

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LAURO MARTINEZ, ACCUSED-APPELLANT.

G.R. No. 124892. January 30, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is an appeal from the Decision of the Regional Trial Court of Romblon, Branch 81 in Criminal Case No. 1735 that found herein accused-appellant LAURO MARTINEZ (LAURO) guilty of the murder of RIZALINA ROTONI (RIZALINA).

LAURO and four other co-accused, namely, Herminio Rase, Angeles Martinico, Primitivo Rollon and Ruben Real were charged in an information that reads:

"That on or about the 27th day of September, 1987, at around 11:00 o'clock in the evening, in sitio Cabangahan, barangay Danao, municipality of Cajidiocan, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, conspiring, confederating and mutually helping one another, did then and there, by taking advantage of their superior strength and with evident premeditation, willfully, unlawfully and feloniously, in consideration of a price, reward or promise, attack, assault, hack and shoot one RIZALINA R. ROTONI, with the use of bladed weapons and firearms, inflicting upon the latter multiple mortal injuries in different parts of her body which were the cause of her death.

Contrary to law, with the aggravating circumstances of nocturnity purposely sought by the accused in the commission of the offense, with insult or in disregard of the respect due the offended party on account of her age and sex and the crime was committed in the dwelling of the offended party."[1]

On March 21, 1990, all the accused except for Real who was at large, pleaded not guilty to the crime charged.

At the trial, the prosecution presented (1) Dr. Benito M. Male, Jr., Medical Officer IV; (2) German Rotoni, husband of the victim; (3) Mirasol Parolan, granddaughter of the victim; (4) Alta Rotoni-Alcala, daughter of the victim; (5) Lilia Rotoni-Parolan, daughter of the victim; (6) SPO4 Roque Altobano, member of the Philippine National Police (PNP); (7) Jose Rotoni, son of the victim; (8) Noel Riano, laborer; (9) SPO3 Rodolfo Riño, Sr., Assistant Station Commander, PNP Magdiwang, Romblon; and (10) Atty. Cesar M. Madrona, Public Attorney's Office.

The defense presented (1) accused-appellant LAURO himself; (2) his co-accused Herminio Rase; (3) Gerry Maron, farmer; (4) Willard Reta, farmer; (5) Joselito Venus, farmer; (6) Prisca Riñon Martinez, farmer; and (7) Luis Rotoni, farmer and carpenter, while co-accused Angeles Martinico testified on his behalf. Co-accused Primitivo Rollon died on May 17, 1994 as evidenced by a death certificate dated December 2, 1994.

The Office of the Solicitor General summarizes the version of the prosecution regarding of the brutal slaying of RIZALINA as follows:

"The spouses Rizalina Rotoni and German Rotoni reside at Sitio Cabangahan, Barangay Danao, Cajidiocan, Sibuyan Island, Romblon.

At around 8 o'clock in the evening of September 27, 1989, the couple slept together with their granddaughter, Mirasol Parolan, in one room of their house (p. 9, TSN, June 10, 1991). Mirasol is the daughter of Lilia Rotoni Parolan who lives a few meters away from the house of the couple while Lilia is the couple's daughter.

At around 11 o'clock in the evening, the household was awakened by someone knocking on the gate and asking to buy gasoline (pp. 9-10, TSN, June 10, 1991). Wearily, German got out of bed and took the key to the kamalig where the gasoline was stored. Flashlight in hand, he went outside the house, leaving its door open (pp. 12-13, TSN, June 10, 1991). German proceeded to the gate where Primitivo Rollon and Angeles Martinico awaited him (p. 42, July 20, 1990). He asked the duo how much gasoline they wanted to buy (p. 7, July 20, 1990). Primitivo Rollon answered one (1) gallon and handed over a plastic container. German proceeded to the kamalig. Left alone, Angeles Martinico and appellant surreptitiously entered the Rotoni house (p. 14, TSN, Aug. 6, 1992). When German returned to the gate, he found nobody there (p. 7, TSN, July 20, 1990) so he decided to go back to the house (p. 11, TSN, July 20, 1990). As he passed by a stack of hollow blocks, Angeles suddenly emerged and clutched German's neck (p. 50, TSN, July 20, 1990). German fought back but Angeles overpowered him (pp. 48, 49 & 50, TSN, July 20, 1990). At a point in their struggle, German managed to disengage himself and fled (p. 12, TSN, July 20, 1990).

Rizalina followed German. On her way, she met appellant at the door (pp. 14-15, TSN, June 10, 1991). Without warning, appellant boxed Rizalina on the left face (p. 15, TSN, June 10, 1991). Then he aimed and fired his handgun at her but missed (p. 15, TSN, June 15, 1991). He grabbed her and dragged her outside the house (p. 15, TSN, June 10, 1991).

