

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARLON ZUNIEGA ALIAS “NONOY,” ACCUSED-APPELLANT.

G.R. No. 126117. February 21, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us on appeal is the Decision[1] of the Regional Trial Court of Negros Oriental, Branch 38, Dumaguete City in Criminal Case No. 9950, convicting the accused-appellant, Marlon Zuniega a.k.a. "Nonoy," of the crime of murder.

In an Information[2] dated September 18, 1991, the appellant was charged with the crime of murder committed as follows:

"That on November 18, 1987 at about 9:00 o'clock in the evening more or less at Barangay Alangilan, Sta. Catalina, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and treachery did, then and there willfully, unlawfully and feloniously shoot Napoleon Aujero three (3) times, with the use of a carbine rifle with which the accused was then armed and provided, thereby inflicting upon the victim gunshot wounds which caused the latter's immediate death.

Contrary to Article 248 of the Revised Penal Code."

Arraigned on October 7, 1991, accused-appellant Marlon Zuniega, assisted by counsel, pleaded NOT GUILTY.[3] Thereafter, the trial ensued.

The prosecution's lone eyewitness, Felixnito Lasota,* a family man with three (3) children and a resident of Barangay Alangilan, Sta. Catalina, Negros Oriental, testified that he knows the victim, Napoleon Aujero (Napoleon, for brevity) and the appellant. The appellant is his relative and neighbor whose house is adjacent to his house and separated only by a fence. At about 9:00 o'clock in the evening of November 18, 1987, the appellant paid him a visit and asked if he could accompany him to the house of Napoleon, which is about 300 meters away from his house. The appellant did not tell him the purpose of their visit. While they were walking towards the house of Napoleon, he noticed that the appellant carried with him his service carbine rifle that was issued to him as a member of the Civilian Home Defense Force (CHDF) of their place. When they arrived at the place of Napoleon, he was asked by the appellant to wait beside the road in front of the house of Napoleon which is about 12 meters from where he stood. While thereat, he saw Napoleon seated alone on a chair, in a diagonal front position, inside the porch of his house. When the appellant was about three (3) meters away from Napoleon, he saw the appellant fire his gun three (3) times at Napoleon who fell down from his chair to the floor. He was able to recognize the identity of the appellant because of the electric bulb that illumined the house of Napoleon. Then, the appellant fetched him from the place where he stood and they both proceeded back towards his (Felixnito's) house.

When he asked the appellant why he killed Napoleon, the appellant answered that Napoleon committed something wrong but the latter did not elaborate. No other conversation took place between him and the appellant except that

the appellant also told him not to tell anybody about the incident so that nothing untoward would happen to him. Afterwards the appellant left him. He said that he did not report the incident to the police nor to anybody else because of this threat of the appellant. Not even his wife knew about it. Since then he avoided the appellant because he was frightened of what he had witnessed. It was only after he learned of the arrest of the appellant by the army that he voluntarily reported the incident to the police on August 31, 1991.[4]

Jose Lacpao, the Barangay Captain of Alangilan, Sta. Catalina, Negros Oriental and also the team leader of the Civilian Armed Forces Geographical Unit (CAFGU) in that barangay, testified that the appellant was under him as a member of the CAFGU from 1987 up to the time that Napoleon Aujero was shot, and that, the appellant, as such member of the CAFGU, was issued a carbine rifle. He said that he was in Dumaguete City on November 18, 1987 and arrived only five (5) days after the subject shooting incident in said Barangay Alangilan. He only came to know of the death of the victim after he attended a conference on August 28, 1991 at the headquarters of the military at the house of Leonardo Quinicot* where the appellant admitted having killed the deceased Napoleon. The conference was in connection with the drive of the military to have unregistered firearms in the area registered with them at their temporary headquarters. It was he and Capt. Batiancila who ordered Corporals Mardonio and Cañete to pick up the appellant even without a warrant of arrest because the purpose was only for the appellant to attend the conference. Other persons present at the conference were Barangay Secretary Tiburcio and army officers Capt. Batiancila, Corporals Mardonio and Cañete and the owner of the house, Leonardo Quinicot.[5]

Jose Lacpao also admitted that he is facing two (2) criminal charges, that is, one for the death of Rev. Fr. Quemada which is pending before the Regional Trial Court of Dumaguete City, Branch 40, and the other is for arson wherein a certain Engr. Abugan is the complainant and herein appellant is the witness who has not yet testified against him in those two (2) cases even up to the time when he (Jose Lacpao) testified in this case. He denied that Capt. Batiancila struck appellant with a basket and a paddle, or that the Captain made accused-appellant crawl around the Quinicot residence.[6]

