

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO CASTILLANO ALIAS “RODEL”, ACCUSED-APPELLANT.

G.R. No. 130596. February 15, 2002

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Negros Occidental, Branch 47, Bacolod City in Criminal Case No. 18102 convicting appellant Rodolfo Castellano, alias Rodel, of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

The Information dated December 18, 1996 charging the appellant of the crime of murder reads:

That on or about the 20[th] day of August, 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, without any justifiable cause or motive, being then armed with a .38 caliber revolver, with intent to kill and by means of treachery and evident premeditation, did, then and there wilfully, unlawfully and feloniously attack, assault and shoot with said revolver Ramil J. Hijapon, thereby causing upon the person of the latter the following wounds, to wit:

Cardiopulmonary arrest
Penetrating gunshot wound
1 chest (R)parasternal
line at the level of the nipple

which directly caused the death of the said victim Ramil J. Hijapon.[2]

When arraigned on April 1, 1997, the appellant, assisted by counsel, pleaded not guilty.[3] Thereafter, trial on the merits ensued.

The version of the prosecution:

The victim’s widow, Lucia Hijapon, testified that at about 8:00 o’ clock in the evening of August 20, 1996, she was conversing with her husband, Ramil Hijapon, inside their store, which was within their house at Purok Pepsi, Zone 5, Barangay Bata, Bacolod City, when her husband was shot by appellant Rodolfo Castellano. She was opposite her husband who was facing the street with his back against the wall. She heard two (2) gunshots. After the first gunshot, she saw her husband holding his chest because he was hit. She pulled him towards her and looked back at the window, and saw Rodolfo Castellano holding his gun and then fired a second shot which missed her husband because she pulled him. The second gunshot instead hit the concrete wall where her husband was leaning, and created a hole or mark thereon. Prior to the shooting, she and her husband were not aware of any danger as they were then just conversing with each other. Her store measured four (4) feet by ten (10) feet, and the wall of her store facing the street was made of concrete from the floor, and the upper portion was made of cyclone wire. At that time, the inside and outside portions of her store were well-lighted, which enabled her to see any person standing outside her store. When she saw the appellant firing a gun, she was very near the place where appellant was standing and what divided them was only the cyclone wire, while her husband was less than an

armslength away from the appellant. Her son, Buenaventura Hijapon, was then inside the store. Aside from the appellant, there were no other person outside the store. After her husband was hit, she shouted for help but no one immediately came to help because they were afraid of the assailant. She kept on shouting for help and it took minutes before their neighbor showed up and looked for a vehicle to bring her husband to the hospital. However, her husband was already dead[4] when they reached the hospital.[5]

Lucia Hijapon attributed the killing of her husband to the fact that on March 3, 1994 at around 9:00 o' clock in the morning, the appellant tried to shoot her husband at their store at Purok Pepsi, and her husband filed a case against him. At that time, her husband was a waiter and when he was off-duty, he volunteered as a CVO and accompanied the arresting officer who arrested the appellant.[6]

She felt grief for the death of her husband who was working as a waiter at the Bascon Hotel for a monthly salary, including tips, amounting to Four Thousand Pesos (P4,000.00). She spent more than Thirty Thousand Pesos (P30,000.00) for the wake, but she failed to adduce evidence to substantiate the expense.[7]

Buenaventura Hijapon corroborated the testimony of his mother, Lucia Hijapon. He testified that at around 8:00 o' clock in the evening of August 20, 1996, he was inside the store in their house at Purok Pepsi, Zone 5, Barangay Bata, Bacolod City minding the store and resting. His parents, Lucia and Ramil Hijapon, were also inside the store, and they were less than an armslength away from him. While he was standing near the cyclone wire facing the road, he saw the appellant approaching their store. When the appellant was at the store near his parents, the appellant pulled his .38 caliber revolver from his waist, inserted it in their jalousie window, and fired twice at his father who was sitting inside the store. At that time, appellant was less than an armslength away from him and less than a meter away from his father. At the first gunshot, his father was hit, but the second gunshot missed his father because he was pulled by his mother. He was shocked by the incident but his mother was able to shout for help. After firing the two (2) shots, appellant hurriedly left with his gun. He attributed the killing to appellant's grudge against his father because on March 3, 1994, appellant shot his father but his gun did not fire; thus, his father filed a case for attempted homicide against appellant.[8]

