PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESEMIEL MOSQUERRA AND JIMMY MOSQUERRA, ACCUSED. JIMMY MOSQUERRA, ACCUSED-APPELLANT.

G.R. No. 129209. August 09, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is an appeal from a judgment dated August 27, 1996 rendered by the Regional Trial Court, Branch 45, San Jose, Occidental Mindoro, in Criminal Case No. R-3744 entitled "People of the Philippines v. Jesemiel Mosquerra and Jimmy Mosquerra," finding accused-appellant Jimmy Mosquerra guilty of murder beyond reasonable doubt and sentencing him to life imprisonment and to pay the heirs of the victim civil indemnity of Fifty Thousand Pesos (P50,000.00).

On August 30, 1994, an Information[1] for murder was filed against accused Jesemiel Mosquerra and herein accused-appellant Jimmy Mosquerra. The information reads:

> The undersigned accuses Jesemiel Mosquerra and Jimmy Mosquerra of the crime of murder, committed as follows:
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> That on or about the 18th day of August, 1994 at around 7:30 o'clock in the evening, in Barangay San Roque II, Municipality of San Jose, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with sharp bladed instruments, with intent to kill and taking advantage of superior strength, conspiring and confederating together with two others whose true names and identities are still unknown, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said weapons one Nelson Soro, thereby inflicting upon the latter serious wounds which caused his untimely death.
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> CONTRARY TO LAW.

From the record, it appears that the victim, Nelson Soro, and accused-appellant's brother, Jesemiel Mosquerra, had an altercation in the late afternoon of August 18, 1994. Jesemiel and several others were then playing basketball in the neighborhood basketball court when Soro on board his tricycle passed by. Whether intentionally or by accident is unclear, but Soro was hit on the face by a basketball thrown by Jesemiel. As a result, Soro lost control of his tricycle, hitting a fence. Incensed, Soro alighted from his tricycle, arming himself with a screwdriver with which he attempted to stab Jesemiel. The latter, however, managed to avoid being hit. Before the fight could escalate, Soro fled on foot and proceeded to the house of Eusebio Surilla, a policeman, to seek the latter's assistance in recovering his tricycle which he left near the basketball court. Surilla accompanied Soro to the basketball court, whereupon he admonished the feuding pair to cool off. Soro was able to get back his tricycle. On the other hand, Jesemiel was heard to mutter as he was leaving, "Mamaya ka lang putang ina mo."[2]

Later that evening, while he was walking along a street in Purok VI, Barangay San Roque II, Soro was attacked suddenly by four (4) persons. The assault was witnessed by Frankie Fabella who was walking along the same road

on his way to the house of one Tata Aurelio Castillo from whom he wanted to inquire about some seedlings. Upon hearing a man shouting for help, Fabella hid himself alongside a concrete fence bordering the house of Fiscal Pagayatan. From his position, Fabella saw Jesemiel and Jimmy Mosquerra attacking Soro, who was prostrate on the ground. The brothers were seen by Fabella taking turns stabbing the victim with twelve (12) inch knives while another companion of the brothers was using a fan knife. Still another person dressed in a pair of shorts bearing the printed name "Chicago Bulls" was standing in the middle of the street and acting as a lookout. Fabella, who initially mistook the lookout to be a man, recognized her as Analyn Bernardo, a busty[3] lesbian.[4] Fearing reprisal, Fabella slipped away, undetected, and went home.

Soro's lifeless body was discovered the following morning. The autopsy report prepared by Dr. Hurley de los Reyes stated that Soro sustained the following injuries:

- Stab wound, 6 cm. x 2.5 cm left epigastric area;

- Stab wound, 1.2 cm. x 0.4 cm. right chest, 4th I.C.S.

- Stab wound, 1.5 cm. x 0.3 cm. left chest 4th I.C.S.

- Stab wound, 5 cm. x 4 cm. left lateral forearm;

- Stab wound, 3 cm. x 1.6 cm. anterior [sic] upper third of the right forearm;

- Stab wound, 5 cm. x 1.2 cm., left axilliary area;

- Incised wound, 4 cm. x 1 cm., posterior arm, left;

- Stab wound, 3 cm. x 1.8 cm., left lateral forearm;

- Stab wound, 1 cm. x 0.2 cm. forearm, posterior, left

- Stab wound, 7 cm. x 0.2 cm. anterior forearm, left

- Stab wound, 0.4 cm. x 0.2 cm. anterior left forearm

- Stab wound, 2.5 cm. x 0.9 cm., left back

- Stab wound, 1 cm. x 0.3 cm. left back

- Stab wound, 2 cm. x 0.2 cm. middle, back;[5]

Due to the number and severity of his stab wounds, Soro died from cardiorespiratory arrest and massive hemorrhage.

