

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MICHAEL SIMON,
FROILAN REYES Y LACSON @ OLAN, ELY TONGOL Y DEMAPENDEN
AND JOHN DOES, APPELLANTS.**

G.R. No. 130531. May 27, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For automatic review is the Decision[1] dated May 21, 1997 of the Regional Trial Court, Branch 172, Valenzuela, Metro Manila, in Criminal Case No.3989-V-94, finding appellants Froilan Reyes y Lacson @ Olan and Michael Simon guilty of murder and imposing upon them the supreme penalty of death.

Appellants were charged in an Amended Information which reads:

“That on or about the 19th day of February 1994, in Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, without any justifiable cause, with intent to kill, with treachery and evident premeditation and taking advantage of their superior strength during night time, did then and there willfully, unlawfully and feloniously slap, punch, kick on the different parts of his body, tie his hands, hit with the piece of wood the head, hit the chest and head with a caliber .45 revolver and strangle to death with a piece of wire the neck of one, ANGELITO MANIAOL, thereby inflicting upon the latter serious physical injuries, which injuries ultimately caused the victim’s death.

“Contrary to law.”[2]

Out of the five accused in the Amended Information, only appellants Froilan Reyes and Michael Simon were tried before the court a quo. The others have remained at large.

Upon being arraigned on May 29, 1996, both appellants pleaded “not guilty.”[3]

The prosecution presented as its witnesses the following: Lenita Ibañez-Dominguez; Severino Dominguez; Ely Tongol; Celedonio Espital; Nida Espital, girlfriend of the victim; Esther Maniaol, mother of the victim; Crispin Bajado, and Dr. Maximo Reyes. Their testimonies established the following:

At around 12:30 in the morning of February 19, 1994, Lenita Dominguez, a balut vendor, and her daughter went home at 4447 BCL Homes Compound, Gen. T. de Leon, Independence St., Valenzuela, Metro Manila. However, appellant Froilan Reyes, who was unexpectedly guarding the gate, prevented them from entering the compound. He gave her a “tip” that SPO4 Loreto Rodriguez instructed him not to allow anybody to enter because someone would be killed inside.[4] She did not say anything. Unmindful of his warning, she and her daughter proceeded to their place. In front of her store, about 4 meters away, she saw appellant Michael Simon together with Dominador Atienza, Hermie Atienza, Noel Simon, Bobot Abesamis, Ronald Malit, Ping Oñate, Junel Bunao and Ely Tongol engaged in a drinking spree. Lenita knows them being her neighbors in the same compound. Then to her surprise, she saw SPO4 Loreto Rodriguez hit with a .45 caliber gun the forehead of the victim, Angelito Maniaol alias

“Marlo”.[5] This caused the victim to run towards the house of his girlfriend, Nida Espital, located in the same compound. The group followed him. Then appellant Michael Simon, Ely Tongol, Hermie Atienza and Dominador Atienza attacked him with fistblows.[6] Noel Simon tied his hands behind his back with an alambre.[7] Then they brought him back to the place where they were drinking. Ping Oñate and Hermie Atienza kicked him, while Tongol, Abesamis and Dominador Atienza boxed him. SPO4 Rodriguez hit him again with a dos por dos and a gun.[8] At this point, Noel Simon and Dominador Atienza held the victim. Bunao then tied his mouth with a handkerchief.[9] Immediately, appellant Michael Simon, Ronald Malit, Junel Bunao, and Ely Tongol started hurting him with lighted cigarette butts (“pinagpapaso ng sigarilyo”). During the “burning session,” the others were laughing.[10] The victim was already so weak, making an unintelligible sound (“umuungol”). Blood was oozing from his mouth and nose.[11] Lenita observed that the “maong” pants of appellant Michael Simon and Noel Simon had blood stains. Thereafter, Noel Simon and Dominador Atienza brought the victim inside the garage of Crispin Bajado.[12] The latter saw what happened to the victim inside the garage. There, Noel Simon hit the victim’s head 3 times with a piece of wood. SPO4 Rodriguez also hit the victim’s head with a revolver and strangled him with an “alambre”. Appellant Michael Simon pummeled him with kicks. Then the group tied a nylon cord around his neck.[13]

During all those times, appellant Froilan Reyes stayed at the gate, warning the people not to enter the compound. At about 1:05 A.M., Nida Espital, the victim’s girlfriend, together with her sister and the latter’s classmate arrived.[14] Despite appellant Reyes’ warning,[15] Nida and her companions managed to get inside the compound. Appellant Reyes followed them.[16]

At that time, SPO4 Rodriguez wanted to take the victim, whose body and face were already covered with blood, outside the gate of Bajado.[17] Hence, he ordered Noel Simon and Dominador Atienza to board him in Ping Oñate’s Nissan Sentra car with Plate No. PRT – 346, parked in front of Lenita’s house.[18] However, the plan did not push through because they saw Nida and her two companions coming from the gate.[19] SPO4 Rodriguez signaled Noel Simon and Dominador Atienza to bring the victim’s body to a hidden place. So the two pulled back the very weak and dying[20] victim inside Bajado’s gate.[21]

Nonetheless, once inside the compound, Nida saw the bloody victim already dead, with hands tied behind his back. His legs were apart and something was stuck in his mouth. Also, a wire was tied around his neck. His head was wounded and full of blood, his body had numerous burns and his chest appeared to have been hit several times.[22] She started shouting but SPO4 Rodriguez pacified her. Nida noticed that his hands, shirt and brown shorts were stained with blood.[23]

Celedonio Espital, brother of Nida, also a resident of BCL Homes, corroborated the testimony of Lenita.[24] He identified appellants Simon[25] and Reyes in court.[26] He added that he saw both appellants and others carrying the victim and were trying to board him in a gray colored[27] car. SPO4 Rodriguez’s shirt had bloodstains. There were also drops of blood on his feet and hands.[28] After he instructed his brother Benjie to fetch Esther, the victim’s mother, the police investigators arrived.

