

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LARRY LAVAPIE, SIMEON LACHANO, ARNOLD BUATES, SANTOS SAN PASCUAL, SR., SANTOS SAN PASCUAL, JR., REY SAN PASCUAL, BENIGNO C...

G.R. No. 130209. March 14, 2001

Ponente: BUENA, J.

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BUENA, J.:

This is an appeal from the Decision[1] dated December 16, 1996, of the Regional Trial Court of Iriga City, Branch 36,[2] finding accused-appellants Larry Lavapie and Santos San Pascual, Sr. guilty beyond reasonable doubt of murder, sentencing each of them to suffer the penalty of reclusion perpetua and to pay the heirs of the victim, Sonny Sierva, jointly and severally, the amount of P7,000.00 as actual damages, P50,000.00 as death indemnity and P50,000.00 as moral damages, and to pay the costs.

The antecedent facts are as follows:

Accused-appellants Larry Lavapie and Santos San Pascual, Sr., together with Simeon Lachano, Arnold Buates, Santos San Pascual, Jr., Rey San Pascual, Benigno Catina, Jr. and several Does, were charged in an information which reads:

"That on or about the 29th day of March, 1989, at Sitio Tastas, Barangay San Vicente, (Buraburan) Municipality of Buhi, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with bolos, with intent to kill and with treachery and evident premeditation, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and hack with said bolos one Sonny Sierva, thereby inflicting upon the latter [a] mortal wound which directly caused his death, to the damage and prejudice of his heirs in the sum of Fifty Thousand Pesos (P50,000.00), plus other forms of damages that may be proven in court.

ACTS CONTRARY TO LAW."[3]

Upon their arraignment on October 17, 1989, accused Larry Lavapie and Rey San Pascual pleaded not guilty.[4] Subsequently, or on January 29, 1990, the other accused - Benigno Catina, Jr., Santos San Pascual, Sr. and Santos San Pascual, Jr. also pleaded not guilty.[5] Accused Simeon Lachano, likewise, pleaded not guilty on July 16, 1991.[6] Accused Arnold Buates remained at large.

At the trial, the prosecution presented the following witnesses against accused Larry Lavapie, Rey San Pascual, Benigno Catina, Jr., Santos San Pascual, Sr. and Santos San Pascual, Jr. - Dr. Alicia M. Mercurio, Jenny Cordial, Enrico Sierva, Domingo Samonte, Rogelio Sierva and Sgt. Jaime Patiam. The following witnesses, on the other hand, testified against accused Simeon Lachano - Erlinda Sierva and Rogelio Sierva. In their defense, all of the six (6) accused, who were brought before the jurisdiction of the trial court, testified in court, in addition to Felix Lavapie, Juan Bongais and Loreto Camasis.

For the prosecution, eyewitness Domingo Samonte testified that on March 29, 1989, at around 11 p.m., he came from the dance hall in San Vicente with Rogelio Sierva and the victim Sonny Sierva.[7] While on their way, Rogelio and Sonny talked with some ladies, then, Rogelio went home ahead, and left Domingo and Sonny behind.[8] While approaching Rogelio's house, Domingo and Sonny noticed a group of persons coming towards them. Domingo stepped backwards towards Sonny. Sonny focused the flashlight, which he was holding, on accused-appellant Santos San Pascual, Sr. and accused-appellant Larry Lavapie, who was then holding a bolo. Accused-appellant Santos San Pascual, Sr. suddenly held the hands of Sonny behind his back, while accused-appellant Larry Lavapie hacked Sonny.[9] Domingo testified that Sonny was hit on the neck, the same witness pointing to the left side of his neck.[10] When Sonny fell on the ground, Domingo ran towards some pili trees. Then, Domingo saw two (2) persons, a boy and a girl, who were following them and holding a torch which they used to lighten the fallen body of Sonny. Domingo, however, was not able to recognize these two (2) persons. On cross-examination, Domingo testified that when he witnessed the hacking incident, there were other persons at the scene of the crime but he was not able to recognize them.[11] Domingo further recounted that after he saw the hacking incident, he ran towards the back of a pili tree and stayed there until dawn of the following day.[12] At dawn, he proceeded to his house in Buraburan.[13] He did not report the incident to anybody else but a certain friend and his wife. Domingo also admitted that when accused-appellant Santos San Pascual, Sr. held the hands of Sonny behind the latter's back, he did not tell Santos San Pascual, Sr. to stop but just took a step backwards.[14]

