

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BIENVENIDO BONITO Y BEDAÑA @ “BINDOY”;
EDILBERTO (ROBERTO) CANDELARIA @ “BENTONG”;
AND DOMINGO BUIZA, ACCUSED-APPELLANTS.**

G.R. No. 128002. October 10, 2000

Ponente: PUNO, J.

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PUNO, J.:

Accused Bienvenido Bonito, Edilberto (Roberto) Candelaria and Domingo Buiza were convicted of the crime of Murder by the Regional Trial Court[1] of Tabaco, Albay, for the violent death of FLORA BANAWON. They were sentenced to suffer the penalty of reclusion perpetua and ordered to pay the heirs of the victim the amount of P50,000 as civil indemnity, P10,000.00 as actual damages, P20,000.00 for lost earnings of the victim, P30,000.00 for moral damages, and to pay the costs.

Appellants were charged with the crime of murder that was allegedly committed as follows:[2]

"That on or about the 24th day of June 1994 at 10:00 o'clock in the evening, more or less, at Sitio Pinarik, Barangay Canaway, Municipality of Malilipot, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with a still unidentified person, with intent to kill, conspiring, confederating and helping one another, with evident premeditation, treachery, abuse of superior strength and cruelty, did then and there wilfully, (sic) unlawfully and feloniously assault and attack FLORA BANAWON, thereby causing various injuries on the vital parts of the body and not contented forcibly insert and thrust cassava stalk to the vagina of the offended party, which caused her death, to the damage and prejudice of her heirs." (emphasis ours)

The accused were arraigned on April 18, 1995. They pled "not guilty." [3] Trial ensued.

The prosecution evidence came chiefly from the testimonies of the following witnesses: (1) Santos Banawon, the surviving spouse of the victim, (2) Dr. Arsenia Mañosca-Moran, the Municipal Health Officer of Malilipot, Albay, (3) Nelson Volante, the eyewitness, and (4) Benjamin Brusola, a neighbor of the Banawons and the accused.

Santos Banawon, 62 years old, husband of victim Flora Banawon, testified that on June 24, 1994, at about 6:00 p.m., the victim left for Datag, Malilipot, Albay, to pray the novena. Datag is approximately 5 kilometers away from their residence in Pinaric, Canaway, Malilipot, Albay. That evening, she did not return home.[4]

The next day, Santos searched for his missing wife. He proceeded to lower Pinaric and saw a crowd looking at the lifeless body of his wife. She was badly beaten and a cassava trunk was jabbed in her genitalia. The police brought his wife's body to the Rural Health Center for autopsy.[5]

On August 15, 1994, Santos reported the incident to the National Bureau of Investigation to assist the local police in resolving the case of his wife.[6]

Santos declared that he spent a total amount of P10,000.00 for his wife's embalment, coffin, wake, internment, tombstone, and funeral car. He received donations in the amount of P4,000.00, more or less. During her lifetime, his wife earned P400.00 weekly by weaving mats for other people. He lost his job as a carpenter because he was deeply troubled by his wife's death. His monthly income then was P2,000.00. For the five months he failed to work while seeking justice for the death of his wife, the total income he allegedly lost was P10,000.00.[7]

Dr. Arsenia Mañosca-Moran, Municipal Health Officer of Malilipot, Albay conducted an autopsy on the victim on June 25, 1994. She noted the following injuries sustained by the victim:[8]

"HEAD:

pallor swollen face; with moving maggots on the buccal opening; lips blue, swollen tongue, completely fractured mandibular bone (R) side inwardly and upwardly dislocated & (L) side outward and upwardly dislocated; with imprint abrasion (bite mark) at (L) maxillomandibular region; 1.9 cm. Lacerated wound at (L) lower chin; (L) eye partially opened with constricted pupil; (R) eye, closed with purplish periorbital hematoma and 0.4 cm. lacerated wound at nasal side of infraorbital region; ear with purplish subcutaneous hematoma at (L) helix.

NECK:

with redness and ecchymotic friction abrasion and slight desquamation of the epidermis at the (L) lateromedial aspect middle 3rd of the neck and neck flexed on the opposite side (R).

EXTREMITIES - Upper: firm clenched hands with purple fingernails.

Lower:

with reddish brown multiple abrasion at posterior aspect of the proximal 3[rd] of the lower extremities, bilateral & (L) post. side of the knee.

GENITALIA:

with cassava branch inserted 4 cm. Deep intravaginally with abundant yellowish maggot on the vaginal introitus and in thigh and upon removal of the branch, admits 2 fingers with ease, no lacerations noted.

