

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUANITO ABELLA, DIOSDADO GRANADA, BENJAMIN DE GUZMAN, AND EDGARDO VALENCIA, ACCUSED-APPELLANTS.*G.R. No. 127803. August 28, 2000*

Ponente: DAVIDE JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-127803/>**DAVIDE JR., J.:**

It all started with an altercation during a basketball game. Three days later, or on 10 March 1992, the bodies of MARLON[1] Ronquillo; JOSEPH Ronquillo; ERWIN Lojero; ANDRES Lojero, Jr.; and FELIX Tamayo were fished out of the murky waters of the Pasig River, filthy, bloated, putrid, and decomposing. Postmortem examinations on the cadavers showed signs of foul play.

MARLON's hands were tied at the back with a black electric cord. He had lacerated wounds, contusions, ligature marks and hematoma. He died from a gunshot wound on the head.[2]

ANDRES' hands were bound at the back with a plastic flat rope with four loops. His genitals were cut off; and he had ligature marks, contusions, and hematoma. The cause of his death was "asphyxia by strangulation; hemorrhage, intracranial, traumatic."[3]

JOSEPH's hands were "hog-tied at the back using a basketball T-shirt." He also had ligature marks, contusions, lacerated wounds and fracture. He died of "asphyxia by strangulation; hemorrhage, intracranial, traumatic with skull fracture."[4]

ERWIN's body showed abrasions and burns. There were cord impressions on his wrists and depressed fracture on his head and at the base of his skull. He died of "asphyxia by drowning with blunt head injury."[5]

FELIX had abrasions on the left cheek and tie impressions on the wrists. The cause of his death was "asphyxia by drowning."[6]

On 18 March 1992, five informations for murder were filed before the Regional Trial Court of Manila (hereafter the trial court) against Juanito ABELLA, Diosdado GRANADA, Benjamin DE GUZMAN, Edgardo VALENCIA, Renato Dante, and Virgilio de Guzman. The cases were raffled to Branch 52 presided over by the late Judge David Nitafan. Docketed as Criminal Cases Nos. 92-104529 to -33, the informations[7] identically read as follows:

That on or about March 8, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating together with others whose true names, real identities and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one Marlon Ronquillo y Alepda [(Criminal Case No. 92-104529), one Felix Tamayo y Pascual (Criminal Case No. 92-104530), one Andres Lojero, Jr. y Pascual (Criminal Case No. 92-104531), one Joseph Ronquillo y Alepda [(Criminal Case No. 92-104532), one Erwin Lojero y Pascual (Criminal Case No. 92-104533)] by then and there hitting his

head with guns, kicking him, tying his hands, [neck and private organ (additional allegation in Criminal Case No. 92-104531)] and thereafter throwing his body into the river thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.

Contrary to law. [Enclosures supplied].

On 25 March 1992, the informations were amended to include three other accused, namely, Joselito Crespo, Bienvenido Dugay and Danilo Abarete.[8] Upon arraignment all the accused pleaded not guilty to the charges against them. On 26 August 1992, Joselito Crespo, Renato Dante, Bienvenido Dugay, Danilo Abarete and Virgilio de Guzman were dropped from the information.[9]

The prosecution's version of the events is as follows: In the morning of 7 March 1992, MARLON, JOSEPH, and an unidentified companion played three rounds of basketball against the team of JOEY de los Santos at the vicinity of Dalisay and Lakas Streets, Bacood, Sta. Mesa, Manila. The Ronquillos won the first two rounds; but the third round ended in a brawl, which the neighbors quickly pacified. JOEY later went back to Dalisay Street carrying two pillboxes. A certain Donald Ancheta saw him, took the pillboxes and turned them over to a policeman.[10]

On 8 March 1992, between 5:00 and 6:00 p.m., JOEY and his brother GENER threw stones at the Ronquillos' house, attracting the attention of neighbors, who forthwith ran after the brothers. JOEY and GENER were overtaken and mauled before they were released.[11]

