

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FELIPE ESPONILLA AND SAMSON ESPONILLA, APPELLANTS.

G.R. No. 122766. June 20, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal by appellants Felipe Esponilla and Samson Esponilla from the Decision[1] of the Regional Trial Court (RTC) of Iloilo City, Branch 39, in Criminal Case No. 36890 convicting them of murder and sentencing each of them to reclusion perpetua.

In the Information dated October 15, 1991, the appellants were charged with murder committed as follows:

INFORMATION

The Provincial Prosecutor of Iloilo, through the undersigned, accuses FELIPE ESPONILLA and SAMSON ESPONILLA of the crime of MURDER, committed as follows:

That on or about the 28[th] day of June, 1991, in the Municipality of Igaras, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another to better realize their purpose, armed with a firearms (sic) of unknown Caliber, with deliberate intent and decided purpose to kill and with treachery and/or evident premeditation, did then and there wilfully, unlawfully and feloniously assault, attack and shoot Jose Eumag with the firearms with which they were then provided, thereby hitting and inflicting upon the latter gun shot wounds on the different parts of his body which caused his death immediately thereafter.

CONTRARY TO LAW.[2]

At their arraignment, the appellants, with the assistance of their counsel, pleaded not guilty to the charge.

The Evidence of the Prosecution[3]

Spouses Jose Eumag, 61 years old,[4] and Enriqueta Eumag, 69 years old, lived in their farm at the outskirts of Barangay Igtalongon, Igaras, Iloilo,[5] about a kilometer away from the farm of Felipe Esponilla and his brother Samson Esponilla at Barangay Pinaopawan, Igaras, Iloilo. The Spouses Eumag and the Esponilla brothers had known each other for a long time. Felipe in particular used to pass by the house of the Eumags and had borrowed money from Jose.[6] The Eumags had known Samson, Felipe's brother, since his childhood.[7]

But neighborliness metamorphosed into resentment when Jose testified against Dionisio Esponilla, a first cousin of Felipe and Samson, in an arson case filed by Gerardo Eumag,[8] a brother of Jose. While the case was pending trial, Dionisio was detained at the Municipal Jail of Igaras[9] where he committed suicide on February 5, 1989. Consequently, the case was dismissed. On September 14, 1989, Jose was shot on his right thigh but he survived. Felipe and Samson were charged with frustrated murder in an Information filed in the RTC, Iloilo City, Branch 36, docketed as Criminal Case No. 34297, for the shooting of Jose.[10]

As of June 1991, the trial was ongoing. On June 28, 1991, at about 9:30 a.m., Spouses Jose and Enriqueta were in

their rice field, which was about nine hundred meters away from their house, for another day's work of farming.[11] Jose was plowing the field with his carabao while Enriqueta, who was about four arms' length away from her husband, was cutting the grasses. Felipe, Jose's brother, was threshing palay in his farm about one hundred arms' length from where Jose and Enriqueta were. Suddenly, Enriqueta heard a gunshot. She saw her husband fall to the ground, face down. She instinctively looked at the direction from where the gunshot rang out and saw Felipe and Samson beside the dike, about seven meters away from Jose, each holding a firearm still aimed at the victim. She rushed to her husband and helped him stand up, to no avail. She shouted for help. Felipe and Samson backtracked and hurriedly ran away.[12]

Enriqueta frantically waved to Felix, shouting that Jose had been shot. Felix rushed to where Enriqueta was and was aghast to see his brother Jose bloodied all over. Felix and Enriqueta carried Jose to a drier portion of the rice field.[13] By then, Jose was already dead. They decided to bring the victim's body to the poblacion for autopsy.[14] Felipe rushed to the Igaras Police Station and reported the incident. His report was entered by SPO2 Antonio G. Emboltorio in the police blotter.[15] At 12:00 noon, Dr. Priscilla C. Gallo, Medical Officer of Igaras, Iloilo, conducted a post-mortem examination of the cadaver of the victim and made the following findings:

Post-Mortem Examination

Name : JOSE EUMAG Y MORALES

Age : 61 years old

Sex : Male

C.S. : Married

Address : Sitio Tarugan, Brgy. Igtalongon, Igaras, Iloilo

Occupation : Farmer

Date of Incident : June 28, 1991

Time of Incident : 9:30 A.M.