VAGINAL SMEAR FOR SPERM CELL: (-) neg. June 27, 1994

CAUSE OF DEATH: Asphyxia 2° to occluded windy

: Neurogenic shock."

(Emphasis supplied)

Dr. Moran explained that at the time of the examination, the victim had been dead for more than 12 hours. The victim's face was swollen and pale which could be due to strangulation. Her lips were blue and the tongue was swollen. The right and left sides of the lower bones of the mouth (jaws) were dislocated, probably due to a strong impact. There was a bite mark on the left cheek caused by human teeth and a 1.9 cm. wound on the lower chin. The left eye was slightly protruding (medyo nakalabas) while the right eye was closed and appeared bluish (parang latay), indicating that the victim received a fist blow. The lacerated wound on the nasal side indicated that whoever hit the victim had a metal or ring on his finger. The crack on the left ear, outer lobe, could be due to an impact against a hard object or due to a fist blow. The abrasions on the neck showed crossing imprints that were not caused by hand or rope but by a hard object pressed against the victim. The injuries on the thigh near the buttocks indicated that the victim was pushed or pressured down to the ground. Her genitalia had a branch of cassava inserted inside, about 4 cms. deep.[9]

Dr. Moran concluded that, from the nature of the injuries sustained by the victim, it was possible that more than one person attacked her and that she put up a fight against her assailants. The victim died primarily due to strangulation.[10]

Nelson Volante, 46 years old, gave an eyewitness account of the crime. He testified that on the evening of June 24, 1994, he watched television shows in the house of a certain Bonifacio Borjal. He left at about 10:00 p.m. It was a moonlit night.

On his way home, he passed by the trail leading to his house. After about one kilometer, he heard someone moaning. Curious, he followed where the sound emanated. As he peeped through the foliage some three meters away from the trail, he saw three men standing near a woman who was lying on the ground face up ("nakatihaya"). Another man whom he failed to recognize was standing beneath a banana tree about ten meters away from the accused and the woman. He identified the three men as accused Bienvenido Bonito, Roberto Candelaria[11] and Domingo Buiza. Accused Bonito was holding a cassava trunk. Without much ado, Bonito inserted the cassava trunk in the private part of the woman while Buiza and Candelaria held her hands and feet respectively. Volante was just five meters away from the three accused. Shocked by what he saw, he hurriedly left and headed for home. He did not tell his wife about the incident because he was afraid to get involved. He hardly slept that night.[12]

The following morning, Volante went to the farm as usual. When he returned home in the afternoon, he learned from a certain Sergia and Paño Binaday that the body of Flora Banawon was found with a cassava trunk inserted in her private part. He then realized who the victim was.

More than five months after the incident, Volante finally heeded his conscience and told Santos Banawon what transpired that tragic night. Santos Banawon accompanied him to the NBI office in Legazpi. Atty. Carlos Carrillo took his sworn statement on December 9, 1994.[13]

After Volante had executed his affidavit and before the three accused were arrested,[14] his house was stoned on two occasions. Fearful for his family's safety, he and his family moved to Sta. Elena, Malinao, Albay.

Benjamin Brusola, 67 years old, testified that at about 8:00 p.m. of June 26, 1994, he went to the house of Santos Banawon for the wake of the victim. He overheard that "Bindoy" (accused Bonito) also attended the wake to ask forgiveness from the victim because he could not sleep for three consecutive nights. Bonito briefly glanced at the coffin but he did not ask for forgiveness. Instead, Bonito sat on a bench and conversed with a certain Luis Cabalis and co-accused Domingo Buiza. Brusola overheard Bonito saying it was nice to have "fun" with an old woman ("paitok-itokan"), then Bonito exchanged "high-fives" with Buiza.

The defense was anchored on denial and alibi.

Essentially, accused Candelaria and Buiza claimed that they were sleeping in their respective houses on the night Flora Banawon was brutally murdered. Accused Bonito, on the other hand, did not take the witness stand. Their witnesses claimed that the last person they saw following Flora Banawon as she was heading for home that fateful night was eyewitness Nelson Volante.

Blas Bongalos, 75 years old, testified that at about 6:30 p.m., on June 24, 1994, Volante dropped by his house and asked for something to drink. Bongalos gave him a bottle of gin (lapad). Clemente Buiza, father of accused Domingo Buiza, happened to be there. Clemente told Volante to entrust to him his (Volante's) bolo if he would like to drink liquor. Volante obediently gave the bolo to Clemente for temporary safekeeping. Volante consumed the gin after more than twenty minutes. Thereafter, he got his bolo back from Clemente and left.[15]

Alfredo Brutas, 45 years old, a "barangay kagawad," testified that Volante used to work for him in his farm in Canaway, Malilipot, Albay, before the latter transferred his residence to Malinao in February 1995. On June 24, 1994, there was a drinking spree in his house because his son had just arrived from abroad. Volante arrived at about 7:00 p.m. to retrieve the bolo that he (Brutas) confiscated from Volante when the latter got drunk on another occasion. Brutas refused to give back the bolo because Volante appeared inebriated again. Volante got peeved at him. Brutas then told him to leave his house. Volante left at 8:00 p.m.