Meanwhile, Jose Rotoni who was awakened by the gunshots (p. 5, TSN, April 7, 1992) proceeded to the gate of the victim's house (p. 6, TSN, April 7, 1992). There, he saw appellant who was outside the gate dragging out Rizalina (p. 6, TSN, April 7, 1992). Jose rushed to the gate and held Rizalina's waist to pull her back inside (p. 8, TSN, April 7, 1992). Appellant shouted "(B)arila na! Barila na! para mapatay na ini" (Shoot! Shoot! So she will die) (p. 9, TSN, April 7, 1992). Jose Rotoni was fired at but he was not hit (p. 10, TSN, April 7, 1992). Jose Rotoni ran to the kamalig to get a crowbar (p. 9, TSN, April 7, 1992). At this juncture, Angeles Martinico hacked the victim on the neck (p. 14, TSN, Aug. 6, 1992). Thereafter, the attackers fled.

Jose Rotoni and Alta Rotoni Alcala brought the victim who was still alive to the latter's house (p. 19, TSN, June 10, 1991). Mirasol Parolan followed them (p. 19, TSN, June 10, 1991). Once inside the house, they put the victim on the floor (p. 19, TSN, June 10, 1991). Alta Rotoni Alcala told the victim "(N)ay dayhon ta kaw sa hospital?" (Mother, I will bring you to the hospital) and the victim responded "(I)ndi na" (Do not bother) (pp. 19-20, TSN, June 10, 1991). Aunt Alta inquired from the victim, "(S)i Lauro ba ang naghimo ini sa imo?" (Was it Lauro who did this to you), the victim answered "(S)iya" (He was the one) (pp. 20, 21, TSN, June 10, 1991). Aunt Alta finally asked her "(S)i Felomino Renon ba kay kaibahan sa paghimo nii sa imo? (Was Felomino Renon also one of those who did this to your?) The victim did not reply (p. 22, TSN, June 10, 1991).

Dr. Benito Maler, Jr., (sic) Medico-Legal Officer of Sibuyan District Hospital conducted an autopsy on the victim's corpse. Dr. Male testified that the victim sustained a 10-inch long wound at the left side of the base of the neck, a six-inch long wound at the left side of the neck, another wound on the left shoulder and mandible (pp. 5-7, TSN, July 19, 1990). Furthermore, the victim suffered abrasions on both knees and hands which could have been caused by the dragging of the victim (pp. 7-8, TSN, July 19, 1990). The victim also suffered one (1) gunshot wound in the navel (pp. 8-9, TSN, July 1, 1990)."[2]

Accused-appellant LAURO disclaimed any participation in the murder of RIZALINA and raised alibi as his defense before the court a quo.

On the night that the crime occurred, accused-appellant LAURO was allegedly at the betamax show house of

Flosie Hormego (Hormego) in Danao, Cagidocan, Romblon from 8:30 to 10 p.m., drinking in the company of Percelito Reta, Gerry Marron, Renfredo Ruga and Willard Reta. Thereafter, they transferred to the kitchen of Hormego where they continued drinking and proceeded to argue about the previous congressional elections until about 1 to 1:30 in the morning of the following day. After they finished drinking, LAURO slept, upon the invitation of Gerry Marron, in the house of Myrna Marron, the mother of Gerry Marron.

Willard Reta corroborated the testimony of accused-appellant LAURO regarding the drinking session. Joselito Venus, neighbor of Hormego, confirmed in his testimony in court and his affidavit that his evening rest was inordinately disturbed by the group's argumentation. Joselito Venus allegedly tried to approach the group to stop the ruckus and it was at this time, at exactly 11 p.m., that Joselito Venus saw accused-appellant LAURO with said group, arguing with Renfredo Ruga.

After trial, the court a quo promulgated the now assailed judgment that reads:

"WHEREFORE, this Court finds both co-accused LAURO MARTINEZ and ANGELES MARTINICO GUILTY beyond reasonable doubt of the crime of MURDER under the Information, dated December 26, 1989, and sentences each of them to suffer the penalty of reclusion perpetua, with the accessory penalties of the law.

Both said co-accused, jointly and severally, are ORDERED to pay the heirs of RIZALINA R. ROTONI the sum of P50,000.00 as indemnity for death, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The bail bond of co-accused Angeles Martinico is ORDERED CANCELLED and said co-accused is ordered immediately confined in jail.

The periods of preventive imprisonment which both co-accused may have undergone shall be credited in their favor to their full extent pursuant to Article 29 of the Revised Penal Code, as amended.

