PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAMFILO QUIMSON @ “NOEL QUIMSON,” ACCUSED-APPELLANT.

G.R. No. 130499. October 05, 2001

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PER CURIAM:

Before us on automatic review is the decision dated June 30, 1997 of the Regional Trial Court, 5[th] Judicial Region, Branch 11, Ligao, Albay, in Criminal Case No. 3388 for Multiple Murder and Frustrated Murder, the dispositive portion of which reads;

> "WHEREFORE, the court finds the accused, PAMFILO QUIMSON, a.k.a. NOEL QUIMSON, guilty beyond reasonable doubt of the crime of MULTIPLE MURDER defined and penalized under Article 248, as amended, in relation to Article 48 of the Revised Penal Code, with the qualifying circumstance of treachery and generic aggravating circumstance, of evident premeditation without any mitigating circumstance, and hereby imposes upon said accused the penalty of DEATH, and to indemnify the legal heirs of the victims sums of money as follows:
>
> "HEIRS OF ROMEO MATIAS, SR.
>
> P
>
> 50,000.00
>
> -
>
> Actual Damages
>
> P
>
> 150,000.00
>
> -
>
> Moral Damages
>
> P
>
> 30,000.00
>
> -
>
> Burial
>
> "HEIRS OF CRISALDO GUIMBA

P

50,000.00

-

Actual Damages

P

150,000.00

-

Moral Damages

P

30,000.00

-

Burial

"HEIRS OF RAUL RENDOR

P

50,000.00

-

Actual Damages

P

150,000.00

-

Moral Damages

P

30,000.00

-

Burial

"HEIRS OF GLENDA VILLAREAL

P

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50,000.00

-

Actual Damages

P

150,000.00

-

Moral Damages

P

30,000.00

-

Burial

"With costs.

"SO ORDERED."[1]

The antecedents are as follows:

In the evening of August 17, 1995 Romeo Matias, Sr., Crisaldo Guimba, Raul Rendor, Glenda Villareal and Antonio Flores - who were all then on board a blue Toyota Tamaraw FX traveling along Colon St. in Barangay Bagumbayan, Ligao, Albay - were waylaid and fired upon by gunmen.[2]Antonio Flores, the driver of the Tamaraw FX, and Raul Rendor, who was seated beside him, managed to get out of the vehicle. Wounded, the two proceeded to the house of Romeo Matias, Sr., where they met the latter's wife, Isidra Matias. Rendor and Flores confided to Isidra that they were ambushed by Pamfilo Quimson with some unidentified companions. Raul Rendor was noticeably weak and pale, and he was constantly clutching his stomach, while Antonio Flares was trembling. Thereafter, Isidra told their family driver to bring Rendor and Flores to the hospital.[3]

Wilfredo Matias, who earlier accompanied another victim, met Rendor and Flores at the Albay Provincial Hospital where the two were subsequently brought. There, Rendor told Wilfredo Matias that Pamfilo Quimson was one of their assailants.[4]

The following day, Raul Rendor was operated on in order to repair the perforated wounds in his right diaphragm and the lacerated wounds in his lungs. Surgical packs were temporarily placed inside his body to prevent further bleeding at the back of his liver.[5] In the morning of August 21, 1995, Raul Rendor underwent a second operation to remove the said surgical packs. Later that day, Raul Rendor died of respiratory failure.[6]

SPO1 Penafiel, SPO3 Bea and P03 Borromeo were the first policemen to respond to the ambush-slaying of Matias' group at the corner of Colon and Mabini Streets. The three policemen found the blue Tamaraw FX resting on the shoulder of the road. They took Glenda Villareal and Romeo Matias, Sr. to the Pio Duran Memorial Hospital.[7]

Minutes later, SPO3 Iglesia arrived at the crime scene and secured it. He saw the Tamaraw FX slanting on the right shoulder of the road and facing the direction of the house of Romeo Matias, Sr., some 100 meters ahead. He found the body of Crisaldo Guimba, which had been lifted out of the Tamaraw FX by onlookers, lying on the road some three (3) meters from the rear of the ambushed vehicle. He made a sketch and caused the vehicle to be

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photographed. He also recovered 39 empty bullet shells from the crime scene.