Between 8:00 and 9:00 p.m. of the same day, WILFREDO Lojero, a certain Daniel, and the victims were in front of the Ronquillos' house in Lakas Street, trading stories while awaiting a certain Aling Flor.[12] JOSEPHINE del Rosario was then at the corner of Lakas Street on her way to a friend's house when the victims called her and asked her about her mother, who was a barangay kagawad at Bacood. They told her that they were waiting for Aling Flor to report to her that JOEY and GENER threw stones at the Ronquillos' house.[13] Later, EVELYN de la Cruz joined the group in the conversation.[14] The area was then illuminated by a streetlight at the corner of Damayan and Dalisay Streets about ten arms-length away.

Suddenly, a dirty white Ford Fiera without a plate number stopped in front of the group. There were about ten to thirteen people on board. Among them were JOEY and GENER, who looked out of the van and pointed at the victims. All the passengers except for JOEY and GENER alighted. Their faces were covered with black handkerchiefs, and they were armed. Someone shouted, "Pulis ito!" Another exclaimed, "Walang tatakbo!" FELIX ran but stopped when shots were fired; he was hit with a gun then dragged into the van. WILFREDO Lojero, however, managed to sneak into the Ronquillos' house and was able to see everything. The other victims were boxed, kicked, and also hit with a gun and dragged into the van. Before the van sped away, one of the abductors warned JOSEPHINE, "Ikaw huwag kang maingay, wala kang nakita, wala kang narinig." [15]

Meanwhile, at about 6:00 p.m. inside the Iglesia ni Cristo (INC), Sta. Ana compound in Bacood, ELENA Bernardo was waiting for Pastor Cesar Almedina to seek his advice regarding her son-in-law's problem. Pastor Almedina asked her to wait, and she did so. She waited until 10:00 p.m. Suddenly the guard switched off the lights inside the compound. With only the MERALCO light illuminating the compound from outside, she saw a dirty white Ford Fiera loaded with passengers enter and park in front of the pastoral house near the path leading to the basement. JOEY, GENER, all the accused and the victims were inside the van. Four of the victims were made to alight from the van, while the fifth one lay on the floor of the vehicle as though dead. The victims were brought to the basement, which was at the back of the chapel and beneath the choir office. ELENA followed. Inside the basement the victims were continually mauled, whipped with a gun, and beaten with steel tubes, lead pipes and other blunt instruments. One of the victims was tied with wire. Filemon Garcia arrived with a blowtorch and also

entered the basement. ELENA heard the victims beg for mercy. Unable to endure the sight she sat in front of the chapel and stayed for 30 minutes. Pastor Almedina arrived and told her that they would talk about her problem at another time. Afterwards the victims were herded back to the Fiera. They seemed almost dead.[16]

On 10 March 1992, at 8:45 a.m., the lifeless body of FELIX was found floating on the Pasig River near Beata-Tawiran in Pandacan. At 12:25 p.m., ERWIN's body was retrieved from the same river at the back of the Sta. Ana market. At about the same time, the decomposing bodies of ANDRES, MARLON and JOSEPH were also fished out of the Pasig River near Lambingan Bridge.[17]

SPO3 Myrna Ricasa prepared the crime report and was part of the group that conducted the police line-up on 13 March 1992. Witnesses to the abduction identified the accused from among five line-ups. JOSEPHINE identified ABELLA as among the passengers of the Ford Fiera. EVELYN pointed to GRANADA; Roy Ronquillo and Noel Estorel, who were not presented as witnesses, identified DE GUZMAN and VALENCIA, respectively.[18]

Appellants advanced alibi as their defense. They all claim to have attended the panata at the Punta Sta. Ana chapel on 8 March 1992 from 8:00 to 10:00 p.m., save for ABELLA whose attendance was excused. The panata is a religious practice of the INC held for seven consecutive days as preparation for the santa cena or holy supper. In 1992, the panata was held from 8 to 14 March 1992 and the santa cena, on 15 March 1992.[19] VALENCIA testified that after the panata on 8 March 1992, he went home to San Juan, Metro Manila; it was then about 11:00 p.m.[20] For his part, GRANADA claimed that after attending the panata, he left the Iglesia compound with Filemon and Marilou Garcia. The three arrived at the Garcia residence in Bacood, Sta. Mesa, at 11:00 p.m. Filemon and GRANADA had snacks and watched two movies on the video player. It was already past midnight when GRANADA went home.[21] GRANADA's testimony was corroborated by both Filemon and Marilou.[22]