The case against co-accused RUBEN REAL who is at large is ORDERED ARCHIVED pending his arrest.

The case against co-accused Primitivo Rollon who died on May 17, 1994 is DISMISSED and his bail bond is ORDERED CANCELLED.

Co-accused HERMINIO RASE is entitled to acquittal, as he is hereby ACQUITTED, of the charge of murder under the aforesaid Information, his guilt beyond reasonable doubt not having been established. The bail bond filed for his provisional liberty is automatically cancelled (Section 22, Rule 114, 1985 Rules on Criminal Procedure, as amended by Administrative Circular No. 12-94, dated August 16, 1994).

SO ORDERED."[3]

Hence, this appeal brought solely by accused-appellant LAURO who relies upon the following issues:

"ASSIGNMENT OF ERRORS

I

THE COURT A QUO ERRED IN NOT FAVORABLY CONSIDERING APPELLANT LAURO MARTINEZ' DEFENSE;

II

THE COURT A QUO ERRED IN TOTALLY DISREGARDING THE UNCONTRADICTED TESTIMONY OF SPO3 PERCELITO CLUB;

III

THE COURT A QUO ERRED IN ACCORDING PRECIPITATE CREDULITY TO THE TESTIMONIES OF

THE WITNESSES FOR THE PROSECUTION DESPITE THEIR GLARING CONTRADICTIONS, INCONSISTENCIES AND IMPROBABILITIES;

IV

THE COURT A QUO ERRED IN FINDING THAT APPELLANT LAURO MARTINEZ AND ACCUSED ANGELES MARTINICO CONSPIRED IN KILLING RIZALINA ROTONI; AND

V

THE COURT A QUO ERRED IN NOT ACQUITTING APPELLANT LAURO MARTINEZ OF THE CRIME CHARGED AND FINDING HIM CIVILLY LIABLE FOR THE DEATH OF RIZALINA ROTONI."[4]

After a careful evaluation of the evidence on record, we hold that the trial court did not err in convicting accused-appellant LAURO for the murder of RIZALINA.

Accused-appellant LAURO insists that the evidence taken in its entirety will readily show that he was merely accused of the crime "in view of the bad blood between the Rotoni and the Martinez families"[5] and that he was "the most expedient and simplistic suspect".[6] The acrimonious relationship between him and the victim's kin allegedly stemmed from land disputes. Proof of this supposed bad blood is the fact that prior to RIZALINA's death, she had filed criminal cases against accused-appellant LAURO. Accused-appellant LAURO cites the testimony of Alta Rotoni Alcala to the effect that he together with Filomino Rinon challenged the family of RIZALINA to a fight to the finish ("ubusan ng lahi").

We do not find merit in accused-appellant's claim that he was convicted merely because he was an expedient suspect. The evidence of the prosecution, which the trial court described as "overwhelming"[7], established beyond reasonable doubt his guilt in the conspiracy to murder RIZALINA. The dying declaration of RIZALINA pointing to accused-appellant LAURO as the killer; the testimony of Mirasol Parolan, who was present at the scene of the incident that fateful night, positively identified accused-appellant LAURO as the one who boxed RIZALINA, fired the first shot, and dragged RIZALINA[8]; and the testimony of Jose Rotoni who recognized the voice and body of the person who was dragging the body of RIZALINA to be that of accused-appellant LAURO[9] establish with certainty the participation of accused-appellant LAURO in the murder of RIZALINA.

Accused-appellant LAURO tried to account for his whereabouts on the night that the victim was killed. He contends that he was not at the scene of the crime which occurred around 11 p.m. since he was drinking with a group of people at the betamax show house from 8:30 p.m. to 10 p.m. that same evening. The group then transferred to the kitchen wherein they allegedly continued drinking up to 1:30 a.m. the following day. Accused-appellant LAURO claims that he was with Gerry Marron after the drinking session and went with the latter to sleep at the house of Myrna Marron, mother of Gerry Marron. He implores this Court to give credence to his defense of alibi considering that it is allegedly duly supported by the testimonies of Willard Reta, Gerry Marron, and Joselito Venus.