Based on the physical evidence at hand, Major Arroyo of the PNP Crime Laboratory concluded that the ambush vehicle was fired upon from the right side and at the back.[8]

Thereafter, the investigation of the shooting incident was transferred to the Task Force Katarungan under Senior Superintendent D. Saminiano.[9]On August 19, 1995, the Task Force went to the Albay Provincial Hospital to interview Raul Rendor. His wife Vivian and his attending physician, Dr. Barrosa gave their consent to the interview.[10]The investigation was brief because the witness was in pain and had difficulty in breathing.[11]The sworn statement of the late Raul Rendor pointed to accused Pamfilo Quimson as one of the gunmen.[12]

Based on the evidence presented, the court a quo found the injuries and cause of death of the victims to be as follows:

> "ROMEO MATIAS, SR.: He died on the spot. There were sixteen (16) gunshot wounds of varying sizes, some characterized by contusion collars and tattooing. Gunshot Wound No. 2 involved an avulsion of the scalp and evisceration of the tissues of the brain. Each of the wounds was fatal. The cause of death is `hemorrhagic shock due to skull fracture, secondary to multiple fatal gunshot wounds with brain tissue evisceration' (Exhibit `C').
>
> "CRISALDO GUIMBA: He died also on the spot. He sustained fourteen (14) gunshot wounds, mostly at the back. The most fatal is wound No. 1 which involved skull fracture and avulsion of the scalp. The cause of death is also `hemorrhagic shock due to skull fracture secondary to fatal gunshot wounds' (Exhibit `E').
>
> "RAUL RENDOR: He sustained gunshot wounds involving vital organs of the body and died on August 21, 1995, at Albay Provincial Hospital. The cause of death is `respiratory failure, secondary to gunshot wounds' (Exhibit `J').
>
> "GLENDA VILLAREAL: No medical evidence was presented. However, witnesses testified that they saw her wounded and had to be brought to the Albay Provincial Hospital where she died on August 18, 1995.
>
> "ANTONIO FLORES: He did not testify in the case. There is no medical evidence to prove his injuries."[13]

On October 2, 1995, accused-appellant Pamfilo Quimson was charged with Multiple Murder and Frustrated Murder under the following information:

> "The undersigned, Assistant Provincial Prosecutor of Albay, hereby accuses PAMFILO QUIMSON alias NOEL QUIMSON, of the crime of MULTIPLE MURDER with FRUSTRATED MURDER, committed as follows:
>
> `That on or about 8:45 in the evening of August 17, 1995 at Barangay Bagumbayan, Ligao, Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with two male persons, who are still unidentified, conspiring, confederating and helping each other for a common purpose, with intent to kill, with treachery, evident premeditation and with the use of firearms (M-16, M-14 and 9MM pistol), did then and there wilfully, unlawfully and feloniously fire at a blue colored Tamaraw FX, causing the death of the following passengers - ROMEO MATIAS, SR., GRISALDO GUIMBA, RAUL RENDOR and GLENDA VILLAREAL y BORBE; seriously wounding ANTONIO "REY" FLORES which would have produced the crime of MURDER, as a consequence, but nevertheless did not produce it by reason or cause independent of the will of the perpetrators, that is the immediate medical assistance given to Flores, to the damage and prejudice of the victims and their heirs.'
>
> "ACTS CONTRARY TO LAW."[14]

Upon arraignment on November 14, 1995, accused-appellant entered a plea of not guilty.[15]

In disowning liability for the offense charged; accused-appellant interposed the defense of alibi. At around 8 o' clock in the evening of August 17, 1995, accused-appellant claimed that he was in Macalaya, Castilla, Sorsogon, with two of his fellow soldiers in the house of a barangay kagawad. According to accused-appellant, they were then drinking in the said house located just outside their camp from 5:00 in the afternoon to 10:00 in the evening. Thereafter, accused-appellant and his two companions returned to their quarters inside the military camp.[16]

After trial on the merits, accused-appellant was found guilty beyond reasonable doubt of the crime charged and was sentenced accordingly. With the court a quo's imposition of the death penalty, the case is now before us on automatic review. Accused-appellant raises the following errors:

> "ASSIGNMENT OF ERRORS:
>
> 1. THE TRIAL COURT ERRED IN ADMITTING THE STATEMENT OF RAUL RENDOR AS A DYING DECLARATION AND BASING ITS JUDGMENT OF CONVICTION UPON IT.
>
> 2. THE TRIAL COURT ERRED IN HOLDING THAT THERE EXISTED EVIDENCE OF RES GESTAE, AND BASING ITS JUDGMENT OF CONVICTION UPON IT.
>
> 3. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF INADMISSIBLE, INCREDIBLE AND IMPLAUSIBLE PROSECUTION EVIDENCE AND IGNORING THE MORE CREDIBLE AND PREPONDERANT EVIDENCE FOR THE ACCUSED."[17]

The appeal is not meritorious.