Jenny Cordial, a 15-year-old ward of Sonny Sierva's aunt, testified that on March 29, 1989, at around 11 p.m., she and Rico Sierva[15] came from a dance in San Vicente, Buraburan and were on their way home when they came upon the body of Sonny Sierva lying on the middle of the road.[16] They recognized Sonny Sierva because Cordial was then holding a torch.[17] Cordial and Enrico Sierva came upon Sonny Sierva, who was lying prostrate on the road, with a hack wound on the neck, and was almost beheaded.[18] At that instance, Cordial saw accused-appellant Larry Lavapie, who was holding a bolo, standing at a distance of about five (5) to six (6) meters from the body of Sonny Sierva.[19] Aside from accused-appellant Larry Lavapie, Cordial also saw other persons at the scene of the crime but she was not able to recognize them. Thereafter, Cordial and Enrico Sierva ran away and went home to inform the father of Sonny Sierva of what happened but they were told by his wife that Rogelio Sierva was also hacked. Incidentally, while on cross-examination, the prosecutor informed the trial court that Cordial actually grew up under the care of Rogelio Sierva's sister. Cordial testified on cross-examination that when she and Enrico Sierva saw the body of Sonny Sierva lying on the road, they were only about one (1) meter away from the body. When they saw accused-appellant Larry Lavapie, he was holding a bolo which was pointed downwards. Cordial clearly recognized accused-appellant Larry Lavapie because she was then holding a torch. Cordial described the bolo held by accused-appellant Larry Lavapie as "shiny and sharp," and "clear and clean." [20] Cordial also noticed that the other persons, who were at scene of the crime, were standing still, facing the body of Sonny Sierva, about a meter away from accused-appellant Larry Lavapie, and that some of these persons were smoking.[21] Cordial did not recognize these other persons because according to her "it was dark." [22] On further cross-examination, she estimated these other persons at the scene of the crime to number about seven (7) persons.

Enrico Sierva, 15-year-old cousin of the victim, Sonny Sierva, testified that on March 29, 1989, at around 11 p.m., he and Jenny Cordial came from a dance in San Vicente, Buhi and were on their way home. Near the house of the victim's father, Rogelio Sierva, they saw a man lying prostrate on the road. They went closer to the body and saw that the said man sustained a hack wound on the neck. They recognized the man lying on the road as Sonny Sierva.[23] Glancing around, Enrico saw accused-appellant Larry Lavapie holding a bolo and standing by the road with accused-appellant Santos San Pascual, Sr.[24] According to Enrico, both accused-appellants were at a

distance of about five (5) to six (6) meters away from him when he saw them. He also saw other persons at the scene of the crime but he was not able to recognize them because they were in a "dark place." [25] Thereafter, he and Jenny Cordial ran towards the house of Rogelio Sierva, located about 30 meters away, and informed Rogelio's wife, Erlinda Velasco, that her son was lying dead on the road. Erlinda Velasco told them that her husband was also hacked and was being brought to a hospital. On cross-examination, Enrico Sierva testified that he told his uncle, Rogelio Sierva, that it was the group of accused-appellant Larry Lavapie who hacked Sonny Sierva, [26] and that accused-appellants Larry Lavapie and Santos San Pascual, Sr. were there. [27] Enrico further testified that the torch they were carrying on the night of March 29, 1989 was made of a round bottle of gin.

Dr. Alicia M. Mercurio, Municipal Health Officer of Buhi II, Camarines Sur, conducted the autopsy on the body of Sonny Sierva and prepared an autopsy report [28] dated April 25, 1989, with the following findings:

"Lesions:

"Incised wound at the neck, right side cutting the whole neck structure with a portion of the skin only on the left side holding it in place about 3 in. long.