ABELLA was a member of the PNP highway patrol group assigned to Mobile Unit No. 13 in March of 1992. His tour of duty was from 2:00 to 10:00 p.m. He was previously granted exemption from attending the panata. Together with PO3 Ferdinand Parolina, he patrolled Roxas Boulevard from the corner of T.M. Kalaw St. to the corner of Vito Cruz St. on 8 March 1992. ABELLA and Parolina parted ways at 10:15 p.m.[23] PO3 Parolina, who drove the mobile car, corroborated ABELLA's testimony.[24]

According to former accused Bienvenido Tugay, on 11 March 1992 at 11:00 p.m., Major Joe Pring arrived at the Iglesia compound in Punta, Sta. Ana, with police officers, demanding entrance inside the premises. Since there was no order from his superior allowing outsiders to enter the compound, Tugay refused. Enraged, Pring asked for the names of Tugay's companions. Tugay enumerated the names of appellants.[25]

The following day, appellants read their names in newspapers as among the perpetrators of the crime. Alarmed, they consulted the INC Central Office on what steps to take. Accompanied by Atty. Restituto Lazaro of the Iglesia's legal department, appellants proceeded to see Gen. Diokno at the Western Police District Headquarters on 13 March 1992 "to clear their names." Major Pring brought them to his office and hurriedly organized a police line-up. During the line-up Major Pring allegedly tapped all the accused on the shoulder as a signal to the prosecution witnesses for identifying them. Accordingly, appellants were identified.[26]

On 7 February 1995, after several instances where defense counsel questioned his orders and doubted his partiality, Judge Nitafan inhibited himself from further hearing the cases. The cases were re-raffled to Branch 35 presided over by Judge Ramon P. Makasiar, who penned the decision on 15 November 1996 convicting the accused.[27] The dispositive portion reads:

WHEREFORE, judgment is rendered pronouncing the four accused in these cases: JUANITO ABELLA y GARCIA, DIOSDADO GRANADA y SALCEDO, BENJAMIN DE GUZMAN y LABASAN, and EDGARDO

VALENCIA y VILLANUEVA guilty beyond reasonable doubt of MURDER on five (5) counts, and sentencing each of them to the penalties of five (5) reclusion perpetua, and to pay the costs in proportionate shares.

The said four accused are further ordered, jointly and severally, to pay:

A. To Erlinda Ronquillo and Betty Ronquillo

- P91,607.70 for actual damages,

- P500,000.00 to each of them for moral damages,

- P500,000.00 to each of them for exemplary damages;

B. To Domingo Tamayo

- P33,125.50 for actual damages,

- P500,000 for moral damages,

- P500,000 for exemplary damages;

C. To Andres Lojero, Sr.

- P60,716.00 for actual damages,

- P1,000,000.00 for moral damages,

- P1,000,000.00 for exemplary damages.

SO ORDERED.[28]

This decision was amended to include an award of P50,000 as indemnity for the death of each of the victims.[29]

Appellants are now before us contending that the trial court erred:

I

IN FINDING THAT THERE WAS POSITIVE AND CLEAR IDENTIFICATION OF THE ACCUSED IN THE ALLEGED ABDUCTION OF THE VICTIMS;

II

IN GIVING CREDENCE TO THE TESTIMONY OF ALLEGED EYEWITNESS ELENA BERNARDO;

III

IN HOLDING THAT CIRCUMSTANTIAL EVIDENCE ADDUCED BY THE PROSECUTION IS SUFFICIENT TO SUSTAIN CONVICTION;

IV

IN FINDING ACCUSED'S DEFENSE OF ALIBI WEAK;

