

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERT DARAMAN @ “JOVIT,” EDGARDO LUMENARIAS @ “ALONG,”
ELIAS FUENTES (AT LARGE), JESSIE OBLIMA (AT LARGE), ACCUSED,
ROBER...**

G.R. No. 126046. August 07, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In resolving this appeal, the Court reiterates the well-settled doctrine that the testimony of a single credible and trustworthy witness is sufficient to convict the appellant, particularly if said witness was not shown to have been motivated by any bias or ill motive.

The Case

On December 28, 1992, an Information for robbery with homicide[1] was filed before the Regional Trial Court of Panabo, Davao, against Edgardo Lumenarias,[2] Robert Daraman, Elias Fuentes and Jessie Oblima. The Information reads:

"That in the evening of September 30, 1992, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, with intent to gain, armed with handguns, and by means of force and intimidation, robbed and took away cash money amounting to P2,000.00 and two wrist watches valued at P2,000.00, or the total sum of P4,000.00 belonging to the spouses Fausto and Lina Labrador, and on the occasion of the said robbery, accused Edgardo Lumenarias, still in pursuance of the conspiracy, by means of his handgun, shot Lina Labrador in the head, causing her death, to the damage of her surviving heirs."

On March 11, 1993, Lumenarias and Daraman, assisted by Atty. Prosper P. Dajalos of the Public Attorney's Office, were arraigned. Lumenarias pleaded guilty while Daraman entered a plea of not guilty.[3] Fuentes and Oblima remained at large. In his Judgment dated March 24, 1993, Judge Mariano C. Tupas imposed upon Edgardo Lumenarias an indeterminate sentence of 14 years and 8 months of reclusion temporal as minimum to 20 years of reclusion temporal as maximum. Lumenarias was also ordered to indemnify the heirs of Lina Labrador in the sum of fifty thousand pesos and to pay the costs.[4] The case against Robert Daraman proceeded in due course, with Judge Tupas presiding over the trial until his retirement. Judge Bernardo V. Saludaes, who replaced him, penned the assailed 28-page Decision of January 25, 1996, the dispositive portion of which reads:

"WHEREFORE, premises considered, this Court finds the accused Robert Daraman, alias 'Jovit', 33 years old, married to Letty T. Daraman, jobless and resident of Kinamayan, Sto. Tomas, Davao Province, guilty beyond reasonable doubt as co-principal [in] the crime of Robbery with Homicide penalized under Article 249, par. 1 of the Revised Penal Code, as charged in the information, and is hereby therefore sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law, and to indemnify Fausto Labrador, surviving spouse of the victim, Lina Labrador, in the amount of FIFTY THOUSAND PESOS, for such death, in addition to

the payment of TWENTY THOUSAND (P20,000.00) as and for moral damages, TEN THOUSAND (P10,000.00) PESOS as and for exemplary damages, and NINETEEN THOUSAND (P19,000.00) PESOS for actual expenses in the burial and funeral expenses and restitution of the money and articles robbed, and to pay the costs.

"In the service of this sentence, said accused shall be immediately remitted and transferred to the custody of [t]he Director, Bureau of Corrections of the National Bilibid Prisons, Muntinlupa, Metro Manila, issuing the corresponding commitment order (or mittimus) pursuant to Circular No. 4-92-A, which amended Circular No. 4-92 of the Supreme Court dated April 20, 1992.

x x x x x x x x

"SO ORDERED."[5]

Hence, this appeal.[6]

The Facts

According to the Prosecution

The solicitor general summarized the facts of the case as follows:

"At about 6:30 in the evening of September 30, 1992, Fausto Labrador and his wife, victim Lina Labrador, were eating their evening meal in their kitchen when they heard a customer call out that he wanted to buy ice water and cigarettes from their sari-sari store. The Labradors' residence is located at North Gate, San Roque, Sto. Tomas. Lina stood up to attend to the customer. Fausto later heard her call out for him to join her in the store. There, Fausto saw his wife trembling before two men armed with firearms. The men told them to keep quiet as they were staging a hold-up. The hold-uppers insisted on entering the couple's residence. Lina was forced to open the door to their kitchen. One of the two men entered the house with Lina while the other stayed to guard Fausto. Fausto heard the robber hurrying up his wife, and then the sound of keys being used to open cabinets and drawers. A short while later, Fausto heard a gunshot. He saw the robber inside the house picking up coins from the floor then going out to the store and fleeing the scene with his companion. Fausto entered the house and saw his bloodied wife on the floor, with a gunshot wound on her head, already unable to speak. Lina died shortly thereafter, in Fausto's arms. (TSN, Aug. 24, 1993, pp. 3-14).

"Fausto identified the robber who shot his wife as accused Edgardo Luminarias, and the other who guarded him as appellant Robert Daraman. After the robbers had left, Fausto shouted for help. It took his neighbors about 30 minutes to respond. Fausto later found the following items missing from his house: two (2) wrist watches, their motorcycle keys and around P2,000.00 in cash.

"A medico-legal examination of the victim was conducted by Dr. Dominador Tenchavez, [m]unicipal [h]ealth [o]fficer of Sto. Tomas, Davao. He testified that the victim died due to intracranial hemorrhage secondary to gunshot wound at the left temporal portion of the head. (Exh. "D") (TSN, May 27, 1993, pp. 4-7).

"Fausto's testimony was corroborated by Bienvenido Piamonte. Piamonte was one of the lookouts while the robbery was being staged by Luminarias and appellant. Piamonte testified that the plot to rob the Labradors was hatched a month before the incident. He claimed to have met appellant Robert Daraman at the residence of Luminarias. It was at this meeting that the robbery was planned. Piamonte confirmed Fausto's testimony that Luminarias and appellant Daraman, who were armed with handguns, were the ones who entered the Labrador residence while he, Jessie Oblima and Elias Fuentes posted themselves outside. He stated that after the robbery, the group proceeded to the residence of Luminarias where they were each given P100.00 as their share in the proceeds of the robbery. He testified that Luminarias told him he had to kill the victim because she shouted. (TSN, Aug. 18, 1993, pp. 4-15)."[7]

According to the Defense

Appellant's version of the facts is presented below:

"x x x x x x x x x

"Edgardo Lumenarias testified that on September 30, 1992, at about 6:00 p.m., he, Bienvenido Piamonte, Elias and Totong gathered at his residence to plan the [r]obbery of the Labrador[s]. He and Totong entered the house where the [r]obbery with [h]omicide happened. He [did] not know the person of Robert Daraman before September 30, 1992. The first time that he saw and met Daraman was when they were already in the Sto. Tomas Municipal Jail on October 18, 1992. Bienvenido Piamonte was also in that jail on October 18, 1992.

"Alberto Caangay testified that accused Daraman was still in the bullmill operation at Balite District, Diwalwal, Monkayo, Davao when the alleged incident happened on September 30, 1992. (TSN, February 23, 1994, p. 6).

"Robert Daraman likewise testified that he met Bienvenido Piamonte inside Sto. Tomas Municipal Jail on October 18, 1992. Piamonte who was inside the jail acknowledged having participated in the commission of the crime. He was surprised why Piamonte was released from jail. It was he whom Piamonte pointed [to] later on as one of the perpetrators of the crime. (TSN, May 3, 1994, pp. 6-7)

"Mercedita Lumenarias testified [that] in the early afternoon of September 30, 1992, her husband Edgardo Luminarias, Bienvenido Piamonte, a certain Oblima and Elias Fuentes planned a robbery. Accused Robert Daraman was not present during the said planning. (TSN, September 1, 1995, pp. 4-5)

"Manny Daraman, the cousin of accused Robert Daraman was also presented in court to show that both of them [had] similar features and appearance."[8]