We are not convinced. The defense of alibi requires an accused to prove his presence in another place at the time of the perpetration of the offense and to demonstrate that it would thus be physically impossible for him to be at the scene of the crime.[10] For alibi therefore to prosper, two (2) elements must concur: (a) the accused was in another place at the time the crime was committed and, (b) it would be physically impossible for the accused to be at the scene of the crime at the time it was committed.[11]

In rejecting accused-appellant LAURO's alibi, the trial court noted that the betamax show house where accused-appellant LAURO was drinking is about two (2) kilometers from his house which in turn is only ten (10) meters away from the house of RIZALINA.[12] The Marron house where accused-appellant LAURO slept is

about two kilometers from the house of RIZALINA and this distance can be negotiated within 20 minutes even by walking leisurely.[13] In light of these factual findings, it can be reasonably concluded that it was not physically impossible for accused-appellant LAURO to have been at the scene of the crime. Nowhere in the testimonies of Willard Reta, Gerry Marron, and Joselito Venus was it categorically stated that they never lost sight of accused-appellant LAURO that fateful night. The short distance between the scene of the crime and the Marron house when juxtaposed with the positive identification by Mirasol Parolan of accused-appellant LAURO and the dying declaration of RIZALINA that accused-appellant LAURO was her assailant, convincingly demolish accused-appellant LAURO's defense of alibi. No jurisprudence in criminal cases is more settled than that alibi is the weakest of all defenses, for which reason it should be rejected when the identity of the accused is sufficiently and positively established by credible eyewitnesses to the crime.[14]

While it may be true that the alibi of accused-appellant LAURO is corroborated by three witnesses, it is worth stressing that alibi must receive credible corroboration from disinterested witnesses.[15] Notably, two of the defense witnesses who corroborated the alibi of accused-appellant LAURO are related to him. Gerry Marron is a first cousin[16] while Willard Reta is a relative by affinity of accused-appellant LAURO.[17] Joselito Venus at first denied any kind of relationship with accused-appellant LAURO but upon cross-examination, it was revealed that accused-appellant LAURO testified in a murder case for the prosecution wherein the victim in said case was the brother of Joselito Venus, the accused in said case was eventually convicted.[18] Moreover, the testimony of Joselito Venus is suspicious in that he testified that he was disturbed by the noise coming from the Hormego place, and that at exactly 11:00 p.m. he peeped at the Hormego kitchen and heard Renfredo Ruga and accused-appellant LAURO quarrelling.[19] Joselito Venus was insistent that accused-appellant LAURO could not have perpetrated the crime because he saw him at precisely 11 p.m., a claim that raises doubt taking into account the debt of gratitude that he owes to accused-appellant LAURO for testifying in the criminal case of his brother.

The trial court did not give weight to the testimony of said defense witnesses in view of the more credible testimonies of the prosecution witnesses who positively identified accused-appellant LAURO as the assailant of RIZALINA. Well entrenched is the rule that the issue of credibility is best addressed to the trial court judge who observed first hand the demeanor and deportment of the witnesses. Appellate courts will not disturb the findings on the credibility, or lack of it, accorded by the trial court to the testimony of witnesses, unless it be clearly shown that the trial court had overlooked or disregarded arbitrarily certain facts and circumstances of significance in the case.[20] In the case at bar, we see no compelling reason to overturn the weight accorded by the trial court to the testimonies of the prosecution witnesses.

Accused-appellant LAURO now resorts to impugning the credibility of the prosecution witnesses, directing the attention of this Court to the allegedly glaring contradictions, inconsistencies and improbabilities in the testimonies of Mirasol Parolan, Jose Rotoni, Alta Rotoni-Alcala and Lilia Rotoni-Parolan which allegedly make said testimonies unreliable. The contradictions, inconsistencies and improbabilities pertain to the alleged conflicting versions given by the prosecution witnesses as to the circumstances surrounding RIZALINA's dying declaration, i.e., as to the place where RIZALINA gave her dying declaration and the number of shots heard by Mirasol Parolan, Jose Rotoni, German Rotoni and Alta Rotoni- Alcala.

Again, the points raised by accused-appellant LAURO boil down to the issue of credibility, an issue that we have already ruled upon. The purported glaring contradictions, inconsistencies and improbabilities in the testimonies of the prosecution witnesses, upon closer scrutiny, are in fact minor inconsistencies that tend to bolster the fact that the testimonies are unrehearsed. Moreover, we do not expect the testimony of witnesses to the crime to be thoroughly consistent in all details because different persons may have different impressions and recollections of the incident.[21] We therefore have no reason to doubt the veracity of the testimonies of the prosecution witnesses

that RIZALINA affirmed in her dying declaration that it was accused-appellant LAURO who attacked her when she said "siya" (He was the one) in answer to Alta Rotoni Alcala's question "(S)i Lauro ba ang naghimo ini sa imo?" (Was it Lauro who did this to you?).