Meanwhile, Esther rushed to the scene of the crime and saw the dead body of the victim sprawled in Bajado’s garage. She spent P70,750.00 for the wake and burial of her son as shown by a list of expenses (Exhibit “Q”). She and her family suffered “mental anguish and shock” that cannot be quantified in terms of money.

An autopsy was conducted by Dr. Maximo Reyes of the National Bureau of Investigation on February 19, 1994. His Postmortem Findings are as follows:

“Cyanosis, lips and fingernailbeds.

Hemorrhage, meningeal; epidural and subarachnoidal, extensive. Contused abrasions, 3.0 x 8.0 cm., area of

face, left, 3.0 x 10.0 cm., area of chest, left; 2.0 x 3.0 cm., left, deltoid area; 1.0 x 4.0 cm., left hypochondriac area, 4.0 x 10.0 cm., left iliac region; 3.0 x 4.0 cm., left knee; 7.0 x 18.0 cm., area of right leg, anterior aspect; 4.0 x 10.0 cm., area of shoulder, left; 1.0 x 2.0 cm., left suprascapular area; 1.0 x 3.0 cm., left infrascapular area, 3.0 x 5.0 cm., right lumbar area, 4.0 x 16.0 cm., area of the forearm, right, posterior aspect.

Ligature marked, total length of 12.0 cm. extending from anterior aspect of left side of neck down to the lateral aspect with a diameter of 0.1 to 0.8 cm., the widest.

Hematomas, periorbital, 2.0 x 4.0 cm., right; 2.0 x 5.0 cm. left; interstitial, scalp from left parieto-occipital to vertex and right, parieto-occipital.

Lacerated wounds, sutured membrane of both upper and lower lips, left parietal area, 3.0 cm.

Fracture, linear, left, parieto-occipital bone.

Heart and all other internal organs are congested.

Stomach, ¼ filled with brownish fluid.

CAUSE OF DEATH: Traumatic Head Injury.”[29]

Appellants Michael Simon and Froilan Reyes raised the defenses of denial and alibi.

Appellant Michael Simon, also a resident of BCL at the time of the incident, testified that on February 18, 1994, at around 8:00 o'clock in the evening, he was watching T.V. at home with his parents and his two brothers. After dinner, he went to Tatang's place which was 6 to 8 houses away from their residence.[30] Then he went to Ely's place, located 3 houses away, to attend his birthday party.[31] Appellant drank a bottle of beer and thereafter went home with his brother Noel at around 10:30 p.m.[32] When he woke up at 6 o'clock the following day, several policemen from Valenzuela were looking for him. They brought him to the Valenzuela Police Headquarters and later, to the NBI. He denied having participated in the killing.[33] Lenita testified against him because she was in need of money and wanted to be entitled to the cash benefits given under the Witness Protection Program of the government. Also, she was motivated by hatred in testifying against him because his family did not tolerate her illicit relationship with his brother Noel. Nelia Simon, mother of appellant, corroborated his testimony.

Appellant Froilan Reyes testified that on February 18, 1994, he was working as a stay-in caretaker in the shop of Alex Bajado (father of Crispin Bajado) located at Tamaraw Hills, Marulas, Valenzuela, Metro Manila. At around 6:00 o'clock in the evening, Alex Bajado instructed him to get the two boxes of fasteners the former left in the car compartment of Crispin Bajado at BCL Homes Compound. So he went to the place together with a certain Popoy, arriving there at 8:00 o'clock that same evening. Crispin was then sleeping. It took them only twenty minutes to get the fasteners, then they immediately returned to the shop on board a tricycle. After dinner, they played cards for a while and slept.[34]

Antonio Sarmiento, testifying for appellant Reyes, declared that spouses Severino and Lenita Dominguez used to borrow money from him from 1987 to 1995;[35] and that the spouses have abandoned their residence in the BCL Homes Compound.

On May 21, 1997, the trial court rendered its Decision convicting both appellants of murder defined and penalized under Article 248 of the Revised Penal Code, thus:

“WHEREFORE, judgment is hereby rendered finding accused MICHAEL SIMON and FROILAN REYES y LACSON @ Olan guilty beyond reasonable doubt and as principal of the crime of murder as defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act 7659, attended by the aggravating circumstance of cruelty with no mitigating circumstance to offset the same, and hereby sentences

each of them to suffer the supreme penalty of death. Both accused Michael Simon and Froilan Reyes y Lacson @ Olan are further sentenced, jointly and severally, to pay the heirs of victim Angelito Maniaol the amount of P70,750.00 as actual damages, the amount of P50,000.00 as indemnity for the death of Angelito Maniaol, and the amount of P250,000.00 as moral damages, plus the cost of suit.

x x x

“SO ORDERED.”[36]

Hence, this appeal.