V

IN HOLDING THAT TREACHERY WAS PRESENT TO QUALIFY THE CRIME TO MURDER; and

VI

IN RULING THAT THE VOLUNTARY SURRENDER OF THE ACCUSED DOES NOT CONSTITUTE A MITIGATING CIRCUMSTANCE.[30]

As to the first assignment of error, appellants contend that reliance on the testimonies of JOSEPHINE and EVELYN is misguided. In JOSEPHINE's testimony she expressly named the abductors as GRANADA and a "good-looking guy," referring to ABELLA, who "could be easily remembered"; but in her sworn statement she only mentioned GRANADA. Such omission of an important detail casts doubt on the veracity of her identification of ABELLA. Neither did EVELYN identify ABELLA, De Guzman and Valencia during the police line-up and in her sworn statement of 11 March 1992, although she pointed to all appellants when she testified in court. That GRANADA was recognized both by JOSEPHINE and EVELYN in a dimly lit place at night because of his gray hair is likewise unworthy of belief.

Appellants claim in their second assignment of error that ELENA's testimony was a mere concoction with loopholes that were revealed during cross-examination. Her insistence that all the victims were stabbed was disproved by medico-legal findings. Her testimony was uncorroborated by either testimonial or physical evidence and was even contradicted by the ocular inspection as observed by the presiding judge himself. Admittedly holding a grudge against GRANADA, she is a biased witness motivated by vindictiveness.

In their third assignment of error, appellants allege that the circumstances relied upon by the trial court were not established with certainty. The only circumstances proven were the basketball altercation, the stoning of the Ronquillos' house, FELIX's attempt to flee and the fact that the victims were fished out of the Pasig River. Testimonies on the abduction are patently inconsistent with each other. Nothing connects the appellants to the basketball altercation or the stoning of the Ronquillos' house. The link between appellants and the De los Santos brothers is tenuous.

Appellants next assert that their defense of alibi gained strength because they were not positively identified. They further maintain that the use of superior force as a qualifying circumstance was not alleged in the information and could not therefore serve to elevate the killing to murder. Neither could treachery be considered, as there were no witnesses to the actual killing. Lastly, appellants equate their move to "clear their names" to the mitigating circumstance of voluntary surrender.

We affirm the conviction of appellants. After a careful scrutiny of the witnesses' testimonies, we find that all the appellants were positively identified as the ones who abducted and killed the victims.

I

JOSEPHINE readily recognized GRANADA from among the abductors who alighted from the Fiera, as he was her neighbor and she has known him since she was a child. In spite of the black handkerchief covering GRANADA's face, JOSEPHINE was familiar with his physique and physical features, particularly his prematurely graying hair. She was in front of the victims when they were abducted.[31] When part of the face of the accused is not visible, positive identification is difficult. Nevertheless when despite such artifice the witness is familiar with the accused,[32] or his identity is not sufficiently hidden due to his physical appearance,[33] or there are extraneous factors,[34] recognition is facilitated. Identification becomes quite an easy task even from a considerable distance, once a person has gained familiarity with another.[35]

With regard to ABELLA, JOSEPHINE was able to recognize him as one of the abductors because he had no cover on his face and he was a "good-looking guy" who "could easily be remembered." The alleged inconsistency between her sworn statement where she failed to mention ABELLA and her testimony in court is imaginary. JOSEPHINE's testimony was merely an amplification of her sworn statement in which she admitted:

21. T: Maliban kina BOBOT, JOEY at GENER, mayroon ka pa bang nakilala?

S: Mayroon pa po akong namukhaan ngunit hindi ko alam ang kanilang mga pangalan.[36]

It is probable that she found out ABELLA's name only after the sworn statement was executed. There is no inconsistency when what the witness stated in open court are but details or additional facts not mentioned in the affidavit.[37]

EVELYN testified that she recognized the appellants as among the abductors of the victims and then proceeded to name them in court.[38] She particularly recognized GRANADA, as she had seen him on several occasions. Her assertion that GRANADA's face was not covered, contrary to JOSEPHINE's testimony, does not detract from the fact that GRANADA was indeed one of the abductors. The handkerchief covering GRANADA's face could have fallen off in the course of the commotion. Besides, it is not to be expected that all witnesses viewed the abduction at the same stages.