Capt. Leonardo Batiancila, the Officer-in-Charge of the Special Operations Team under the Civil Military Operation of the 37[th] Infantry Battalion in Barangay Alangilan, Sta. Catalina, corroborated the testimony of Barangay Captain Jose Lacpao that his team conducted an operation in the area by requiring the residents there to register their unlicensed or unrecorded firearms, if any, so that the military could determine the number of residents in the area who have firearms. He said that he first met the appellant on August 27, 1991 at their temporary headquarters after the appellant was invited to shed light on a report that he possessed a homemade shotgun. On August 28, 1991, he met the father of the appellant, Barangay Councilman Restituto Zuniega, who reported to him that the appellant had threatened to shoot him for his alleged information given to the military that the appellant possessed an unlicensed firearm. To settle this apparent conflict between appellant and his father, Restituto Zuniega, Capt. Batiancila verbally directed his men to invite the appellant to their headquarters. The appellant came and surrendered a pistolized homemade shotgun. Capt. Batiancila declared that it was also at this occasion that the appellant confessed that he caused the death of Napoleon on November 1987 when he shot the latter with his service caliber 30 M-1 Carbine Rifle. In the evening of said date, Capt. Batiancila turned over the custody of the appellant to the 36[th] PC Command at Nagbagang, Sta. Catalina for proper disposition on account of the appellant's confession including the appellant's illegal possession of firearms.[7]

Dra. Rosita Muñoz, Municipal Health Officer of Sta. Catalina, Negros Oriental, testified that she issued the Death Certificate of the victim without having seen or examined the body of the deceased; and that the entries in the death certificate was just furnished by Eppie Paz Minasalbas who is the daughter of the deceased, that is why she could not tell the kind of gun used in killing the victim.[8]

Franco Aujero, the son of the victim who resides at Daro, Dumaguete City, testified that, upon being informed by his brother that their father died, he immediately went to Alangilan, Sta. Catalina, Negros Oriental. When he saw the remains of his father he noticed that the body of his father had bullet wounds on the chest, another on the right arm and one on the right portion of his back.[9]

The appellant interposed the defense of denial and alibi.

The appellant, Marlon Zuniega, testified that in the evening of November 18, 1987, he slept at the house of Gloria Aliabo in Barangay Bonawon, Siaton, Negros Oriental which is about 18 kilometers away from Barangay Alangilan. He left Barangay Alangilan at about 3:30 o'clock in the afternoon of November 18, 1987 on board a Ceres Bus to deliver four (4) sacks of bananas to Gloria Aliabo. Upon his arrival at Barangay Bonawon, Siaton, Negros Oriental at about 4:00 o'clock in the same afternoon, he and Gloria Aliabo's husband lifted the four (4) sacks of bananas, one at a time, from the road following a foot path to Gloria Aliabo's house which is located about 500 meters away from the road. It was only on the following day, at around 9:00 o'clock in the morning, that he arrived at Alangilan and learned about the death of Napoleon Aujero.

Gloria Aliabo, Raul Edrial and Hecunias Magdasal testified to corroborate this testimony of the appellant.

Gloria Aliabo testified that the appellant arrived at about 5:00 o'clock in the afternoon of November 18, 1987 at her house in Barangay Bonawon which is about 15 kilometers away from Barangay Alangilan; that there are no jeepneys and tricycles in their barangay except buses of the Ceres liner; that the last trip of the Ceres Bus bound for Barangay Alangilan is at 4:30 o'clock in the afternoon, and that bus comes from Dumaguete City. Owing to the road conditions, travel time by foot from Barangay Bonawon to Barangay Alangilan is about four (4) hours, or just an hour if negotiated with a vehicle. She admitted that she is related to Felixnito Lasota, the prosecution's eyewitness, and that she is also a cousin of the appellant whose mother's surname is also "Lasota"; that she is also a cousin of the wife of the deceased whose death she came to know only when she visited her farm in Barangay Alangilan on November 19, 1987. She was informed that elements of the NPA were responsible for the victim's death.[10]

Raul Edrial, who is a barriomate of the appellant in Barangay Alangilan, testified that he helped the appellant in loading bananas on a Ceres Bus at about 4:30 o'clock in the afternoon of November 18, 1987. The following day, at about 8:00 o'clock in the morning, he again saw the appellant alight from a Ceres Bus coming from the direction of Barangay Bonawon, Siaton, Negros Oriental. However, he said that in 1987 up to the time he testified for the defense the jeepneys plying the route of Alangilan to Bonawon would last until 7:00 o'clock in the evening. He estimated that travel time of a Ceres Bus coming from Alangilan to Bonawon would only last around 30 minutes. [11]

Hecunias Magdasal, a CHDF member of Alangilan, Sta. Catalina, Negros Oriental, testified that while he was waiting for a bus, he saw the appellant, at about 3:00 o'clock in the afternoon of November 18, 1987, in front of his (appellant's) house loading several sacks of bananas on a bus along the road. He was informed by the appellant that the bananas would be brought to Barangay Bonawon, Siaton, Negros Oriental. When he was about 20 meters away from the appellant, he also saw that the bananas were later on loaded on a Ceres Bus bound for Barangay Bonawon, Siaton, Negros Oriental. After receiving reports of the death of Napoleon Aujero, he and Barangay Captain Lacpao went to the house of the deceased to see the dead body of Napoleon Aujero at about 7:00 o'clock in the morning of November 19, 1987. In the afternoon of the same day he saw the appellant at the house of Barangay Captain Jose Lacpao at about 4:00 o'clock in the afternoon.[12]