Place of Incident : Brgy. Igtalongon, Igaras, Iloilo

Place of Autopsy : Igaras, Iloilo

Date of Autopsy : June 28, 1991

Time of Autopsy : 12:05 p.m.

Post-mortem examination done by: Dr. Priscilla C. Gallo
Medical Officer
Igaras, Iloilo

Informant: Enriqueta M. Eumag Wife

Findings:

Victim wearing maong pants, blue black T-shirt and maroon/white stripped (sic) polo shirt

Trunk:

Gunshot wound, entrance 5 cm. above the right pelvic rim, 10 mm in size, midscapular line right with multiple exit.

Gunshot wound entrance, right upper outer quadrant of right buttocks

Fracture of the right hipbone noted ;

Cause of death:

Cardio-Pulmonary Arrest

Severe Hemorrhage secondary to gunshot wounds

(SGD.) PRISCILLA C. GALLO, M.D.

Medical Officer

Igbaras, Iloilo.[16]

Dr. Gallo found two gunshot entrance wounds at the right portion of the pelvic bone, each wound about two inches apart. The first entrance wound had multiple exits at the abdominal area, while the second entrance wound had no exit wound. She recovered two pellets at the upper outer quadrant of the buttock. According to Dr. Gallo's report, two wounds could have been caused by a single shotgun blast.[17]

Jose's wake lasted for almost a month.[18] He was finally laid to rest on July 25, 1991.[19] Enriqueta testified that when her husband was still alive, he earned at least ten cavans of palay per cropping. During the extended wake, she spent at least P80,200: P7,500 for funeral services and burial expenses, P600 for religious services, and P72,100 for food and other expenses.[20] All expenses were, however, unreceipted.[21]

During the trial, Felipe pleaded on many occasions to Enriqueta for her to agree to settle the case amicably, and offered to pay her P6,000; but Enriqueta declined.[22] Felipe and Samson's mother also offered to settle the case amicably but Enriqueta was adamant and rejected the offer outright.

The Defenses of the Accused

Felipe and Samson interposed twin defenses of denial and alibi.[23] Felipe testified that he was a farmer who lived in his farm located right at the middle of the boundary of Barangays Tigbanaba and Pinaopawan, Igbaras, Iloilo.[24] He denied shooting Jose. While he admitted that he was not in good terms with the Eumags, Felipe stated that he and his brother Samson, who was at that time in a distant Barangay Anono-o, Guimbal, Iloilo, could not have harmed Jose because if they did, the incident would definitely be attributed to them, considering their strained relationship with the Eumags. Felipe claimed that the charge against them was but a concoction of Enriqueta for refusing her demand of P10,000 for the settlement of the frustrated murder case filed by Jose against them.[25]

Felipe testified that in the morning of June 28, 1991, he was busy at work in his farm the whole day. He went to the nearby farm of Santiago Flores, the President of the Communal Irrigation System and NIA water master, and asked permission to irrigate his farm. He also asked Santiago to help him clear his farm. Santiago agreed. The two cleared and cleaned the two-kilometer irrigation canal for two hours. At about 10:30 a.m., they went back to the

farm of Santiago and took a respite. Thereafter, Felipe checked the flow of the canal and returned to his farm. He took his lunch at his nearby house. He then continued on working the canal and at 6:00 p.m., he called it a day.[26]

Felipe's neighbor Santiago Flores, a relative of the victim and a kagawad of Barangay Tigbanaba, corroborated his alibi. He testified that he was with Felipe irrigating the latter's farm the whole day on June 28, 1991. He testified that at about 7:30 a.m. that day, he was seeding the farm when Felipe arrived and sought his assistance to irrigate his rice field. Santiago obliged and, after thirty minutes, the two went to his house and ate breakfast. Thereupon, the two proceeded to the main irrigation canal and cleared and cleaned it. They diverted the flow of the water towards the rice field of Felipe. The two returned to Santiago's farm at about 10:30 a.m., after which they parted ways.[27] Santiago said that he was persuaded by Felipe and Samson's parents to testify[28] and that at no time did he attend the wake of his deceased nephew.[29]