To summarize, the defense presented the following witnesses: Robert Daraman, the appellant himself, who denied committing the crime charged and asserted that he was then at Diwalwal, Monkayo, Davao, where he worked from September 15 to October 15, 1992;[9] Alberto Caangay, who claimed that appellant was in his employ at Diwalwal, during the aforesaid period;[10] Manny Daraman, who was presented as a sur-rebuttal witness; [11] and Edgardo Lumenarias,[12] who testified on the particulars of the crime charged -- how it was planned and how it was executed. Lumenarias also declared that Prosecution Witness Bienvenido Piamonte planned the robbery, and that it was one "Totong," not Appellant Robert Daraman, who had shot Lina Labrador to death. He claimed that he saw Daraman for the first time only on October 18, 1992, when the two of them were already in jail.[13] The defense also sought to present Mercedita Lumenarias, but she did not take the witness stand anymore because the prosecution admitted that, if presented, the said witness would merely testify that appellant was not among those who were at her house on the afternoon of September 30, 1992.[14]

The Trial Court's Ruling

In finding Appellant Daraman guilty of robbery with homicide, the court a quo gave full credence to the testimony of Bienvenido Piamonte and that of Fausto Labrador, the surviving spouse of Lina Labrador. The trial court said:

"It is quote [sic] clear and unmistakable that the testimony of Fausto Labrador, surviving spouse of Lina Labrador (his wife), positively pointed to, and identified accused Edgardo Lumenarias, alias "Along" and accused Robert Daraman, alias "Jovit" as the duo who entered their house on that fateful night of September 30, 1992, and were able to enter their said house by the use of threats and intimidation, using the guns in their possession, with Edgardo Lumenarias, alias "Along", entering their room and robbing them of their cash and other valuables and then, shot his wife, Lina, resulting in her instantaneous death, while said accused Robert Daraman, alias 'Jovit',

stood guard over him with his handgun pointed at him, and after the robbery and shooting, rushed out of their house, leaving him and his [dead] wife and bringing with them their money, wrist watches, and other personal effects, like motorcycle keys. In addition to this positive and clearly convincing narration of credible facts by the robbery victim, Fausto Labrador, the narrated version given by Bienvenido Piamonte -- who was admittedly one of the group who planned and perpetrated the robbery heist on the Labrador store and house, but was deemed, upon closer investigation by the public [prosecutor] to be "less guilty", and would better enhance the ends of justice if utilized as a [s]tate [w]itness, which he was in fact -- was equally credible and trustworthy when he positively pointed to Edgardo Lumenarias, Robert Daraman, at-large accused Elias Fuentes and Jessie Oblima as the active participants in that robbery-killing committed on the early evening of September 30, 1992, at North Gate, San Roque, Sto. Tomas, Davao Province, where they robbed the Labrador couple of their money and other valuables worth P4,000.00 all in all."[15]

The lower court gave little weight to the testimonies of the defense witnesses, viz.:

"On the other hand, the somersaulted version narrated by defense witness and co-accused Edgardo Lumenarias, when he pointed allegedly to one "Totong" and not him as the killer of Lina Labrador, and that [by] co-accused Robert Daraman, alias "Jovit", cannot be given any iota of credence, considering his voluntary and spontaneous plea of guilty to the offense charged on March 11, 1993, thus admitting all the substantial allegations of the criminal charge which included the participation, as thereon alleged, of Robert Daraman, alias "Jovit". He is therefore already estopped from taking and presenting a different version, after pleading guilty to the Information earlier. With respect to the testimony parroted by defense witness Alberto Caangay, this Court cannot also trust this kind of witness, with the manner this witness [had] been noticed to be engaging in false, if not entirely fabricated testimony, which certainly created serious doubts on his credibility[;] the objective of his presentation is to fortify the defense of alibi concocted by accused Robert Daraman - to the effect that he could not have been a co-perpetrator in the commission of the robbery-killing at the Labrador store/house on September 30, 1992, as he was at his bullmill operations from September 15, 1992 to October 15, 1992[;] but with the glaring, noticeable flippancy in the testimony of this witness, this Court considers him to be a very unreliable witness. And, of more significant consideration which should not be overlooked is the undeniable fact that the distance of Mount Balite, Diwalwal, Monkayo, Davao, can easily be traveled in a matter of hours, in view of the numerous kinds of transportation plying that very route. x x x And more importantly is the element of human nature, common sense and simple logic. When this accused Robert Daraman had no children yet, and while working (if true) at faraway Mt. Diwata, Diwalwal, Monkayo, Davao, certainly his conjugal visitations to his spouse would be a very compelling factor for him to rush to his home at Kinamayan, Sto. Tomas, Davao, more often than what he claims as enduring for a period of one (1) month straight at the bullmill operations site. When he already had two (2) children, nature dictate[d] that he ha[d] to make frequent visits, not only to extend his fatherly love to his spouse and two (2) children, but to bring the needed supply for their essential necessities, as a responsible head of the family. From these observed factors, these versions narrated by this apparently coached witness can only be viewed with extreme caution and grave suspicion. They just do not dovetail with reality and truth. Moreover, it has been positively testified to by Artemio Herodias that he saw this accused - Robert Daraman, alias "Jovit" - at their place at North Gate, Sto. Tomas, Davao Province, on September 28, 1992, and considering that it was the eve of the fiesta of the place or "vesperas", x x x there is more than sufficient, solid reason to believe that accused Robert Daraman was in truth and in fact present during the vesperas and fiesta of their place."[16]

As for the appellant's testimony, the lower court asserted:

"The bare denial of Robert Daraman to [sic] the prosecution's finger of guilt in the commission of that robbery-homicide is therefore very weak, and more so with his alibi."[17]

The Issues

The appellant assigns the following errors to the trial court:[18]

"I

The trial court gravely erred in finding accused-appellant Robert Daraman guilty beyond reasonable doubt of robbery with homicide despite the insufficiency of the prosecution's evidence.

II

The trial court gravely erred in giving credence to the testimonies of Fausto Labrador and Bienvenido Piamonte identifying the accused-appellant Robert Daraman as the perpetrator of the crime."

The crux of the case lies in the credibility of Prosecution Witnesses Fausto Labrador and Bienvenido Piamonte, upon whose testimonies the appellant was convicted. Hence, we shall discuss this as the first issue, and the sufficiency of the prosecution's evidence as the second.

The Court's Ruling

The appeal is devoid of merit.

First Issue:

Credibility of Witnesses

As a rule, the assessment of a trial judge of the credibility of witnesses is not disturbed on appeal, because he or she had had the opportunity to observe them and the manner in which they testified.[19] However, such rule does not apply to the present case.[20] Judge Bernardo V. Saldares, the ponente, took over from Judge Mariano Tupas only during the presentation of the sur-rebuttal witness on September 1, 1995.[21] Thus, Judge Saldares had no opportunity to personally observe any of the witnesses, except Manny Daraman.[22] Nonetheless, after a meticulous review of the records of the case, this Court finds no reason to differ from the conclusions of Judge Saldares.