"Cause of Death - Incised wound, neck (almost whole neck) with secondary hemorrhage (massive)." [29]

Dr. Mercurio explained that due to the hack wound (or incised wound) sustained by the victim, Sonny Sierva, the victim's head was almost severed from the body, with only three (3) inches of flesh on the left side of the neck, connecting the neck to the body. [30] According to Dr. Mercurio, the hack wound could have been caused by a sharp instrument like a very sharp bolo. Dr. Mercurio further opined that the victim could have died at around 1 or 2 a.m. of March 30, 1989.

Rogelio Sierva, father of the victim, Sonny Sierva, testified that on March 29, 1989, at around 11 p.m., he came from a dance in Buraburan, San Vicente, together with his son, Sonny Sierva and his brother-in-law, Felix Buendia. [31] On their way home, they passed by the house of a certain Teresita Gaite, where Sonny Sierva was left behind with his friends. Rogelio and Felix proceeded on their way home. When they were already near his house, Rogelio saw six (6) of the seven (7) identified accused. [32] Rogelio continued to testify that he was hacked on his right ear by accused Arnold Buates. Rogelio and Felix then ran towards Rogelio's house. When Rogelio was about to open the door of his house, he was hacked on the right arm by accused Santos San Pascual, Jr. Rogelio then entered the house and got a bolo but his assailants already retreated to the place where he was first hacked. Thereafter, Rogelio sought the assistance of his brother, Silvestre Sierva, whose house was located about 20 meters away, [33] and requested that he be brought to a hospital. On their way to the hospital, they saw Sonny Sierva, who was almost beheaded, lying on the road. When Rogelio discovered that Sonny was already dead, they proceeded to the San Vicente Assistance Center and reported the hacking incident. Afterwards, they proceeded to the Mediatrix Hospital where Rogelio was treated for his wounds. Rogelio also testified that he spent more or less P7,000.00 which he incurred due to the death of Sonny Sierva. [34] On cross-examination, Rogelio admitted that he was previously charged for the attempted rape of the daughter of accused Santos San Pascual, Sr. [35]

Because accused Simeon Lachano was arrested only after the prosecution had already presented the foregoing witnesses against the five (5) other accused, the prosecution presented anew, Rogelio Sierva and an additional witness, Erlinda Sierva, to testify against accused Simeon Lachano.

Erlinda Sierva, mother of the victim, Sonny Sierva, testified that she spent less than P10,000.00 as burial and funeral expenses on account of the death of Sonny Sierva. [36]

Rogelio Sierva, in testifying against accused Simeon Lachano, merely reiterated his previous testimony against the five (5) other accused.

For the defense, on the other hand, all of the six (6) accused, who were brought before the jurisdiction of the trial court, testified together with Felix Lavapie, Juan Bongais and Loreto Camasis.

Accused-appellant Larry Lavapie, in his defense, interposed denial and alibi. Lavapie testified that on March 29, 1989, at around 8 p.m., he was at a dance in San Vicente, Buhi,[37] with accused Santos San Pascual, Jr., a certain Santiago Sanorjo and Danny Belardo.[38] Lavapie, Santos San Pascual, Jr., Santiago Sanorjo[39] and Danny Belardo left the dance hall at past 11:30 p.m. and went to the barn of Santiago Sanorjo, arriving thereat at around 1 a.m.[40] They slept in the said barn and went to their respective houses on the following day.

Accused Santos San Pascual, Jr. corroborated the testimony of accused-appellant Larry Lavapie that they attended a dance in San Vicente, Buhi. They left the dance hall at past 12 midnight[41] and went to the house of Santiago Sanorjo where they slept until 6 o'clock of the following morning.[42]

Juan Bongais testified that in the evening of March 29, 1989, he was at a dance in San Vicente, Buraburan. He arrived at the dance at 7 p.m. and left at about 12:30 a.m. of the following day.[43] He left the dance with Jenny Cordial, Rico Sierva and Liza San Pascual.[44] On their way home, they met Rogelio Sierva who was hacked and being carried by Dionesio Coronel and Felicito Coñas. They continued walking for several meters until they came upon the dead body of Sonny Sierva, lying on the road.[45] On cross-examination, Bongais testified that when they were about to leave the dance at around 12:30 a.m. of March 30, 1989, accused-appellant Larry Lavapie and his co-accused Santos San Pascual, Jr. were still at the dancing hall.[46]