WILFREDO was part of the victims' group when the abduction took place, but he ran for safety after one of the abductors fired warning shots. He allegedly recognized GRANADA despite the handkerchief on the latter's face. GRANADA's white hair and pointed nose became rooted in WILFREDO's consciousness as GRANADA got off the van, introduced himself as a policeman, and fired two warning shots. Most often the face and body movements of the assailant create an impression which cannot be easily erased from memory.[39]

Not only was WILFREDO physically present and an eyewitness when the abduction took place, but more importantly two of the victims were his brothers. Blood relatives have a definite stake at seeing the guilty person brought before the courts so that justice may be served. It would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit.[40]

II

ELENA's testimony is sufficient to convict appellants. She positively identified all the appellants as among the passengers of the Fiera and whom she saw torturing the victims. She could not have been mistaken in identifying them because she knew them very well, they being deacons of the INC.[41] She was only four meters away when the Fiera passed by her. [42]Her identification must have been confirmed when appellants alighted from the Fiera

and proceeded to the so-called basement. Out of curiosity, she followed and stayed near the door of the basement[43] where she saw appellants and their cohorts maul and torture the victims. Although the electric lights inside the compound were switched off she could see the culprits and the mauling of the victims, since the place was illuminated by two streetlights outside.[44]

The appellants' attack, for being contrary to physical evidence, ELENA's testimony that she saw some of their cohorts, particularly Boy Valencia and Virgilio de Guzman, stab the victims. Indeed, the post-mortem examination on the bodies of the victims yielded no finding of stab wounds. This physical evidence is a mute and an eloquent manifestation of truth; it rates high in the hierarchy of trustworthy evidence.[45] Thus, where the physical evidence runs counter to the testimony of the prosecution witness, as in this case, the former should prevail.[46] At any rate, when asked on cross-examination whether the victims suffered stab wounds, ELENA answered, "Siguro po, hindi ko po alam."[47]

ELENA must have been mistaken in her observation of the events or in her recollection. But this is understandable, as several persons were actively engaged in the mauling of the victims. It would have been highly unlikely for her to remember accurately their movements. Lapse of time blurs recollections. Human memory can be treacherous. It is a very common thing for honest witnesses to confuse their recollection of what they actually observed with what they have persuaded themselves to have happened or with impressions and conclusions not really drawn from their actual knowledge.[48]

While ELENA's testimony on the stabbing does not ring true in the face of the physical evidence, this does not mean that her entire testimony is false or had been contrived. It is significant to note that her identification of the appellants as malefactors was corroborated by the other prosecution witnesses, who pointed to them as the victims' abductors. Moreover, her testimony that they and their cohorts had beaten the victims by using lead pipes and blunt instruments was corroborated by the autopsy report, which revealed that most of the victims sustained lacerated wounds, contusions and hematoma.

There is a general principle of law that where a witness has testified falsely to some material matter in a case, his testimony in other respects maybe disregarded unless it is corroborated by other proof. This rule of law is expressed in the maxim "Falsus in uno, falsus in omnibus." This rule, however, has its own limitations, for when the mistaken statement is consistent with good faith and is not conclusively indicative of a deliberate perversion, the believable portion of the testimony should be admitted. Although a person may err in memory or in observation in one or more respects, he may have told the truth as to other respects.[49] Elsewise stated, the maxim deals only with the weight of evidence and is not a positive rule of universal application and should not be applied to portions of the testimony corroborated by other evidence, particularly where the false portions could be innocent mistakes.[50]

Notwithstanding the false or mistaken statements, the trial judge, Judge Makasiar, found ELENA's version "impressive, as the manner of her narration was straightforward, sincere, candid, frank and terse."[51] Like the other prosecution witnesses, she had been subjected to "searching, grueling and consuming cross-examination by a determined, brilliant, veteran and astute defense counsel, no less than retired Supreme Court Justice Serafin Cuevas, such that any falsehood and fabrication in [her] narration and identification of the four accused ... could have been easily detected and exposed." But she passed the test.