Appellant Daraman characterizes his identification by Fausto Labrador as "doubtful, unreliable and not positive." [23] He argues that the witness remembered him "because of his body buil[d] and appearance as the thin one," and that "it is of public knowledge that [the] physical appearance of a person will resemble and look [like] that of others." [24] He also contends that "it is unbelievable that a person could identify another person during trial as the perpetrator of the crime if he saw the alleged perpetrator only for the first time during the alleged incident. A person could not pinpoint or identify with certainty a perpetrator, whom he saw for the first time at night during the alleged incident." [25]

These arguments do not persuade. First, appellant gives too much importance to Labrador's description of him as "the thin one." It cannot be denied that the witness positively identified him as one of the two armed men who robbed their house and as the one who guarded him. [26] The store was well-lit, and the witness was able to take a good look at the appellant. [27] Thus, Labrador saw the face, not just the physique, of Daraman. Second, appellant's other argument has been debunked in *People v. Bracamonte*, [28] in which the appellant contended that the witness could not have positively identified him as one of the culprits, because they were complete strangers to each other. The Court held that "[t]here is nothing in law and jurisprudence which requires, as a condition sine qua non, that in order for the positive identification by a prosecution witness of a felon to be good, the witness must first know the latter personally. If this were the case, the prosecution would rarely get any conviction since, in most instances, the perpetrator of the crime is unrelated to the victim. [There is] [n]o further requirement xxx that the identification made by its witness be direct, firm, unequivocal and most importantly, credible." [29]

Fausto Labrador's identification of appellant as one of the robbers was direct, unequivocal and credible, as can be

gleaned from the following:

"x x x x x x x x

Q

What did you notice when you responded to your wife's call and you were at the store?

A

When I responded to the call of my wife, I went to the store and I saw two men holding a gun.

x x x x x x x x

Q

What, if any, did they tell you when they saw you?

A

When I went to our store, I saw two men holding guns and telling us to keep our mouths [shut] for this is a hold-up.

x x x x x x x x

Q

How about the companions, where did they stay, what did they do?

A

The other one was the one guarding me and the one pointing his gun at me.

Q

[Where] were you facing at that time?

A

I was facing to [sic] the one pointing the gun at me and I saw him very well.

x x x x x x x x

Q

How about you, what was done to you when the robber and your wife entered the room?

A

When the other man entered our house already, he ordered me to drop [to] the floor, sir.

Q

And while you were dropped on the floor, what did the second man do?

A

While the man who accompanied my wife entered the store, he ordered me to drop [to] the floor and then the other man slowly entered our house[;] the one guarding me and he waited until the time the second man entered and the one guarding me now is the second man.

x x x x x x x x

Q

The other one, the one who guarded you from outside and inside the house?

(Witness pointing to a person [who] when asked of [sic] his name, answered Robert Daraman)

While you were on the floor face down, what was this accused Daraman doing?

A

He was the one guarding me and [who] ordered me not to move.

Q

Where was his firearm?

A

Pointing at me.

x x x x x x x x

Q

What happened on October 19?

A

The police informed me that they had apprehended the suspects and they wanted me to see them if I could identify them.

x x x x x x x x

Q

When you saw the suspects, were you able to identify them?

A

Yes, when I saw, I immediately identified them [as] xxx the ones who robbed us.

Q

Was there any doubt in your mind that these were not the same persons?

A

I did not have any doubt or second thought because when I saw them, I immediately recognized them and my feelings [were those] of hatred.

x x x x x x x x"[30]

Labrador did not waver even during his cross-examination, which proceeded as follows:

"x x x x x x x x

Q

Did you see two persons or one person pointing a gun at you?

A

Two persons.

Q

Of course you could not recognize the person pointing a gun at you at that time?

A

I do not know their names, but I can recognize their faces.

Q

Why did you say that you could recognize their faces, have you seen them before?

A

That was the first time I saw them because the fluorescent lamp was so bright that I could really recognize their faces.

x x x x x x x x

Q

While you were there at the store, what happened later on?

A

When my wife opened the door, Lumenarias went with her inside. While they were in the store, Lumenarias shouted at me, 'Drop to the floor!', and then I obeyed and dropped down to the floor, and the other accused, Daraman, entered the house and then guarded me, still pointing his gun at me, then Lumenarias and my wife entered the room just adjacent [to] the house.

x x x x x x x x"[31]

When the trial court propounded clarificatory questions, the witness was even more emphatic in pointing to Daraman as one of the culprits.