Samson, for his part, likewise denied any involvement in the killing of Jose. He testified that on June 23, 1991, he was at Delfin Estaño's poultry farm at Barangay Anono-o, Guimbal, Iloilo, and left the farm only on June 28, 1991. It was impossible for him to have killed Jose, as he was fifteen kilometers away from where the killing took place. He never left Delfin's farm until he was picked up by five policemen on June 29, 1991 who brought him to Igaras for investigation. After the investigation, he proceeded to Pinaopawan and helped his father in his farm. When he learned from his brother Felipe that a warrant of arrest had been issued against them, Samson immediately went to the police station and surrendered himself.[30] He and his brother Felipe bore no grudge against Jose despite what had happened to their cousin Dionisio.[31]

Delfin Estaño corroborated appellant Samson's alibi. Delfin said that he had engaged the services of Samson on May 5, 1991 as helper in his poultry. As helper, Samson received P400 per month plus free board and lodging. From that day on until June 29, 1991, Samson had been staying in his place, taking care of his 500 chickens. Delfin averred that at no time did Samson leave his place much less on June 28, 1991. On June 29, 1991, Samson was arrested and stopped working for Delfin.[32] When Delfin confronted Enriqueta about Samson's arrest, she replied that she lodged the charge against Samson and Felipe for refusing to pay her.[33]

Roque Emague testified that at the time of the shooting, he was at the nearby farm of Mario Eurofan[34] grazing his four goats. He was about ten arms' length away from Jose whom he noticed to be all alone. As he was untangling the ropes of his goats that got intertwined, Roque heard a shot and simultaneously noticed a person whom he did not know, shoot Jose at point blank range with a shotgun. Afraid for his life, Roque hid. When he saw the assailant walk towards the creek en route to the mountains, Roque dashed home. Roque described the assassin as tall, small-built, with white complexion, and in his mid-thirties. He said that he never saw Felipe and Samson or Aquilino within the vicinity.[35]

Aquilino Estremera, for his part, testified that at about 9:00 a.m. of June 28, 1991, he was walking along Barangay Igtalongon on his way to his cousin, Juanito Espinosa. As he passed by the farm of the Eumags, he saw Roque tying his goats. Suddenly, a man whom he saw for the very first time shot Jose. He was about ten arms' length away from the victim. Aquilino ran, but stopped and looked back. He saw the assassin flee to the mountains. He also saw Roque scampering. Aquilino described the assailant as tall, skinny, with curly hair, and fair in complexion. He added that he never noticed Enriqueta at the crime scene.[36]

On October 28, 1994, the trial court convicted Felipe and Samson of murder, qualified by treachery. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the accused Felipe Esponilla and Samson Esponilla are hereby found guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Art. 248 of the Revised

Penal Code and there being no mitigating or aggravating circumstance, is hereby sentenced to suffer the penalty of reclusion perpetua.

The accused are further ordered to pay jointly and severally actual damages to the wife of the deceased the total amount of P40,000, and to his legal heirs, the amount of P50,000 for his wrongful death, P30,000 as moral damages and the costs.

The accused Samson Esponilla who is detained is credited with the number of days he spent under detention if he is qualified, otherwise, he shall be credited only with four-fifths (4/5) of his preventive imprisonment.

Pursuant to the case of People vs. Ricardo C. Cortez, G.R. No. 92560, October 15, 1991, the bail bond put up by the accused Felipe Esponilla is cancelled and said accused is hereby ordered detained at the Iloilo Rehabilitation Center, to be transmitted to the National Penitentiary (sic) or Bureau of Corrections in Muntinlupa, Metro Manila, together with the other accused Samson Esponilla, even if they appeal.

