

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. REMEGIO SUZA, FLORENCIO SUZA, DANILO SUZA, ACCUSED.

G.R. No. 130611. April 06, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the decision dated April 10, 1992[1] of the Regional Trial Court, Branch 38, Iloilo City, the dispositive portion of which reads:[2]

"WHEREFORE, and in view of the foregoing, judgment is rendered finding accused Danilo Suza guilty beyond reasonable doubt of the crime of Robbery with Homicide punishable under Article 294 of the Revised Penal Code, as principal, without mitigating or aggravating circumstance, and sentence the accused to suffer the penalty of Reclusion Perpetua; to pay the heirs of Teresita Dañucop the sum of P11,900.00 for personal properties accused took from the deceased; to pay the heirs of Teresita Dañucop the sum of P50,000.00 as damages for the death of Teresita Dañucop and to pay the cost of suit.

Let the records of this case be archived until the two (2) other accuseds who are at large are arrested.

SO ORDERED."

In an information dated May 29, 1991, accused-appellant Danilo Suza, alias Danny, together with his two brothers, Remegio Suza, alias Ebang, and Florencio Suza, alias Joel, were charged with the crime of Robbery with Homicide as follows:[3]

"That on or about March 19, 1991, in the Municipality of Dueñas, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another to better realize their purpose and by means of violence and/or intimidation of persons and with insult or in disregard of the respect due to the offended party on account of her sex and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously take, steal and carry away with intent to gain from Teresita Dañucop the following to wit:

- a. Cash amount P3,000.00
- b. 3 pcs. Gold Necklace valued at 900.00
- c. 4 pairs of Earrings valued at P2,000.00
- d. 6 pcs. Seiko Brand Wrist Watch valued at P6,000.00

Total P11,900.00

against her consent and to her damage and prejudice in the aforestated amount of ELEVEN THOUSAND NINE HUNDRED PESOS, Philippine Currency, and by reason or on the occasion of such robbery, the above named accused with treachery, i.e., accused hogtied both the hands of said Teresita Dañucop and gagged her mouth with a handkerchief, did then and there wilfully, unlawfully, and feloniously attack, assault, stab, cut and slash the

throat of said Teresita Dañucop with bladed knives (Pinute) which accused were then provided thereby inflicting multiple injuries to said Teresita Dañucop which caused her death thereafter.

CONTRARY TO LAW."

Of the three (3) accused, only Danilo Suza faced trial; the two (2) other accused Remegio Suza and Florencio Suza, are at large.

Upon his arraignment, accused Danilo Suza pleaded not Guilty.[4]

The prosecution presented four witnesses.

Dr. Angel Lagat, Rural Health Physician of Dueñas, Iloilo, who examined the Cadaver of the deceased Teresita Dañucop, identified the Medical Report he issued (Exhibit A) and the diagram of a human body showing the extent of the injuries sustained by the deceased (Exhibit B). He declared that the cause of death was massive hemorrhage due to stab wounds which was embodied in the Certificate of Death (Exhibit C).[5]

Jullie Dañucop, a resident of Punong Pequeño, Duenas, Iloilo and brother of deceased Teresita Dañucop, testified that he knows the three accused, who are brothers, and lived in the adjacent Barrio Batuan, Sitio Lampuyang, Dueñas, Iloilo.[6] On March 19, 1991 at around 7:00 o'clock in the evening, while he was inside his house in Barangay Punong Pequeño, Duenas, Iloilo, Patricio Panerio arrived at his house and told him that his sister Teresita Dañucop was held up in the sugarcane plantation owned by one named Mamung.[7] Jullie, together with his brothers and sisters, nephews and nieces, proceeded to the place mentioned by Panerio to search for Teresita but were not able to find her as the sugarcane field was very wide.[8] The following morning, Jullie together with his nephew, Oscar Aracha, and this time, accompanied by Panerio, went to the sugarcane plantation and there found the body of Teresita, hogtied with her face to the ground already dead.[9] Jullie reported the incident to the Dueñas police, after which policemen Lapiguera and Lamera went to the crime scene and conducted an investigation.[10] Jullie then executed a sworn statement (Exhibit D) in connection with this incident. He testified that during the lifetime of his sister Teresita, she was selling clothes, wrist watches, necklaces, and earrings as an occupation[11] and was lending some cash money.[12] He intimated that Teresita used to bring five wrist watches with the price of P1,000 each; five pieces of necklace and earrings at P400 each; fifteen (15) pants at P300 each; jacket at P250; that all these were missing when the body of his sister was found.[13]

SPO3 Faviano Salazar of Dueñas Police Station identified the excerpts of entries in the police blotter relative to the arrest of Danilo Suza (Exhibit F). He declared that he and other policemen of Dueñas, Iloilo, accompanied by the victim's relatives, arrested accused Danilo Suza at about 2:00 o'clock in the morning of March 21, 1991 inside the dance hall of Barangay Lampuyang, Dueñas, Iloilo.[14]