Appellant Reyes, in his Appellant’s Brief, raised the following assignments of error:

“I

THE LOWER COURT SERIOUSLY ERRED IN GIVING CREDIT TO THE BELATED, DOUBTFUL AND EXAGGERATED TESTIMONIES OF THE PROSECUTION WITNESSES

II

THE LOWER COURT SERIOUSLY ERRED IN DISREGARDING THE POSITIVE AND CLEAR EVIDENCE OF THE HEREIN APPELLANT

III

THE LOWER COURT SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN CONVICTING THE HEREIN ACCUSED-APPELLANT.”[37]

Appellant Simon ascribed to the trial court the following errors:

“I

THE LOWER COURT SERIOUSLY ERRED IN CONSIDERING THE BELATED, HIGHLY DOUBTFUL AND EXAGGERATED TESTIMONIES OF THE PROSECUTION WITNESSES

II

THE LOWER COURT SERIOUSLY ERRED IN DISREGARDING THE DIRECT AND CLEAR EVIDENCE OF THE HEREIN APELLANT

III

THE LOWER COURT SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN CONVICTING THE HEREIN ACCUSED-APPELLANT.”[38]

Appellants Reyes and Simon contend that the prosecution failed to prove their guilt beyond reasonable doubt because its witness, Lenita Dominguez, is not credible. She only appeared and testified after a year from the filing of the Information.

The Solicitor General counters that Lenita, an eyewitness, was telling the truth. In fact, she was unequivocal and categorical in her narration. More importantly, appellants were positively identified by the prosecution witnesses, hence, the latter’s testimony cannot be simply discredited by appellants’ mere denial and alibi.

The assigned errors basically involve a determination of the credibility of the prosecution witnesses.

I. Credibility of prosecution witnesses

Settled is the rule that when it comes to credibility of witnesses, appellate courts generally do not overturn the findings of trial courts. The latter are in a best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses’ manner of testifying, demeanor and behavior in

court.[39] We see no reason to deviate from this rule.

Appellants' bid to exonerate themselves by attempting to destroy the credibility of Lenita is without merit. The latter's account of the incident is straightforward and categorical, thus:

“ATTY. DAQUIZ:

Q

Now, Mrs. Witness, you said that you are residing at BCL Compound, is that correct?

A

Yes, ma'am.

Q And you know the accused in this case, Michael Simon?

A Yes, ma'am.

Q How about Noel Simon?

A Yes, ma'am.

Q What about Froilan Reyes?

A Yes, ma'am.

Q How about Dominador Atienza?

A Yes, ma'am.

Q How about Ely Tongol?

A Yes, ma'am.

Q How about Bobet Abesamis?

A Yes, ma'am.

Q How about Junel Bunao?

A Yes, ma'am.

Q How about Ronald Malit?

A Yes, ma'am.

Q What about Ping Oñate?

A Yes, ma'am.

Q Why do you know them?

A Because they are all my neighbors, ma'am.

Q At BCL Compound?

A Yes, ma'am.

Q What about the victim in this case Angelito Maniaol alias 'Marlo'?

x x x

WITNESS:

A Yes, sir.

ATTY. DAQUIZ:

Q How did you come to know him?

A Because he often visited our place because his girlfriend is residing in our place, ma'am.

COURT:

Q What is the name of his girlfriend?

A Nida Espital, your Honor.

x x x

ATTY. DAQUIZ:

Q What time did you arrive at your house after vending 'balut' on February 19, 1994?

A I arrived home at 12:30 early morning on February 19, 1994, ma'am.

Q And when you arrived home on that particular date and time, what if anything unusual happened that you saw?

A Yes, ma'am.

Q Will you please tell the Honorable Court what is that unusual thing that you saw on that date and time?

A When I entered the gate of BCL Compound together with my daughter, we met Froilan Reyes, ma'am.

Q You are referring to the same Froilan Reyes who is one of the accused in this case Mrs. Witness?

A Yes, ma'am.

Q If Froilan Reyes is now in court Mrs. Witness, would you be able to point him out?

A Yes, ma'am, that man (witness pointing to a man wearing a long sleeves shirt who when asked his name answered Froilan Reyes).

Q And after you met Froilan Reyes, what happened, if any?

A When we met Froilan Reyes near the gate of the BCL Compound he gave me a tip that according to SPO4 Loreto Rodriguez no one would be allowed to enter into the compound because there would be someone to be killed.

Q What else happened, what else if any, did he tell you?

A None, ma'am.

Q What was your response to that?

A I did not answer anything, ma'am.

Q And what happened after that?

A We proceeded to our house at BCL, ma'am.

Q Where is your house located Mrs. Witness, in relation to the house of Crispin Bajado?

A Our houses are fronting each other, ma'am.

Q And how far is the house of Crispin Bajado from your house?

A 10 meters away, sir.

x x x

ATTY. DAQUIZ:

Q Mrs. Witness, when you arrived home, what happened?

x x x

WITNESS:

A

When we were about to enter the gate of our house, we saw SPO4 Loreto Rodriguez hit with a gun Angelito Maniaol at the forehead, your Honor.

ATTY. DAQUIZ:

Q I see. More or less if you can remember, what kind of gun was that?

A 45 caliber, ma'am.

x x x

ATTY. DAQUIZ:

Q

Who were those persons that you saw Mrs. Witness aside from SPO4 Loreto Rodriguez?