SO ORDERED.[37]

The trial court ruled that the prosecution mustered the requisite quantum of evidence to prove their guilt of the crime charged. It held that although the prosecution failed to prove who between the two shot Jose, nevertheless, the prosecution proved that Felipe and Samson conspired to kill Jose, and that one of them shot Jose to death. The court concluded that both of them are liable for the death of Jose.[38]

The trial court said that the appellants failed to prove their twin defenses of denial and alibi. It ratiocinated that it was not physically impossible for the appellants to be at the scene of the crime at the time of the commission thereof. It took into consideration the geographical proximity of the places where the appellants alleged they were at the time. Besides, according to the trial court, alibi crumbles upon positive identification.[39]

In their brief, Felipe and Samson, now the appellants, assert that:

I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF MURDER BASED ON ONE CIRCUMSTANTIAL EVIDENCE

II

GRANTING FOR THE SAKE OF ARGUMENT THAT ACCUSED ARE GUILTY, THE LOWER COURT ERRED IN FINDING A CASE OF MURDER AND NOT HOMICIDE[40]

On the first assignment of errors, the appellants assert that the prosecution failed to present any eyewitness to the actual killing of the victim. The testimony of Enriqueta does not constitute circumstantial evidence sufficient to establish their guilt beyond reasonable doubt. It would be the height of folly for them to have remained at the situs criminis, still toting their guns after one of them had already fired a shot, knowing that it was broad daylight, and Enriqueta could have easily seen and identified them, thus ensuring their prosecution and conviction.

The Office of the Solicitor General (OSG), for its part, contends that the prosecution had adduced a chain of circumstantial evidence sufficient to establish the culpability for the death of Jose:

- i. On June 28, 1993 at around 9:30 a.m., Jose Eumag was plowing his ricefield while his wife Enriqueta was pulling weeds or grasses;
- ii. Suddenly, a gunshot was fired which hit Jose and caused him to fall on the ground face down;
- iii. Enriqueta shouted for help; looked at the place where the gunshot came from; and, saw the appellants Felipe and Samson still pointing their guns on her fallen husband Jose;
- iv. Immediately after Enriqueta saw the appellants still pointing their guns at her fallen husband, appellants

Felipe and Samson ran away.

The combination of all the abovementioned circumstances produces the needed proof beyond reasonable doubt that indeed the appellants are guilty of killing their victim Jose.

Said circumstances are further corroborated by the testimony of prosecution witness Dra. Priscilla C. Gallo to the effect that the victim Jose suffered two (2) gunshot wounds caused by one (1) gunshot blast (tsn., Dra. Priscilla C. Gallo, April 20, 1992, p. 26).

It is to be observed that the testimony of prosecution witness Enriqueta as to the circumstances surrounding the shooting of her husband Jose to death by the appellants was direct, clear and straight-forward.

Besides, no motive on the part of prosecution witness Enriqueta to falsely testify against the appellants was established (*People v. Laurora*, 211 SCRA 202; *People v. Bechayda*, 212 SCRA 336).[41]

The Court agrees with the ruminations of the OSG. It is not absurd for the appellants to have committed the crime in broad daylight and brazenly tarry before fleeing from the situs criminis. Such devil-may-care attitude is not uncommon for criminals. Indeed, some criminals intentionally reveal their identities to witnesses to sow fear in them, and demonstrate defiance of the law. In this case, the appellants killed Jose in broad daylight in full view of Enriqueta. The appellants wanted Enriqueta to know that they and no one else killed Jose for testifying against Dionisio and for charging them for frustrated murder. Even as Jose was already mortally wounded, the appellants still pointed their guns at Jose and made it clear to Enriqueta that they had shot Jose. Jose may have survived when he was shot on September 14, 1989; they saw to it that Jose will not survive the second time around.

Admittedly, Enriqueta Eumag did not actually see any of the appellants shoot her husband. Nonetheless, direct evidence is not a condition sine qua non for the conviction of an accused. Direct evidence of the commission of a crime and the perpetrators thereof is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[42] Under the Rules of Court[43] and pursuant to settled jurisprudence, conviction may be had even on circumstantial evidence provided three requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. For circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt.[44]

Wharton suggests four basic guidelines in the appreciation of circumstantial evidence, to wit: (1) it should be acted upon with caution; (2) all the essential facts must be consistent with the hypothesis of guilt; (3) the facts must exclude every other theory but that of guilt; and (4) the facts must establish such a certainty of guilt of the accused as to convince the judgment beyond a reasonable doubt that the accused is the one who committed the offense.[45] The peculiarity of circumstantial evidence is that the guilt of the accused cannot be deduced from scrutinizing just one particular piece of evidence. It is more like a puzzle which, when put together, reveals a remarkable picture pointing towards the conclusion that the accused is the author of the crime.[46]

In this case, the prosecution adduced sufficient testimony and physical evidence, albeit circumstantial, to prove that indeed the appellants killed the victim.