The appellant testified that Felixnito Lasota was ill-motivated in testifying against him because of their quarrel which occurred sometime in December 1991 over Felixnito Lasota's pig and that he (appellant) was a witness in

the murder and arson cases filed against Barangay Captain Jose Lacpao, uncle of Felixnito's wife.[13]

The appellant admitted that on November 18, 1987 he was still a member of the CHDF with Barangay Captain Jose Lacpao as his team leader. Whenever the CHDF members were on duty they were provided with firearms, and if they were not on duty they would leave their firearms in the house of Barangay Captain Jose Lacpao. He was issued a garand rifle on the first time he was called by Barangay Captain Lacpao to be on duty. When he was again called to be on duty, he was issued a carbine rifle. However, he said that after every tour of duty, CHDF members like him were asked to deposit these service firearms with the Barangay Captain. He claimed that on November 18, 1987 he was off-duty.[14]

As to appellant's alleged ordeal in the hands of the military, he testified that he was brought to the army headquarters by Corporals Mardonio and Cañete at about 8:00 o'clock in the morning of August 27, 1991. While thereat, he was told by Capt. Batiancila to acknowledge having caused the death of Napoleon Aujero and to sign some papers in respect thereto. When he refused and denied participation in the killing of Napoleon Aujero, he was manhandled and not allowed to leave until 6:00 o'clock in the afternoon and under strict instruction to return the following day. Together with his father, he returned on the following day, and again he was mauled while his father was struck with a paddle. In the evening of the said date, he was turned over to the PC Detachment in Nagbagang, Sta. Catalina, Negros Oriental and he was put in jail.[15]

On re-direct examination[16] and re-cross examination,[17] the appellant testified that while he was in the headquarters of Capt. Batiancila the latter punched him on the right jaw and struck him at the back of his head and on both feet with a .45 caliber firearm; and that Corporal Mardonio also struck him at his back with an M16 rifle while Corporal Cañete pressed his left fingers with another M16 rifle against a stone. He submitted himself for physical examination on August 29, 1991 and he was issued a medical certificate by Dr. Patrocinio G. Garupa, Jr. of the Bayawan District Hospital. He did not file a complaint against the soldiers who manhandled him, and he did not inform Barangay Captain Lacpao about it because he believed that the mauling was planned by Barangay Captain Lacpao.

Dr. Patrocinio G. Garupa, Jr., government physician at the Bayawan District Hospital, testified that on August 29, 1991 at about 10:05 o'clock in the morning he treated the appellant for several lacerated wounds, contusions and abrasions. He explained that the wounds must have resulted from a forceful contact with a hard instrument that has been applied on the body of the appellant. On October 10, 1991 he issued a medical certificate[18] for said medical attendance.[19]

After the defense rested its case, the prosecution again presented its sole eyewitness, Felixnito Lasota, this time as a rebuttal witness. Felixnito Lasota testified on the rebuttal that on November 18, 1987 he saw the appellant at the house of the latter's sister, Narcinita, that is, first, at about 3:00 o'clock in the afternoon, second, at about 5:00 o'clock in the afternoon, and third, at about 7:00 o'clock in the evening, all of November 18, 1987. When he fetched water from the pump of the house of Narcinita, he again saw the appellant inside the house of Narcinita in the morning of November 19, 1987 doing nothing.[20]

On June 25, 1996, the trial court rendered its assailed decision, the dispositive portion of which reads, to wit:

"WHEREFORE, judgment is hereby rendered finding accused Marlon Zuniega, alias "Nonoy" guilty beyond reasonable doubt of the crime of Murder and imposes upon said accused the penalty of Reclusion Perpetua, with all the accessory penalties provided by law. Said accused is directed to pay the heirs of the deceased Napoleon Aujero the amount of Fifty Thousand (P 50,000.00) Pesos as civil indemnity for such death.

The property bond posted by said accused on June 8, 1992 is hereby ordered cancelled and the accused is ordered immediately committed to the custody of the Provincial Warden.

The accused having been in detention since September 10, 1991 and released on bail only on June 11, 1992, proper account of said period of preventive imprisonment shall be made by the Warden concerned, provided the convict abided by the rules of the institution.

The effects and instruments of the crime are ordered forfeited in favor of the government.

SO ORDERED."[21]

In this appeal, the appellant, Marlon Zuniega, raises the following assignment of errors:

I

THAT THE HONORABLE LOWER COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AS CHARGED IN THE INFORMATION.

II

THE HONORABLE LOWER COURT GRAVELY ERRED IN GIVING WEIGHT AND CONSIDERATION TO THE INCREDIBLE TESTIMONY OF INCREDIBLE WITNESS FELIXNITO LASOTA WHO ALLEGEDLY WAS INVITED TO WITNESS THE KILLING OF NAPOLEON AUJERO ON NOVEMBER 18, 1987 BUT WHO REPORTED TO THE AUTHORITIES ONLY ON AUGUST 21, 1991 OR ONE THOUSAND THREE HUNDRED SEVENTY EIGHT (1,378) LONG DAYS AFTER THE INCIDENT.