Settled is the rule that the factual findings of the trial court, especially on the credibility of witnesses are accorded great weight and respect. This is so because the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply; or the

furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[52]

Admittedly, ELENA's testimony has some discrepancies. However, the trial court emphasized:

[I]t is to be expected that some discrepancies, and even self-contradictions, will appear on cross-examination, especially where the witness is of inferior mental capacity and without any experience in court proceedings, like Elena Bernardo.[53]

The trial court correctly likened Elena's testimony against appellants, all of whom were ranking members of the Iglesia ni Cristo, as a declaration against interest. This was so because her act of testifying against them put her in danger of being expelled from the said sect. In fact, as admitted by Pastor Cesar Almedina, he and many other local officials of the Church recommended her expulsion allegedly on grounds of non-attendance at church services and violation of the teachings, doctrines, laws and tenets of the Iglesia, which were not, however, specified by him. But the recommendation was disapproved by the Central Office because of these cases.[54]

While ELENA admitted to having a grudge against GRANADA for arresting his son-in-law sometime in 1991, her identification of him as one of the perpetrators of the crime charged cannot be disregarded because it was strongly corroborated by the three other prosecution witnesses, who categorically pointed to him as one of the abductors. Her honesty in admitting her dislike against GRANADA should be considered in her favor.[55] The existence of such grudge does not automatically render her testimony false and unreliable.[56] It must be noted that she had no known quarrel with the other appellants to be considered as sufficient motive in implicating them. Where there is no evidence and nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption is that she was not so actuated.

As to her long silence or reluctance to give her statement or to testify, ELENA explained that she was initially barred by then Judge Nitafan from testifying. Besides, there was a threat on her life by one of the suspects in the killing of herein five victims.[57] Nevertheless, she had already reported the incident to a certain Brother Cerilo del Rosario, who replaced Pastor Almedina after the latter was transferred to another chapel, and that sometime in 1993 she went to the Central Office of the INC and related the whole event to Brother Eduardo Manalo.[58]

At any rate, the failure of a witness to report to the police authorities the crime that she had witnessed is not a matter affecting her credibility. The natural reticence of most people to get involved in a criminal case is of judicial notice.[59]

III

Concededly, there were no eyewitnesses to the actual killing of the victims. But the following of circumstances leave no shred of doubt that the appellants were the perpetrators of the crime:

- On the morning of 7 March 1992, the victims MARLON and JOSEPH had a basketball altercation with JOEY and his two companions;
- Later that day, JOEY was caught bringing two pillboxes to Dalisay Street, where the victims reside;
- Between 5:00 and 6:00 p.m. of 8 March 1992, JOEY and GENER, both members of the INC, threw stones at the Ronquillos' house, attracting the attention of neighbors who in turn mauled them;

- Between 8:00 and 9:00 p.m. of that same date, after the De los Santos brothers pointed at the victims, the appellants and their cohorts picked up and herded the victims into a Ford Fiera, which then sped away;

- At about 10:00 p.m. the victims, except the one lying in the vehicle who seemed either unconscious or dead, were brought to a so-called basement in the Iglesia compound in Punta, Sta. Ana. There, they were mauled, tortured and beaten by appellants, who were deacons of the INC, as well as by their cohorts, using steel tubes, lead pipes, guns and other blunt instruments. Thereafter, they were loaded into the van, which forthwith sped out of the compound; and

- Three days later, or on 10 March 1992, the victims' bodies were found floating on the Pasig River, showing signs of foul play.