Accused-appellant Santos San Pascual, Sr., likewise, claimed denial and alibi. San Pascual, Sr. testified that in the evening of March 29, 1989, he was resting in his house in sitio Tastas, Labawon, Buhi.[47] He slept at 7 p.m. and awoke at 5 o'clock of the following day.[48] San Pascual, Sr. further claimed that Rogelio Sierva, father of the victim, was actuated by ill-motive to implicate him in this crime, i.e., he filed a complaint against Rogelio for the attempted rape of his daughter, Gina San Pascual.[49] On cross-examination, San Pascual, Sr. testified that sitio Labawon is adjacent to barangay San Vicente.

The three (3) other accused, Rey San Pascual, Simeon Lachano and Benigno Catina, Jr., likewise, interposed denial and alibi in their respective testimonies before the trial court.

On January 23, 1997, the trial court rendered a Decision dated December 16, 1996, finding accused-appellants Larry Lavapie and Santos San Pascual, Sr. guilty of murder qualified by treachery. The four (4) other accused, Santos San Pascual, Jr., Rey San Pascual, Benigno Catina, Jr. and Simeon Lachano were acquitted for insufficiency of evidence. The dispositive part of the said Decision reads:

"WHEREFORE, premises considered, the Court finds -

"1. The accused, Larry Lavapie and Santos San Pascual, Sr., guilty beyond reasonable doubt as principal[s] of the crime of murder defined and penalized under Article [2]48 of the Revised Penal Code, prior to its amendment by Rep. Act No. 7659, as charged in the information, and there being no generic aggravating nor mitigating circumstances, [the Court] hereby sentences the said accused to suffer the penalty of reclusion perpetua; to pay, jointly and severally the heirs of the deceased, Sonny Sierva, spouses Rogelio and Erlinda Sierva the following:

- a) P7,000.00 as actual damages,
- b) P50,000.00 as death indemnity,
- c) P50,000.00 as moral damages, and to pay the costs;

"2. [T]he [other] accused, Santos San Pascual, Jr., Rey San Pascual, Benigno Catina, Jr., and Simeon Lachano,

not guilty of the crime charged in the information and [the Court] hereby acquits them thereof for insufficiency of evidence. The bonds posted for their provisional liberty are hereby ordered cancelled and released.

"With respect to the accused, Arnold Buates, who was never brought to the jurisdiction of this [C]ourt, let the records of this case be sent to the archives to be revived as soon as this [C]ourt acquires jurisdiction over [the] said accused.

"SO ORDERED." [50]

In convicting accused-appellants, Larry Lavapie and Santos San Pascual, Sr., the trial court relied primarily on the testimony of prosecution witness Domingo Samonte that accused-appellant Larry Lavapie was the one who hacked Sonny Sierva on the neck with the use of a bolo, while accused-appellant Santos San Pascual, Sr. was at the back of Sonny Sierva, holding the latter's hands.[51] The trial court also relied heavily on the testimony of prosecution witness Jenny Cordial that she saw accused-appellant Larry Lavapie, standing about five (5) meters away from the dead body of Sonny Sierva; and on the testimony of prosecution witness Enrico Sierva that he saw accused-appellants, Larry Lavapie and Santos San Pascual, Sr., standing five (5) meters away from the dead body of Sonny Sierva.[52] The trial court further maintained that Jenny Cordial's description of Sonny Sierva's body when they came upon it, lying prostrate on the road, was supported by the medical findings stated in the autopsy report of Dr. Alicia M. Mercurio.[53] The trial court rejected the defenses of denial and alibi raised by accused-appellants, and ruled that denial and alibi cannot prevail over positive identification, and that accused-appellants' alibi was not corroborated by any credible and disinterested witness.[54] In ruling that the killing was qualified by treachery, the trial court explained that accused-appellants "waited, in ambush, for their victim;"[55] and that the suddenness of the attack on Sonny Sierva and the fact that his hands were being held at his back by accused-appellant Santos San Pascual, Sr. while he was hacked by accused-appellant Larry Lavapie, rendered him "helpless to put up any defense." [56] The trial court also found that conspiracy attended the commission of the crime, based on the fact that "...they [accused-appellants] are related to each other (uncle and nephew) and from their concerted acts in killing Sonny Sierva." [57]