III

THAT THE HONORABLE LOWER COURT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED FOR INSUFFICIENCY OF EVIDENCE AND/OR AT LEAST ON THE HYPOTHESIS OF REASONABLE DOUBT.

The appeal is not meritorious.

The appellant contends that the trial court, through Judge Alfonso Briones, wrongly gave weight to the eyewitness account of Felixnito Lasota and erred in merely relying on the transcript of stenographic notes when Judge Briones penned the judgment of conviction since he did not have the opportunity to hear the actual eyewitness account of Felixnito Lasota. This case commenced before trial Judge Enrique Inting and it was only after the prosecution has completed presentation of its evidence before Judge Eleuterio Chiu when Judge Alfonso Briones took over the case. Thus, the rule that findings of the trial court are entitled to great weight and respect is not applicable in this case, according to the appellant.

We do not agree.

Although Judge Alfonso Briones, who penned the appealed decision, personally heard only the testimonies of the witnesses for the defense and the rebuttal witness of the prosecution, the Court finds that he did not commit any grave abuse of discretion in the appreciation of the facts as borne by the evidence adduced in this case. The Court also noted that the prosecution's eyewitness, Felixnito Lasota, was also its rebuttal witness.

In *People vs. Ulzoron*, [22] we had occasion to rule that -

"The circumstance that the judge who wrote the decision has not heard the testimonies of the prosecution witnesses does not taint or disturb his decision. After all, he had the records of the case before him including the transcript of stenographic notes. The validity of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial unless there is a clear showing of grave abuse of discretion in the appreciation of the facts, x x x." [23] (Emphasis ours)

Also in *People vs. Salimbago*, [24] we ruled that -

"x x x, the fact that the judge who penned the decision is not the same judge who heard the testimonies of witnesses is no compelling reason to jettison the findings of conviction by the court a quo and does not ipso facto render it erroneous more so when the judgment appears to be fully supported by the evidence on record. Although a judge in such a situation had no way of testing the credibility of witnesses considering that he did not have the unique opportunity of having observed that elusive and incommunicable evidence of the witnesses' demeanor and behavior while testifying, nonetheless the lower court's evaluation of the testimonies is supported by the evidence on record. It is settled that the trial court's factual findings are binding on this Court when they are ably supported by evidence on record."

We find that Judge Briones properly assessed the testimonies of the prosecution witnesses on the basis of the records of this case including the transcript of stenographic notes. Judge Briones' lack of opportunity to observe the demeanor of the other prosecution witnesses whose testimonies are merely corroborative did not prevent him from determining from the transcript of stenographic notes whether any of said witnesses was forthright and frank.[25] Time and again, this Court has ruled that it will not interfere with the judgment of the trial court in passing upon the credibility of witnesses unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misapprehended or misinterpreted.[26] We have carefully gone over the records and the stenographic notes of this case and we find no compelling reason to overturn the findings of fact and the conclusions of the trial court in the case at bar.

Appellant's bid to exonerate himself by attempting to destroy the credibility of Felixnito Lasota is without merit. Prosecution's eyewitness Felixnito Lasota, was straightforward in categorically testifying that the appellant fetched him from his house at about 9:00 o'clock in the evening of November 18, 1987 to go to the house of Napoleon Aujero; that the appellant was then carrying a carbine rifle; that the appellant asked him to wait near the road in front of the house of the victim, Napoleon Aujero, which was just about twelve (12) meters away from where he stood; and that the appellant was the one who fired his carbine rifle three (3) times at Napoleon Aujero causing the instantaneous death of the latter.[27] This positive identification of the appellant as the person who shot the victim to death in this case was credible considering the electric light that adequately illumined the scene of the crime.[28] Being a blood relative who just lived nearby, Felixnito Lasota could not have erred in positively identifying the appellant as the person who fatally shot the victim, Napoleon Aujero, three (3) times. Notwithstanding that both the appellant and prosecution witness Felixnito Lasota were blood relatives,[29] the latter was not deterred from testifying to the truth of what he had witnessed even at the risk of getting the ire of their blood relatives. Jurisprudence holds that if an accused had really nothing to do with a crime, it would be against the natural order of events and of human nature, and against the presumption of good faith, that a prosecution witness would falsely testify against an accused-appellant.[30] We find the positive and forthright declaration of the prosecution witness Lasota worthy of credence in contrast to the self-serving denials of the appellant. Even in the crucible of cross-examination by the counsel for the defense and the clarificatory questions of the trial court, this eyewitness account of Felixnito Lasota remained steadfast and unwavering.[31] We find that this straightforward testimony of Felixnito Lasota to be more believable than the bare denial and alibi of the appellant. A plea of denial has been viewed with disfavor by the courts due to the facility with which it can be concocted.[32] Denial and alibi, if not substantiated by clear and convincing evidence, as in the case at bar, are negative and self-serving evidence bearing no real weight in law and jurisprudence.[33] Thus, in the absence of any controverting evidence that the positive identification made by Felixnito Lasota was wrongly made or was otherwise ill-motivated, we find no cogent reason not to believe his testimony.