Brutas claimed that he did not talk to anyone prior to his appearance in court. Allegedly, he happened to be in court to visit Fiscal Narciso Berango when he saw the court's calendar posted on the bulletin board. He volunteered to testify for the accused.

Ricardo Banaobra, 30 years old, testified that in the evening of June 24, 1994, he was one of the guests of Alfredo Brutas. They were celebrating the arrival of Brutas' son. Volante passed by at 7:00 p.m. He had a bolo with him and he was very talkative. He noticed that Volante was a bit intoxicated. Brutas took the bolo from Volante. At past 9:00 p.m., the victim passed by. After awhile, Volante left the group.[16]

Jose Belenzo, 64 years old, testified that he had known eyewitness Nelson Volante, the Banawons and accused Bienvenido Bonito and Roberto (Edilberto) Candelaria for many years because they were residents of Canaway. He also knew accused Domingo Buiza because he married a girl from Canaway. Between 9:00 p.m. and 10:00 p.m. of June 24, 1994, he was in his store doing some chores. Volante arrived at 9:00 p.m. He noticed that Volante was a bit tipsy. Volante asked for cigarettes. After an hour, the victim passed by his store and momentarily stopped to ask for the time. After he told her that it was already 10:00 p.m., she went home. Volante followed her. In the afternoon of the next day, Belenzo learned that somebody died. He had not seen Volante since then.[17]

On cross-examination, Belenzo testified that he attended all the hearings of the case but he never went to the NBI to shed light on the incident. Roberto Candelaria and Edilberto Candelaria refer to the same person but the real name of Roberto is Edilberto. When Volante passed by his store in the evening of June 24, 1994, he was not carrying any bolo. According to Belenzo, he had seen the victim pass by the trail near his store for several years. That night, however, was the first time that she dropped by the store solely to ask him what the time was.[18]

Accused Domingo Buiza, 33 years old, testified that at 9:00 a.m. of June 24, 1994, he was in Sto. Cristo, Tabaco, Albay to help his aunt Nelia prepare for the town's fiesta. He stayed there the whole day and went home only at 7:00 p.m. When he reached home, he immediately went to bed because he had a few drinks in his aunt's house. He woke up late the following day. It was already Sunday morning when he learned from an uncle that his aunt, Flora Banawon,[19] was killed. He went to her wake twice. After the internment, his uncle, Santos Banawon, went to his house and requested him to testify against Volante. He told his uncle that he could not help him because he did not know anything about the killing. He claimed he had a good relationship with the victim when she was still alive. She requested him to take care of one of her piglets.

On cross-examination, Buiza testified that he did not ask Santos why he had to testify against Volante. Santos also did not tell him how the victim died. Even during the wake, he claimed that he had no idea how the victim died. He informed his parents that Santos Banawon wanted him to testify about the case.[20]

Clemente Buiza, 54 years old, father of accused Domingo Buiza, testified that Delfin, a brother of the victim, requested him to help in convincing his son, Domingo Buiza, to testify against Volante. He relayed the message to his son. Domingo declined the request because he did not know anything about the incident. On another occasion, Delfin fetched him and Domingo and accompanied them to the house of Santos. Again, Domingo denied any knowledge of the incident. Clemente surmised that Domingo was prosecuted because he refused to testify against

Volante.

On cross-examination, he testified that after the internment of the victim, Delfin came to see him and told him that Santos would like to talk to him and his son in the house of Dionisio Cielo, a brother of Delfin and the victim. Santos allegedly told him, "Ano kaya kun patistigoson mo si Domingo digdi? (How about letting Domingo testify in this case?)" Without asking Santos why the latter was insisting that Domingo should testify in the murder case, he replied that that would be impossible because his son knew nothing about the case. However, he never asked Santos what would be the nature of his testimony.[21]

Amelita Buiza, 28 years old, wife of Domingo Buiza, testified that she and her husband were in the house of Clemente Buiza in Comun, Tabaco on June 24, 1994. Her husband spent the whole day in Sto. Cristo, Tabaco, and went home in the evening at about 7:00 p.m. They had supper at 8:00 p.m. After dinner, her husband went to bed. She slept at 11:00 p.m. because she had to attend to the needs of their six (6) children. She claimed that it was impossible for her husband to commit the crime charged against him because he was with her that night, sleeping, and he woke up at about noontime the next day. Besides, the victim was her husband's aunt and the two had a pleasant relationship with each other when the victim was still alive.[22]

On cross-examination, she testified that she woke up at noontime the next day, June 25, 1994. She slept continuously from 11:00 p.m. of June 24, 1994, until 11:00 a.m. of June 25, 1994.