On February 3, 1997, accused-appellants filed a Motion for New Trial, alleging that prosecution witnesses, Jenny Cordial and Domingo Samonte retracted their respective testimonies.[58] However, in an Order dated March 12, 1997, the trial court denied the foregoing motion, for lack of merit.[59]

Hence, this appeal.

In their appellant's brief, accused-appellants raise a lone assignment of error:

THE LOWER COURT ERRED IN NOT CONSIDERING THE RETRACTION OF PROSECUTION WITNESS[ES] JENNY CORDIAL AND DOMINGO SAMONTE [AS] NEWLY-DISCOVERED EVIDENCE WHICH SHALL JUSTIFY THE HOLDING OF A NEW TRIAL.

We find merit in this appeal.

The conviction of accused-appellants by the trial court was predicated primarily on the testimony of prosecution witness Domingo Samonte who "positively identified [accused-appellant] Larry Lavapie as the one who hacked Sonny Sierva with a bolo at his neck while accused[-appellant] Santos San Pascual, Sr., was at the rear of Sonny Sierva, holding his hands;"[60] and on the testimonies of the two (2) witnesses who arrived at the scene of the crime shortly after the hacking incident occurred - Jenny Cordial, who "saw accused[-appellant] Larry Lavapie standing about five [5] meters away from the dead body of Sonny Sierva"[61] and Enrico Sierva, who "saw and recognized the same accused[-appellant] Larry Lavapie and accused[-appellant] Santos San Pascual, Sr., standing [five] 5 meters away from the dead body of Sonny Sierva." [62] According to the trial court, Jenny Cordial's

description of the condition of Sonny Sierva's body when they came upon it, "...is supported by the medical findings" as stated in the autopsy report.[63] Furthermore, the trial court observed that accused-appellants failed to show "any improper motive on the part of the said witnesses to falsely testify against them." [64]

While it is settled to the point of being elementary that on the issue of credibility of witnesses, appellate courts will not disturb the findings arrived at by the trial court, which was certainly in a better position to rate the credibility of the witnesses after hearing them and observing their deportment and manner of testifying during the trial; this rule stands absent any showing that certain facts and circumstances of weight and value have been overlooked, misinterpreted or misapplied by the trial court which, if considered, would affect the result or outcome of the case.[65] After a careful review of the records of this case, particularly, the testimonies of prosecution witnesses, the Court finds that significant facts and circumstances were overlooked and disregarded by the trial court, which, if properly considered, would have affected the result of this case. The records show that there are strong and cogent reasons that justify a departure from the trial court's findings.

In the case at bar, prosecution eyewitness Domingo Samonte testified that accused-appellant Larry Lavapie suddenly hacked Sonny Sierva, hitting the latter on his neck; Samonte demonstrated by pointing to the left side of his neck, thus:

"PROSECUTOR:"Q:All right. You said Larry Lavapie suddenly hacked Sonny Sierva[,] was Sonny Sierva hit? [WITNESS DOMINGO SAMONTE]:"A:Yes, sir. "Q:Where was he hit? "A:He was hit on his neck. (Witness pointing to the left side of his neck.) "Q:After Sonny Sierva was hacked by Larry Lavapie[,] what happened to Sonny Sierva, Mr. Samonte? "A:He fell down, sir." [66] (Emphasis supplied.)