We have long since held that in order for a dying declaration to be admissible in evidence, the following requisites must concur: (1) the declaration was made by the deceased under consciousness of his impending death; (2) the deceased was at the time competent as a witness; (3) the declaration concerns the cause and surrounding circumstance of the declarant's death; and (4) it is offered in a criminal case wherein the declarant's death is the subject of inquiry.[18]

The only question raised by accused-appellant against the admissibility of the written ante mortem statement of Raul Rendor is whether or not the latter made his declaration under the consciousness of his impending death. Accused-appellant invites our attention to that portion of the said statement wherein Rendor promised to give a supplemental statement after he had recovered, and to the fact that the same was made almost twelve (12) hours after Rendor's first operation. He also points to the testimony of Dr. Barrosa, Rendor's physician, admitting that Rendor was quite fine.[19]

At first glance, it would seem that appellant's argument may have some basis. A thorough study of Dr. Barrosa's testimony, however, would prove the contrary.

> "x x x
>
> "CONDITION OF PATIENT:
> - conscious, coherent, ambulatory
> - Blood Pressure: 100/80
> - Cardiac Rate: 120/min.
>
> "BRIEF HISTORY:
>
> - Nature of Incident: Ambushed
> - Time of Incident: 8:30 P.M.
> - Place of Incident: Centro, Ligao, Albay
>
> "Physical Examination revealed the following findings:

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- there was a round wound below the right scapular area
- another round wound through and through at the back of his leg
- Abdomen was flat
- with abdominal tenderness at the right upper quadrant
- other quadrant soft, no guarding

"IMPRESSION:

- intra-thoracic injury
- intra- abdominal injury"[20]

"x x x

"A- Operative Findings of the first operation of Raul Rendor:
- the patient was placed under general anesthesia
- Close tube thoracotomy (right) F32 rectal tube revealing a pint of fresh blood and evacuating around
- midline incision carried from skin down to peritoneum
- upon opening the abdominal wall, 2.0 liters of blood consisting of clotted and non-clotted was found or evacuated

- recovery of slug inside abdominal cavity
- around 750 cc of clotted blood was evacuated

"a) 2.5"cm. lacerated wound was seen at the anterior surface of right lobe of liver

"b) stellate-shaped laceration around 7.0 cm. in greatest diameter noted surrounded by necrotic liver tissues postero lateral surface of the (right) lobe of liver

- a 2.0 cm. perforation of the right diaphragm was also seen
- repair of diaphragmatic laceration was done using chronic I straumatic needle
- repairing liver laceration using parenchyma suture of metal patching was done
- bleeding persisted
- application of 7 square packs surrounding the liver was done
- close

"Q -

Will you explain in layman's language the findings you have read?

"A -

This 2.5 aceration of the right lobe of liver. Our liver consists of 2 parts, right and left part. There was a wound there of about 2.5 cm. The character of the wound the edges were rugged on the anterior surface of the liver, and another one, also a round wound at the back portion of the liver which is larger than the one on the lungs. The third wound, 2.0 cm. perforation on the right diaphragm. The diaphragm is the one separating our abdominal cavity from the chest cavity. The operation done in the diaphragm was repairing. The liver was sutured, and metal patching was done by application of square packs at the back portion of the liver. These square packs measure 4 x 8 cm., and this consists of about 7 packs, and they were placed at the back of the liver. The purpose of this is to prevent the bleeding of the liver."[21]

The medical findings quoted above show just how serious Rendor's condition was. With two vital organs damaged, his arduous discomfort and agonizing pain are quite real. More so since the effect of anesthesia had obviously worn off after almost 12 hours from the first operation. We also take note of Dr. Barrosa's impression of Rendor who was perceptibly fatigued and in anguish during the taking of the latter's statement.[22] In fact,

Rendor could not even bring himself to sign his declaration. After only six questions, the interview had to be stopped. He only had enough strength left to place his thumbmark.[23]Indeed, Rendor was in such a precarious state that the idea of dying could not have escaped him.

In the early case of U.S. vs. Virrey,[24]this court had occasion to illustrate some of the means by which to determine the declarant's state of mind at the time he gives his ante mortem statement.