A

Dominador Atienza, Hermie Atienza, Noel Simon, Bobet Abesamis, Ronald Malit, Ping Oñate, Junel Bunao, Ely Tongol, Michael Simon. Those were the only persons I saw.

Q Where did you see them Mrs. Witness?

A In front of our store, ma'am.

Q And that what were they doing, if any, Mrs. Witness in front of our store during that time?

A They were drinking, ma'am.

Q And after you saw SPO4 Loreto Rodriguez hit Angelito Maniaol, what happened next Mrs. Witness?

A Maniaol ran towards the house of his girlfriend Nida Espital, ma'am.

Q And what happened after that Mrs. Witness?

A They exchanged fist blows. They all followed him, ma'am.

x x x

WITNESS:

A They exchanged fist blows and they caught Angelito Maniaol, your Honor.

COURT:

Exchanged fistic blows.

ATTY. DAQUIZ:

Q Who were these who exchanged fistic.

A Ely Tongol, Hermie Atienza, Dominador Atienza, Noel Simon.

Q Now, who were those who were able to catch Maniaol?

A Noel Simon, ma'am.

Q And what did Noel Simon do when Noel Simon was able to catch Angelito Maniaol?

A He tied the hands of Angelito Maniaol, ma'am.

Q With what? What did he use in tying the hands of Angelito Maniaol?

A Nylon cord or 'alambre'.

x x x

ATTY. DAQUIZ:

Q Will you please describe to us the nylon cord?

x x x

WITNESS:

A The clothes line (sampayan) at the back of, 'as liked nila Crispin'.

ATTY. DAQUIZ:

Q Now when Noel Simon was able to catch Angelito Maniaol, what happened next?

ATTY. TOLENTINO:

Already answered, your Honor. Noel Simon allegedly tied the hands of Angelito Maniaol.

ATTY. DAQUIZ:

Q After tying the hands of Angelito Maniaol, what happened next?

A Noel Simon brought Angelito Maniaol to the middle of the place where they were then drinking.

Q Approximately, how far is that from your store Mrs. Witness?

A About four (4) meters, ma'am.

Q

How far is that also from where they brought Angelito Maniaol after tying him Mrs. Witness from the house of Crispin Bajado? The distance?

A Yes. Seven meters more or less, ma'am.

ATTY. MENDOZA:

We would like to place on record, your Honor, that once in a while the witness is speaking in English. As a matter of fact, the last answer is in English.

FISCAL:

Once in a while, your Honor.

COURT:

Q What is your educational attainment?

A High school graduate, your Honor.

ATTY. DAQUIZ:

Q When they brought Angelito Maniaol with tied hands in the middle of their drinking session, what happened next?

A They kicked him, boxed him. They hit him with a gun, hit him with a 'dos por dos', ma'am

Q

If you can recall, who were those persons who kicked him?

A Ping Oñate, Hermie Atienza, ma'am.

Q If you can recall, who were those persons who boxed him?

A Ely Tongol, Bobet Abesamis, ma'am.

x x x

ATTY. DAQUIZ:

Q Who else if you can recall?

A Dominador Atienza, ma'am.

Q If you can recall, who were those who hit him with a 'dos por dos'?

A Sgt. Loreto Rodriguez, ma'am.

Q Who else Mrs. Witness, if you can recall?

A He was the only one who hit Angelito with a 'dos por dos', ma'am.

Q Now who hit again with a gun, Mrs. Witness?

A SPO4 Loreto Rodriguez, ma'am.

Q During all the time where was Michael Simon?

x x x

WITNESS:

A He was also with the group, your Honor.

ATTY. DAQUIZ:

Q And what, if any, did you see him do, Mrs. Witness, during that times?

ATTY. TOLENTINO:

Already answered, your Honor, drinking in the drinking place.

ATTY. DAQUIZ:

Aside from drinking?

COURT:

Witness may answer.

WITNESS:

A His only participation was they exchanged blows.

ATTY. DAQUIZ:

Q With whom?

A With Angelito Maniaol, ma'am.

COURT:

Q By exchange of fistic blows, are you telling the Court that Maniaol was trying to box Michael Simon?

A Yes, your Honor, they exchanged fistic blows.

x x x

ATTY. DAQUIZ:

Q What happened when they exchanged fistic blows?

A They held the person, sir.

ATTY. DAQUIZ:

Q Who held Angelito Maniaol during that time?

A They were Noel Simon and Dominador Atienza, ma'am.

Q What about Michael Simon?

ATTY. TOLENTINO?

We will object, your Honor, because the only person who held Angelito Maniaol were Noel Simon and Dominador Atienza, your Honor.

ATTY. DAQUIZ:

Q What was Michael Simon doing?

ATTY. TOLENTINO:

Already answered, nothing more, except that they held Angelito Maniaol.

ATTY. DAQUIZ:

Q What else happened, if any, what else, if any, did Michael Simon do?

A No more, ma'am.

x x x

Q Aside from those who held him. Who were those around him during that time, if any?

A Ronald Malit, Ping Oñate, Junel Bunao and Sgt. Rodriguez.

Q Now, you mentioned about the name of Junel Bunao. What, if any, did Junel Bunao do, if any?

ATTY. TOLENTINO:

Already answered, your Honor. They were merely around Angelito Maniaol.