Undaunted, accused-appellant imputed alleged ill motive on the part of Felixnito Lasota due to a past but minor feud between them. But this was, however, correctly rejected by the trial court when it found that -

"From his own mouth, the accused himself fired at the credibility of Felixnito anchored on a quarrel over a pig

in December, 1991, and also on account of Felixnito's wife who is said to be a niece of Jose Lacpao, the Barangay Captain, who is facing two (2) criminal cases where the accused is marshaled as a prosecution witness (TSN., pp. 8-9, December 20, 1994). The assertion of the accused is glaringly lame. Felixnito already executed a sworn statement on August 31, 1991 (pages 7-8, Records); a warrant for the arrest of the accused was issued on September 5, 1991 (page 20, Records); the accused was committed to the custody of the Provincial Warden on September 10, 1991 (page 18, Records) and was released on bail only on June 11, 1992 (page 90, Records). It taxes the imagination how the accused could pick up a quarrel with Felixnito over a pig in December 1991, when said accused was still detained. On the other hand, Jose Lacpao, a witness for the prosecution who testified in this case on December 2, 1992, stated on cross-examination by the defense that up to that point in time the accused has not yet testified against him (TSN., pp. 19-20, December 2, 1992) and there is no showing in the records that, indeed, the accused testified in the pending cases against Jose Lacpao. All of the foregoing have eroded the testimonial credibility of the accused and, in turn, give more credence to the narration of facts Felixnito told the Court." [34]

Other than the aforesaid shallow imputation of alleged ill motive, the appellant could not ascribe any alleged falsehood to Felixnito for the latter to point an accusing finger against him for such grave a crime as murder. Where there is no evidence to indicate that the prosecution witness was actuated by improper motive, the presumption is that he is not so actuated and that his testimony is entitled to full faith and credit. [35] Positive identification when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. [36]

We agree, however, with the trial court in not giving weight to the testimonies of prosecution witnesses Barangay Captain Jose Lacpao and Capt. Leonardo Batiancila who claimed that the appellant had confessed to them regarding the crime. Their testimonies were not given weight mainly due to certain constitutional infirmities. The trial court found that the appellant was placed in the custody of the military without any warrant for his arrest; that the alleged conference of the appellant with Capt. Batiancila indicated that the appellant was already under custodial investigation and he was not informed of his constitutional rights; and that the appellant's alleged confession thereat for the death of the deceased appeared to be involuntary, irregular and attended by violence committed upon his person. The constitutional and jurisprudential postulates on due process, by now elementary and deeply embedded in our criminal justice system, are mandatory and indispensable. [37] Thus, any transgression of such constitutional safeguards shall not be sanctioned by this Court or in any court of justice.

In the case at bar, the judgment of conviction of the trial court rendered against the appellant is chiefly premised on the eyewitness account of Felixnito Lasota. The trial court is not precluded from rendering a finding of guilt in a criminal prosecution on the basis of the testimony of a single witness. Unless expressly required by law, the testimony of a single witness, if found credible and positive, as in the case at bar, is sufficient to convict for the truth is established not by the number of witnesses but by the quality of their testimonies. [38] Criminals are convicted, not on the number of witnesses against them, but on the credibility of the testimony of even one witness who is able to convince the court of the guilt of the accused beyond a shadow of a doubt, [39] as in the case at bar.

The appellant also argues that the revelation of the crime by prosecution eyewitness Felixnito Lasota three (3) years after the killing took place is incredible and unworthy of belief considering that he had all the opportunity to report the crime to the police authorities. Such a long delay, according to the appellant, should cast grave doubts in the veracity of the testimony of one claiming to have witnessed the incident.

We disagree. Settled is the rule that failure to reveal at once the identity of the perpetrator of a felony does not impair the credibility of a witness more so if the delay has been adequately explained. [40] Although three (3)

years and nine (9) months may be a long a period for Felixnito Lasota to keep silent about what he had witnessed and refrained from reporting earlier the identity of the assailant to the police authorities, however, circumstances obtaining in this case sufficiently show that Lasota's silence then was due to his continuous fear of a great danger to his life and/or to his family if he should testify. An eyewitness account cannot be disregarded on account of the delay in its reporting, so long as the delay is justified,[41] as in the case at bar. Witnessing a crime is an unusual experience which elicits different reactions from witnesses. Therefore, no clear cut standard form of behavior can be drawn.[42] Witnesses are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal investigations due to a variety of valid reasons.[43] One may immediately report the incident to the proper authorities while another, in fear and/or avoiding involvement in a criminal investigation, may keep to himself what he had witnessed.[44] Still others, like Felixnito who came forward to reveal the perpetrator of the crime only after the lapse of three (3) years, would want to make sure that the possibility of a threat to his life or to his loved ones is already diminished, if not totally avoided. The ruling of this Court in *People vs. Gornes*[45] is instructive, to wit:

"It is true that the charge against the appellant was initiated only three and a half years after the commission of the crime. However, the fact of delay alone does not work against the witnesses. In *People vs. Rostata*, this Court held:

'Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of the witness if such delay is satisfactorily explained. The law on prescription of crimes would be meaningless if We were to yield to the proposition that delay in the prosecution of crimes would be fatal to the state and to the offended parties. In fixing the different prescriptive periods on the basis of the gravity of the penalty prescribed therefor, the law takes into account or allows reasonable delays in the prosecution thereof.'