"This may be shown by the words or statements of the declarant himself, or it may be inferred from the nature and extent of the wounds inflicted. It may also be shown by his conduct at the time and the communications, if any, made to him by his medical adviser or others, if acquiesced in by him. The fact that a clergyman has administered to him the last rites of the church also tends to show that he was under the sense of approaching death. (citations omitted)

"When death supervenes speedily after such a declaration is made, the inference that the declarant realized his condition may be obvious; but it should be remembered that it is the belief in impending death and not the rapid succession of death, in point of fact, that renders the testimony admissible. The admissibility of the declaration, as is thus apparent, depends on the state of declarant's mind at the time of making the declaration; and the mere fact that death does not immediately follow will not render the declaration inadmissible, provided death does ensue as a result of the injuries which are the subject of the declaration."

The isolated pronouncements of Dr. Barrosa as pointed out by accused-appellant are not persuasive. These were but the result of the mismatch between the good doctor and the cunning defense counsel. When the doctor was provided the chance to explain and clarify his answers however, Rendor's true condition was affirmed.

"x x x

"Q -

And the surgery was done at 1:20 P.M. of August 18?

"A -

Yes, sir.

"Q -

Or in the afternoon of the following day?

"A -

Yes, sir.

"Q -

And it was done that time because you did not find anything urgent with respect to the patient?

"A -

In general, his blood volume is very low and his complaint of on and off pain of the upper portion of his abdomen, that's why initially, I was already contemplating of ...

"Q -

And the purpose of the operation was to evacuate the blood stocked up or accumulated on his thorax and

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abdominal cavity?

"A -

The primary reason is that operation called "exploratory laparotomy", wherein in entirety, the midline portion of the abdomen was being opened from the upper portion of the area going down.

"Q -

And that operation shows that there was no danger?

"A -

Yes, sir.

"Q -

And because of that finding, the surgeons applied packs to stop the bleeding?

"A -

Yes, sir.

"Q -

And they succeeded doing so?

"A -

Yes, sir.

"COURT:

"Q -

The examining counsel wanted to know from you doctor, why several hours had elapsed before the actual operation could be performed on the patient.

"A -

Before we operate on the patient, I still build up the patient.

"Q -

What do you mean by building up?

"A -

To correct his blood volume; to give him antibiotics to be absorbed; to monitor any other existing injury, if any.

"Q -

In other words, the building up of the patient is necessary before an operation could be performed?

"A -

In this particular case, yes, Your Honor.

"COURT:

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Go ahead.

"ATTY. REANTASO:

"Q -

But in extra-ordinary cases, that preparatory procedure may be dispensed with and you can go directly to surgery?

"A -

Yes, sir.

"Q -

And since it was not a critical urgent case, you have to build him up to more or less make the operation successful?

"A -

Yes, sir, and to lessen anesthesia risk, and at the same time to make his body a little bit stronger for his operation and blood transfusion.

"COURT:

"Q -

Was there anything alarming from the condition of the patient before operation could be performed?

"A -

In this particular case, his pain was only localized on the right upper portion.

"Q -

In other words doctor, the condition of the patient as you so examined him was such, that the operation could be delayed if there was a necessity?

"A -

To be delayed and the benefit of building him up and to prepare him to survive the surgery."[25] (emphasis supplied)

"x x x

"ATTY. REANTASO:

"Q -

After you realized that the operation was of success and the remedies you applied were effective, you were optimistic about the chances of the patient after you administered all these things?

"ATTY. BRIGUERA: After when? Which day thereafter?

"COURT:

Immediately after.

"WITNESS:

"A -

I am qualifying my answer basing on two organs, the liver and the lungs. The pressure problem was solved but the lungs was perforated. It no longer functions, the right lung. It was bleeding. So, his breathing was already complicated, then, another complication is infection. And later on the lungs collapsed. His right lung no longer functions inspite of the tube placed, the lung tube placed, the injury to the lungs becomes worth watching.

"Q -

In other words, the lung was worth watching?

"A -

Yes, sir.

"Q -

Doctor, is there a technical, medical meaning when you say that an operation has been successful?

"A -

Success. is categorized into two levels, the intra-operative level wherein the operation was performed and was finished.

"Q -

With the patient surviving?

"A -

Yes, sir.

"Q -

That is intra-operative level?

"A -

Yes, sir.

"Q -

What is the other one?

"A -

The post-operative level wherein complications set in. It is the stage of monitoring the patient's complication. In this stage, complication is to be watched on.

"Q -

Which of the two you say or is characterized as successful operation?

"A -

The post-operative operation.

"Q -

In other words, just exactly what do you mean when you say it was successful, the post-operative operation?