The most telling evidence against accused-appellant LAURO is the dying declaration of RIZALINA. Rule 130, Section 37 of the Rules of Court enumerates the requisites for the admissibility of a dying declaration, to wit: (a) it must concern the crime and the surrounding circumstances of the declarant's death; (b) at the time it was made, the declarant was under a consciousness of impending death; (c) the declarant was competent as a witness; and (d) the declaration was offered in a criminal case for homicide, murder, parricide in which the decedent was the victim.[22] RIZALINA's dying declaration clearly meets these requisites.

First, RIZALINA affirmed that it was accused-appellant LAURO who attacked her, a statement that pertains to the crime and to the identity of her assailant. Second, RIZALINA was barely alive from the ten-inch hack wound on the neck and gunshot wound in the abdomen when she was brought back to the house as her pulse had to be checked to see if she was still alive.[23] That she was in the throes of death and was fully aware of her impending death are evident when she refused to be brought to the hospital.[24] After affirming that it was accused-appellant LAURO who assaulted her[25], she was unable to answer this second question of Alta Rotoni-Alcala: "(S)i Felomino Renon ba kay kaibahan sa paghimo nii sa imo? (Was Felomino Renon also one of those who did this to your?)[26] RIZALINA then expired. Third, RIZALINA was competent as a witness. And fourth, RIZALINA's dying declaration was offered in a criminal prosecution for murder where she herself was the victim.

Accused-appellant LAURO faults the trial court for totally disregarding the testimony of SPO3 Percelito Club (SPO3 Club) of the Cajidiocan, PNP who testified that he saw RIZALINA's head still hanging on the fence when he arrived at the crime scene the morning after the commission of the crime.[27] The testimony of SPO3 Club allegedly clashes with the testimonies of Alta Rotoni-Alcala and Jose Rotoni who said that they carried RIZALINA back to the house where the victim gave the purported dying declaration. To further stress the supposed inconsistencies, accused-appellant LAURO also cites the testimony of Mirasol Parolan that the dying declaration was made before the victim's body was brought back to the house. Accused-appellant LAURO then claims that Alta Rotoni-Alcala was lying when she said that SPO3 Club was not at the scene of the crime when the police blotter shows that he was indeed at the crime scene the morning after the killing. The trial court allegedly committed an error when it underestimated the significance of the testimony of SPO3 Club.

We reject accused-appellant's contentions. Aside from Alta Rotoni-Alcala, Lilia Rotoni-Parolan also unequivocally stated in court that SPO3 Club was not at the scene of the crime. Lilia Rotoni-Parolan was the one who fetched the police officers from the municipal hall and brought them to the crime scene the morning after the killing. According to her testimony, the police officers who were with her were Chief of Police Roque Altobano, two police officers who were new and Police Officer Noel Riano.[28] She insistently declared that SPO3 Club was not with them when they went to the crime scene.[29] Defense witness Major Leocadio Repil merely testified as to the entry in the police blotter that stated that "P/Cpl. Roque Altobano, station commander, Pfc. Percelito Club and Pat. Leoncio Rabino proceeded to barangay Danao, Cajidiocan, Romblon to investigate the killing incident thereat".[30] However, he also testified that he had no personal knowledge if SPO3 Club was indeed at the crime scene.[31] Moreover, it would have been very improbable and unlikely for the children of RIZALINA to leave her head hanging on the fence until around 9 a.m. of the next day as claimed by SPO3 Club. The more credible testimonies are those of Mirasol Parolan, Alta Rotoni-Alcala and Jose Rotoni who testified in unison that RIZALINA was still alive when they reached the gate and that they brought her back to the house.[32]

Accused-appellant LAURO questions how RIZALINA could have uttered the word "siya" considering the extent of her injury as testified to by Dr. Male, Jr., the Medico Legal who conducted the autopsy. Dr. Male, Jr. testified

on cross examination that the most fatal wound of the victim was in the neck that measured ten (10) inches that almost touched the bone of the neck and practically cut one half of the same.[33]

Contrary to the urgings of accused-appellant LAURO, the testimony[34] of Dr. Male, Jr. did not categorically state that the ten-inch wound in RIZALINA's neck precluded her from uttering the word "siya". Dr. Male, Jr. merely confirmed in court that said neck wound was the wound that caused RIZALINA's death. In fact, Dr. Male, Jr. testified that RIZALINA's trachea was not hit and that the same fatal wound could have led to her death within thirty (30) minutes.[35] It was therefore not absolutely impossible for RIZALINA to have said the word "siya", which fact was duly established by the unequivocal testimonies of the prosecution witnesses.

We have examined the transcripts of the testimonial evidence, and find that the most damaging testimony against accused-appellant LAURO is that of Mirasol Parolan who was present during the assault and who positively identified him as the one who boxed RIZALINA, fired the first shot at her and dragged her. Mirasol Parolan endured a rigorous examination in court wherein she steadfastly declared that it was accused-appellant LAURO whom she saw that fateful night.