We find the delay in this case to be sufficiently and satisfactorily explained. The victim's family, which included the two prosecution witnesses, were threatened by Raul Vilar and the accused himself after their mother was killed. Fear of reprisal compelled them to hold their tongues. In fact, had not the appellant been arrested, these witnesses might have kept their silence forever" (Underscoring supplied and citations omitted).

In the case at bar, before, during and after the crime took place the appellant was residing just a stone's throw away from the house of prosecution eyewitness Felixnito Lasota, a family man with three (3) children.[46] Felixnito Lasota sufficiently explained that his disinclination to immediately speak out and point to the perpetrator of the crime to the proper authorities was mainly due to the threat of harm that the appellant specifically told him before they parted ways on the date the shooting incident happened. Notwithstanding the fact that Felixnito often passed by the police station in going to his place of work, the thought of having to leave his family behind and near the place where the appellant resides was enough reason for him to be compelled temporarily to be tight-lipped about the crime. It was only after Felixnito Lasota came to know about the arrest of the appellant by the military that he was able to voluntarily divulge the appellant's authorship of the killing of Napoleon Aujero in this case. It has been held that witnesses in this jurisdiction are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal investigations due to a variety of reasons. Fear of the criminal is one such reason.[47] For the Court to unreasonably discredit a witness' account of the crime for the simple reason that it was delayed is to permanently seal the lips of reluctant and timorous witnesses.[48] Felixnito sufficiently explained on the witness stand his long silence, thus:

"ATTY. ADVINCULA:

Q. After he fell to the floor of the porch, do you know what happened next to Napoleon?

A. That was the time when we left.

COURT: to witness

Q. You went home together with whom?

A. With Marlon Zuniega.

Q. Including you you also went home with Marlon to your own residence?

A. Yes, after that incident we went home together.

COURT: to witness

Q. Where did Marlon separate from you, before reaching home or in your house already?

A. We separated ways already when we were near our house and I do not know where he went.

COURT:

Continue.

ATTY. ADVINCULA:

Q. After that did you not have anything in mind that you are going to report to the police?

A.

No, I did not report the matter because I was threatened.

COURT: to witness

Q. How did he threat (sic) you?

A. He warned me not (sic) tell the incident to anybody so that nothing will happen to me.

COURT:

Continue.

xxx xxx xxx"[49]

"Fiscal Bustamante:

Q. On November 18, 1987, was Marlon Zuniega still a member of the CHDF, if you know?

A. Yes.

Q. And you reported the incident only after 3 years and 10 months?

xxx xxx xxx

Q. Did you report the incident to the police?

A. I voluntarily reported the matter to the police.

Q When?

A. I think I reported the matter on August 31, 1991.

Q. Three (3) years after?

A. Yes.

COURT:

Continue.

FISCAL BUSTAMANTE:

Q.

Now, you testified a while ago that you did not report the matter immediately to the authorities because of fear. Now, I want you to explain, did you not fear . . .

COURT: to witness

Q. What were you afraid of?

ATTY. FLORES:

Objection, Your Honor, there is no basis.

ATTY. ADVINCULA:

There was prior answer.

COURT:

You read the answer. (after reading);

FISCAL BUSTAMANTE:

I will refresh (sic) my question, Your Honor.

Q.

Now, when you reported the matter to the authorities sometime in August, 1991, did you feel threatened at that time when you reported the matter?

A. I was not afraid anymore.

COURT: to witness

Q. Why did it take you three years to report the incident?

A. Because Marlon was already arrested by the army.

Q. Do you know what he was arrested for?

A.

No, I do not know why he was arrested but all I can say is that I reported the matter after Marlon Zuniega was arrested already.

COURT:

Q. How do you know that he was arrested?

A. Because he was arrested in our barrio.

Q. By whom?

A. By the army.

Q. And he was detained?

A. Yes.

Q.

That is why you decided to report to the police what happened three years before in which Marlon Zuniega shot and killed Napoleon Aujero?

A. That's the one.

xxx xxx xxx ."[50]

Warned as he was not to divulge to anybody about the shooting incident, otherwise something serious could happen to him and his family, the fear that was impressed upon Felixnito was real. He saw how the appellant killed the victim in cold blood. He could also be killed if he squeals on the appellant. The appellant who is a member of CAGU is a next door neighbor. The fear and instinct of self preservation of Felixnito and his concern for the safety of his family sufficiently explain his silence of three (3) years and nine (9) months, about the crime which he had witnessed.

On the other hand, we find the appellant's alibi to be without merit. The trial court correctly pointed out that -

"x x x the accused has so laboriously used the factor of timing so as to provide a convenient basis for his x x x claim that there was no more available transportation for him to take in going home late in the afternoon of said date. Raul Edrial, a witness for the defense, crossed-path with the claim of the accused on availability of transportation. Thus, Raul declared:

"Fiscal Elmaco:

Q.

And you know that there are also jeepneys plying the route from Alangilan to Bonawon as of 1987 until the present?

A. Yes.

Q.