First, Enriqueta narrated the lurid details of how the appellants killed the victim in broad daylight at a relatively close range:

FISCAL BARRIOS:

Q In the morning of June 28, 1991, about 9:30 o'clock more or less, can you still recall where were you?

A I was at the farm.

Q Do you have companion when you said you were in your farm that morning of about 9:30 o'clock of June 28, 1991?

A My husband, who is plowing our farm at that time.

Q Where is that farm of yours located, what barangay?

A At Barangay Igtalongon.

Q You said you were together with your husband who was then plowing your farm or field, can you tell the Court how far were you at your husband at that particular time of June 28, 1991?

A About four arms length.

Q

Now, where were you sitting in relation to your husband who was then I withdraw the question.

Q Now in relation to your husband, who was then plowing the field, where were you situated?

A I was at the right side.

Q And while you were at the right side, what were you doing then at that particular time?

A I was pulling grasses.

Q And at that particular moment, about four arms length to the right side of your husband, was there any unusual incident that happened?

A I heard a shot.

Q And what happened when you heard a shot?

A My husband fell down on his stomach.

Q

How many shots did you hear?

A One.

Q And when you saw your husband fell down on the ground on his stomach, what else happened or what did you do?

A I tried to help my husband and I was shouting for help.

Q Before you went to your husband to let him stand and before you shouted for help, did you see anybody within the premises where your husband fell?

A Felipe and Samson Esponilla.

Q Where were they in relation to your husband before your husband fell?

A At the side of the dike at the back of my husband.

COURT:

At the side of what?

WITNESS ANSWER:

At the side of the dike at the back of my husband.

FISCAL BARRIOS:

When you saw these Samson and Felipe Esponilla to the direction or rather at the back towards the direction at the back of your husband, what were they doing?

A I saw them pointing their gun to my husband.

Q Who was holding the firearm?

A Two of them.

Q When you saw them still pointing their firearms, your husband had already fallen on the ground?

A Yes, sir.

Q

How far were they from your husband from the place where your husband was, when you saw them still pointing with their firearms?

A Five arms' length.

Q Now, when you saw them still pointing their firearm, your husband had already fallen on the ground, to whom or what direction were they pointing their firearm?

A At my husband.

Q You said that you then went to your husband to let him stand up and shout for help, can you tell us what did these two accused do when you shouted for help?

A They run away.

Q To what direction did you see them run away?

A At the back of my husband.[47]

Second. Enriqueta testified that aside from her, there was no other person in the periphery where her husband was shot:

Q Immediately before and after your husband was shot to death by the two accused, Felix and Samson Esponilla, can you tell if there were persons within or near the premises were (sic) you and your husband (were) at the time, aside from the accused Felix and Samson Esponilla?

A No more, sir.

Q When you look to the direction where you saw the two accused Felipe and Samson Esponilla, you saw them still in the position of pointing their firearm towards your husband, what was or what were their position, were they standing or sitting or squatting?

A They are standing.[48]

The trial court concluded that Enriqueta was a credible witness and her testimony entitled to full probative weight. So does this Court. It is the trial court and not this Court that had the opportunity to observe Enriqueta's manner of testifying, her furtive glances, her calmness, sighs, or the scant or full realization of her oath.[49] The trial court's assessment of the credibility of witnesses is entitled to respect.[50] After all, it is well-settled that where there is no evidence that the witness against the accused was actuated by any improper motive, and absent any compelling reason to conclude otherwise, her testimony will be given full faith and credit.[51]

Third. The prosecution convincingly established that the appellants were driven by a personal grudge against the victim. There was no love lost between the victim and the appellants, who ascribed to Jose the death of their cousin Dionisio. The criminal case for frustrated murder against the appellants for the shooting of Jose was pending in the RTC, Branch 36, Iloilo City. Aside from the appellants, no one was known to harbor a grudge against the victim.