Buenaventura Hijapon further testified that during his father's lifetime, his father told him and his brothers to be careful of appellant because he was a traitor, had a grudge against their family, and harbored a grudge against appellant. Although he saw appellant coming when the latter was three (3) meters away from their store, he failed to warn his parents who were conversing with each other because the incident happened suddenly. Before March 3, 1994, he used to see appellant passing by their store, but thereafter, he did not see appellant pass by anymore until the said incident of August 20, 1996.[9]

PO3 Willie Perez, who was assigned in August 1996 at Police Station 3, Barangay Mandalagan, Bacolod City, testified that on August 20, 1996, he conducted an investigation regarding a shooting incident which happened at about 8:00 o'clock in the evening at Purok Pepsi, Zone 5, Barangay Bata, Bacolod City. Together with the React Team led by SPO2 Ricardo Custodio and PO3 Hernani Magallanes, he proceeded to the crime scene but the victim, Ramil Hijapon, was already brought to Riverside Hospital. Inside the house of the victim, they discovered bloodstain and a slug hole of a .38 caliber slug on the wall. The wife and son of the victim, who were eyewitnesses to the crime, said that the suspect of the shooting incident, appellant Rodolfo Castellano, had a grudge against the victim because, a couple of years ago, the appellant was charged in court by the victim with attempted homicide. From the slug recovered from the crime scene, it appears that a .38 caliber revolver was used in shooting the victim. After the incident, appellant went into hiding. The team of investigators submitted their Investigation Report[10] duly signed by P03 Willie Perez.[11]

Dr. Johnnie Arिताo, Jr., Bacolod City health officer, conducted the post mortem examination of the victim, Ramil

Hijapon, and submitted a report[12] thereon dated August 21, 1996 with the following findings:

Wound, gunshot 0.7 cm in diameter, roughly oval in shape, surrounded by a contused-abraded collar, 0.3 cm. around the gunshot wound at the 5[th] intercostal space, right along parasternal line at the level of the nipple, directed forward posteriorly rupturing the heart and lung and the bullet lodged at the spinal vertebra.[13]

The cause of the victim's death was "cardio-respiratory arrest, secondary to a penetrating wound, chest right, along parasternal line, ruptured heart and lung due to a gunshot wound." [14] The bullet lodged at the spinal vertebra, with the entrance wound at the right breast.[15] Dr. Aritao concluded that at the time of the shooting, the barrel of the gun was more than six (6) feet away from the victim because there were no powder burns in the wound. Ordinarily, a distance of about six (6) inches would produce powder burns. Dr. Aritao stated that if the victim was given immediate medical attention, he would have probably survived. The location of the entrance wound showed that the victim was facing his assailant when he was shot.[16]

Viveca Natu-el, Branch Clerk of Court, Branch 3, Municipal Trial Court in Cities (MTCC), Bacolod City, testified that in 1994, an Information for Attempted Homicide in Criminal Case No. 94-16538 was filed against Rodolfo Castellano alias "Rodel Castellano" before Branch 3, MTCC, Bacolod City. Pursuant to a subpoena duces tecum sent to her, she brought the record of Criminal Case No. 94-16538 in court, and identified the Information[17] for Attempted Homicide against Rodel Castellano,[18] wherein the complainant was Ramil Hijapon,[19] and she also identified the pictures[20] of appellant Rodolfo Castellano. She further identified in court the herein appellant as the same Rodolfo Castellano who is the accused in the pending MTCC case which was filed in court on June 15, 1994.[21]