Accused-appellant LAURO contends that the positive identification made by Mirasol Parolan is allegedly doubtful because of the contradictions in her sworn statement, statements during the preliminary investigation and testimony in open court. In her sworn statement, Mirasol Parolan said that accused-appellant LAURO boxed the right side of RIZALINA's face, then dragged her to the gate where a man shot RIZALINA whom Mirasol Parolan allegedly did not get to see. During the preliminary investigation, Mirasol Parolan stated that accused-appellant LAURO boxed RIZALINA, shot her, and thereafter proceeded to drag her to the gate. On the witness stand, Mirasol Parolan declared that accused-appellant LAURO boxed RIZALINA on the left side of her face, shot her and dragged her outside the house towards the gate then stepped on the victim's hand.

Accused-appellant LAURO cannot now belatedly assail the alleged contradictory statements of Mirasol Parolan considering that he failed to impeach said witness during the trial. The basic rule is that a witness called by the opposing party can be impeached by proving that on a former occasion he made a statement inconsistent with his statement made on trial, provided such statement is material to the issue.[36] However, before a witness can be impeached by proof of contradictory statements, the Rules of Court[37] require that a proper foundation or predicate must first be laid. This is done by asking the witness whether he made such a contradictory statement, in order to give him a chance to admit, explain or deny it, which he has a right to do.[38] Counsel of accused-appellant failed to do this. The records reveal that the counsel of accused-appellant LAURO did not ask Mirasol Parolan about the contradictory statements she made prior to the trial, statements specifically referring to the sequence of events she had witnessed that fateful night.

More importantly, Mirasol Parolan, who is very familiar with accused-appellant LAURO, consistently and categorically stated that she witnessed his participation in the murder of RIZALINA. Whatever inconsistencies there may be in Mirasol Parolan's narration of the events, specifically the sequence of events, can be characterized as minor inconsistencies that are not sufficient to cast serious doubt on her entire testimony in court. Mirasol Parolan's identification of accused-appellant LAURO is buttressed by the corroborative testimony of Jose Rotoni who also identified accused-appellant LAURO as the one who dragged RIZALINA.

To discredit the testimony of Jose Rotoni, accused-appellant LAURO argues that if Jose Rotoni truly saw his mother, RIZALINA, being dragged, he then should have stopped said person from dragging his mother. According to accused-appellant LAURO, Jose Rotoni's inaction defies belief because it is contrary to the normal reaction of a son. Accused-appellant LAURO also points out that if Jose Rotoni had indeed recognized him as the assailant then there should have been no need for Jose Rotoni to prod his sister, Alta Rotoni, to ask RIZALINA to

identify her attacker.

Accused-appellant LAURO's contentions deserve scant consideration. Jose Rotoni was able to adequately explain why he failed to stop the attacker of RIZALINA from dragging her. Based on Jose Rotoni's account of what transpired, someone shot at him while he was pulling back RIZALINA from accused-appellant LAURO.[39] It was at that point that he heard the person pulling RIZALINA shout "Barila na! Barila na! Para mapatay na ini." (Shoot! Shoot! So she will die!)[40] It was dark and Jose Rotoni recognized the voice as that of accused-appellant LAURO, whom he had known since childhood.[41] Jose Rotoni then ran away, a reaction that is understandable. At any rate, not every witness to a crime can be expected to act reasonably and conformably to the expectation of mankind.[42] Hence, even assuming that there was inaction on the part of Jose Rotoni when he saw that his mother, RIZALINA, was being dragged, such reaction would not be sufficient to impair his credibility.

Accused-appellant LAURO then exhorts this Court to consider the extra-judicial confessions of co-accused Angeles Martinico and Primitivo Rollon in determining his guilt since both extra-judicial confessions contain statements allegedly favorable to him. Said extra-judicial confessions, which the trial court ruled as admissible,[43] did not implicate accused-appellant LAURO as a co-conspirator in the murder of RIZALINA. Accused-appellant LAURO concedes that these extra-judicial confessions are inadmissible against him as co-accused and is binding only against the person making the confession. Nonetheless, accused-appellant LAURO maintains that the extra-judicial confessions should be considered in his favor insisting that the "confession of a co-accused that he alone committed the crime is a circumstance that may be taken to engender great doubt to the alleged guilt of the other accused." [44]