Patricio Panerio, 51 years old, farmer and residing at Barangay Punong Pequeño, Dueñas, Iloilo, testified that he had known the accused for 15 years being his neighbors and residents of Sitio Lampuyang, Bgy. Batuan, Dueñas, Iloilo which is about (2) kilometers away from his house. On March 19, 1991, at about 7:00 o'clock in the evening, he was in the sugar plantation of Teresita Daet, 400 meters away from the dance hall of Barangay Sitio Lampuyang, Batuan, Dueñas, Iloilo.[15] While on his way home from the basketball court, he heard noises coming from the sugarcane plantation, so he crawled towards the direction where the noise was coming from and saw Teresita Dañucop with her hands tied and with something in her mouth.[16] He saw accused Remegio Suza, alias Ebang on the right side of Teresita while the other accused Florencio Suza, alias Joel, was pushing Teresita forward and Danilo Suza following behind. Appellant Danilo Suza shouted to "stretch" Teresita, Florencio who was then situated in front of Teresita held the latter's hand while Remegio positioned himself at Teresita's feet, and Danilo Suza stabbed Teresita two (2) times on the chest.[17] Panerio was about five (5) arms length away

from the assailants.[18] After they laid the victim on the ground, Remegio shouted to Florencio to finish the victim, and Florencio slashed her throat,[19] Danilo Suza told Florencio and Remegio to take off their clothes and wipe out the finger prints on the victim's body.[20] While the assailants were wiping the victim's body, Panerio backed off little by little and fled towards the house of Jullie Dañucop, brother of the deceased, and told him that Teresita was held up by Danilo, Florencio, and Remegio Suza at the sugarcane plantation of Manoy.[21] He stated that Jullie Dañucop then called for his relatives and bringing torches with them proceeded to the place he pointed.[22] He went home and early in the morning of March 20, 1991, Oscar Aracha, a nephew of Teresita Dañucop, told him that Jullie will fetch him as they did not find Teresita Dañucop in the place he mentioned. Panerio then went with Jullie Dañucop and Aracha to the sugarcane plantation and found the victim lying with her face on the ground and her buttock's elevated.[23] He looked at the deceased but returned home as he was afraid.[24] He executed a sworn statement on March 20, 1991 at around 3:00 P.M. (Exhibit G to G-H).

The defense has a different version to tell. They presented four witnesses:

Giovani Paredes, 29 years old, an upholstery shopowner, testified that his upholstery business is located at Diversion Road, Calubihan, Jaro, Iloilo City.[25] He knows the accused Danilo Suza whom he claimed to be working with him for two (2) years and sleeping in his shop where his house is located.[26] On March 19, 1991, he was working with the accused from 7:00 o'clock in the morning up to 12:00 noon and until 5:00 o'clock in the afternoon.[27] At 7:00 o'clock in the evening of the same date, he was with Danilo Suza drinking beer inside his shop until 12:00 o'clock midnight and after which they went to sleep.[28] The following day at around 7:00 o'clock in the morning, accused Danilo Suza who was already at the shop asked his permission to go to Dueñas to attend his town fiesta at Sitio Lampuyang, Batuan, Dueñas, Iloilo. He allowed the accused Danilo to go and attend his town fiesta for which reason the latter left for Dueñas at around 11:00 o'clock in the morning of March 20, 1991 and did not return to work.[29] On March 21, 1991, the mother of Danilo Suza came to his house and informed him that her son was nabbed and arrested in the evening of March 20, 1991 while inside the dance hall.[30] He later learned that Danilo was one of the suspects in the killing of Teresita Dañucop. He immediately went to the Dueñas Police Station and saw Danilo Suza with so many bruises showing that he was maltreated by the police.[31] Giovani went to the Human Rights Commission to report the maltreatment suffered by Danilo and to attest to the fact that Danilo was with him on the 19th up to 20th of March 1991.[32] Then Prosecutor Vicente Aragona radioed the Dueñas Police Station to bring Danilo Suza and the policeman who allegedly maltreated Danilo for some queries. Giovani, however, was not able to pursue his complaint since Danilo could not pinpoint who among the policemen maltreated him since he was blindfolded at that time.[33]

Vilma Lama, a housewife and resident of Lampuyang, Batuan, Dueñas, Iloilo, testified that she knows all the accused who are brothers, as they are neighbors.[34] She recalled that on March 20, 1991, it was their fiesta and she was in her house entertaining visitors. At around 2:00 in the afternoon, accused Danilo Suza arrived, ate his lunch and stayed for about an hour then went home to the house of his parents located not far away from her house.[35] She testified that she was in her house the whole day of March 19, 1991 and had not seen Danilo on that day and the days prior thereto.[36] She intimated that Danilo was working in Iloilo City, repairing chairs and working with one named Jovan.[37]

Melanie Ortiz Paredes, wife of witness Giovani Paredes, substantially corroborated the testimony of her husband.[38]