On the other hand, the appellant denounced the prosecution's allegation as a lie that he killed Ramil Hijapon. He put up the defense of alibi, asserting that he was in Cebu at the time the crime was committed; and that in July 1996 he was in Cebu because he delivered fighting cocks to Dax Villadelgado and stayed there up to the last week of August 1996; and that he then proceeded to Manila to also sell fighting cocks. He claimed that he was charged with killing Ramil Hijapon because he apprehended Ramil and got his gun which Ramil pointed at a certain Roberto "Bobby" Picuncillo in April 1992 since there was a gun ban. After calling the police, he gave the gun to SPO3 Rico Agsam. Thereafter, everytime he passed by the house of Ramil Hijapon, the latter and his family used to say to him that he was a traitor. He did not mind them, and Ramil Hijapon no longer spoke to him.[22]

On cross-examination, appellant stated that he and Ramil Hijapon resided in the same purok, but he resided at Zone 3 while Ramil resided at Zone 5. His house was two (2) blocks away from Ramil's house. He did not know whether a case was filed against Ramil Hijapon for the alleged April 1992 incident after he forwarded Ramil's gun to the police; and he did not execute any affidavit. He was surprised why Ramil earlier charged him with Attempted Homicide for the shooting incident on March 3, 1994 and Murder in the instant case, insisting that he was in Cebu.[23]

Dax Villadelgado, 18 years old, a first year college student, and resident of Tudtod Street, Mabolo, Cebu City, testified that he knew appellant who was introduced to him by his cousin, Jed Rojo, sometime in December 1995 when he was in high school. Appellant arrived in Cebu on July 21, 1996 and delivered fighting cocks; the payment therefor was due on July 29, 1996. Appellant continued to stay in Cebu after July 29 because Villadelgado invited him to his 18th birthday on August 14, 1996 while Villadelgado's mother also invited him to her birthday on August 20, 1996. Appellant stayed in Cebu up to the last week of August 1996, and then left for Manila. He was requested by Jed Rojo to testify for the appellant because he knew that appellant was with him (Villadelgado) when the crime was committed.[24]

Josefa de Paula, 54 years old, testified that she knew the appellant and the victim, Ramil Hijapon, because they all

came from Barangay Bata, Bacolod City. She resided at Purok Riverside while appellant and the victim were residents of Purok Pepsi. Purok Riverside and Purok Pepsi are separated by the national road. At around 8:00 o'clock in the evening of August 20, 1996, she was walking towards the house where she would attend a wake, and after passing the store of the victim Ramil Hijapon (about eight (8) to ten (10) meters away therefrom), she heard a gunfire. She looked back and saw a tall, slim person wearing a white T-shirt and maong pants who was still aiming his gun at the jalousie window of the house of Ramil for one or two (2) seconds. Then the assailant ran towards her direction allowing her to see his face; hence, she would recognize the assailant if she saw him. The assailant was not appellant Rodolfo Castellano. After the assailant ran towards her direction, she moved back while he proceeded on his way and she saw him tuck something in his waist. She stood in place for a while and then saw some persons going to the store of Ramil. She also went there briefly but later left for the wake when somebody stepped on her foot. She stayed for thirty (30) minutes at the wake. On her way home, she passed by the store of Ramil Hijapon and inquired about what happened; somebody told her that Ramil was shot. She peeped inside the store from the jalousie window and saw blood. She just listened to the stories being told and then she went home.[25]

After August 20, 1996, Josefa de Paula did not know about the instant case. She knew for the first time that appellant was the suspect in the killing of Ramil Hijapon during the last week of April 1997. She met Rodel's mother when she was distributing handbills for the May 12, 1997 barangay election. She greeted Rodel's mother who told her that Rodel was in prison because he was the suspect in the killing of Ramil Hijapon. She informed Rodel's mother that it was not Rodel who killed Ramil Hijapon.[26]

Josefa de Paula knew the wife of the victim, but she did not talk to her about the incident of August 20, 1996 nor condole with the family of the victim. She did not attend the wake of Ramil Hijapon. She did not report to the police what she witnessed at the time of the shooting incident. She just volunteered to testify for the appellant as she went earlier to the defense counsel who told her to testify.[27]