Accused-appellant LAURO's contention is non sequitur. The fact that the extra-judicial confession of co-accused Angeles Martinico and Primitivo Rollon (deceased) did not name accused-appellant LAURO as a participant in the commission of the crime does not necessarily lead to the conclusion that accused-appellant LAURO is innocent. It bears repeating that accused-appellant LAURO was convicted on the strength of the evidence of the prosecution that established his participation in the conspiracy to kill RIZALINA. Noteworthy is the fact that in convicting Angeles Martinico, the trial court did not solely rely on his extra-judicial confession since the trial court likewise found the evidence against Angeles Martinico as "overwhelming".[45]

The evidence against Angeles Martinico in fact shed light on the circumstances surrounding the murder of RIZALINA and underscore the conspiracy of the accused in killing RIZALINA. German Rotoni testified that Angeles Martinico and Primitivo Rollon were the ones who pretended to buy gasoline and that it was Angeles Martinico who choked him. Another prosecution witness, Noel Riano, a neighbor of Angeles Martinico and Primitivo Rollon, testified that on September 29, 1987, he and Angeles Martinico bought a dog to be slaughtered and cooked for their drinking spree. Angeles Martinico paid for the dog and for the gallon of tuba (native liquor). Noel Riano noticed the wristwatch of Angeles Martinico with a yellow circle on its face, he then asked Angeles Martinico where he got the money, the latter said "nakayari kami" (We had done something). Angeles Martinico then narrated how he killed a woman in Danao named Rizalina Rotoni. He also said that this woman was greedy for land, that someone hired them to kill the woman, that he had other companions, that he took the wristwatch of the woman, kicked the fence of the gate, and inserted the head of the woman into the fence. Angeles Martinico also told Noel Riano that a certain Manong Ruben would bring the money. At the time that they were already drinking, this Manong Ruben arrived and gave Angeles Martinico an envelope. Noel Riano eventually got to know Manong Ruben as Ruben Real, one of the accused who is at large. Angeles Martinico narrated the killing of RIZALINA in a loud voice and before Noel Riano and nine (9) other persons. He then showed to these people the wristwatch that he took from RIZALINA. Felecito Rollon then remarked that the evidence should be destroyed, to

which Angeles Martinico said "Sayang" (pity). Angeles Martinico later sold the wristwatch to Josie Robiso. Said wristwatch was eventually recovered and was presented as evidence.

Based on the foregoing, we cannot sustain the assertion of accused-appellant LAURO that the trial court erred in finding that he conspired with his co-accused Angeles Martinico in killing RIZALINA. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[46] It is not necessary that conspiracy be proved by direct evidence of prior agreement to commit the crime nor is it essential that there be proof of previous agreement to commit a crime.[47] The existence of conspiracy may be logically inferred and proved through acts of the accused that point to a common purpose, a concert of action, and a community of interest.[48]

Accused-appellant LAURO and his co-accused Angeles Martinico and Primitivo Rollon attempted to gain entry into the Rotoni household that fateful night by pretending to buy gasoline. After luring German Rotoni out of the house, Angeles Martinico then choked him. Thereafter, a series of attacks against RIZALINA ensued with accused-appellant LAURO shouting an instruction to shoot. The actions of accused-appellant LAURO and co-accused Angeles Martinico and Primitivo Rollon clearly indicate a concerted effort to kill RIZALINA. The trial court thus correctly ruled that there was conspiracy in the case at bar. With the existence of conspiracy, it is no longer necessary to determine who among the malefactors rendered the fatal blow.[49] This precept is based on the entrenched rule that all the conspirators are liable as co-principals regardless of the intent and character of their participation, because the act of one is the act of all.[50]

We do not however agree with the trial court that treachery qualified the crime to murder for the simple reason that this qualifying circumstance was not alleged in the information. What qualified the killing to murder is the aggravating circumstance of abuse of superior strength that was duly alleged in the information and supported by the records. In appreciating the circumstance of abuse of superior strength, the factors to consider are the age, size and strength of the parties.[51] Thus, an attack made by a man with a deadly weapon upon an armed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself.[52]

RIZALINA, the hapless victim, was a 66-year-old woman weakened by the initial blow that the 24-year-old accused-appellant LAURO suddenly inflicted upon her. In spite of the fact that she was already utterly helpless and defenseless, accused-appellant LAURO, who was armed with a gun, continued to drag her. He then shot her but missed. RIZALINA sustained a gunshot wound in her abdomen, had abrasions on her knees and died from a ten-inch incised wound on her neck caused by a bolo. Without doubt, abuse of superior strength characterized the crime, raising the category to murder pursuant to Article 248, paragraph 1 of the Revised Penal Code.

We sustain the finding of the trial court that there was no evident premeditation in this case. The prosecution failed to show (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that he had clung to his determination; and (c) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will had he desired to hearken to its warning.[53] The generic aggravating circumstance of dwelling is present in this case, as correctly appreciated by the trial court, considering that the assault against RIZALINA was carried out in her house.