COURT:

The question is whether Bunao did anything.

WITNESS:

A He was the one who tied a handkerchief on the mouth of Angelito Maniaol, your Honor.

ATTY. DAQUIZ:

Q After tying him with the handkerchief, what happened next Mrs. Witness?

A They sat him in the place where they were drinking and started 'pinagpapaso ng sigarilyo'.

Q By the way Mrs. Witness, will you please describe to the Honorable Court how Angelito Maniaol was tied in his hands?

A His hands were tied at the back, ma'am.

FISCAL:

Witness standing and put her two (2) hands at her back.

ATTY. DAQUIZ:

Q And when he was seated, what was his position, if any?

A He was made to sit on a bench, ma'am.

Q With his hands tied, is that correct?

A Yes, ma'am.

Q

And that time Mrs. Witness, that he was made to sit down with his hands tied, what about the handkerchief that was placed in his mouth? Was it still there or not?

x x x

WITNESS:

A The handkerchief was still there, your Honor.

ATTY. TOLENTINO:

Q And who were those persons surrounding him at that time that he was seated already Mrs. Witness?

A All of them, ma'am.

Q

When you said 'silang lahat', are you referring to Michael Simon, Dominador Atienza, Hermie Atienza, Ping Oñate, Bobet Abesamis, Junel Bunao, Ronald Malit and Sgt. Loreto Rodriguez and Noel Simon?

A Yes, ma'am.

Q What about Froilan Reyes Mrs. Witness? Where was he at that time?

A He was at the main gate of BCL, ma'am.

x x x

COURT:

Q How far is the gate from your house? Can you see the gate of the compound?

A No, your Honor.

ATTY. DAQUIZ:

Q How did you come to know Mrs. Witness that Froilan Reyes was at the gate during that time?

ATTY. MENDOZA:

Already answered, your Honor. At the time she was going home.

COURT:

When she entered the BCL Compound Froilan Reyes was at gate.

x x x

ATTY. DAQUIZ:

The question was how did she come to know that Froilan was at the gate of that time they were surrounding Angelito Maniaol, the deceased?

WITNESS:

A Because up to the time that Nida Espital arrived, he was still there at the gate, your Honor.

ATTY. DAQUIZ:

Q More or less what time was that?

A 1:00 early morning, ma'am.

Q And what, if you know, was he doing there at the gate?

ATTY. MENDOZA:

Witness would be incompetent, your Honor, because the gate could not be seen from her house.

ATTY. DAQUIZ:

My question is if she knows why he was there.

ATTY. TOLENTINO:

The same objection, your Honor, because it does not appear that she is competent to know about it because she is inside the house.

ATTY. MENDOZA:

At the same time there was an admission that she cannot see the gate from her house.

ATTY. TOLENTINO:

Yes, your Honor.

COURT:

There was already an answer.

ATTY. DAQUIZ:

It is an established fact, that is not debatable. My question is what is the reason if she knows why Froilan Reyes was at the gate.

COURT:

Already answered. He was there to inform people that nobody would be allowed to enter because somebody would be killed. That is the ruling of the Court.

ATTY. DAQUIZ:

Q You testified Mrs. Witness that Froilan Reyes was there to notify anybody who comes in that they should not enter?

A Yes, ma'am.

ATTY. TOLENTINO:

Objection to that line of question. That question should be made on cross-examination.

COURT:

Anyway, there was an answer already.

ATTY. DAQUIZ:

I am just repeating what the Court said. I would like to be clarified.

Q

When Froilan Reyes informed you that nobody should enter the gate because somebody would be killed, to prevent anybody from entering, what was your perception of that statement that be made?

ATTY. TOLENTINO:

Objection, your Honor, on the same ground.

ATTY. MENDOZA:

Calling for opinion of the witness.

ATTY. TOLENTINO:

Yes, your Honor, calling for opinion of the witness.

x x x

COURT:

It is a question of terminology. When you ask a person what it appears to be, we cannot say that is calling for opinion. Witness may answer.

WITNESS:

A My understanding is that he is giving us a tip that that person would be killed and we are going to watch him.

ATTY. DAQUIZ:

Q I heard you say a while ago about the word look out. What is that in relation to your understanding of what Froilan Reyes told you during that time? What do you mean by that?

A

My understanding is that look out is that Froilan Reyes is the one in charge of telling anybody that would be entering in the compound that according to SPO4 Loreto Rodriguez, he will not allow anybody to come inside

because there would be somebody to be killed.

Q

Now Mrs. Witness, at that time that they surrounded, by the way Mrs. Witness, you mentioned about Michael Simon. If he is in court would you be able to point him to us?

A Yes, ma'am.

Q Please do so.

A

That man, ma'am. (witness pointing to a person inside the courtroom wearing a gray and blue t-shirt, who when asked by the Court his name answered Michael Simon).

Q

After they have surrounded him Mrs. Witness, what, if any, did they do to Angelito Maniaol, if any? When he was being surrounded, what, if any, did you see them doing to Angelito Maniaol?

x x x

ATTY. TOLENTINO:

According to the witness, they started 'pinagpapaso ng sigarilyo'.

x x x

ATTY. DAQUIZ:

Q

By the way Mrs. Witness, you mentioned that they started making 'paso' with cigarette. Who were these people who were doing the 'paso'?

A Ely Tongol, ma'am.

Q Who else?