Roberto "Bobby" Picuncillo testified that he knew the appellant and the deceased, Ramil Hijapon, since they all resided at Purok Pepsi, Zone 5, Barangay Bata, Bacolod City. In March 1992, while he was on his way to the coffee shop of Loreto Bermoy, Ramil Hijapon called him and accused him of stoning his house, which he denied. Then Ramil Hijapon entered his house, while he proceeded toward the coffee shop of Loreto Bermoy. While walking towards the coffee shop, Ramil called him again and when he turned, Ramil was pointing a revolver at him. Appellant then happened to pass by and since he knew both of them, he just stood between them and got the revolver of Ramil after which he (Picuncillo) and appellant called the BAC-UP Police Station. When the police arrived, appellant turned over Ramil's revolver to Police Officer Rico Agsam. They were brought to the BAC-UP precinct and the incident was recorded. Thereafter, he and the appellant left the precinct while Ramil Hijapon stayed behind. He saw appellant in the morning of March 3, 1994, and also on August 20, 1996. Appellant who was in the business of selling fighting cocks and rice until August 20, 1996 used to sell his fighting cocks in Manila.[28]

On June 11, 1997, the trial court rendered its Decision, the dispositive portion of which reads:

WHEREFORE, finding accused Rodolfo Castellano, alias Rodel, GUILTY beyond reasonable doubt of Murder punishable under Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act No. 7659, JUDGMENT is hereby rendered sentencing him to suffer RECLUSION PERPETUA, as well as the accessory penalty provided by law. He is likewise ordered to indemnify the heirs of Ramil Hijapon P50,000.00 for his death. Cost against accused.

Accused Rodolfo Castellano being detained in connection with the instant case, the period of his preventive imprisonment shall be credited in his favor and to be fully deducted from the service of his sentence even if

penalized with reclusion perpetua (People vs. Corpus, 231 SCRA 480), provided he has agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners pursuant to Article 29 of the Revised Penal Code.

SO ORDERED.[29]

Appellant ascribes to the trial court the following errors:

I

WHETHER OR NOT THE WIDOW AND THE SON ARE BIASED WITNESSES UNDER THE CIRCUMSTANCES;

II

WHETHER THE TESTIMONIES OF WITNESSES WHO ARE IN NO WAY RELATED TO THE ACCUSED-APPELLANT, BE DISCREDITED AS AGAINST THE TESTIMONIES OF THE WIDOW AND SON;

III

WHETHER ALIBI MUST BE CONSIDERED AS A LEGITIMATE AND VALID DEFENSE.[30]

Appellant contends that the evidence for the prosecution, consisting of the testimonies of the victim's wife, Lucia Hijapon, and son, Buenaventura Hijapon, are biased and do not prove beyond reasonable doubt that he killed the victim Ramil Hijapon; and that Lucia and Buenaventura harbored ill-will against him because of the April 1992 incident; thus, they pointed to him as the assailant of the victim. It was impossible for Lucia to see him since she was facing her husband when the latter was shot. Although Lucia testified that the store was well-lighted inside and outside, she told the police after the incident that the assailant was unidentified, and it was only three (3) days thereafter that he was implicated in the commission of the crime; and that it was not true that Buenaventura saw him since he failed to warn the victim that he (appellant) was approaching. Considering the allegedly biased testimonies of the victim's wife and son, he claims that the testimonies of the defense witnesses who are not related to the victim should have been given consideration and weight. Hence, appellant prays for his acquittal.

Appellant's arguments are devoid of merit.