Accused Roberto Candelaria, 40 years old, claimed he was in his house on the material date and time. He also clarified that his real name is Edilberto Candelaria and not Roberto Candelaria. He denied any knowledge about the incident. He also did not know why Volante implicated him in the crime.[23]

Filomena Candelaria, 39 years old, wife of accused Candelaria, testified that in the evening of June 24, 1994, she and her husband were in their house. They slept at 8:00 p.m. She woke up at about 10:00 p.m. and nursed her 3-month old child. Her husband was still asleep. She woke up at 5:00 a.m. the following morning. She admitted that the locus criminis was not far from their house.

On rebuttal, Volante denied that he went to the store of Jose Belenzo or to the house of Alfredo Brutas in the evening of June 24, 1994. He also denied carrying a bolo at that time. He further testified that Belenzo is related by affinity to accused Bonito and Candelaria. The mother of Bonito's wife is the sister of Jose Belenzo's wife, while the mother-in-law of Candelaria is the sister of Belenzo's wife.[24]

On sur-rebuttal, Bonifacio Borjal, 76 years old, testified that in the evening of June 24, 1994, he was in his house in Purok 5, Canaway, Malilipot, Albay. He denied that Volante was in his house to watch T.V. shows. Allegedly, his granddaughter was the only one who knew how to operate their T.V., but she was in Daraga, Albay, that evening. He admitted that he came to court to testify upon the request of the wife of one of the accused.

The trial court convicted accused Bonito, Candelaria and Buiza of murder. Hence, the appeal.

Appellants Bonito and Candelaria contend that:

"I

THE COURT A QUO ERRED IN ACCORDING UNDUE CREDENCE AND WEIGHT TO THE TESTIMONY OF NELSON VOLANTE, THE PROSECUTION'S LONE EYEWITNESS, INSPITE (SIC) OF HIS GLARING LACK OF CREDIBILITY.

II

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME OF

MURDER CONSIDERING THAT THE PROSECUTION FAILED TO ADDUCE EVIDENCE TO ESTABLISH THE QUALIFYING CIRCUMSTANCES OF SAID OFFENSE AS ALLEGED IN THE INFORMATION.

III.

THE COURT A QUO ERRED IN HOLDING THE ACCUSED-APPELLANTS RESPONSIBLE FOR THE DEATH OF FLORA BANAWON DESPITE ITS FINDING THAT THERE IS NO EVIDENCE TO LINK THEM TO SUCH KILLING.

IV.

THE COURT A QUO ERRED IN SENTENCING THE ACCUSED-APPELLANTS TO PAY THE HEIRS OF FLORA BANAWON JOINTLY AND SEVERALLY DAMAGES WHICH THE PROSECUTION FAILED TO PROVE."

For his part, appellant Buiza contends that:

"THE HONORABLE TRIAL COURT WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND IN EXCESS OF JURISDICTION GRAVELY ERRED IN FINDING ALL THE ACCUSED GUILTY OF THE OFFENSE CHARGED."

The crucial issue is whether the guilt of the accused was established beyond reasonable doubt by the prosecution.

The judgment is affirmed with modification.

Volante positively identified the appellants as the authors of the beastly crime. He testified as follows:[25]

"PROSECUTOR VILLAMIN:

Q:

On June 24, 1994, at about 10:00 o'clock in the evening, could you recall where were you?

(NELSON VOLANTE):

A:

Yes, sir.

Q:

Where were you then?

A:

I was at the house of Bonifacio Borjal watching television, sir.

Q:

What time did you leave that place?

A:

I left for home, sir.

Q:

Were you able directly to go to your house?

A:

No, sir.

Q:

Why?

A:

Because I heard somebody moaning while I was on the way home, sir.

Q:

At what particular place did you hear that sound?

A:

About a kilometer away from Bonifacio's house, sir.

Q:

What did you do when you heard that sound?

A:

I kept on walking for about ten (10) meters. Then I heard a sigh. Thru a foliage I took a look.

Q:

What did you observe?

A:

I was able to see these three accused with a woman who was lying on the ground.

Q:

Who were those three persons whom you saw?