Pursuant to an Order of Arrest dated September 5, 1994,[6] accused-appellant Jimmy Mosquerra was apprehended on September 6, 1994. Jesemiel, on the other hand, was not caught. An amended information for murder[7] was subsequently filed to include Analyn Bernardo as one of the accused. At his arraignment, accused-appellant entered a plea of not guilty. The other accused remain at large.

To prove accused-appellant's guilt, the prosecution presented as witnesses, Frankie Fabella, Eusebio Surilla, Dr. de los Reyes, Mary Jane Banao, Alexander Castillo-Soro, Esmelia Bernardo, and Armando Milan. Mary Jane Banao, in particular, narrated that at about 7:30 in the evening of August 18, 1994, she was walking towards her house with a cousin when she saw Soro being followed by Jesemiel, who was holding in his right hand something wrapped in a white cloth. The object was revealed to be a knife when Jesemiel removed its cover. She lost sight of the two (2) when both were swallowed by the darkness. However, she recognized accused-appellant hiding in the dark. She further testified that she met Analyn Bernardo on the same road and that the latter told her that Jimmy

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Mosquerra was going to kill Soro.[8]

On his part, accused-appellant Jimmy Mosquerra claimed that he was never at the scene of the crime when Soro was killed. He maintained that his services as a tricycle driver were contracted by Leopoldo Sy to transport the latter's companions to a gathering at the Mina de Oro Hotel on that fateful night. To corroborate his defense of alibi, he presented as witness Leopoldo Sy and Imelda Ordoña who allegedly were with accused-appellant at a drinking spree.

On August 27, 1996, the trial court rendered its Decision[9] finding the accused-appellant guilty of murder, beyond reasonable doubt, for the death of the victim, Nelson Soro. With reference to the defense of alibi of accused-appellant, the trial court found and declared that:

> xxx xxx xxx
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> As could be gleamed from the testimony of defense witnesses, the defense of the accused in the instant case is alibi. That he was not at the scene of the crime when the criminal act complained of happened.
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> Alibi is a defense that places the accused at the relevant time of crime in a different place than the scene involved and so removed therefrom as to render it impossible for him to be the guilty party. xxx Essential to a valid defense of alibi is the physical impossibility of presence at the scene of the crime at the time of commission thereof. xxx The house of the accused is near the scene of the crime and accused are neighbors of the victim, the proximity of the house of the accused to the place of the crime wholly negates their defense of alibi. Moreover, alibi cannot prevail over positive identification. xxx Accused was positively identified by the prosecution witnesses as the perpetrators of the crime. Their defense of alibi must perforce be rejected.
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> Against the case for the prosecution, accused could only muster the weak defense of alibi. It is well settled that courts have always looked upon this defense with caution, if not suspicion not only because it is inherently reliable but likewise because it is rather easy to fabricate. For alibi to prosper, it would not be enough for the accused to prove that he has been elsewhere when the crime is committed but that he must further demonstrated that it would have been physically impossible for him to be at the scene of the crime at the time of its commission. xxx
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> Accused interposed alibi as their defense. Time and again, it has been held that alibi is a weak defense and cannot prevail over the positive identification of the accused by the prosecution's witness who has no malice to testify falsely against them. For the defense of alibi to prosper, the accused must show that he was at some other place for such a period of time and that it was physically impossible for him to have been at the place where the crime was committed at the time of its commission. In the case at bench, the place where accused claimed to have been at that time of the incident was only a few thousand meters away from the scene of the crime. xxx
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> Accused defense of [sic] alibi is not worthy of belief. It has been repeatedly ruled that alibi is a weak defense as it is easy to concoct and fabricate. It become weaker in the face of the positive identification of the accused by an eye witnesses [sic] with no improper motive to falsely testify. More, it is not sufficient for the accused to alleged [sic] that he was away from the scene of the crime at the time of its commission. He must also present a clear and convincing proof that it is physically impossible for him to be at the locus criminis while the crime is in progress. That physical impossibility is not present in this case. The records show that Jimmy Mosquerra's residence is about one and a half (1½) kilometers away from the crime scene. xxx Its distance could be negotiated in just a few minutes only, especially, when one uses a motor vehicle which is of common use for travel today.
>
> As already testified to and proven at the time of the trial, it was shown that on the 18[th] day of August, 1994, at around 7:30 o'clock in the evening, in San Roque II, Municipality of San Jose, Province of Occidental Mindoro, the accused Jimmy Mosquerra, in conspiracy with others, who are still at large, being armed with