The foregoing testimony of Samonte is belied by the physical evidence that the deceased, Sonny Sierva sustained an "incised wound at the neck, right side cutting the whole neck structure with a portion of the skin only on the left side holding it in place about 3 in. long." [67] (Emphasis supplied.) While Samonte categorically testified that Sonny Sierva was hacked on the neck, at the same time, Samonte demonstrated by pointing to the left side of his neck; the autopsy report clearly revealed that Sonny Sierva was hacked on the right side of his neck and not on the left side. This material inconsistency, consequently, casts a serious doubt on the testimony of Samonte. As we have ruled in *People vs. Vasquez*, [68] since the physical evidence on record runs counter to the testimonial evidence of the prosecution witnesses, conclusions as to physical evidence should prevail. It bears reiteration that physical evidence is that mute but eloquent manifestations of truth which rate high in our hierarchy of trustworthy evidence.[69] In the light of the physical evidence obtaining in this case, contrary to oral assertions cannot normally prevail. Greater credence is given to physical evidence as evidence of the highest order because it speaks more eloquently than a hundred witnesses.[70]

Moreover, Samonte's claim that on March 29, 1989, at around 11 p.m., he came from the dance hall in San Vicente with Rogelio Sierva and the victim Sonny Sierva, [71] and that while on their way, Rogelio and Sonny talked with some ladies, then, Rogelio went ahead, leaving Domingo and Sonny behind, [72] was even contradicted by Rogelio's (one of Samonte's alleged companions on that fateful night) testimony on two (2) different instances, [73] that on March 29, 1989, at about 11 p.m., he was with his son, Sonny Sierva and his brother-in-law, Felix Buendia, [74] without any reference to the alleged presence of Samonte, thus:

"ROGELIO SIERVA'S FIRST TESTIMONY WHICH WAS TAKEN ON AUGUST 16, 1990:
"PROSECUTOR:"Q:Mr. Sierva, on March 29, 1990 [should be 1989] at about 11 o'clock in the evening, where were you?

[WITNESS ROGELIO SIERVA]:

"A:We came from a dance at Sitio Buraburan, San Vicente, Buhi, Camarines Sur. "Q:You said we, who were

your companions during that time[,] Mr. Sierva? "A:My son Sonny Sierva and my brother-in-law, Felix Buendia. "Q:

While you together with your late son Sonny Sierva and your brother-in-law Felix Buendia were on your way home from centro Buraburan, Buhi, Camarines Sur, do you recall of any incident that happened?

"A:Yes, sir."[75] (Emphasis supplied.)

"ROGELIO SIERVA'S SECOND TESTIMONY WHICH WAS TAKEN ON AUGUST 5, 1993:

"PROSECUTOR:"Q:Mr. Sierva, where were you on March 29, 1989 at about 11 o'clock in the evening? [WITNESS ROGELIO SIERVA]:"A:I was then at San Vicente, Buraburan, Buhi, Camarines Sur. "Q:Why did you happen to be there, Mr. Sierva during the aforesaid date and time? "A:I accompanied my son to the dancing hall. "Q:Where was this dancing hall? "A:At Centro San Vicente, Bura-buran. "Q:What were you doing at the aforesaid place during the aforesaid date and time? "A:I was watching the dance. "Q:Who were with you, if any, during that time, Mr. Sierva? "A:My son and my brother-in-law.

"xxx xxx xxx."

"Q:After watching the dance, what did you do, if any? "A:We went home. "Q:You said "we went home". Who were with you? "A:My brother-in-law and my son. "Q:What is the name of your brother-in-law? "A:Felix Buendia. "Q:

While you were on your way home together with your brother-in-law and your son Sonny Sierva, do you recall of any incident that happened, Mr. Sierva?

"A:Yes, sir."[76] (Emphasis supplied.)

Certainly, the foregoing testimonies of Rogelio Sierva, which we find to be consistent on material points, further cast serious doubt on the veracity of Samonte's testimony.