The crime was committed in 1987 when murder was punishable by reclusion temporal maximum to death. With the suspension of the death penalty by the 1987 Constitution and before the passage of the law re-imposing the death penalty (RA 7659)[54], the proper penalty is reclusion perpetua.[55] Despite the presence of the generic aggravating circumstance of dwelling in the case at bar, the penalty herein of reclusion perpetua would not be

affected. Reclusion perpetua is an indivisible penalty that under Article 63 of the Revised Penal Code must be applied regardless of any mitigating or aggravating circumstance that may have attended the commission of the crime.

The trial court properly awarded P 50,000.00 as civil indemnity to the heirs of RIZALINA, to be jointly and severally paid by accused-appellant LAURO and his co-accused Angeles Martinico who withdrew his appeal before this Court.

WHEREFORE, the decision appealed from finding accused-appellant LAURO MARTINEZ guilty beyond reasonable doubt of the crime of murder, ordering him to pay jointly and severally with his co-accused Angeles Martinico the civil indemnity of P 50,000.00 to the heirs of the victim and sentencing him to reclusion perpetua with all the accessory penalties under the law, is hereby AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, p. 13.

[2] Ibid., pp. 153-155.

[3] Ibid., pp. 62-63.

[4] Ibid., p. 84.

[5] Ibid., p. 103.

[6] Ibid., p. 103.

[7] Ibid., p. 52.

[8] TSN, June 10, 1991, pp. 9-23.

[9] TSN, April 7, 1992, p. 9.

[10] People vs. Ravanos, 284 SCRA 634 (1998), p. 638.

[11] Ibid., pp. 638-639.

[12] Rollo, p. 9.

[13] Ibid.

[14] People vs. Sumalpong, 284 SCRA 464(1998), p.486.

[15] People vs. Cabanela, 299 SCRA 153, p. 163.

[16] TSN, August 29, 1994, p. 13.

[17] Ibid., p. 15.

[18] TSN, August 31, 1994, p. 18.

[19] Ibid., p. 11.

[20] People vs. Sagun, 303 SCRA 382 (1999), p. 391.

- [21] *People vs. Fabro*, 278 SCRA 304 (1997), p. 308.
- [22] *People vs. Viovicente*, 286 SCRA 1 (1998), p. 8.
- [23] TSN, June 10, 1991, p. 19.
- [24] *Ibid.*, p. 20.
- [25] *Ibid.*, pp. 20-21.
- [26] *Ibid.*, p. 19.
- [27] TSN, July 6, 1994, pp. 24-27.
- [28] TSN, August 17, 1995, p. 8.
- [29] *Ibid.*, p. 14.
- [30] TSN, October 24, 1995, p. 4.
- [31] *Ibid.*, p. 5.
- [32] TSN, June 10, 1991, pp. 22-23 and pp. 54-55; TSN, July 3, 1991, p. 15; and TSN April 7, 1995, pp. 10-11.
- [33] TSN July 19, 1990, p. 14.
- [34] *Ibid.*, pp. 2-20.
- [35] *Ibid.*, p. 14.
- [36] RICARDO J. FRANCISCO, *BASIC EVIDENCE*, 2[ND] ED., 1999, p. 465.
- [37] "Rule 132, SEC. 13. How witness impeached by evidence of inconsistent statements.--Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them."
- [38] FRANCISCO, *supra*, p. 466.
- [39] TSN, April 7, 1992, p. 9.
- [40] *Ibid.*
- [41] *Ibid.*
- [42] *People vs. Kyamko*, 222 SCRA 183 (1993), p. 192.
- [43] *Rollo*, p. 60.
- [44] *Ibid.*, p. 99.
- [45] *Ibid.*, p. 55.
- [46] *People vs. Andres*, 296 SCRA 318 (1998), p. 339.
- [47] *People vs. Gargar*, 300 SCRA 542 (1998), p. 554.
- [48] *People vs. Andres*, *supra*, p. 339.

[49] People vs. Chua, 297 SCRA 229 (1998), pp. 240-241.

[50] Ibid., p. 241.

[51] People vs. Bernal, 254 SCRA 659 (1996), p. 671.

[52] LUIS B. REYES, THE REVISED PENAL CODE, CRIMINAL LAW, BOOK 1, 14TH ED., p. 397.

[53] People vs. Ruelan, 231 SCRA 650 (1994), p. 662.

[54] Date of effectivity, December 31, 1993.

[55] People vs. Bihison, 308 SCRA 510 (1999), p. 525.

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