Motive is a key element when establishing guilt through circumstantial evidence. Coupled with enough circumstantial evidence or facts from which it may be reasonably inferred that the accused was the malefactor, motive may be sufficient to support a conviction.[52]

Fourth. Dr. Priscilla C. Gallo, who conducted the post-mortem examination on Jose, testified that the wounds sustained by the latter could have been caused by a single gunshot blast at the back. This dovetailed with the testimony of Enriqueta that she heard one gunshot and that immediately after Jose was shot, she saw the appellants, each armed with a gun, only seven meters behind Jose.

Fifth. When Enriqueta shouted for help, the appellants fled from the situs criminis. Flight is an implied admission of guilt. It betrays a guilty conscience; it is silent yet a resounding admission of guilt.[53]

Sixth. Enriqueta testified that appellant Felipe and appellants' mother repeatedly offered to settle the case for the appellants to escape prosecution and conviction for the crime charged. The appellants never offered a morsel of evidence to controvert the testimony of Enriqueta. In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be amicably settled or compromised, an offer of compromise by the accused is an implied admission of guilt.[54]

The above-cited circumstances taken together constitute one unbroken chain leading to the fair and reasonable conclusion that the appellants, to the exclusion of others, shot the victim to death.[55]

It does not matter who of the two appellants actually shot Jose. As correctly held by the trial court, the appellants conspired to kill Jose. The act of one is the act of both.[56]

Case law has it that conspiracy need not be established by direct evidence of acts charged, but may and generally must be proved by a number of indefinite acts, conditions, and circumstances which vary according to the purpose accomplished. Previous agreement to commit a crime is not essential to establish conspiracy, it being sufficient that the condition attending its commission and the acts executed may be indicative of a common design to accomplish a criminal purpose and objective. If there is a chain of circumstances to that effect, conspiracy has been established.[57]

Thus, the rule is that conspiracy must be shown to exist by direct or circumstantial evidence, as clearly and convincingly as the crime itself. In the absence of direct proof thereof, as in the present case, it may be deduced from the mode, method, and manner by which the offense was perpetrated or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest. Hence, it is necessary that a conspirator should have performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed. The overt act may consist of active participation in the actual commission of the crime itself or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators.[58]

In the case at bar, it was established that the appellants suddenly arrived at the farmland of the victim, each armed with a gun. Even as Jose was shot, both the appellants tarried at the scene, their firearms pointed at the fallen victim, ready to finish him off. They left the situs criminis together after Enriqueta had shouted for help. There is no evidence that one prevented the other from shooting the victim. The acts of the appellants before, during and after the commission of the crime indicated a joint purpose and design, concerted action, and community of interest. If one of the two shot the victim, the other, armed with a lethal weapon, was nonetheless present at the scene of the crime, undoubtedly to lend moral and material assistance to the actual assassin — another badge of conspiracy. Thus, the appellants as conspirators are equally liable as the principals for the crime. As the State Supreme Court of Hawaii held:

Conspirators are one man, they breathe one breath, they speak one voice, they wield one arm and the law says that the acts, words and declarations of each, while in the pursuit of the common design, are the acts, words and declarations of all.[59]

It is pointless for the Court to still ascertain who among the appellants shot the victim.

The trial court correctly overruled the appellants' defenses of denial-alibi. For the defense of alibi to prosper, the defense must establish positive, clear and satisfactory proof that it was physically impossible for the appellants to have been at the scene of the crime at the time of its commission, and not merely that they were somewhere else.[60] Alibi is one of the weakest, if not the weakest, of defenses in criminal prosecution because it is easy to fabricate and difficult to disprove. The appellants' barefaced denial of the crime charged which is merely negative and self-serving, cannot prevail over the straightforward, positive and spontaneous testimony of Enriqueta. As regards appellant Felipe, his evidence would indicate that Barangay Tigbanaba, where he allegedly spent the whole day, was only two kilometers away[61] from the scene of the crime and could be negotiated by a trek.[62] The same is true with appellant Samson, Barangay Anono-o, Gimbab, Iloilo, where he was allegedly working as helper for Delfin Estañol, was only less than an hour away from Barangay Igtalongon by jeep.[63] Thus, even if the appellants were respectively seen at these locations, it was not physically impossible for them to have gone to the locus criminis at the time the crime was committed, and thereafter return to the said places.