> sharp-bladed instrument, with manifest intent to kill, willfully, unlawfully and feloniously attack, assault and stab one Nelson Soro, inflicting fatal wounds resultant therewith met his sudden and untimely demise.
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> That the qualifying circumstance of treachery and aggravating circumstances of superior strength and conspiracy with his co-accused, who are still at large, were proven to have been attendant in the commission of the offense.
>
> VIEWED FROM THE FOREGOING, conclusion is inescapable that the accused Jimmy Mosquerra is GUILTY beyond reasonable doubt for which the Court, with the presence of the qualifying circumstance of treachery as it was nighttime when committed and the aggravating circumstances of conspiracy and superior strength, sentences him to suffer life imprisonment; and, to indemnify the heirs of the deceased in the amount of Fifty Thousand (P50,000.00) Pesos; and to pay the costs."

In this appeal, appellant Jimmy Mosquerra contends that the court a quo erred in finding him guilty beyond reasonable doubt of murder.

The appeal is devoid of merit.

We have held in a number of cases that alibi is an inherently weak and unreliable defense, for it is easy to fabricate and difficult to disprove.[10] Of paramount significance is that accused-appellant was positively identified by prosecution witness Frankie Fabella as one of Nelson Soro's murderers. Alibi cannot prevail over the positive identification of the accused-appellant as one of the perpetrators of the crime, especially so in the face of categorical statements coming from credible witnesses who have no ill motives in testifying.[11] The record shows that an attempt was made to discredit prosecution witness Fabella with two (2) sworn statements dated September 16, 1994[12] executed by Princinito Mosquerra and Esperanza Mosquerra, parents of Jesemiel and Jerry. They alleged that at 8:00 in the evening of September 15, 1994, they were shot at by Fabella, but that the latter missed. These affidavits, however, are hearsay and have no probative value since the said affiants were never called to the witness stand to testify in this case.

To establish alibi, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime.[13] Physical impossibility "refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places."[14] In the case at bar, accused-appellant failed to satisfy the said requisites, especially the second. It was shown during the trial that the distance of Mina de Oro Hotel where accused-appellant claimed to be from the locus delicti was estimated at one-and-a-half to two (1½ -2) kilometers only, a distance not too far to traverse even by walking. In People v. Cañete,[15] we held that:

> Extant in our jurisprudence are cases where the distance between the scene of the crime and the alleged whereabouts of the accused is only two (2) kilometers (People vs. Lumantas, 28 SCRA 764 [1969]), or three (3) kilometers (People vs. Binsol, 100 Phil. 713 [1957]) or even five kilometers (People vs. Manabat, 100 Phil. 603 [1957]), and yet it was held that these distances were not too far as to preclude the possibility of the accused's presence at the locus criminis, even if the sole means of traveling between the two places at that time was only by walking (People vs. Aparato, 80 Phil. 199 [1948]). With more reason, therefore, do we find the defense of alibi in the present case implausible, the distance merely being merely one kilometer, which may be negotiated by foot within 25 to 30 minutes. The established circumstances in this case cannot conclusively preclude the possibility of accused-appellant Harvey Cañete's presence at the scene of the crime at 8:30 on the evening of June 11, 1988 when the crimes were committed.

This ruling was subsequently affirmed in People v. Payot,[16] People v. Floro,[17] People v. Jose,[18] and People v. Gallego.[19] Even a distance of one-and-a-half kilometers, as in the present case, was not deemed

insuperable.[20] It bears noting that accused-appellant had a tricycle which he could have used to go to Barangay San Roque II. Failing that, he could have hailed any of the numerous tricycles plying that route.[21]