A:

Domingo Buiza, Bienvenido Bonito and Roberto Candelaria and another one.

x x x x x x x x

Q:

What else did you observe?

A:

I saw Bienvenido Bonito standing and at the same time holding a piece of cassava trunk.

Q:

What else did you observe?

A:

I also saw Domingo Buiza holding the hand of the woman while Candelaria was near her feet.

x x x x x x x x

Q:

Aside from seeing Bienvenido Bonito holding the cassava trunk, what else did you observe of Bienvenido?

A:

He was the one who inserted the cassava trunk into the private part of the woman.

x x x x x x x x

Q:

At that time of the insertion, did you still hear her moaning?

A:

Yes, sir.

Q:

While that was being done by Bienvenido Bonito, what were the other two doing?

A:

They were holding the victim, sir.

Q:

You said that you saw three men. Could you tell us if there were other persons present there?

A:

Yes, sir, there was somebody whom I saw beneath a banana tree, about ten meters away.

Q:

What was he doing there?

A:

He was standing, sir.

Q:

Could you tell us why you were able to identify these three persons inspite (sic) being nighttime?

A:

Because it was a moonlit night, sir.

Q:

Could you tell us your distance from these three men?

A:

About five meters away from them, sir.

Q:

What else did you observe?

A:

That was all, sir. They were holding the victim.

Q:

Thereafter, what else did you do?

A:

I stepped back about five meters away. Then I left and passed by the farm lot of Salvador Bobiles.

Q:

How did you feel (sic) about what you have seen?

A:

I could not sleep, sir."

The trial court found Volante credible. We respect its finding. We give the trial court the wide latitude of assigning values to the declarations of witnesses on the stand because of its unique opportunity to observe them as they testify. It is aided by various indicia that could not be readily seen on record. The witness' candid answer, the hesitant pause, the nervous voice, the undertone, the befuddled look, the honest gaze, the modest blush, or the guilty blanch - these reveal if the witness is telling the gospel truth or weaving a web of lies. Thus, unless any fact or circumstance of weight and influence has been overlooked or the significance of which has been misconstrued as to impeach the findings of the trial court, its findings on the credibility of witnesses should not be interfered with.[26] None exists in the case before us.

The trial court was correct in believing Volante. His account of the incident was consistent and candid. He did not waver even on cross-examination, indicating that he told the truth. He further testified as follows:[27]

"ATTY. BROMANTE:

Q:

And as you have alleged, you actually witnessed the incident?

(NELSON VOLANTE):

A:

Yes, sir.

Q:

Also that you have seen and recognized these accused and the victim during the incident?

A:

Yes, sir.

Q:

Will you agree with me that during the time that you witnessed the incident, you have already recognized the victim to be Flora Banawon, am I right?

A:

Not yet, sir.

Q:

Why? What was then the position of the victim? Was she facing the ground?

A:

She was facing up, sir.

Q:

And her face was covered?

A:

The view of her face was blocked by Domingo Buiza, sir.

Q:

Why, what was then the position of Domingo Buiza?

A:

Domingo Buiza croached (sic) near the head of Flora Volante (sic), sir.

Q:

How far were you then from the place of the incident?

A:

About five meters away, sir.

Q:

And from that position, how long have you stayed?

A:

About a minute, sir.

Q:

And during that one-minute period, Domingo Buiza, one of the accused stayed immobile?

A:

No, sir, he did not.

Q:

And that is the reason when you declared awhile ago that this Domingo Buiza was doing something to the victim?

A:

Yes, sir.

Q:

What was that?

A:

He was holding the arm of Flora Banawon, sir.

Q:

And when you arrived near the scene of the incident, Domingo Buiza was then about to hold the hand of the victim?

A:

I saw him holding already the hand of Flora Banawon.

Q:

When you left the place, Domingo Buiza already released his hold of the hands of Flora Banawon?

A:

Not yet, sir.

Q:

Despite witnessing the gruesome incident, you never made any opportunity (sic) to at least take a good look of the face of the victim?

A:

I did not, sir.

Q:

Why, What was your reason why you never took a look of the victim?

A:

Because Domingo Buiza's body was blocking the face of the victim."

Appellants contend that Volante's "unnatural reactions" during and after the crime was committed were enough to destroy his credibility. For instance, he did not try to discover who the victim was at that time he witnessed the incident. As a married man himself, Volante should have ascertained first who the victim was because she could have been his own wife. They contend, further, that Volante should have returned to the crime scene to help the victim or, at the very least, to satisfy his curiosity. Instead, he mysteriously changed his residence and kept the incident to himself for five months.