These circumstances are sufficient to establish the guilt of the appellants beyond reasonable doubt of the crime charged. They constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the appellants, to the exclusion of all others, as the guilty persons.[60]

IV

As for appellants' defense of alibi, we have consistently held this to be the weakest of all the defenses. Appellants were unable to show that it was physically impossible for them to have been present at the scene of the crime. GRANADA, DE GUZMAN and VALENCIA claimed to have been attending the "Panata" rites on 8 March 1992, the date of the abduction and mauling of the five victims. However, considering that there were at least 200 members of the INC who attended the panata, it was possible for them to have sneaked out unnoticed into the Ford Fiera to Lakas Street, picked up the five victims and waited in the evening for the grounds to be deserted before bringing them inside the INC compound. Neither was ABELLA able to show by clear and convincing evidence that it was physically impossible for him to go from his alleged post at the corner of T.M. Kalaw St. and Roxas Boulevard to Lakas Street, Bacood, Sta. Mesa. Thus, appellants' defense of alibi must fail. Besides, such defense is worthless in view of the positive identification of appellants as the culprits.

V

We agree with the trial court that the killing was characterized by treachery. It is true that treachery should normally attend at the inception of the aggression. However, when the victim was first seized and bound and then slain, treachery is present.[61] In this case, it is enough to point out that the victims' hands were tied at the back when their bodies were found floating in Pasig River. This fact clearly shows that the victims were rendered defenseless and helpless, thereby allowing the appellants to commit the crime without risk at all to their persons.

The circumstance of abuse of superior strength was absorbed in treachery and cannot be considered as an independent aggravating circumstance. It need not be alleged in the information, as treachery was adequate to elevate the killing to murder.

VI

We cannot equate appellants' move to "clear their names" as voluntary surrender. For a surrender to be voluntary, it must be spontaneous and should show the intent of the accused to submit himself unconditionally to the authorities, either because (1) he acknowledges his guilt or (2) he wishes to save the government the trouble and expense necessarily included for his search and capture.[62] In an analogous case, we have held that when the

accused goes to a police station merely to clear his name and not to give himself up, voluntary surrender may not be appreciated.[63]

Lastly, we affirm the awards made by the trial court except as to the awards of moral and exemplary damages, which are, however, reduced from P500,000 to P50,000 each.

WHEREFORE, the challenged decision of Branch 35 of the Regional Trial Court of Manila in Criminal Cases Nos. 96-104529 to 33 is hereby AFFIRMED with the modification that the awards of moral and exemplary damages are hereby reduced from P500,000 to P50,000 each.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] His name was alternatively spelled Marion in the transcript.

[2] Exhibit "B," Crim. Case No. 104529.

[3] Exh. "B," Crim. Case No. 104531; TSN, 22 September 1992, 11.

[4] Exh. "B," Crim. Case No. 104532.

[5] Exh. "B- Lojero," Crim. Case No. 104533.

[6] Exh. "B-Tamayo," Crim. Case No. 104530.

[7] Rollo, 11-12, 15-16, 19-20, 23-24, 27-28.

[8] Rollo, 13-14, 17-18, 21-22, 25-26, 29-30.

[9] Original Record (OR), 260-261.

[10] TSN, 26 May 1992, 19-21.

[11] Id., 21-22.

[12] TSN, 26 May 1992, 23-24.

[13] TSN, 22 May 1992, 40-43.

[14] TSN, 26 May 1992, 25, 34; 14 July 1992, 5, 14-15.

[15] TSN, 22 May 1992, 44-45, 51-52; 26 May 1992, 25-27, 31-34; 14 July 1992, 5-8, 14-15.

[16] TSN, 6 December 1995, 6-15, 34-36, 66-79, 95-98; 20 December 1995, 7-8, 61; 10 January 1996, 6- 7, 10-11, 35; 24 January 1996, 14, 38, 63-65; 28 February 1996, 21-22.

[17] Exh. "A."

[18] TSN, 26 August 1992, 3-12; 13 September 1995, 24, 33, 38-39.

[19] TSN, 6 September 1995, 13-17, 20-22; 27 September 1995, 17-22; 25 October 1995, 7-8.

[20] TSN, 25 October 1995, 20-21.

[21] TSN, 6 September 1995, 22-25, 78-79.