We agree with the trial court that the victim's wife and son are not biased witnesses. Blood relationship between a witness and the victim does not, by itself, impair the credibility of the witness.[31] In fact, the relationship with the victim would render the testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit.[32] There is absolutely nothing in our laws to disqualify a person from testifying in a criminal case in which said person's relative was involved, if the former was really at the scene of the crime and was a witness to the execution of the criminal act.[33] Lucia and Buenaventura Hijapon were in the store together with the victim when the shooting incident occurred. Contrary to appellant's argument that it was impossible for Lucia Hijapon to see the assailant since she was then facing her husband Ramil Hijapon, Lucia testified that although she was then opposite her husband facing the wall, she saw the assailant because when Ramil was hit by the first gunshot, she pulled Ramil toward her and at the same time looked back at the window of the store where the shot came from, and she saw the appellant Rodolfo Castellano who was outside the store holding a gun fired the second shot which hit the wall instead of her husband because she had pulled him.[34] Buenaventura also saw appellant approaching while the latter who was three (3) meters away from the store pulled his gun from his waist and inserted it in the jalousie window of their store and shoot his father twice. At that time, appellant was only less than an arm's length away from Buenaventura and Lucia. The inside and outside portions of the store were brightly illuminated so that Lucia and Buenaventura were able to

positively identify the assailant as the appellant Rodolfo Castellano. The appellant was a neighbor of theirs residing only two (2) blocks away from their house.

The issue of the inability of Lucia Hijapon to identify the assailant immediately after the shooting incident as shown in the police blotter report dated August 20, 1996[35] and the fact that the appellant was identified as the assailant three (3) days after the incident as shown in the police blotter report dated August 23,[36] 1996 was correctly resolved by the trial court, thus:

In the first place, said police blotter reports (Annexes “A” and “B” to accused’s memorandum), not having been previously identified, marked, and offered in evidence by either the prosecution and defense, are not to be admitted. The Court shall consider no evidence which has not been formally offered (People vs. Franco, G. R. No. 118607, March 4, 1997; People vs. David, G.R. No. 105667, March 1, 1994; People vs. Sendon, G.R. No. 101579-82, December 15, 1993). In the second place, even if we defy the rule in the interest of justice and confer just a modicum of evidentiary value to the report of August 20 (Annex “A”), it will be noted on the face thereof that the blotter entry was made by police officers Custodio, Magallanes and Perez and not by Lucia Hijapon. Notably too, the report inter alia, says: “The unidentified assailant according to the bystander was wearing white shirt and black hat who walked casually after the incident.” The “unidentified assailant” was so described by the “bystander” and not by the widow. Reference to Lucia Hijapon, however, says: “The victim’s wife alleged that the motive of the killing was an old grudge.” Surely, the wife had sufficiently identified the killer of her husband as one with an old grudge against the deceased. Such identification was sufficiently clarified to the investigators in the subsequent police blotter report of August 23, 1996 (Annex “B”) as “Rodolfo Castellano y N. Alias Rodel.”[37]

The statement attributed to Lucia in Annex “A” of describing her husband’s killer as one with an “old grudge” is a clear and convincing proof that she already knew the name of the assailant during the initial investigation even if the particular name did not appear in the police blotter. A police blotter is taken ex parte. Hence, in the same manner, it could be just as incomplete and inaccurate, sometimes from other partial suggestions or for want of suggestions or inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion to her memory and for her accurate recollection of all that pertains to the subject. Entries in official records are only prima facie evidence of the facts therein stated and are not conclusive. (See People vs. Prado, G.R. No. 112982, December 29, 1995; People vs. Paragua, et al., G.R. No. 96923, May 24, 1996).[38]

With regard to the argument of appellant that the testimony of the victim’s son, Buenaventura Hijapon, is not credible because he allegedly failed to warn the victim when he saw the appellant approaching, we agree with the trial court when it declared and ruled, thus:

xxx This is puerile. As amply explained by Buenaventura, he first noticed accused coming to the store when Castellano was only about two armslength or three meters away. Immediately upon reaching the store, accused pulled his firearm and fired at the unsuspecting Ramil who was inside the store. The incident happened so fast, and the pulling of the gun and firing were so sudden, giving no ample time for the son to warn his father of the impending attack. Besides, Buenaventura was so shocked by the incident that he himself was not able to shout for help.[39]