We are not persuaded by appellants' contentions.

Different people may react differently to a given situation and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[28] In Volante's case, he was overpowered with fright. His reaction was understandable. He witnessed a gruesome murder. At least three men participated therein. Outnumbered, he chose to retreat instead of playing hero. We cannot fault him for that. There was also nothing unnatural about Volante's failure to initially recognize the victim. He satisfactorily explained that he could not see the victim's face from where he was standing because appellant Buiza was blocking his view. Besides, he was at the crime scene for barely a minute, thus giving him little time to take a good look at the victim who was then surrounded by the appellants. At any rate, he learned the next day that the victim was Flora

Banawon because she was found in the same spot where he saw the crime and a cassava trunk was found inside her private part just like the lady victim he saw that fateful night.

True, Volante took awhile before he finally told anyone about the tragic fate of Flora Banawon. Such delay did not erode his credibility. We have held that delay in revealing the identity of the malefactors does not necessarily impair the credibility of a witness, especially where such witness gives sufficient explanation therefor.[29] Volante has satisfactorily explained that he feared for his and his family's safety. We take judicial notice of the natural reluctance of a witness to get involved in a criminal case and to provide information to the authorities.[30] More so when townmates are involved in the commission of crime. Further, we could not dismiss lightly the natural tendency of a witness of a gruesome killing, as in this case, to fear for his safety.[31]

Appellants also claim that there was no evidence that could link them to the killing. The claim is preposterous. Volante may not have seen the actual killing of the victim, but the totality of the evidence adduced by the prosecution point to the appellants as the persons who may have been responsible for the commission of the crime to the exclusion of any other person. The eye-ball account of Volante reveal that the victim was lying on the ground, her face badly mangled from the beatings she received from her assailants, she could barely move and all she had mustered to do was moan. The three appellants surrounded her. One of them held her hands, another held her feet, and still another inserted a cassava trunk in her genitalia. The combination of these circumstances leads us to a reasonable conclusion that they were responsible for her death and warrants a finding of guilt beyond reasonable doubt.

Volante could not have committed a mistake in pointing to the appellants as the malefactors. It was a moonlit night, appellants have been his neighbors for years before the incident and he witnessed the incident at a very close range, a distance of about five (5) meters.

We agree with the trial court that the testimony of Volante should prevail over the defense of denial and alibi proffered by appellants. It must be stressed that there is no showing that Volante has ill motive to implicate the appellants in a grievous offense such as the case at bar. It is settled that in the absence of any improper motive on the part of a witness to falsely testify against the accused, his testimony deserves credence. Besides, alibi is the weakest of all defenses as it is easy to fabricate and difficult to disprove, and it is practically worthless in the face of positive identification.

Article 248 of the Revised Penal Code, as amended by R.A.7659, provides:

"Art. 248. Murder.- Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder, and shall be punished by reclusion perpetua to death, if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
- In consideration of a price, reward, or promise;
- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment of or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity;
- With evident premeditation;

- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse."

The Information charged that the killing was attended by the following circumstances: evident premeditation, treachery, abuse of superior strength and cruelty.

The trial court found the appellants guilty of murder and sentenced them to suffer the penalty of reclusion perpetua without discussing the attending circumstance that qualified the killing to murder. The decision was also silent as to the presence of any mitigating or aggravating circumstance. Section 1, Rule 20 of the Revised Rules of Court requires that after an adjudication of guilt by the court, it should impose the proper penalty and civil liability provided for by law. Further, Section 2 of the same Rule mandates that the judgment of conviction should state, among others, the aggravating or mitigating circumstances attendant to the commission of the crime, if there are any. The appreciation of these attending circumstances is crucial for they determine whether the penalty should be increased or decreased. Judges who faithfully observe this duty contribute to the orderly administration of justice.[32]

Our perusal of the records reveals that the prosecution failed to establish evident premeditation, treachery and abuse of superior strength.

Before evident premeditation can be appreciated as a qualifying aggravating circumstance, these requisites must concur: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.[33] None of these requisites were established in this case. There was not an iota of evidence that appellants planned, meditated and reflected on their intention to kill the victim.[34]

Likewise, treachery cannot be considered against the appellants. For treachery to be present, two conditions must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the deliberate and conscious adoption of the means employed. Volante did not see the inception of the assault on the victim. When he reached the crime scene, the victim was already sprawled on the ground, face up, moaning and heaving a faint sigh while appellants were surrounding her. Appellant Bonito was then in the process of inserting the cassava trunk inside the genitalia of the victim. Absent any particulars as to the manner in which the aggression commenced or how the act that resulted in the death of the victim unfolded, treachery cannot be appreciated.[35]