[22] TSN, 1 February 1995, 15-18, 36; 11 October 1995, 19-23.

[23] TSN, 20 September 1995, 4-8, 19-20, 47-49, 64-67, 71-74.

[24] TSN, 11 October 1995, 36-40, 45.

[25] TSN, 18 October 1995, 59-63.

[26] TSN, 6 September 1995, 38-47, 54, 87-88; 20 September 1995, 34-40; 18 October 1995, 63-69; 25 October 1995, 10-13; 25 March 1996, 10-16, 22-30.

[27] Rollo, 67- 110.

[28] The P50,000 death indemnity for the victims was not mentioned in the dispositive portion but was included in the body of the decision. Rollo, 110.

[29] Rollo, 114-115.

[30] Appellants' Brief, Rollo, 156-157.

[31] TSN, 14 July 1992, 6.

[32] *People v. Aguilar* 8 SCRA 387 [1963]; *People v. Torino*, 11 SCRA 287, 293 [1964]; *People v. Baligod*, 227 SCRA 834, 840 [1993].

[33] *People v. Alban*, 1 SCRA 931, 933-934 [1961] where the mask below the eyes of the accused did not sufficiently hide his identity due to his exposed forehead and physical appearance.

[34] See *People v. Tabago*, 167 SCRA 65 [1988] where only the lower portion of the face was covered; other parts of the body were visible and distinguishable in broad daylight.

[35] *People v. Matubis*, 288 SCRA 210, 221 [1998].

[36] Exhibit "3"; OR, 551-552.

[37] See *People v. Conde*, 252 SCRA 681, 690 [1996].

[38] TSN, 14 July 1992, 7.

[39] *People v. Apongan*, 270 SCRA 713, 728 [1997], citing *People v. Gomez*, 251 SCRA 455, 469-470 [1995].

[40] *People v. Boniao*, 217 SCRA 653, 671 [1993]; *People v. Galas*, 262 SCRA 381, 391 [1996]. See *People v. Tulop*, 289 SCRA 316, 331 [1998]; *People v. Abria*, 300 SCRA 556, 563 [1998].

[41] TSN, 6 December 1995, 10.

[42] *Id.*, 96.

[43] TSN, 28 February 1996, 35.

[44] TSN, 10 January 1996, 11.

[45] *People v. Nepomuceno*, 298 SCRA 450, 463 [1998].

[46] *People v. Vasquez*, 280 SCRA 160, 175 [1997].

[47] TSN, 6 December 1995, 77.

[48] VII VICENTE J. FRANCISCO 443, Part II (1997).

[49] VII VICENTE J. FRANCISCO 443, Part II (1997), Id., 531, 533.

[50] People v. Ruiz, 93 SCRA 739, 763 [1979]; People v. Bibat, 290 SCRA 27, 37-38 [1998].

[51] Decision, 30.

[52] People v. Quijada, 259 SCRA 191, 212-213 [1996]. Citing People v. De Guzman, 188 SCRA 407 [1990]; People v. Delovino, 247 SCRA 637 [1995].

[53] Decision, 31.

[54] TSN, 6 March 1996, 16-17, 73-74.

[55] See People v. Ilao, 296 SCRA 658, 668 [1998].

[56] See People v. Oliano, 287 SCRA 158, 169 [1998].

[57] TSN, 6 December 1995, 17.

[58] Id., 105; TSN, 20 December 1995, 72-74, 80-81.

[59] People v. Aguiluz, 207 SCRA 187, 195 [1992].

[60] People v. Maqueda, 242 SCRA 565, 591-592 [1995].

[61] See U.S. v. De Leon, 1 Phil. 163, 164 [1902]; U.S. v. Elicanal, 35 Phil. 209, 218 [1916]; People v. Mongado, 28 SCRA 612, 650 [1969]; People v. Ong, 62 Phil. 174, 211 [1975].

[62] People v. Lee, 204 SCRA 900, 911 [1991].

[63] People v. Evangelista, 256 SCRA 611, 625 [1996].

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