In addition, we find Samonte's response to the occurrence to be contrary to ordinary human experience and behavior. If indeed Samonte was present at the scene of the crime when the victim, Sonny Sierva, whose hands were held at the back by accused-appellant Santos San Pascual, Sr., was hacked on the neck by accused-appellant Larry Lavapie, while the other accused, numbering at least five (5), were apparently merely observing the incident; it was then unnatural and against common experience that Samonte ran away towards some pili trees and simply stayed there until dawn of the following day, even as he had already seen a boy and a girl discovered the fallen body of Sonny Sierva shortly after the incident occurred. Considering the testimonies of prosecution witnesses, Jenny Cordial and Enrico Sierva, that after discovering the dead body of Sonny Sierva lying prostrate on the ground, and seeing the several accused standing near the dead body of Sonny Sierva, they were able to run away and go to Rogelio Sierva's house to report what they saw, without the several accused following them or even attempting to threaten them in any way, it appears that the several accused posed no threat to Samonte, which could have forced him to remain near some pili trees. It is also perplexing why Samonte did not see, inform or seek the help of Rogelio Sierva, Felix Buendia, Silvestre Sierva and an unidentified person, who also happened to come upon the dead body of Sonny Sierva while on their way to the hospital. This Court finds occasion, at this point, to apply a long-held doctrine that to be credible, testimonial evidence should come not only from the mouth of a credible witness but it should also be credible, reasonable and in accord with human experience.[77] While we take judicial notice that eyewitnesses to a crime are often reluctant to report the incident, the Court finds the response of Samonte to the occurrence contrary to human experience, and his testimony not credible, thus, we reject his testimony.

In view of the resulting lack of positive identification, accused-appellants' conviction or acquittal would now

depend primarily on the sufficiency of the circumstantial evidence against them, based on the testimonies of the other prosecution witnesses, particularly, Jenny Cordial and Enrico Sierva. Section 4, Rule 133 of the Rules of Court provides that circumstantial evidence is sufficient for conviction if: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

In the instant case, prosecution witness Jenny Cordial testified that she saw accused-appellant Larry Lavapie, who was holding a bolo, standing at a distance of about five (5) to six (6) meters from the body of Sonny Sierva;^[78] while prosecution witness Enrico Sierva testified that after he recognized the man lying on the road as Sonny Sierva, he saw accused-appellant Larry Lavapie with a bolo, standing by the road, with accused-appellant Santos San Pascual, Sr.^[79] The above circumstance, in the absence of other corroborative evidence, does not satisfy the requirements under Section 4, Rule 133 of the Rules of Court nor point with moral certainty to the guilt of accused-appellants. As we have consistently held, the mere presence of accused-appellants at the locus criminis cannot be solely interpreted to mean that they committed the killing. The mere presence of accused-appellants at the crime scene, without more, is inadequate to support the conclusion that, indeed, they committed the crime.^[80] We also observe that as testified by prosecution witness Jenny Cordial, the bolo allegedly held by accused-appellant Larry Lavapie was "shiny and sharp," and "clear and clean."^[81] If indeed it was accused-appellant Larry Lavapie who hacked Sonny Sierva on the neck, the bolo, which he allegedly used in hacking Sonny Sierva, would not have been "clear and clean." It should also be noted that aside from the two (2) accused-appellants, there were at least five (5) other persons who were at the scene of the crime, and who could have been responsible for the killing, but unfortunately, they were not recognized by prosecution witnesses, Jenny Cordial and Enrico Sierva. According to Jenny Cordial, the other persons, numbering about seven (7), who were at the scene of the crime, standing still and facing the body of Sonny Sierva, were only about a meter away from accused-appellant Larry Lavapie,^[82] but she was not able to recognize them because "it was dark."^[83] In corroboration, Enrico Sierva testified that both accused-appellants were at a distance of about five (5) to six (6) meters away from him when he saw them; and that he also saw other persons at the scene of the crime but he was not able to recognize them because they were in a "dark place."^[84]

In resumé, considering the evidence for the prosecution and the attendant circumstances, the Court entertains reasonable doubt as to the culpability of accused-appellants.

WHEREFORE, for failure of the prosecution to prove beyond reasonable doubt that the accused-appellants are guilty of the crime charged, the Decision dated December 16, 1996, of Branch 36 of the Regional Trial Court of Iriga City in Criminal Case No. IR-2639 is hereby REVERSED AND SET ASIDE. The accused-appellants are ACQUITTED, and their immediate release from confinement is ordered unless some other lawful cause warrants their further detention.

The Director of Prisons is DIRECTED to implement this Decision and to report to this Court immediately the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 45-55.

[2] Presided by Judge Orlando L. Espinas.