The suddenness and swiftness of the startling and frightful event and the shock he underwent of witnessing his father being killed in cold blood by accused were enough justification to paralyze Buenaventura into even uttering a warning or shouting for help. Such action or reaction of the son from a gruesome event is understandably far from contrary to human experience and most certainly does not imply that he did not see accused as the perpetrator of the heinous crime. “There is no standard human behavioral response we know when one is confronted with a strange, startling and frightful experience” (People vs. Vinas, Jr., 245 SCRA 448; People vs. Alban, et al., 245 SCRA 549, citing People vs. Flores, 217 SCRA 613; People vs. Danico, 208 SCRA 472; People vs. Raptus, 198 SCRA 425; People vs. Lagota, 194 SCRA 92; People vs. Radomes, 141

SCRA 548). “The actions and reactions of a man are not always stereotype.” (People vs. Viñas, Sr., supra, citing People vs. Salazar, 221 SCRA 170).[40]

The trial court gave credence to the testimonies of the prosecution witnesses since their statements were not tainted with any contradictions, inconsistency or prevarication, and they testified in a candid, categorical and consistent manner. It credited in the eyewitnesses’ favor their honesty in acknowledging that they had a grudge against the appellant.

On the other hand, the trial court found the testimony of defense witness Josefina de Paula that she saw the shooting incident and the face of the assailant, who was not appellant Rodolfo Castellano, to be unworthy of credence[41] for the following reasons. First, after having allegedly seen the shooting and the face of the assailant who ran towards her direction, Josefina stood by for a while and upon seeing several people at the store of Ramil Hijapon, she went there to take a look but did not immediately inquire if someone was hurt considering that she heard the gunfire and saw the assailant aiming a gun at the jalousie window of Ramil’s house. Moreover, she did not volunteer any information about what she saw to the people gathering around; instead, when someone stepped on her foot, she immediately left to attend a prayer in a wake at a nearby house. Second, in the wake where many people attended and considering that the recent shooting incident must have been the subject of conversations, Josefina never mentioned to anyone there what she allegedly saw. Third, on her way home from the wake, Josefina again passed by the store of Ramil and it was only at that time that she inquired about what happened, and somebody told her that Ramil was shot. However, she never told her barriomates present that she saw the assailant and a part of the shooting incident; instead, she just listened to their stories and then went home, which is contrary to human experience. Fourth, although Josefa knew the wife of the victim, she did not talk to her about the shooting incident she witnessed wherein the victim was killed nor did she condole with the family of the victim alleging that she did not attend the wake of Ramil Hijapon because of the belief that one cannot pray in two wakes at the same time. Fifth, although she knew that appellant was previously in prison, she claimed that she only came to know that the appellant was the suspect in the killing of Ramil Hijapon during the last week of April 1997 when she met appellant’s mother and inquired from her if it was true that appellant was in prison. Appellant’s mother confirmed to her that appellant was in prison as the suspect in the killing of Ramil Hijapon.

The trial court also did not give credence to the testimony of defense witness Dax Villadelgado for being incredible. According to this witness, the appellant allegedly arrived in Cebu on July 21, 1996 to deliver fighting cocks for which payment was due on July 29, 1996, but continued staying in Cebu for another month just to attend the birthday parties of Dax and his mother on August 14, 1996 and August 20, 1996 respectively, despite the fact that appellant was a businessman who must have valued his time while Dax was just a high school student and merely an acquaintance of the appellant in 1995. Moreover, Dax’s mother was not even shown to be close to appellant to merit the latter’s continued stay in Cebu up to August 20, 1996. It was not also proven that the birthday of Dax’s mother was really on August 20 and that appellant really attended her birthday celebration, if any. Hence, appellant’s alleged extended stay in Cebu on lame or flimsy grounds only exposes the weakness of appellant’s alibi.

It is a well-settled doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed during appeal in the absence of any clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellant.[42] After carefully reviewing the records of the instant case, we find no valid reason to disturb the findings of the trial court.