For the same reason, abuse of superior strength cannot be appreciated against the appellants. It must be stressed that this circumstance must be established by clear and categorical evidence. There must exist proof that the attackers deliberately took advantage of their superior strength, their apparent superiority in number vis-a-vis that of the victim, notwithstanding. The records showed no such proof.[36] In the present case, the lone eyewitness did not see how the aggressors attacked the victim. At the time Volante reached the locus criminis, the victim was sprawled on the ground. Volante testified that Buiza held her hands while Candelaria held her feet when Bonito jabbed the cassava trunk inside her vagina. There was no clear proof as to how appellants took advantage of their combined strength in committing the crime. We reiterate that what should be considered, as regards this aggravating circumstance, is not that there were three, four or more assailants as against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense.[37]

The Solicitor General noted that the crime was committed with cruelty. We agree. There is cruelty when the culprit deliberately and inhumanly augmented the suffering of the victim, or outraged or scoffed at his person or corpse.[38] The test in appreciating cruelty as an aggravating circumstance is whether the accused deliberately

and sadistically augmented the wrong by causing another wrong not necessary for its commission and inhumanly increased the victim's suffering or outraged or scoffed at his/her person or corpse.[39] The victim in this case was already weak and almost dying when appellant Bonito inserted the cassava trunk inside her private organ. What appellant Bonito did to her was totally unnecessary for the criminal act intended and it undoubtedly inhumanly increased her suffering. In fine, we hold that cruelty has qualified the killing to murder.

The penalty for murder is reclusion perpetua to death. In the absence of any mitigating or aggravating circumstance, appellants should suffer the penalty of reclusion perpetua.

We now review the award of damages. The trial court made the following awards: P50,000.00 as civil indemnity for the death of Flora Banawon, P10,000.00 as actual damages, P20,000 for loss of earning capacity of Flora Banawon and P30,000.00 for moral damages.

When death occurs as a result of a crime, the heirs of the deceased are entitled to civil indemnity for the death of the victim without need of proof of damages.[40] We affirm the civil indemnity of P50,000.00 as it is in accord with current jurisprudence.

Actual or compensatory damages, on the other hand, cannot be presumed but must be duly proved with reasonable certainty for the court cannot rely on speculation, conjectures or guesswork as to the fact and the amount of damages.[41] In the case at bar, the prosecution did not substantiate its claim for actual damages, hence, we cannot allow the same.[42]

Appellants are, however, liable to pay for the loss earning capacity of the deceased.[43] It was established that the victim used to earn P400.00 per week by weaving mats for other people. Santos also testified that she was 54 years old at the time of her death. Applying the formula for loss of earning capacity, to wit:

Net earning capacity (x)

=

life expectancy x gross annual income

-

living expenses (50% of gross annual income)

appellants should be held liable to pay as follows:

x

=

2 (80-54) x [P19200-P9600.00]

3

=

2 (26) x P9600.00

3

=

17.33 x P9600.00

=

P166,399.99

As regards the award of moral damages,[44] Santos testified that he cried unabashedly upon seeing the pitiful condition of his wife. Deeply troubled, he failed to concentrate on his work as a carpenter and was eventually forced to stop working for some time while seeking justice for his wife's death. Thus, the award of moral damages is justified to compensate his wounded feelings for the violent death of his wife.

Parenthetically, one of the appellants, Candelaria, was described in the complaint or information under the name Roberto Candelaria. Upon arraignment he pleaded "not guilty" to the charge under his alleged name, Edilberto Candelaria. During the trial, he presented his alleged birth certificate to prove that his real name is Edilberto.[45] His own witness[46] testified that Edilberto and Roberto refer to the same person. When the trial court's judgment was promulgated on November 29, 1996, the real name of Candelaria was inserted in the case's caption.[47] The correction conforms to our ruling that an error in the name of an accused is curable at any stage of the proceedings.[48] This is so because the insertion of the real name of the accused is merely a matter of form.[49] What matters in the conviction of a person of a particular crime is his identification as the person who committed the crime, not the name under which he is arrested or complained against. Despite the correction made, the pleadings filed to this Court on appeal inadvertently referred to Candelaria as Roberto. To avoid confusion as to the execution of the sentence against said appellant, the name Edilberto should be inserted vice Roberto.