The Court is not impervious to the testimony of appellant Felipe Esponilla, that Enriqueta demanded P10,000 for the settlement of Criminal Case No. 32497 and threatened that if he refused, she will file another criminal case against him:

Q According to you, you were not in the farm of Jose Eumag in the morning of June 28, 1991, and you were not also in the company of your brother Samson Esponilla, and furthermore, you said you have not shot Jose Eumag that morning of June 28, 1991, can you tell us if you were in good terms with Enriqueta Eumag on June 28, 1991?

A No more.

Q Can you tell us the reason why you were not in good terms with Enriqueta Eumag on June 28, 1991?

A Because she was asking me the amount of Ten Thousand Pesos for the dismissal of the case she filed against me, the case of frustrated homicide, but I told her that I have not done this crime and you have to dismiss it. I told her that it was not true, that she was just daydreaming and she got angry of me.

Q This other case, this frustrated homicide case, in what court is this case pending?

A In branch 36.

Q When you said that Enriqueta Eumag asked for Ten Thousand Pesos to be paid by you and you refused, can you tell us what did Enriqueta Eumag answer in reply to you?

A She told me that if I am not going to pay her she will file again an additional case.[64]

The Court finds the testimony of the appellant incredible. For one thing, the appellant never claimed in the counter-affidavit he filed with the Office of the Investigating Prosecutor that Enriqueta demanded P10,000.[65] This Court does not believe that Enriqueta, who was 69 years old when the crime was committed, would tergiversate the truth and falsely charge the appellants for murder, a quasi-heinous crime, in consideration of P10,000.

The Crime Committed by the Appellants

On their second assignment of error, the appellants assert that if found guilty, they should only be made liable for the crime of homicide and not for murder. They claim that the prosecution failed to prove the existence of the qualifying circumstance of treachery.

The Court does not agree. The trial court correctly appreciated treachery as having qualified the killing of the victim to murder. Treachery is present when the shooting was unexpected and sudden, giving the unarmed victim no chance whatsoever to defend himself. The two conditions for treachery to be present are (1) that at the time of the attack, the victim was not in a position to defend himself, and (2) the offender consciously adopted the particular means, method, or form of attack employed by him.[66]

In the case at bar, the victim was shot at the back. Though the Court is not unmindful that a shot at the back of the victim's body is not conclusive proof that there was treachery, nonetheless, in this case, the victim was in a wide open field, plowing his farm. The attack was a complete surprise and was unprovoked. There was hardly any risk at all to the appellants. The victim was plowing his farmland, completely impervious that death was at hand. He was unarmed and was not in a position to defend himself against the assault of the appellants. Clearly, he was killed in a treacherous manner.

The appellants are therefore guilty of murder, the prescribed penalty for which, under Article 248 of the Revised Penal Code, is reclusion perpetua to death. There being neither mitigating nor aggravating circumstance that attended the killing, the lesser of the two indivisible penalties shall be imposed, i.e., reclusion perpetua, pursuant to Article 63 (2) of the Revised Penal Code.

Civil Liabilities of the Appellants

The trial court correctly awarded to the heirs of the victim civil indemnity in the amount of P50,000 which needs no proof other than that of the death of the victim.[67] However, the amount of P30,000 moral damages should be increased to P50,000 in line with prevailing jurisprudence.[68] The Court cannot sustain the award of actual damages in the amount of P40,000 considering that there were no receipts presented to support them.[69] Nevertheless, the heirs are entitled to temperate damages in the amount of P25,000.[70]

Finally, the trial court was correct in not awarding damages for lost earnings. The prosecution merely relied on Enriqueta Eumag's self-serving statement, that her husband was earning at least ten cavans of palay per cropping as farmer. Compensation for lost income is in the nature of damages and requires due proof of the amount of the damage suffered. For loss of income due to death, there must be unbiased proof of the deceased's average income. Also, the award for lost income refers to the net income of the deceased, that is, his total income less his average expenses. In this case, Enriqueta gave only a self-serving testimony of her husband's income. No proof of the victim's expenses were adduced; thus, there can be no reliable estimate of his lost income.[71]

WHEREFORE, the assailed Decision of the Regional Trial Court, Iloilo City, Branch 39, in Criminal Case No. 36890, is hereby **AFFIRMED WITH MODIFICATION**. Appellants Felipe Esponilla and Samson Esponilla are ordered, jointly and severally, to pay the heirs of the victim Jose Eumag civil indemnity in the amount of P50,000, moral damages in the amount of P50,000, and temperate damages in the amount of P25,000.