A Only Ely Tongol, ma'am.

Q After doing that, what happened Mrs. Witness?

A He was brought inside the yard of Crispin Bajado, ma'am.

Q And who were these people who brought Angelito Maniaol during that time inside the yard of Crispin Bajado?

A Noel Simon and Dominador Atienza, ma'am.

Q What about the other persons Mrs. Witness? What did they do, if any?

A The others remained seated at the place where they were drinking.

Q And what were they doing?

ATTY. MENDOZA:

Already answered; they were drinking.

COURT:

That is what the witness answered.

Q You are telling us that they continued drinking?

A Yes, your Honor.

ATTY. DAQUIZ:

Q Who were these people or who were these persons drinking Mrs. Witness, who were left behind drinking?

A All except Noel and Dominador Atienza, because they brought Angelito Maniaol inside the yard of Crispin Bajado, ma'am.

Q Now Mrs. Witness, what happened when Angelito Maniaol was brought inside the yard of Crispin Bajado? What happened next?

A Noel Simon and Dominador Atienza tied the back of Angelito Maniaol with an 'alambre'." [40]

Despite relentless cross-examination, Lenita, an eyewitness, never wavered in the material details of her testimony. Hence, the trial court is correct in holding that she is credible. Settled is the rule that criminals are convicted, not on the number of witnesses against them, but on the credibility of the testimony of even one witness who is able to convince the court of the guilt of the accused beyond a shadow of a doubt, [41] as in the case at bar.

II. Imputation of improper motive on
the part of prosecution witness
Lenita Dominguez is bereft
of merit

Other than the shallow imputation that Lenita was financially hard-up, the reason why she testified for the prosecution, both appellants failed to prove that she was ill-motivated in testifying against them. Where there is no evidence, as in this case, to indicate that the prosecution witness was actuated by improper motive, the presumption is that he is not so actuated and that his testimony is entitled to full faith and credit. [42] Also, jurisprudence holds that if an accused had really nothing to do with a crime, it would be against the natural order of events and of human nature, and against the presumption of good faith, that a prosecution witness would falsely testify against him. [43]

III. Delay in reporting the incident is
justified

Both appellants likewise contend that if Lenita's account were true, why did it take her one year from the time of the filing of the Information to testify for the prosecution? Settled is the rule that failure to reveal at once the identity of the perpetrator of a felony does not impair the credibility of a witness, more so if the delay has been adequately explained. [44]

We have repeatedly held that different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response where one is confronted with a strange or startling or frightful

experience.[45] There is no clear cut standard form of behavior that can be drawn.[46] Witnesses are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal investigations due to a variety of valid reasons.[47] One may immediately report the incident to the proper authorities, while another, in fear and/or avoiding involvement in a criminal investigation, may keep to himself what he had witnessed.[48] Others reveal the perpetrator of the crime only after the lapse of one year or so to make sure that the possibility of a threat to his life or to his loved ones is already diminished, if not totally avoided. In *People vs. Gornes*,[49] we held:

"It is true that the charge against the appellant was initiated only three and a half years after the commission of the crime. However, the fact of delay alone does not work against the witnesses. In *People vs. Rostata*,[50] this Court held:

'Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of the witness if such delay is satisfactorily explained. The law on prescription of crimes would be meaningless if we were to yield to the proposition that delay in the prosecution of crimes would be fatal to the state and to the offended parties. In fixing the different prescriptive periods on the basis of the gravity of the penalty prescribed therefor, the law takes into account or allows reasonable delays in the prosecution thereof.'

In the case at bar, Lenita's place is just a stone's throw away from appellants' houses. Hence, it is reasonable why she did not immediately speak out and reported to the authorities the perpetrators of the crime. Having witnessed the gruesome killing of the victim, she believed that appellants and their co-accused might retaliate and kill her and her family. Her fear and instinct of self preservation and her concern for the safety of her family sufficiently explain her silence for one year.

IV. Denial and alibi of appellants

Denial and alibi of the appellants cannot be sustained in the light of their positive identification by the prosecution eyewitnesses.[51] Being a long-time neighbor, Lenita could not have erred in positively identifying them as two of the persons who killed the victim. Besides, for alibi to prosper, it is not enough for appellants to prove that they were somewhere else when the crime occurred but they must also demonstrate that it was physically impossible for them to have been at the scene of the crime.[52] In this case, it was established that during the commission of the crime, appellant Simon was in his house, also within the BCL Homes Compound, the scene of the crime. Appellant Reyes, on the other hand, while staying in Tamaraw Hills, Marulas, Valenzuela, admitted during the trial that he went to the BCL Homes Compound that same evening to get two boxes of fasteners from the car of Crispin Bajado parked in the same Compound. Obviously, it was physically possible for them to be at the scene of the crime when it was committed.

V. Treachery

Treachery was correctly considered by the trial court as a qualifying aggravating circumstance. It was alleged in the Information and proved during the hearing. Treachery exists "when the offender commits a crime against persons, employing means, methods, or forms in the execution thereof which tend directly and specifically to insure its execution, without risk to himself arising from any defense or retaliatory act which the victim might make.[53] Here, while the group was engaged in a drinking spree, SPO4 Rodriguez suddenly hit the victim on his head with a revolver. While he ran towards the nearby house of his girl friend, however, there was no way he could escape. The group followed him and attacked him with fist blows, tied his hands with an "alambre," kicked him and immediately, SPO4 Rodriguez hit him again with a "dos por dos" and a gun. Junel Bunao tied his mouth with a handkerchief. Still wanting to harm him more, they "burned" him with cigarette butts ("pinagpapaso ng sigarilyo"). Inside Bajado's garage, the group continued inflicting injuries on him. Under these circumstances, how could the helpless victim defend himself or retaliate?