For appellant’s alibi to prosper, he must prove not only that he was somewhere else when the crime was committed but he must likewise demonstrate that it was physically impossible for him to be at the scene of the

crime at the time of its commission.[43] As the trial court found, although appellant claimed that he was in Cebu when the crime was committed on August 20, 1996, he failed to adduce evidence such as plane, boat or bus tickets, hotel bills or meal receipts or any document evincing the sale of his fighting cocks to substantiate his alibi. The trial court took cognizance of the fact that bus, boat or air transportation is readily available between Bacolod and Cebu; hence, it is not physically impossible for a person to leave Cebu at any time of the day and be in Bacolod in just a matter of hours or minutes by plane.[44] Appellant failed to show by clear and convincing evidence that it was physically impossible for him to be at the victim's store at the time the crime was committed, apart from his self-serving declaration that he was in Cebu and despite the unconvincing testimony of Dax Villadelgado. Significantly, appellant's friend and witness, Roberto Picuncillo, who resides in the same barangay of the appellant and the victim, contradicted with his testimony the appellant's alibi that he was in Cebu up to the last week of August 1996. Picuncillo testified that he saw the appellant on August 20, 1996, the date when the crime was committed. More importantly, considering the positive identification of the appellant, as the assailant, by prosecution witnesses, Lucia Hijapon and Buenaventura Hijapon, the defense of alibi must necessarily fail. Alibi cannot stand against strong and positive identification.[45]

The trial court, however, correctly found that the prosecution failed to prove the presence of evident premeditation which requires the concurrence of the following requisites: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and the execution to allow him to reflect upon the consequences of his act.[46]

The trial court also correctly found that the crime was committed with treachery. There is treachery when the offender commits any of the crimes against the person, employing means, methods and forms in the execution thereof which tends directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[47] The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.[48] Treachery can exist even if the attack is frontal, if it is sudden and unexpected, giving the victim no opportunity to defend himself against such attack.[49] What is decisive is that the execution of the attack, without the slightest provocation from the victim who is unarmed, made it impossible for the victim to defend himself or retaliate.[50] In the instant case, the appellant who suddenly arrived outside the victim's store, shot the victim while the latter was sitting and conversing with his wife inside the store, thus depriving the victim of any opportunity to defend himself. The attendant circumstance of treachery qualifies the killing to murder under Article 248 of the Revised Penal Code:

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

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

The trial court correctly imposed the lesser penalty of reclusion perpetua absent any aggravating circumstances in the commission of the crime.[51]

In addition to the civil indemnity of Fifty Thousand Pesos (P50,000.00) awarded by the trial court to the heirs of the victim, Ramil Hijapon, they should also be awarded moral damages in the amount of Fifty Thousand Pesos (P50,000.00) which needs no proof since the conviction of the appellant for the crime charged is sufficient to justify the award of the same.[52]

Although the victim's wife, Lucia Hijapon, testified that she spent Thirty Thousand Pesos (P30,000.00) for the wake of the victim, no receipts were presented to substantiate the actual damages incurred as required by Article 2199 of the Civil Code. Nevertheless, in lieu of actual damages, temperate damages in the amount of Fifteen Thousand Pesos (P15,000.00) may be recovered under Article 2224 as it has been shown that the victim's family suffered some pecuniary loss but the amount thereof cannot be proved with certainty.[53]

WHEREFORE, the assailed Decision of the Regional Trial Court of Negros Occidental, Branch 47, Bacolod City in Criminal Case No. 18102 finding appellant Rodolfo Castellano guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the heirs of the victim, Ramil Hijapon, civil indemnity in the amount of Fifty Thousand Pesos (P50,000.00) is hereby **AFFIRMED** with the modification that he is likewise ordered to pay the heirs of the victim moral damages in the amount of Fifty Thousand Pesos (P50,000.00) and temperate damages in the amount of Fifteen Thousand Pesos (P15,000.00). Cost against the appellant.

SO ORDERED.

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

[1] Penned by Judge Edgar G. Garvilles, Rollo, pp. 17-40.