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"A -

In this particular case, the surgery was only successful in intra-operative because the bleeding was stopped; the tube was placed and the surgical procedure warranted for him or already been given him; the operation was finished, the patient was still alive. In postoperative, complication sits in. It is in this level when surgery on the liver was successful but later on the patient died.

"Q -

How long after operation can complication sit-in?

"A -

In the multi-organ involvement, especially when the lungs are involved, sometimes it will take several hours if given proper care and medication.

"Q -

Or a maximum of how many hours when complication sit-in?

"A -

After 6 hours.

"Q -

Now, the injury to the lung is only seen on the right lung but the left lung is intact?

"A -

Yes, sir, but on x-ray, it showed contusion, meaning, `nalanog.' So, there was a minimal bleeding on the left lung.

"Q -

But you will agree with me doctor when I say that a person, could survive with only one lung?

"A -

Yes, sir.

"Q -

Because there was a case when one lung is removed but the patient was still alive.

"A -

But the chances are very small because sole lung do not function dependently when compared to our kidneys. In anatomy of kidneys, our kidney is located in a very convenient portion of the body, but our lungs, specially the left lung, is very prone to stress because it is very near the heart.

"Q -

But it can maintain life alone?

"A -

Maybe, but in a very short time only."[26](emphasis supplied)

"x x x

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"Q -

The difficulty of breathing which you described as gasping for breath could be traced from the malfunctioning of the lungs?

"A -

Yes, Your Honor.

"Q -

Has the liver injury anything to do in the difficulty of breathing?

"A -

The liver injury may just add because of the pain in the diaphragm because the diaphragm was also violated. This guarding was on his breathing because he does not want to use his other breathing muscle because the pain would come or may sits in.

"Q -

In what way may a malfunctioning lung bring about difficulty in breathing?

"A -

If the lungs collapsed.

"Q -

By that answer doctor, you would like to say that a person can still be alive even if he has a collapsed lung?

"A -

In this particular case, a close tube is designed to maintain the intra-thoracic pressure of the lung which is to be connected into a bottle close tube to aspirate or to maintain or to give aid to the lung and to make it function as if it was a closed chest.

"Q -

And that tube that you installed is to help only the right lung that was injured?

"A -

Yes, Your Honor.

"Q -

Because the left lung as you said was not injured, therefore, it would sustain life unlike kidneys where you can survive?

"A -

I don't think so, sir.

"Q -

You need two lungs to sustain life unlike kidneys where you can still survive with only one kidney?

"A -

Yes, Your Honor."[27](emphasis supplied)

"x x x

"Q -

And this administration of oxygen to the patient was done up to the time the patient have undergone surgery is routinary?

"A -

No, sir, if it does warrant oxygen.

"COURT:

"Q -

Why was a there a necessity for oxygen?

"A -

Because his right lung is already very weak, so, supplemental oxygen is needed to enter his lungs to support the blood circulation.

The purpose of that supplemental oxygen is to give the blood real oxygen.

"Q -

Was the patient under oxygen support at the time his statement was taken?

"A -

Yes, Your Honor.

"Q -

Why was there a necessity to give him oxygen?

"A -

He was gasping already for air and there was already impending septic vasogenic shock."[28]

"x x x

"Q -

And again, considering the lapse of time from the first operation to the second operation which is three days, that gave more optimism to the chances of the patient?

"A -

In surgical protocol, in liver injuries where pack is applied, the maximum period to remove the pack is 72 hours, depending on the clinical evaluation. If there are signs of progressive bleeding, the pack could be maintained up to the maximum period of 72 hours, but it could also be removed in less than 72 hours.

"Q -

And after the second operation when the pack was already removed, there was no more bleeding noted?

"A -

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> No more. There was no active bleeding noted but there was still intra-abdominal evacuation of blood amounting to 200 cc.
>
> "Q -
>
> 200 cc. is a big amount of blood evacuated?
>
> "A -
>
> It was a small amount of blood only to normal individuals. But to a person with extensive blood evacuation, there was already a need for a blood transfusion because of the massive bleeding. The liver also had blood evacuation, that's why there was a blood transfusion which consists of chemical fluid, not pure blood. It is labelled as sero sanguinuous fluid."[29] (emphasis supplied)

The gravity of Rendor's wounds on his right lung and liver could never be downplayed by defense' crafty cross examination.