And can you tell the Court the schedule of the transportations that travel particularly from Alangilan to Bonawon?

A. The jeepneys plying from Alangilan to Bonawon would last until 7:00 o'clock in the evening.

xxxx" (TSN., p. 7, May 23, 1994).

"On the other hand, both Hecunias Magdasal and the accused claimed that a day after the incident or on November 19, 1987, they were in the house of, and met, Jose Lacpao, the Barangay Captain. Hecunias said he was together with Jose Lacpao in viewing the dead body of the victim at 7:00 o'clock in the morning of said date (TSN., p. 26, October 14, 1994), while the accused said that at 10:00 o'clock in the morning of said date he went home after he viewed the corpse and, thereafter, proceeded to the house of Jose Lacpao to inquire, as he did, about the cause of the victim's death (TSN., p.10, February 9, 1995; TSN., p. 7, February 17, 1995). All the while, both the accused and his witness forget that Jose Lacpao was not in his residence on November 18 and 19, 1987 in Barangay Alangilan as he visited his children in Dumaguete City and went home only five (5) days later (TSN., p. 14, December 2, 1992)."[51]

It is an oft-repeated ruling of this Court that no jurisprudence in criminal cases is more settled than that alibi is the weakest of all defenses, and for which reason it should be rejected when the identity of the accused is sufficiently

and positively identified by credible eyewitnesses to the crime.[52] Considering the evidence adduced in this case, there is no doubt that the appellant's alibi and denial of the charge against him are self-serving and not worthy of belief.

The crime for which the appellant was correctly convicted by the trial court is murder inasmuch as the killing of the victim was attended by treachery. The evidence for the prosecution showed that the appellant carried out his criminal design through stealth by positioning himself near his prey under the cover of night. When the appellant was just about three (3) meters away from the victim, Napoleon Aujero, who was then seated alone on his chair at the porch of their house and did not have any inkling of the impending danger that lurked near him, the appellant suddenly fired his service carbine rifle three (3) times at Napoleon Aujero, thereby causing the latter's death. These facts show that the appellant perpetrated the crime in such a way that he easily rendered his victim totally defenseless. This attack by the appellant came without the slightest provocation on the part of the victim; it was deliberate and unexpected, affording the unarmed and unsuspecting victim no chance to resist or escape. The shooting caused the victim's instantaneous death. We have held in a number of cases that when the assailant consciously employed means of execution that gave the person attacked no opportunity to defend himself, much less retaliate, and which tended directly and specially to insure his plan to kill the victim, the crime is qualified to murder.[53]

Considering that the accused-appellant was found guilty by the trial court of having committed the crime of murder on November 18, 1987, the prescribed penalty therefor should be based on the law prior to the date of effectivity on December 31, 1993 of the Death Penalty Law (R.A. No. 7659) which amended Article 248 of the Revised Penal Code. The ruling of this Court in *People vs. Berzuela*[54] is instructive, to wit:

"Prior to the effectivity of the law, murder under Art. 248 of the Revised Penal Code, as amended, was punishable by reclusion temporal maximum to death. Applying, by analogy, Art. 61(3), which provides that "When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum period of that immediately following in said respective graduated scale," this means that the three periods of the penalty are reclusion temporal maximum, as minimum, reclusion perpetua as medium, and death as maximum. In the absence of any mitigating or aggravating circumstance, the penalty will be imposed in its medium period, i.e., reclusion perpetua."

In the case at bar, there being no mitigating or aggravating circumstance, the trial court was correct in imposing the proper penalty of reclusion perpetua for the crime of murder. The trial court's award of P50,000.00 as civil indemnity for the death of the victim in this case is also in accord with law and jurisprudence.

WHEREFORE, the assailed Decision dated June 25, 1996 of the Regional Trial Court of Negros Oriental, Branch 38 in Criminal Case No. 9950, finding the appellant, Marlon Zuniega alias "Nonoy," guilty beyond reasonable doubt of the crime of Murder, and imposing upon the said appellant the penalty of reclusion perpetua, with all the accessory penalties provided by law, and ordering him to pay to the heirs of the deceased victim, Napoleon Aujero, the sum of P50,000.00 as civil indemnity ex delicto, is hereby **AFFIRMED**.

SO ORDERED.

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

* Sometimes referred to as Felixberto Lasota, TSN dated October 14, 1994, pp. 3, 5, 6, & 11.

* Sometimes spelled as Kinikot, TSN, dated December 2, 1992, pp. 12, 24.

[1] Penned by Judge Alfonso P. Briones, Original Records, pp. 355-374.

[2] Original Records, p. 2.

[3] Original Records, p. 356.

[4] TSN dated November 11, 1991, pp. 8-16, 18-29, 31.

[5] TSN dated December 2, 1992, pp. 2, 5-6, 8-9, 11-14, 17-20, 25-27.

[6] TSN dated December 2, 1992, pp. 18-19 & 33.

[7] TSN dated March 3, 1993, pp. 5-7, 11-14.

[8] TSN dated December 16, 1992, pp. 7-8.

[9] TSN dated June 9, 1993, pp. 3-6.

[10] TSN dated March 9, 1994, pp. 3-10.