"x x x x x x x x

Q

Now, in your testimony, you also made mention that [the] accused by the name of Robert Daraman and whom you identified in Court was the one pointing his revolver to you?

A

Yes, sir.

Q

Were you still standing or lying down when the revolver of accused Robert Daraman was pointed to you?

A

While I was still in the store, he was standing while pointing his gun.

Q

How far was your distance?

A

Less than a yard.

Q

Was it pointing to your face or breast?

A

The gun was pointed to my body.

Q

Were you looking at his face?

A

I saw his face and I saw his gun.

Q

Now, in court, you identified Robert Daraman as the person who was pointing his gun to you. Are you very sure that he was the one who pointed his gun to you?

A

Yes, sir. I am sure that he was the one because the fluorescent lamp was very bright.

x x x x x x x x"[32]

The identity, therefore, of Appellant Robert Daraman as one of the malefactors was sufficiently established by Fausto Labrador, a victim of the crime and the widower of the slain Lina Labrador.

Appellant vigorously objects to the testimony given by Bienvenido Piamonte, because the latter had been assured by the police of immunity from prosecution, and thus, allegedly had motive to testify falsely and to "point to another person as the perpetrator in order to free himself from liability." [33] Because of this, appellant contends, the trial court should have given more credence to Lumenarias, who admitted his guilt and denied appellant's participation in the crime. [34] He likewise questions Piamonte's non-inclusion in the Information. [35]

The testimony of Piamonte [36] may have originated from a polluted source, but this fact alone does not make it inadmissible and incompetent. [37] As for his non-inclusion in the Information as an accused, suffice it to say that such action is a prerogative of the prosecution. Indeed, the prosecution has the power to determine who may be called as prosecution witnesses. [38]

Piamonte's testimony corroborates that of Labrador on material points, particularly the following: first, while Edgardo Lumenarias entered the main door, Appellant Robert Daraman, with a gun in his hand, was left outside; and second, appellant entered the house after Lumenarias did. Such material corroboration not only strengthens Labrador's testimony, but also gives some badge of credibility to Piamonte's own.

But even in the absence of Piamonte's corroboration, Fausto Labrador's testimony, having been direct and guileless, is enough to warrant the conviction of appellant. [39] In *People v. Nulla*, [40] the Court held: "It is axiomatic that witnesses are weighed, not numbered, and the testimony of a single witness may suffice for conviction if otherwise trustworthy and reliable." This doctrine was reiterated in *People v. Nimo*, [41] another

robbery with homicide case, in which the Court ruled: "That the prosecution had only one eyewitness hardly affects its cause. There is no law which requires that the testimony of a single witness needs corroboration except where the law expressly mandates such corroboration."

Second Issue:

Sufficiency of Evidence

Appellant claims that the evidence of the prosecution against him is inconclusive. Bolstering his defenses of alibi and denial, he cites the legal aphorism that the accused must be convicted on the strength of the evidence of the prosecution and not on the weakness of that of the defense.[42] We are not convinced.

Fausto Labrador's identification of the appellant as one of the two intruders in their house was direct and unequivocal. In the absence of any proof that he had any bias or ill motive against the appellant, his testimony may be given full faith and credit. Also, it would be unnatural for Fausto, being the husband of Lina and himself a victim who seeks justice, to impute the crime to an innocent person, and thereby allow the real culprit to escape prosecution.

The appellant firmly denies any participation in the crime with which he was charged, contending that he was in another place at the time of its commission. However, in light of the positive identification of appellant as one of the perpetrators of the crime, his defense of alibi and denial cannot be sustained.[43] "An affirmative testimony is far stronger than a negative testimony, especially so when it comes from the mouth of a credible witness." [44]

The testimonies of Edgardo Lumenarias and Alberto Caangay, which were offered to corroborate appellant's alibi and denial, are without value. Lumenarias lacked credibility. In the face of Labrador's positive identification of him as the culprit who pulled the trigger of the gun, he had the temerity to lie on the stand by alleging that it was one "Totong," not he, who had shot Lina Labrador. As for Caangay's testimony, there were noticeable inconsistencies[45] that made it unreliable.