In the early case of U.S. vs. Mallari[30], this Court emphasized that

"(T)he credibility of statements made by a person severely wounded rests not only on the serious situation resulting from his wound but also on his physical and mental condition, which, given the depressed state of his mind, has induced the profound conviction that his life is actually slipping away, and that he is in positive and imminent danger of dying sooner or later from the wound; nor can the force of such declaration be affected by the circumstances that he died later, hours or days after it was inflicted, for when the patient did finally die his death was due to the wound whose gravity did not diminish from the time he made his declaration until the hour of his death."

As regards Rendor's statement that he is to give a supplemental statement in case he recovers, we find the same to be insufficient to render his declaration inadmissible. Rendor's assent was with regard to his willingness to give a subsequent statement rather than on the investigator's vain hope for the declarant's recovery.

Now, even without the questioned written declarations of Rendor, his spontaneous disclosure of their assailants to Mrs. Matias, in whose house they took refuge immediately after the ambush,[31] is likewise admissible as an ante mortem statement. With the pain and discomfort from his injured lung and liver, with his heart rate increasing due to the loss of blood from his internal wounds, and with no medical assistance still in sight, Rendor's state of mind was unmistakably on his possible dissolution.

And even granting for the sake of argument that such a statement is not admissible as a dying declaration, the same may still be admitted as part of res gestae since it was made immediately after the startling occurrence.[32]Rendor's declaration before Mrs. Matias is genuinely an emanation of the incident for he had then no opportunity to concoct or contrive an untrue version of the attack.

In support of his second assigned error, accused-appellant attacks the probative value of the late Raul Rendor's declarations. He argues that the result of the police investigation belies Rendor's statement mentioning an M-14 rifle as one of those used in the ambush. Then he claims that Rendor and Pamfilo Quimson did not know each other, hence, could not have possibly identified the latter. He also claims that Rendor's seat in the ill-fated vehicle prevented him from seeing their assailants, plus the fact that the natural response of Rendor would have been to seek cover.

We are not convinced. The lack of precision with which Rendor identified one of the firearms used is of no moment for we cannot expect him to have full knowledge on the matter. Similarly, We do not accept accused-appellant's argument that Rendor would not have seen their assailants because he was seated at the back

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of the driver. No evidence, testimonial or otherwise was ever advanced to establish this. On the other hand, there is evidence to the effect that Rendor was seated beside the driver. Be that as it may, the fact that Rendor was seated elsewhere will not prevent him from seeing their attackers. Contrary to what accused-appellant argues, jurisprudence recognizes that victims of criminal violence have a penchant for seeing the looks, faces and features of their assailants.[33]Aside from seeking cover from the volley of gunshots, it is equally natural for Rendor to strive to see the appearance of their attackers and observe the manner the crime was committed.[34]

Accused-appellant's contention that Rendor doesn't know the former is likewise not enough to discredit the questioned declarations. Generally, people in rural communities know each other either by face, by name or both.[35]While Rendor is originally from Oas and accused-appellant is from Ligao, the former's wife testified that they stayed for about three (3) years in Ligao sometime after they got married.[36]Also according to her, their house is near that of the Quimson's. She also testified that they occasionally pass by the Quimson's in going to the market and would even see accused-appellant. While Rendor and accused-appellant may not have been friends, it is unlikely that their paths had not crossed during those three (3) years that the Rendor spouses stayed in Ligao. Besides, the degree of closeness or familiarity with the accused-appellant on the part of the witness, although helpful, is by no means an indispensable requirement for the purpose of identifying the former.[37]

On the other hand, accused-appellant's claim that he made himself scarce in Ligao is both unbelievable and unsubstantiated to deserve consideration. It is quite incredible that accused would only spend a maximum of two (2) hours during his visit to his family in Ligao,[38]if indeed his visits were infrequent.[39]He could not even remember the very few times that he went to Ligao.[40] He also failed to substantiate his claim, that he stayed in Tigaon, Camarines Sur after graduating from high school, by presenting his aunt in whose house he allegedly stayed.[41]

As regards his third assigned error, we find the same to be full of holes. The evidence he offered is inadequate to support his defense of alibi. In order for us to consider such a defense, accused-appellant must convincingly prove that it was impossible for him to be at the scene of the crime at the time of its commission.[42]Where there is the least chance for him to be present at the crime scene, alibi will not hold water.[43]