Costs de officio.

SO ORDERED.

Bellosillo, (Chairman), and Quisumbing, JJ., concur.

Austria-Martinez, J., on official leave.

[1] Penned by Judge Jose G. Abdallah.

[2] Records, p. 1.

[3] The prosecution presented three witnesses: Enriqueta Eumag, Dr. Priscilla Gallo, and SPO4 Marcos Tañales, Jr.

[4] Records, p. 104.

[5] Id. at 51.

[6] Id. at 52.

[7] Id. at 252.

[8] TSN, 10 January 1994, p. 10 (Samson Esponilla).

[9] Records, p. 61.

[10] Id. at 59.

[11] Id. at 89.

[12] Id. at 52-59; 90-93.

[13] Id. at 55-56.

[14] Id. at 58.

[15] Id. at 106.

[16] Id. at 105.

[17] Id. at 69-74.

[18] Id. at 62.

[19] Id. at 88.

[20] Id. at 87.

[21] Id. at 107.

[22] Id. at 288-290 (rebuttal).

[23] The appellants testified and presented, as witnesses, Santiago Flores, Roque Emague, Aquilino Estremera and Delfin Estañol.

[24] Records, p. 260.

[25] Id. at 265-266.

[26] Id. at 261-264.

[27] Id. at 115-118.

[28] Id. at 126.

[29] Id. at 124.

- [30] Id. at 243-247.
- [31] Id. at 284.
- [32] Id. at 219-222.
- [33] Id. at 311-312 (Surrebuttal).
- [34] Id. at 280.
- [35] Id. at 143-147.
- [36] Id. at 175-178.
- [37] Id. at 337-338.
- [38] Id. at 332-333.
- [39] Id. at 333-334.
- [40] Rollo, p. 122.
- [41] Id. at 124-126.
- [42] *People v. Danao*, 253 SCRA 146 (1996).
- [43] Section 4, Rule 133, Revised Rules of Court.
- [44] *People v. Gallarde*, 325 SCRA 200 (2000).
- [45] *People v. Orcula, Sr.*, 335 SCRA 129 (2000).
- [46] Id.
- [47] TSN, 20 April 1992, pp. 4-7 (Felipe Esponilla).
- [48] Id. at 7-8.
- [49] *People v. Gonzales*, 338 SCRA 371 (2000).
- [50] *People v. Lomerio*, 326 SCRA 530 (2000).
- [51] *People v. Dacibar*, 325 SCRA 725 (2000).
- [52] *People v. Taliman*, 342 SCRA 534 (2000).
- [53] *People v. Mendoza*, 332 SCRA 485 (2000).
- [54] Section 27, Rule 130, Rules of Court.
- [55] *People v. Mendoza*, 301 SCRA 66 (1999).
- [56] *People v. Taliman*, 342 SCRA 534 (2000).
- [57] Ibid.
- [58] *People v. Mendoza*, *supra*.
- [59] *Territory v. Goto*, 27 Hawaii 65 (1923).
- [60] *People v. Molina*, 311 SCRA 517 (1999).

- [61] Records, p. 267.
- [62] Id. at 268.
- [63] Id. at 224.
- [64] TSN, 4 March 1994, p. 8, (Samson Esponilla).
- [65] Records, pp. 4-11.
- [66] *People v. Gutierrez, Jr.*, 302 SCRA 643 (1999).
- [67] *People v. Abadies*, G.R. No. 135975, 14 August 2002.
- [68] *People v. Catampongan*, 318 SCRA 674 (1999).
- [69] *People v. Orcula, Sr.*, *supra*.
- [70] *People v. Garcia*, G.R. 145505, 14 March 2003.
- [71] *People v. Garcia*, G.R. No. 132915, 6 August 2002.

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