The crime committed was robbery with homicide -- robbery was the main purpose of the appellant and his co-conspirators and the killing was a mere incident of the robbery.[46] Under Article 294 (1) of the Revised Penal Code,[47] the penalty for robbery with homicide is reclusion perpetua to death. However, because the crime happened in 1992, during which the death penalty was still proscribed by the Constitution, the lower court was correct in imposing reclusion perpetua upon Appellant Robert Daraman.

Damages

The Court agrees with the award of P50,000 as indemnity for the death of Lina Labrador, because this is in accord with prevailing jurisprudence,[48] as well as with the award of P20,000 as moral damages, which was proven by Fausto's testimony on the resultant anxiety and shock he had suffered.[49] Considering that the crime was committed with the aggravating circumstance of dwelling,[50] duly proven during the trial, we also sustain the award of P10,000 as exemplary damages.[51] We further affirm the grant of P19,000 as actual damages, because Fausto Labrador presented a list of itemized expenses amounting to P56,000; and the lower court correctly considered only those expenses connected with the death, wake and burial of the victim.[52]

WHEREFORE, the appeal is hereby DENIED and the assailed Decision is AFFIRMED. Costs against the appellant.

Let copies of this Decision be furnished the Secretary of Interior and Local Government and the Secretary of Justice so that Accused Fuentes and Oblima may be brought to justice.

SO ORDERED.

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

[1] Dated December 14, 1992 and signed by Provincial Prosecutor Francisco G. Rivero; record, p. 1.

[2] Also referred to as "Luminarias."

[3] Record, pp. 17 et seq.

[4] Record, p. 23.

[5] Decision, pp. 27-28; rollo, pp. 43-44.

[6] The case was deemed submitted for resolution on May 13, 1998 when the Court received the Appellee's Brief. The filing of a reply brief was deemed waived, as none was submitted by appellant within the reglementary period.

[7] Appellee's Brief, pp. 4-7; rollo, pp. 123-126. Signed by Solicitor General Romeo C. De la Cruz, Assistant Solicitor General Carlos N. Ortega, Assistant Solicitor General Magdangal M. de Leon and for Solicitor Leonor Meliza P. Serrano-Filio.

[8] Appellant's Brief, pp. 5-6; rollo, pp. 61-62. This was signed by Public Attorney IV Araceli A. Rubin, Public Attorney III Bartolome P. Reus and Public Attorney I Ernesto M. Butawan.

[9] TSN, May 3, 1994, pp. 3-16.

[10] TSN, February 23, 1994, pp. 3-19.

[11] TSN, August 14, 1995, pp. 4-11.

[12] This witness was stabbed to death on October 10, 1994, while he was incarcerated at the Davao Provincial Jail. See Decision, p. 12.

[13] TSN, October 28, 1993, pp. 4-19.

[14] TSN, September 1, 1995, pp. 3-4. Decision, p. 20; rollo, p. 36

[15] Decision, pp. 20-21; rollo, pp. 36-37.

[16] Ibid., pp. 22-23; rollo, pp. 38-39.

[17] Ibid., p. 24; rollo, p. 40.

[18] Appellant's Brief, p. 1; rollo, p. 57.

[19] People v. Nardo, 270 SCRA 672, April 4, 1997; People v. Flores, 252 SCRA 31, January 18, 1996; People v. Cayan, 245 SCRA 66, 1995; People v. Calope, 229 SCRA 413, January 21, 1994

[20] See People v. Llaguno, GR No. 91262, January 28, 1998, in which the judge who penned the Decision took over the trial only after the first defense witness had been presented. The Court held that the general rule -- that the findings of the trial courts as regards the credibility of witnesses will not be disturbed on appeal -- cannot be applied, because the judge did not personally assess the prosecution witnesses.