IN VIEW WHEREOF, the Decision of the Regional Trial Court of Tabaco, Albay, (Branch XVIII), in Criminal Case No. T-2625, finding herein appellants BIENVENIDO BONITO, EDILBERTO (ROBERTO) CANDELARIA, and DOMINGO BUIZA[50] guilty beyond reasonable doubt of Murder and sentencing them to reclusion perpetua is AFFIRMED subject to the following modifications:

- The award of actual or compensatory damages is set aside for lack of basis;
- The award of P20,000.00 for lost earnings is set aside and in lieu thereof, appellants are ordered to pay P166,399.99 for lost earning capacity; and
- Appellants are ordered to pay the legal heirs of the victim the amount of P50,000.00 as civil indemnity and P30,000.00 as moral damages.

Costs against appellants.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

- [1] Branch XVIII.
- [2] Information, dated March 3, 1995, Rollo, p. 9.
- [3] Certificate of Arraignment, Original Records, p. 55.
- [4] TSN, Santos Banawon, June 1, 1995, pp. 6-9.
- [5] Id., pp. 9, 25.
- [6] Exhibit "1", for accused Domingo Buiza, Original Records, p. 2.
- [7] Id., pp. 10-14.
- [8] Exhibit "A", Original Records, pp. 6-7.
- [9] TSN, Dr. Arsenia Mañosca-Moran, June 19, 1995, pp. 7-15.
- [10] Id., pp. 15-17, 22, 30.
- [11] Roberto's alleged real name is Edilberto Candelaria.
- [12] TSN, Nelson Valonte, August 30, 1995, pp. 6-16.
- [13] Original Records, pp. 3-5.
- [14] The warrants for the arrest of the accused were issued only on December 19, 1994. See Original Records, pp. 16-17.
- [15] TSN, Blas Bongalos, January 8, 1996, pp. 6-11.
- [16] TSN, Ricardo Banaobra, July 16, 1996, pp. 4-9.
- [17] TSN, Jose Belenzo, January 29, 1996, pp. 6-13.
- [18] Id., pp. 17-27, 32-35.
- [19] Buiza's maternal grandfather is the brother of Flora Banawon's parent.
- [20] TSN, Domingo Buiza, pp. 29-36.
- [21] TSN, Clemente Buiza, January 9, 1996, pp. 43-50.
- [22] TSN, Amelita Buiza, January 10, 1996, pp. 5-8.
- [23] TSN, Edilberto Candelaria, March 3, 1996, pp. 13-15.
- [24] TSN, Nelson Volante, May 21, 1996, pp. 5-6.
- [25] TSN, Nelson Volante, August 30, 1995, pp. 10-15.
- [26] People vs. Tazon, G.R. No. 129793, December 15, 1999.

- [27] TSN, Nelson Volante, August 30, 1995, pp. 48-52.
- [28] People vs. Talaboc, 256 SCRA 441 (1996).
- [29] People vs. Pallarco, 288 SCRA 151, 164 (1998); People vs. Alberca, 257 SCRA 613, 631 (1996); People vs. Alcantara, 254 SCRA 384, 394 (1990).
- [30] People vs. Villanueva, 284 SCRA 501 (1998).
- [31] People vs. Tompong, et al., G.R. Nos. 133191-93, July 11, 2000.
- [32] People vs. Parazo, 272 SCRA 512 (1997).
- [33] People vs. Realin, 301 SCRA 495, 513 (1999).
- [34] People vs. Gayon, 269 SCRA 587 (1997).
- [35] People vs. Nalangan, 270 SCRA 234 (1997).
- [36] People vs. Peñaflorida, G.R. No. 130550, September 2, 1999.
- [37] People vs. Tadeje, et al., G.R. No. 123143, July 19, 1999.
- [38] Article 248, Revised Penal Code, as amended by R.A. No. 7659.
- [39] People vs. Ferrer, 255 SCRA 19 (1996).
- [40] People vs. Espanola, 271 SCRA 689 (1997).
- [41] People vs. Nialda, 289 SCRA 521 (1998).
- [42] People vs. Apelado, et al., G.R. No. 114937, October 11, 1999; People vs. Lachica, G.R. No. 94432, October 12, 1999; People vs. Salcedo, 273 SCRA 473 (1997); People vs. Sanchez, 308 SCRA 264, 287 (1999).
- [43] People vs. Antonio, et al., G.R. No. 128900, July 14, 2000; People vs. Verde, 302 SCRA 690, 707 (1999); Sanitary Steam Laundry, Inc., vs. Court of Appeals, et al., 300 SCRA 20, 35 (1998).
- [44] Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.
- [45] Exhibit "2", Original Records, p. 5-b.
- [46] Jose Belenzo.
- [47] Original Records, p. 136.
- [48] US vs. Vayson, 27 Phil. 447 (1914).
- [49] People v. Padica, 221 SCRA 362 (1993).
- [50] Also spelled as Bueza in some parts of the records.

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