[11] TSN dated May 23, 1994, pp. 5-7, 10, 13, and 16-17.

[12] TSN dated October 14, 1994, pp. 3, 11, 13, 18-20, & 27-32.

[13] TSN dated December 20, 1994, pp. 7-9.

[14] TSN dated March 28, 1995, pp. 6-13.

[15] TSN dated March 28, 1995, pp. 17-23.

[16] TSN dated March 28, 1995, pp. 24-26.

[17] TSN dated March 28, 1995, pp. 27-28.

[18] "With the following findings, to wit:

- Lacerated wound one (1) inch at the scalp occipital area with surrounding contusion;
- Confluent abrasions about 3 ¼ x 1 ½ inches size along the mid axillary line on the level of the right 12th rib;
- Ovaloid confluent abrasion about 1 ¼ inches longest and 1 inch shortest diameter with contusion at the left posterior chest on the lateral inferior angle of scapula;
- Linear circular contusion about 1 inch diameter about 2 ½ inches directly below injury no. 3;
- Confluent abrasion about 1 x 2 inches about 2 inches below injury no. 4 along the posterior axillary line;
- Linear semicircular contusion about 1 ¼ inches length about 2 inches directly below injury no. 5;
- Superficial avulsive laceration about ½ inch diameter at the left mid-ventral index finger;
- Contusion at left post auricular area."

[19] TSN dated April 20, 1994, pp. 3-4, 6; TSN dated May 11, 1995, pp. 5-10.

[20] TSN dated June 30, 1995, pp. 2-6.

[21] Original Records, pp. 373-374; Rollo, pp. 67-68.

[22] 286 SCRA 741 (1998).

[23] Ibid, p. 748 citing *People v. Fulinara*, 247 SCRA 28 (1995).

[24] 314 SCRA 282, 301 (1999).

[25] *People v. Clopino*, 290 SCRA 432, 445 (1998) relying on *People v. Compendio, Jr.*, 258 SCRA 254, 262 (1996).

[26] *People v. Nang*, 289 SCRA 16, 26 (1998); *People v. Boco*, 309 SCRA 42, 63 (1999); *People v. Cañeta*, 309 SCRA 199, 208 (1999).

[27] TSN dated November 11, 1991, pp. 5-15.

[28] TSN dated November 11, 1991, pp. 13-14.

[29] TSN dated November 11, 1991, pp. 8-9.

[30] *People v. Villamor*, 292 SCRA 384, 395 (1998) citing *People v. Enciso*, 223 SCRA 675, 686 (1993).

[31] TSN dated November 11, 1991, pp. 23-26.

[32] *People v. Lagarteja*, 291 SCRA 142, 151 (1998) citing *People v. Dancio*, 253 SCRA 146 (1996).

[33] *People v. Sanchez*, 291 SCRA 333, 343 (1998).

[34] Original Records, p. 370.

[35] *People v. Dominador De La Rosa*, G.R. No. 133443, promulgated on September 29, 2000 citing *People v. Tabaco*, 270 SCRA 32 (1997).

[36] *People v. Caisip*, 290 SCRA 451, 456 (1998).

[37] *Alonte v. Savellano, Jr.*, 287 SCRA 245, 261 (1998).

[38] *People v. Matubis*, 288 SCRA 210, 220 (1998); *People v. Villanueva*, 284 SCRA 501, 509 (1998).

[39] *People v. Enriquez*, 292 SCRA 656, 662 (1998) citing *Bautista v. C.A.*, 288 SCRA 171 (1998); *People v. Saley*, 291 SCRA 715, 750 (1998).

[40] *People v. Manegdeg*, 316 SCRA 689, 706 (1999); *People v. Adoviso*, 309 SCRA 1 (1999).

[41] *People v. Villamor*, 284 SCRA 184, 193 (1998).

[42] *People v. Lachica*, 316 SCRA 443, 452 (1999).

[43] *People v. Ramos*, 309 SCRA 643, 655 (1999).

[44] *People v. Taclan*, 308 SCRA 368, 381 (1999).

[45] 230 SCRA 270, 279-280 (1994) penned by then Associate Justice Hilario Davide, Jr., now Chief Justice.

[46] TSN dated November 11, 1991, p. 23.

[47] *People v. Villanueva*, 284 SCRA 501, 509 (1998).

[48] *People v. Ramos*, 309 SCRA 643, 655 (1999).

[49] TSN dated November 11, 1991, pp. 15-16.

[50] TSN dated November 11, 1991, pp. 19-21.

[51] RTC Decision, p. 17; Original Records, p. 371.

[52] *People v. Sumalpong*, 284 SCRA 464, 486 (1998); *People v. Aquino*, 284 SCRA 369, 375 (1998).

[53] *People v. Balisoro*, 307 SCRA 48, 65 (1999) citing *People v. Cayabyab*, 274 SCRA 387 (1997); *People v. Serzo, Jr.*, 274 SCRA 553 (1997); *People v. Baydo*, 273 SCRA 526 (1997); and *People v. Israel*, 272 SCRA 95 (1997).

[54] G.R. No. 132078 promulgated on September 25, 2000, p. 11.

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