Due to its doubtful nature, alibi must be supported by clear and convincing proof.[22] This was not done in the case at bar for the testimonies of the defense witnesses are marked by contradictions. Imelda Ordoña, allegedly one of accused-appellant's companions at the hotel, stated that at around six o'clock in the evening of August 18, 1994, accused-appellant who was then visiting her at her house, asked to leave because his tricycle was hired for the night by Leopoldo Sy.[23] However, on direct examination, accused-appellant testified that in the morning of that same day, he told Imelda Ordoña of the hiring of his tricycle by Sy[24] and that he then invited her and her housemate, Sally Teja, to accompany him to the hotel. He claimed that Sy hired his services at 8:00 that morning.[25] When called to the stand, however, Sy categorically stated that he contracted Mosquerra's services only at 5:00 in the afternoon, and this arrangement came about only because they met by chance.[26]

The trial court determined that treachery and abuse of superior strength attended Soro's killing. Treachery exists

> xxx when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[27]

It must be proved as a fact independent from the killing itself.[28] A finding of treachery must be grounded on something more than supposition or sheer speculation;[29] necessarily, proof beyond reasonable doubt is the quantum of evidence required to establish its existence.[30] In the case at bar, the trial court wrongfully imputed treachery on the part of accused-appellant for the simple reason that the eyewitness, Frankie Fabella, did not see how the assault on the victim started.[31] The paucity of proof as to the manner in which the aggression started or how the act which resulted in the death of the victim began or developed negates the conclusion that treachery was extant.[32]

In contrast, the allegation of taking advantage of superior strength with the aid of armed men is duly proven as shown in the record. Taking advantage of superior strength has a precise meaning in law. It denotes the use of excessive force out of proportion to the means available to the person attacked to defend himself.[33] Thus, when the assailants seized upon their superior number and arms (here consisting of bladed weapons) to attack an unarmed person, as in the case at bar, abuse of superior strength is properly appreciated in aggravating the crime.[34] In the present case, the victim had no means to defend himself when he was suddenly attacked by three (3) armed persons including the accused-appellant while another acted as a lookout to guarantee the smooth execution, so to speak, of the crime.

Anent the penalty imposed on accused-appellant, the trial court erred in sentencing appellant Jimmy Mosquerra to life imprisonment. Life imprisonment and reclusion perpetua are two distinct penalties and are not interchangeable.[35] We have expounded on the difference in People v. Penillos,[36] to wit:

> As noted from the dispositive portion of the challenged decision, the trial court imposed the penalty of "reclusion perpetua or life imprisonment." Evidently, it considered the latter as the English translation of the former, which is not the case. Both are different and distinct penalties. In the recent case of People v. Baguio, this Court held:
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> "The Code does not prescribe the penalty of `life imprisonment' for any of the felonies therein defined, that penalty being invariably imposed for serious offenses penalized not by the Revised Penal Code but by special laws. Reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes ineligible for pardon, it also carries with it accessory penalties, namely: perpetual special disqualification, etc. It is not the same as `life imprisonment' which, for one thing, does not carry with it any accessory penalty, and

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> for another, does not appear to have any definite extent or duration."
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> As early as 1948, in People v. Mobe, reiterated in People v. Pilones and in the concurring opinion of Justice Ramon Aquino in People v. Sumadic, this Court already made it clear that reclusion perpetua is not the same as imprisonment for life or life imprisonment. Every judge should take note of the distinction and this Court expects that, henceforth, no trial judge should mistake one for the other.

Murder is punishable by reclusion perpetua to death.[37] In relation thereto, Article 63 of the Revised Penal Code provides:

> Art. 63. Rules for the application of indivisible penalties.--xxxx
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> In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:
>
> 1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
>
> 2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
>
> 3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
>
> 4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

Under the premises, the fact that the crime was committed in the evening cannot be taken against accused-appellant, there being no showing that nighttime was particularly sought by the assailants to facilitate the commission of the offense.[38] There being no mitigating or aggravating circumstances, the lesser penalty of reclusion perpetua should be meted out on the accused.

The Solicitor General urges the increase of the civil indemnity to Seventy-Five Thousand Pesos (P75,000.00) purportedly in accord with our ruling in People v. Victor.[39] Reliance thereon is misplaced. The said case applies only to convictions for rape qualified by any of the circumstances under which the death penalty is imposable under Republic Act No. 8353. The case at bar involves a conviction for murder, for which the amount of civil indemnity was rightfully placed at Fifty Thousand Pesos (P50,000.00). Where death results from a crime, the heirs of the victim are entitled to be indemnified for the latter's death without need of further proof.[40]

The court a quo erred in failing to award actual damages in favor of the heirs of the victim. They incurred funeral expenses amounting to Nineteen Thousand Five Hundred Pesos (P19,500.00) which are duly evidenced by receipts.[41] Moreover, the victim's heirs are entitled to moral damages in the sum of Fifty Thousand Pesos (P50,000.00).[42]