[2] Records, p. 1.

[3] Records, p. 27.

[4] Exhibit "B", Records, p. 48.

[5] TSN, April 23, 1997, pp. 33-55.

[6] TSN, April 23, 1997, pp. 45-46.

[7] TSN, April 23, 1997, pp. 54-55.

[8] TSN, April 23, 1997, pp. 65-75.

[9] TSN, April 23, 1997, pp. 79-83.

[10] Exhibit "A", "A-1", Records, pp. 45-47.

[11] TSN, April 23, 1997, pp. 6-16.

[12] Exhibit "F", Records, p. 53.

[13] Exhibit "F-2", Records, p.53 (back).

[14] Exhibit "F-3", Records, p. 53 (back).

[15] Exhibit "F-5-A", Records, p. 53.

[16] TSN, April 30, 1997, pp. 5-7.

[17] Exhibit "D", Records, p. 50.

[18] Exhibit "D-1", Records, p. 50.

[19] Exhibit "D-2", Records, p. 50.

- [20] Exhibits “E” to “E-1”, Records, p. 52.
- [21] TSN, April 24, 1997, pp. 5-15.
- [22] TSN, May 21, 1997, pp. 5-8.
- [23] TSN, May 21, 1997, pp. 10-16.
- [24] TSN, May 21, 1997, pp. 20-27.
- [25] TSN, May 14, 1997, pp. 11-19, 23, 30, 32, 36-37.
- [26] TSN, May 14, 1997, pp. 19-21, 39.
- [27] TSN, May 14, 1997, pp. 41-47.
- [28] TSN, May 20, 1997, pp. 3-12.
- [29] Rollo, pp. 39-40.
- [30] Rollo, p. 77.
- [31] *People v. Realin*, 301 SCRA 495, 510 (1999); *People v. Plazo*, G.R. No. 120547, January 29, 2001.
- [32] *People v. Francisco*, 315 SCRA 114, 124 (1999); *People v. Sion*, 277 SCRA 127, 147 (1997); *People v. Montero, Jr.*, 277 SCRA 197, 206 (1997).
- [33] *People v. Dela Cruz*, 207 SCRA 632, 643 (1992); *People v. Baduya*, 182 SCRA 57, 64 (1990).
- [34] TSN, April 23, 1997, pp. 39-42.
- [35] Annex “A,” Records, p. 69.
- [36] Annex “B,” Records, p. 70.
- [37] Rollo, pp. 30-31.
- [38] Rollo, p. 31.
- [39] Rollo, pp. 31-32.
- [40] Rollo, p. 32.
- [41] Rollo, p.33.
- [42] *Espano v. Court of Appeals, et al.*, 288 SCRA 558, 563 (1998).
- [43] *People v. Banela*, 301 SCRA 84, 93 (1999).
- [44] Rollo, p. 36.
- [45] *People v. Dinglasan*, 267 SCRA 26,43 (1997); *People v. Mataro, et al.*, G.R. No. 130378, March 8, 2001.
- [46] *People v. Magno*, 322 SCRA 494, 515 (2000); *People v. Valdez*, 304 SCRA 611, 626 (1999).
- [47] Article 14, paragraph 16, Revised Penal Code; *People v. Naguita*, 313 SCRA 292, 308 (1999).
- [48] *People v. Magno*, supra note 45; *People v. Vermudez*, 312 SCRA 276, 284 (1999).
- [49] *People v. Valdez*, supra note 45; *People v. Benito*, 303 SCRA 468, 479 (1999).

[50] Id.

[51] Article 63 (2), The Revised Penal Code.

[52] People v. Clarino, G.R. No. 134634, July 31, 2001; People v. Cortez, G. R. No. 131924, December 26, 2000.

[53] People v. Suplito, 314 SCRA 493, 504 (1999); People v. De la Tongga, 336 SCRA 687, 700 (2000); People v. Plazo, supra note 30; People v. Buyser, et al. G.R. Nos. 130144 & 130502-03, May 24, 2001.

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