VI. Abuse of superior strength, cruelty and evident premeditation

We sustain the trial court's holding that the aggravating circumstance of abuse of superior strength is absorbed in treachery and, therefore, cannot be appreciated separately as an independent aggravating circumstance.[54]

However, the trial court erred in appreciating the aggravating circumstance of cruelty. Under Sections 8 and 9, Rule 110 of the Revised Rules of Criminal Procedure, aggravating and qualifying circumstances must be both alleged in the Informations and proved during the trial. Otherwise, they cannot be considered at all.[55] Here, while the prosecution proved that there was cruelty in the commission of the crime, however, such aggravating circumstance was not alleged in the Information. Consequently, we cannot appreciate the same.

The aggravating circumstance of evident premeditation, while alleged in the Information, was not proved.

VII. Presence of conspiracy

Conspiracy is deemed to arise when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be shown by direct proof of an agreement of the parties to commit the crime.[56] It may be inferred from the mode and manner in which the offense was perpetrated, or from the acts of the accused before, during, and after the crime which point to a joint design, concerted action and commonality of sentiment or interest.[57] Once proved, the act of one becomes the act of all. All the conspirators are answerable as co-principals regardless of the extent or degree of their participation.

In this case, the prosecution's evidence indubitably shows that appellant Reyes acted in concert with appellant Simon and the rest of their co-accused in killing the victim. First, while appellant Reyes was guarding the gate of the compound to prevent people from witnessing the killing of the victim, the others were assaulting and beating the latter, hacking him to death. Evidently, as a look-out, appellant Reyes was performing an overt act, which directly or indirectly contributed to the execution of the crime. Also, he was one among those who boarded the victim in a car.

Second, after the victim fled to Nida's place, appellant Simon and his other co-accused pursued him and took turns in attacking him until he was about to die. This is a manifestation of their common purpose to kill him.

Third, when the victim was almost dying, with blood oozing from his mouth, nose and head while growling, not one of them assisted him or showed concern for him. They just stood there watching, laughing, and continuously committing acts of violence against him. The presence of the appellants as a group, each of them armed, undeniably gave encouragement and sense of security and purpose among themselves.[58]

In conspiracy, it is immaterial who inflicted the fatal blows. A conspirator, no matter how minimal his participation, is as guilty as the principal perpetrator of the crime.

VIII. Penalty

Art. 248 of the Revised Penal Code, as amended by Sec. 16, R.A. 7659, punishes murder with reclusion perpetua to death. The presence of the aggravating circumstance of treachery qualifies the killing to murder. There being no aggravating circumstance present, the imposition of reclusion perpetua, being the minimum, is in order.

IX. Civil indemnity

In line with the current jurisprudence, the heirs of the victim are entitled to the amount of P50,000.00 by way of civil indemnity ex delicto.[59] As regards the actual damages, it appears that out of the P70,750.00 awarded by the trial court, only P40,000.00[60] was actually supported by receipts. The other amounts were based solely on a

prepared list.[61] To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.[62] Here, the prosecution failed to present receipts for the other expenses incurred. Thus, we reduce the amount of actual damages awarded by the trial court to P40,000.00 only.

We affirm the award of moral damages, there being proof that the victim's mother and her family suffered wounded feeling, mental anguish and similar injury. However, we reduce the award to P50,000.00.[63] Verily, moral damages are not intended to enrich the victim's heirs; rather they are awarded to allow them to obtain means for diversion that could serve to alleviate their moral and psychological suffering.[64]

We also award the victim's heirs P25,000.00 as exemplary damages. This is pursuant to our ruling in *People vs. Catubig*[65] that if a crime is committed with an aggravating circumstance, either qualifying or generic, an award of P25,000.00 as exemplary damages is justified.

WHEREFORE, the appealed Decision finding appellants Froilan Reyes y Lacson @ Olan and Michael Simon GUILTY beyond reasonable doubt of murder is AFFIRMED with MODIFICATION in the sense that they are meted the penalty of reclusion perpetua and are hereby ordered to pay jointly and severally the heirs of the victim the sums of: P50,000.00 as civil indemnity, P40,000.00 as actual damages, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

Costs de officio.

SO ORDERED.

Vitug, (Acting Chief Justice), Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Davide, Jr., C.J., and Puno, J., on official leave.

[1] Penned by Judge Floro P. Alejo.

[2] Records at 1.

[3] Id. at 317.

[4] TSN, April 4, 1995 at 16-25.

[5] Id. at 30.

[6] Id. at 45.

[7] Id. at 33-37.

[8] Id. at 38-41; Exh. "C-1-A".

[9] Id. at 52; Folder of Exhibits at 3.

[10] Id. at 55 & 70; Records at 428.

[11] Records at 428.

[12] Id. at 5, 70 & 71.

[13] Id.; Folder of Exhibits at 3.

[14] Id. at 61-62.

[15] Id. at 429.

[16] Id.

[17] Id. at 84.

[18] Id. at 86-87.