WHEREFORE, the decision of the Regional Trial Court of Occidental Mindoro finding the accused-appellant, Jimmy Mosquerra, guilty of murder beyond reasonable doubt is hereby AFFIRMED with the MODIFICATION that said accused-appellant is hereby sentenced to reclusion perpetua (not life imprisonment) and ordered to pay the heirs of the victim, Nelson Soro, aside from the civil indemnity of Fifty Thousand Pesos (P50,000.00), the sums of Nineteen Thousand Five Hundred Pesos (P19,500.00), as actual damages, and Fifty Thousand Pesos (P50,000.00) as moral damages. Costs against accused-appellant.

SO ORDERED.

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

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[1] Records, p.1.

[2] TSN, June 8, 1995

[3] TSN, February 7, 1995, p. 22.

[4] TSN, February 7, 1995, p. 65.

[5] Exh. "I", Records, p. 88.

[6] Records, p. 5; see 1[st] Indorsement, dorsal portion of p. 5.

[7] Records, p. 36.

[8] TSN, February 7, 1995, pp. 31-38.

[9] Decision, Records, pp. 184-195.

[10] People v. Batidor, 303 SCRA 335, 350 (1999); People v. Realin, 301 SCRA 495, 512 (1999); People v. Tulop, 289 SCRA 316, 333 (1998).

[11] People v. Benito, 303 SCRA 468, 478 (1999); People v. Antonio, 303 SCRA 414, 429 (1999); People v. Sanchez, 302 SCRA 21, 47 (1999).

[12] Records, pp. 74-75.

[13] People v. Saban, 319 SCRA 36, 46 (1999); People v. Reduca, 301 SCRA 516, 534 (1999).

[14] People v. De Labajan, 317 SCRA 566, 575 (1999).

[15] 287 SCRA 490, 500 (1998).

[16] 308 SCRA 43, 64 (1999).

[17] 316 SCRA 304, 313 (1999).

[18] G.R. No. 130666, January 31, 2000.

[19] G.R. No. 130603, August 15, 2000.

[20] People v. Cabel, 282 SCRA 410, 417 (1997).

[21] TSN, September 5, 1995, p. 49.

[22] People v. Hillado, 307 SCRA 535, 553 (1999); People v. Balmoria, 287 SCRA 687, 708 (1998).

[23] TSN, September 5, 1995, p. 4.

[24] TSN, September 5, 1995, p. 32.

[25] TSN, September 5, 1995, p. 47.

[26] TSN, December 13, 1995, pp. 30-31.

[27] Article 14, par. 16, Revised Penal Code.

[28] People v. Eribal, 305 SCRA 341, 351 (1999).

[29] People v. Tavas, 303 SCRA 86, 96 (1999); People v. Demonteverde, 290 SCRA 175, 185 (1998).

[30] People v. Domingo, 312 SCRA 487, 501 (1999).

[31] People v. Bautista, 312 SCRA 214, 235 (1999); People v. Silvestre, 307 SCRA 68, 89 (1999); People v. Amamangpang, 291 SCRA 638, 653 (1998).

[32] People v. Mantung, 310 SCRA 819, 834 (1999); People v. Real, 308 SCRA 244, 257 (1999); People v. Maldo, 307 SCRA 424, 440 (1999); People v. Borreros, 306 SCRA 680, 693 (1999); People v. Bahenting, 303 SCRA 558, 567 (1999).

[33] I L.B. Reyes, The Revised Penal Code 395 (14[th] ed., 1998).

[34] People v. Silva, 321 SCRA 647, 657 (1999); People v. Gallo, 318 SCRA 157, 168 (1999); People v. Ballabare, 264 SCRA 350, 370 (1996).

[35] People v. Bautista, 312 SCRA 475, 485 (1999); People v. Jimenez, 302 SCRA 607, 621 (1999).

[36] 205 SCRA 546, 565 (1992).

[37] Article 248, Revised Penal Code, as amended by Republic Act No. 7659.

[38] People v. Cayago, 312 SCRA 623, 637 (1999).

[39] 292 SCRA 186 (1998).

[40] People v. Galladan, 318 SCRA 569, 574 (1999).

[41] Exhibits "G" and "G-1", Records, p. 85.

[42] TSN, February 7, 1995, p. 67.

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