[21] Decision, p. 4; rollo, p. 20.

[22] Ibid.

[23] Ibid., p. 9; rollo, p. 65.

[24] Ibid.

[25] Ibid.

[26] TSN, May 24, 1993, p. 10.

[27] Ibid., p. 7.

[28] 257 SCRA 380, June 17, 1996, per Hermosisima, Jr., J.

[29] Ibid., p. 391.

[30] Direct examination of Fausto Labrador, TSN, May 24, 1993, pp. 4-15. Italics supplied.

[31] TSN, May 25, 1993, pp. 5-9. Italics supplied.

[32] TSN, May 25, 1993, pp. 13-14. Italics supplied.

[33] Appellant's Brief, pp. 9-11; rollo, pp. 65-67.

[34] Ibid., pp. 12-13; rollo, pp. 68-69.

[35] Ibid., p. 11; rollo, p. 67.

[36] Piamonte was an ordinary prosecution witness, not a state witness as the trial court erroneously said (Decision, p. 21; rollo, p. 37). Under the Rules of Court, a state witness is one of two or more persons jointly charged with the commission of a crime, but who is discharged with his consent as an accused so that he may be a witness for the State (Sec. 9, Rule 119; *People v. Ferrer*, 255 SCRA 19, March 14, 1996).

[37] In *People v. De Leon*, 128 SCRA 121, March 8, 1984, it was held that although the testimony of the accused as a state witness comes from a polluted source, it does not follow that it is not admissible and competent; the Court, however, has the duty to scrutinize it carefully.

[38] *People v. Go*, 237 SCRA 73, September 26, 1994; *People v. de la Cruz*, 229 SCRA 754, February 8, 1994; *People vs. Fernandez*, 186 SCRA 830, June 27, 1990.

[39] *People v. Pareja*, 265 SCRA 429, December 9, 1996.

[40] 153 SCRA 471 August 31, 1987, per Narvasa, CJ. Italics supplied. See also *People v. Fulinara*, 247 SCRA 28, August 3, 1995.

[41] 227 SCRA 69, October 5, 1993, per Romero, J. See also *People v. Tulop*, GR No. 124829, April 21, 1998, per Panganiban, J.

[42] Appellant's Brief, p. 13; rollo, p. 69.

[43] *People v. Mendoza*, 254 SCRA 61, February 23, 1996; *People v. Jose*, 250 SCRA 319, November 24, 1995. See also *People v. Galanza*, 227 SCRA 526, November 8, 1993.

[44] *People v. Ramirez*, 266 SCRA 335, January 20, 1997, per Panganiban, J.

[45] For example, Caangay said that Daraman was with him from September 15, 1992 until October 16, 1992. However, he also stated that Daraman was arrested on September 18, 1992. (TSN, February 23, 1994, p. 13)

[46] *People v. Salazar*, GR No. 99355, August 11, 1997, per Panganiban, J.

[47] "Art. 294. Robbery with violence against or intimidation of persons - penalties.- Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation." (Underscoring supplied)

[48] *People v. Conte*, 247 SCRA 583, August 23, 1995; *People v. Galanza*, 227 SCRA 526, November 8, 1993; *People v. Joya*, 227 SCRA 9, October 1, 1993.

[49] See TSN, May 24, 1993.

[50] Dwelling is considered an aggravating circumstance in robbery with homicide. It is not an inherent element of the crime, because the perpetrators could have committed it without the necessity of violating or scaling the domicile of their victim. *People v. Mesias*, 199 SCRA 20, July 9, 1991.

[51]"Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party."

[52] *People v. Cayabyab*, GR No. 123073, June 19, 1997, citing *People v. Rosario*, 246 SCRA 658, July 18, 1995.

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