[19] Id. at 88-89.

[20] Id. at 98.

[21] Id. at 91.

[22] Id. at 430.

[23] Id.; TSN, April 4, 1995 at 100.

[24] TSN, August 22, 1994 at 10-25.

[25] Id. at 12.

[26] Id. at 14.

[27] Id. at 48; Exh. "J" at 19; Folder of Exhibits.

[28] Id. at 54.

[29] Exh. "L".

[30] TSN, August 23, 1996 at 4-7.

[31] Id. at 8-9.

[32] Id. at 10-11.

[33] Id. at 19.

[34] Records at 432.

[35] Id. at 433.

[36] Rollo at 46-47.

[37] Id. at 64.

[38] Id. at 139.

[39] People vs. Ave, G.R. Nos. 137274-75, October 18, 2002, 391 SCRA 225; People vs. Alfanta, 378 Phil 95 (2000).

[40] TSN, April 4, 1995 at 18-72.

[41] People vs. Zuniega, G.R. No. 126117, February 21, 2001, 352 SCRA 403, citing People vs. Enriquez, 292 SCRA 656, 662 (1998), citing Bautista vs. C.A., 288 SCRA 171 (1998), People vs. Saley, 291 SCRA 715, 750 (1998).

[42] Id., citing People vs. Dominador De La Rosa, Jr., 341 SCRA 425 (2000), citing People vs. Tabaco, 270

SCRA 32 (1997).

[43] *Id.*, citing *People vs. Villamor*, 292 SCRA 384, 395 (1998), citing *People vs. Enciso*, 223 SCRA 675, 686 (1993).

[44] *Id.*, citing *People vs. Manegdeg*, 316 SCRA 689, 706 (1999); *People vs. Adoviso*, 309 SCRA 1 (1999).

[45] *People vs. Lovedorial*, G.R. No. 139340, January 17, 2001, 349 SCRA 402, citing *People vs. Sta. Ana*, 291 SCRA 188 (1998).

[46] *People vs. Zuniega*, *supra*, citing *People vs. Lachica*, 316 SCRA 443, 452 (1999).

[47] *Id.*, citing *People vs. Ramos*, 309 SCRA 643, 655 (1999).

[48] *Id.*, citing *People vs. Taclan*, 308 SCRA 368, 381 (1999).

[49] G.R. No. 104869, February 23, 1994, 230 SCRA 270, 279-280, penned by then Associate Justice Hilario Davide, Jr., now Chief Justice.

[50] G.R. No. 91482, February 9, 1993, 218 SCRA 657.

[51] *People vs. Tumanon*, G.R. No. 135066, February 15, 2001, 351 SCRA 676, citing *People vs. Francisco*, 315 SCRA 114 (1999).

[52] *Id.*, citing *People vs. Rabang, Jr.*, 315 SCRA 451 (1999).

[53] *People vs. Berdin*, G.R. No. 137598, November 28, 2003, citing *People vs. Bolivar*, 352 SCRA 438 (2001); Article 14, par. 16, Revised Penal Code.

[54] *People vs. Suyum*, G.R. No. 137518, March 6, 2002, 378 SCRA 415, citing *People vs. Clariño*, 362 SCRA 85 (2001); *People vs. Birayon*, 346 SCRA 396 (2000); and *People vs. Quillosa*, 325 SCRA 747 (2000).

[55] *People vs. Perrenas*, G.R. No. 139622, July 31, 2001, 362 SCRA 202.

[56] *People vs. Herida*, G.R. No. 127158, March 5, 2001, 353 SCRA 650, citing *People vs. Roche*, 330 SCRA 91 (2000), citing *People vs. Andales*, 312 SCRA 738, 749 (1999).

[57] *Id.*, citing *People vs. Conde*, 330 SCRA 645 (2000), citing *People vs. Antonio*, 303 SCRA 414, 428 (1999); *People vs. Barredo*, 297 SCRA 246, 259 (1998); *People vs. Nardo*, 270 SCRA 672, 688 (1997); *People vs. Alberca*, 257 SCRA 613, 632 (1996); *People vs. Gomez*, 251 SCRA 455, 468 (1995).

[58] *People vs. Pablo*, G.R. Nos. 120394-94, January 16, 2001, 349 SCRA 79, citing *People vs. Sotes*, 260 SCRA 353, 365 (1996), citing *Arceño vs. People*, 256 SCRA 569 (1996).

[59] *People vs. Ilo*, G.R. No. 140731, November 21, 2002, 392 SCRA 326.

[60] Records at 99, 100-103.

[61] Folder of Exhibits at 29.

[62] *People vs. Acosta*, G.R. No. 140386, November 29, 2001, 371 SCRA 181; *People vs. Suelto*, 381 Phil. 351 (2000); *People vs. Samolde*, G.R. No. 128551, July 31, 2000, 336 SCRA 632.

[63] *People Narciso Ramos y Matias, et al.*, G.R. No. 135204, April 14, 2004, citing *People vs. Marquez*, 380 SCRA 561 (2002); *People vs. Yatco*, 379 SCRA 432 (2002); *People vs. Matic*, 377 SCRA 314 (2002).

[64] *People vs. Berdin*, *supra*, citing *People vs. Bolivar*, 352 SCRA 438 (2001).

[65] G.R. No. 137842, August 23, 2001, 363 SCRA 636.

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