- [3] Rollo, p. 22.
- [4] Records, p. 67.
- [5] Ibid. p. 83.
- [6] Ibid. p. 177.
- [7] TSN, May 17, 1990, p. 9.
- [8] TSN, May 17, 1990, p. 10.
- [9] Ibid., pp. 10-11.
- [10] Ibid., pp. 11-12.
- [11] TSN, May 22, 1990, p. 2.
- [12] Ibid., pp. 3-4.
- [13] Ibid., p. 4.
- [14] Ibid., p. 7.
- [15] Also referred to as Enrico Sierva.
- [16] TSN, January 30, 1990, pp. 4-5.
- [17] Ibid., pp. 5-6.
- [18] Ibid., p. 6.
- [19] Ibid., p. 6.
- [20] Ibid., p. 12.
- [21] TSN, January 30, 1990, p. 13.
- [22] Ibid., p. 14.
- [23] TSN, February 1, 1990, p. 6.
- [24] Ibid., pp. 6-7.
- [25] TSN, February 1, 1990, p. 8.
- [26] TSN, May 17, 1990, p. 3.
- [27] Ibid., p. 4.
- [28] Exhibit "A", Records, p. 6.
- [29] Records, p. 6.
- [30] TSN, January 29, 1990, p. 7.
- [31] TSN, August 16, 1990, p. 4.
- [32] Accused Rey San Pascual was not included in the enumeration of persons seen by Rogelio Sierva when the latter was approaching his house.

- [33] TSN, August 16, 1990, p. 8.
- [34] Ibid., p. 11.
- [35] TSN, November 6, 1990, p. 2.
- [36] TSN, November 27, 1991, p. 12.
- [37] TSN, November 20, 1995, p. 8.
- [38] Ibid., p. 4.
- [39] Ibid., p. 10.
- [40] TSN, November 20, 1995, pp. 5-6.
- [41] TSN, August 15, 1994, p. 9.
- [42] Ibid., p. 10.
- [43] TSN, January 10, 1996, pp. 3-4.
- [44] Ibid., p. 9.
- [45] Ibid., p. 5.
- [46] TSN, January 10, 1996, pp. 7-9.
- [47] TSN, July 7, 1994, p. 4.
- [48] Ibid., pp. 11-12.
- [49] Ibid., p. 7.
- [50] Rollo, pp. 90-91.
- [51] Ibid., p. 93.
- [52] Ibid.
- [53] Ibid.
- [54] Ibid., p. 95.
- [55] Ibid., p. 97.
- [56] Ibid.
- [57] Ibid.
- [58] Records, pp. 416-421.
- [59] Ibid., pp. 423-425.
- [60] Rollo, p. 93.
- [61] Ibid.
- [62] Ibid.
- [63] Ibid.

[64] Ibid.

[65] People vs. Lacatan, 295 SCRA 203, 210-211 (1998).

[66] TSN, May 17, 1990, pp. 11-12.

[67] Exhibit "A", Records, p. 6.

[68] 280 SCRA 160 (1997).

[69] 280 SCRA 160, 175 (1997).

[70] People vs. Alolod, 266 SCRA 154, 164-165 (1997).

[71] TSN, May 17, 1990, p. 9.

[72] TSN, May 17, 1990, p. 10.

[73] Rogelio Sierva's first testimony (TSN, August 16, 1990 and November 6, 1990) was against the five (5) accused who were arrested earlier than accused Simeon Lachano, while his second testimony was only against accused Simeon Lachano (TSN, August 5, 1993).

[74] TSN, August 16, 1990, pp. 4-5; TSN, August 5, 1993, pp. 4-5.

[75] TSN, August 16, 1990, p. 4.

[76] TSN, August 5, 1993, pp. 3-5.

[77] People vs. Atad, 266 SCRA 262, 275-276 (1997).

[78] TSN, January 30, 1990, p. 6.

[79] TSN, February 1, 1990, pp. 6-7.

[80] Abad vs. Court of Appeals, 291 SCRA 56, 62 (1998).

[81] TSN, January 30, 1990, p. 12.

[82] Ibid., p. 13.

[83] Ibid., p. 14.

[84] TSN, February 1, 1990, p. 8.

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