On its own, accused-appellant's alibi is already defective. While he claims that, upon returning to camp in the afternoon of August 16, 1995 he never left, he did admit subsequently of having a drinking session some 30 meters outside their camp the following night.[44] The same night that Romeo Matias, Sr. and his group were ambushed. Add to this the camp's slack policy on monitoring the whereabouts of its soldiers[45]and accused-appellant's alibi becomes unreliable for it shows that he can easily leave camp unobserved. The corroborative evidence on the alleged drinking session that fateful night is equally unreliable because when such evidence is offered by his friends and relatives, the same is held with extreme suspicion considering the facility by which it may be fabricated or concocted.[46] More so when these witnesses themselves prove to be unreliable.[47]

Finally, accused-appellant also claims that their camp from Ligao, Albay takes a good five (5) hours of travel. He tempers It down however, when he added that the five (5) hour travel time includes waiting time. Subsequently though, he also admitted that when he was arrested by the police, it took them three (3) hours more or less, to reach Ligao, Albay.[48]Hence, it was not physically impossible for him to be at the scene of the crime at the proximate time of its commission.[49]

All these considered, we affirm the findings of the trial court and hold accused-appellant Pamfilo Quimson guilty beyond reasonable doubt of four (4) counts of Murder.

As to the award of damages, the trial, court failed to award civil indemnity or compensatory damages to the heirs

of the victim. Article 2206 of the Civil Code provides that when death occurs as a result of a crime the heirs of, the deceased are entitled to be indemnified without need of any proof thereof.[50] Hence, an award of P50,000.00 as civil indemnity for the heirs of the four victims is hereby awarded.

As regards the trial court's award of actual damages, the same will have, to be denied with regard to the heirs of the late CRISALDO GUIMEA, RAUL RENDOR, and GLENDA VILLAREAL since the prosecution failed to offer any evidence to support the allegations of the witnesses claiming actual damages.[51] The separate award of P30,000.00 representing burial expenses for the above-mentioned heirs is necessarily deleted for the same reason. Moreover, the same should have already been included as part of actual damages in case the latter is permitted. On the other hand, the actual damages awarded to the heirs of the late Romeo Matias, Sr. in the amount of P50,000.00 will have to be increased to P110,000.00[52]considering that the same was properly supported by receipts.[53]

As regards the award of moral damages, the same is denied with regard to the heirs of the late GLENDA VILLAREAL because the prosecution failed to present evidence, testimonial or otherwise, to show that the heirs of the deceased are entitled thereto.[54]The award of moral damages to the heirs of the late ROMEO MATIAS, SR., CRISALDO GUIMBA and RAUL RENDOR while justified,[55] must be reduced to P50,000.00 in keeping with present jurisprudence.[56]

Four Justices of the Court maintain their position that R. A. No. 7659 is unconstitutional insofar as it prescribes the death penalty. Nevertheless they submit to the ruling of the majority that the law is constitutional and the death penalty can be lawfully imposed in the case at bar.

> WHEREFORE, the decision of the trial court finding accused-appellant PANFILO "NOEL" QUIMSON guilty beyond reasonable doubt of four (4) counts of murder and imposing the supreme penalty of DEATH is hereby AFFIRMED. Accused-appellant is also ordered to pay the following to the heirs of the victims:
>
> Heirs of ROMEO MATIAS, SR.
>
> P
>
> 50,000.00
>
> -
>
> as civil indemnity
>
> P
>
> 110,000.00
>
> -
>
> as actual damages
>
> P
>
> 50,000.00
>
> -
>
> as moral damages

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Heirs of CRISALDO GUIMBA

P

50,000.00

-

as civil indemnity

P

50,000.00

-

as moral damages

Heirs of RAUL RENDOR

P

50,000.00

-

as civil indemnity

P

50,000.00

-

as moral damages

Heirs of GLENDA VILLAREAL

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P

50,000.00

-

as civil indemnity

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let certified copies thereof, as well as the records of this case, be forwarded without delay to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Kapunan, J., on official leave.

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[1] RTC Decision, pp. 482-483, RECORDS; RTC Decision, pp. 134-135, Rollo.

[2] TSNs January 25, 1996, pp. 5-6, March 28, 1996, pp. 7-8, July 18, 1996, pp. 51, 53-54; RTC Decision, p. 468, RECORDS.

[3] TSNs July 11, 1996, pp. 8-11, December 6, 1995, pp. 12-13.

[4] TSN, December 6, 1995, pp. 16-18.

[5] TSN, February 13, 1996, pp. 21-29.

[6] TSN, February 13, 1996, pp. 72-74.

[7] TSNs July 18, 1996, pp. 51-53, 56-57, 60, December 6, 1995, pp. 10-11.

