Domingo Astrande.

xxx xxx xxx"

[18] *People v. Salazar*, 277 SCRA 67, August 11, 1997; *People v. Perez*, 265 SCRA 507, December 11, 1996.

[19] *People v. Fabro*, 278 SCRA 304, August 27, 1997; *People v. Orehuela*, 232 SCRA 83, April 29, 1994.

[20] *People v. Marollano*, 276 SCRA 84, 102, July 24, 1997, per Panganiban, J. See also *People v. Maongco*, 230 SCRA 562, March 1, 1994.

[21] See *People vs. Palomar*, 278 SCRA 114, August 21, 1997.

[22] He was allegedly the 'aso-aso' or errand boy of the prison employees. TSN, March 1, 1995.

[23] TSN, December 14, 1994, pp. 2-4, 11.

[24] *People v. Daraman*, GR No. 126046, August 7, 1998; *People v. Bello*, 237 SCRA 347, October 4, 1994.

[25] *People v. Zamora*, 278 SCRA 60, August 21, 1997; *People v. Cogonon*, 262 SCRA 693, October 4, 1996; *People v. Porras*, 255 SCRA 514, March 29, 1996; *People v. Morales*, 241 SCRA 267, February 13, 1995; *People v. Parangan*, 231 SCRA 682, April 22, 1994.

[26] *People v. Tidula*, GR No. 123273, July 16, 1998.

[27] Brief for Appellant Sumilata, pp. 10-14; rollo, pp. 124-128.

[28] *People v. Inocencio*, 229 SCRA 517, January 27, 1994.

[29] 264 SCRA 558, November 21, 1996, citing *People v. Amania*, 248 SCRA 486, September 21, 1995, per Panganiban, J.

[30] *People v. Lapura*, 255 SCRA 85, March 15, 1996; *People v. Rodico*, 249 SCRA 309, October 16, 1995; *People v. Pinto*, 230 SCRA 847, March 9, 1994.

[31] Art. 8, par. 2, Revised Penal Code.

[32] *People v. Palomar*, supra; *People vs. Dinglasan*, 267 SCRA 26, January 28, 1997, *People v. Cabiles, Sr.*, 258 SCRA 271, July 5, 1996.

[33] *People v. Caritativo*, 256 SCRA 1, April 1, 1996.

[34] Brief for Appellants Andres, Largo and Tugado, p. 22; rollo, p. 70.

[35] *Ibid.*, p. 28; rollo, p. 76

[36] *People v. Cawaling*, GR No. 117970, July 28, 1998; *People v. Palomar*, *supra*.

[37] *People v. Zamora*, *supra*; *People v. Cabodoc*, 263 SCRA 187, October 15, 1996.

[38] TSN, January 25, 1995, pp. 10-11.

[39] TSN, January 24, 1995, p. 7.

[40] *People v. Molina*, GR Nos. 115835-6, July 22, 1998.

[41] TSN, January 30, 1995, p. 4.

[42] *People v. Violin*, 266 SCRA 224, January 14, 1997; *People v. Torrefiel*, 256 SCRA 369, April 18, 1996.

[43] *People v. Cawaling*, *supra*; *People v. Sol*, 272 SCRA 392, May 7, 1997.

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