[8] TSN, June 13, 1996, pp. 35, 44-47, 65-68, and 70-71.

[9] TSN, March 8, 1996, p. 4 and 20; August 9, 1996, p. 5.

[10] TSN, March 8, 1996, pp. 4-9.

[11] TSNs March 8, 1996, p. 11, February 13, 1996, pp. 32-33 and 42.

[12] Exh. "B" in relation with TSNs, December 5, 1995, pp. 16-20; February 13, 1996, p. 35; July 11, 1996, pp. 29-31.

[13] RTC Decision, pp. 468-469, RECORDS.

[14] Information, p. 86 RECORDS; Information, p. 13, Rollo.

[15] Certificate of Arraignment, p. 93, RECORDS; RTC Order, p. 95, RECORDS.

[16] Appellant's Brief, p. 99, Rollo.

[17] Appellant's Brief, p. 86, Rollo.

[18] People vs. Marollano, 276 SCRA 84, 106 [1997]; People vs. Viovicente, 286 SCRA 1, 8 [1998]; People vs. Bergante, 286 SCRA 629, 638 [1998]; People vs. Dulay, G.R. No. 127753, December 11, 2000, pp. 13-14.

[19] Appellant's Brief, pp. 86-88, Rollo.

[20] TSN, February 13, 1996, p. 17.

[21] TSN, February 13, 1996, pp. 22-24.

[22] TSN, February 13, 1996, pp. 36-39, 40, 42, and 68-69.

[23] TSN, February 13, 1996, p. 43.

[24] 37 Phil 618, 625 [1918].

[25] TSN, February 13, 1996, pp. 49-52.

[26] TSN, February 13, 1996, pp. 56-58.

[27] TSN, February 13, 1996, p. 61.

[28] TSN, February 13, 1996, p. 69.

[29] TSN, February 13, 1996, p. 72-74.

[30] 29 Phil 14, 19-21 [1914].

[31] TSN, July 11, 1996, pp. 8-11.

[32] People vs. Bautista, 312 SCRA 214, 235 [1999]; People vs. Manegdeg, 316 SCRA 689, 707 [1999].

[33] People vs. De la Cruz , 313 SCRA 189, 201-202 [1999].

[34] People vs. Lopez, 312 SCRA 684, 695 [1999].

[35] People vs. Rosario, 246 SCRA 658, 667 [1995]; People vs. Ballesteros, 285 SCRA 438, 445 [1998]; People vs. Hillado, 307 SCRA 535, 551 [1999].

[36] TSN, December 5, 1995, p. 22 and 50.

[37] People vs. Vermudez, 302 SCRA 276, 286 [1999].

[38] TSN, January 15, 1997, p. 5.

[39] TSN, January 15, 1997, p. 5.

[40] TSN, January 15, pp. 46-47.

[41] TSN, January 15, 1997, p. 5.

[42] People vs. Villanueva, 302 SCRA 380, 394-395 [1999]; People vs. Gonzales, 311 SCRA 547, 562 [1999].

[43] People vs. Bracamonte, 257 SCRA 380, 384 [1996].

[44] TSN, January 15, 1997, pp. 16-19.

[45] TSN, January 15, 1997, pp. 55-57.

[46] People vs. Enoja, 321 SCRA 7, 20 [1999]; People vs. Cantere, 304 SCRA 127, 137-138 [1999].

[47] TSNs, January 23, 1997, pp. 46-47 in relation with p. 49; March 11, 1997, p. 20.

[48] TSN, January 15, 1997, p. 62.

[49] People vs. Lachica, 316 SCRA 443, 453-454 [1999]; People vs. Villanueva,. 302 SCRA 380, 394-395 [1999].

[50] People vs. Galladan, 318 SCRA 569, 574 [1999].

[51] Ibid.

[52] Exhibits "X" and "X-1"; TSN, July 11, 1996, pp. 17-18.

[53] People vs. Galladan, 318 SCRA 569, 574 [1999]; People vs. De Vera, 312 SCRA 640, 670 [1999].

[54] People vs. Benito, 303 SCRA 468, 479-480 [1999]; People vs. Manegdeg, 316 SCRA 689, 709 [1999]; People vs. Langres, 316 SCRA 769-788 [1999].

[55] TSNs, July 11, 1996, pp. 15 and 20; February 13, 1996, p. 8; December 5, 1995, p. 23.

[56] People vs. Sandrez, 308 SCRA 264, 287 [1999]; People vs. Bahenting, 303 SCRA 558, 569 [1999].

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