Accused Danilo Suza, 27 years old, an upholsterer, testified that he is a resident of Diversion Road, Jaro, Iloilo City and since 1988 had been living in the house of Giovani Paredes as helper.[39] On March 19, 1991, he worked in the place of Giovani Paredes from 6:00 o'clock until past 11:00 o'clock in the morning and again in the afternoon until 5:00 o'clock.[40] At around 6 o'clock in the evening, while resting after a day's work, he was

requested by Giovanni to buy beer and they started drinking after supper up to past 11:00 o'clock and then went to sleep.[41] He woke up at 6:00 o'clock in the morning the following day, March 20, 1991, took coffee, worked up to 11:00 o'clock in the morning, and left Giovanni's house to go home to Sitio Lampuyang, Barangay Batuan, Dueñas, Iloilo, to attend their fiesta and to participate in the dancing.[42] He arrived in Dueñas at past 1:00 o'clock, boarded a tricycle on the way to their barrio and arrived thereat at past 2:00 o'clock in the afternoon. He then proceeded to the house of Vilma Lama, ate his lunch, took some drinks, and played with the children.[43] He then went to his father's house and stayed there for 15 minutes then proceeded to the house of his elder sister in Lampuyang and stayed there until 7:00 o'clock in the evening.[44] He then went to the dance hall located in the center of Sitio Lampuyang. While inside the dance hall, he was frisked by a person in civilian clothes who was accompanied by two (2) persons in fatigue uniforms carrying firearms who asked his name and asked for his residence certificate. He was also asked where his residence is, to which he replied that he was from Lampuyang.[45] He went further inside the dance hall and danced up to 10:30 P.M. but when he went out of the dance hall to answer the call of nature, three (3) persons appeared and pointed something at him and told him not to move. He did not move and instead asked them what he had done. He was not allowed to re-enter the dance hall and was investigated as to who his companions were in killing Teresita Dañucop. He professed innocence but he was still brought to the police headquarters where he was investigated for about 30 minutes by a certain police named Salazar.[46] He intimated that policeman Salazar boxed him in the stomach and hit him with the butt of an armalite because he did not want to admit the charges against them.[47] At around 7:00 o'clock the following day, March 21, his mother together with Vilma Lama came to talk with the police. His mother then proceeded to Iloilo City to inform Giovanni Paredes about his arrest. He denied Patricio Panerio's testimony that he killed Teresita Dañucop on March 19, 1991.

On rebuttal, the prosecution presented Patricio Panerio who testified that it was not true that accused Danilo Suza was in the upholstery shop of the spouses Paredes the whole day and night of March 19, 1991 and that it was only on March 20, 1991 at about 11:00 o'clock in the morning that accused Danilo went to Sitio Lampuyang, Batuan, Dueñas, to attend the fiesta. Panerio testified that at around 9 o'clock in the morning of March 19, 1991, while he was on his way to the sugar plantation of his sister to bring food for his children who were cutting sugarcane, he passed by the coconut plantation situated at the boundary of Barangay Pequeño and Lampuyang and saw Danilo, Remegio, and Joel Suza drinking tuba.[48] He had a conversation with accused Danilo and he even joined the Suza brothers drinking tuba[49] and after a glass, Panerio proceeded to the plantation of his sister located at Barangay Punong Pequeño at about 11:00 o'clock in the morning.[50] After taking his lunch, he (Panerio) together with the other basketball players went to the basketball court of Lampuyang to play against the players of Anhawan. At about 2:00 o'clock in the afternoon of March 19, 1991, he saw accused Danilo together with his two (2) brothers, Remegio and Joel Suza at the basketball court of Lampuyang watching the game.[51]

Also as rebuttal witness, SPO3 Faviano Salazar of the Dueñas PNP testified that when he went to Lampuyang on the evening of March 20, 1991, his companions were SPO1 Sally Lamera, SPO3 Malco Queque, and others. They found accused Danilo Suza in the dance hall sitting at the dark portion of the dance hall. They approached and informed him that he had a case in the Municipality. The accused did not use his family name "Suza" and SPO3 Salazar asked the Barangay officials around who identified the accused as Danilo Suza. He mentioned the name of the barangay captain as Dolorita Laguna, and they brought accused Danilo Suza to the police station. He denied the declaration of the accused that they maltreated him.[52]

The trial court found the testimony of Patricio Panerio, the lone eyewitness to the brutal killing of Teresita Dañucop positive and clear during the direct and cross-examination and even in the rebuttal. It declared that witness Panerio, a resident of Barangay Pequeño, Dueñas, Iloilo was personally familiar with the Suza brothers as he knows them by their aliases; that Panerio's detailed description of the condition of Teresita before her throat

was slashed and finally stabbed to death by accused Danilo Suza was given in a straightforward manner thus, credible and believable. It further stated that Panerio's testimony on the wounds suffered by Teresita was corroborated by the testimony of Dr. Angel Lagat, rural health physician of Dueñas, Iloilo. Panerio's testimony was also consistent with the testimony of Jullie Dañucop, brother of the deceased, that Panerio was the one who informed them of what happened to Teresita in the sugarcane field in the evening of March 19, 1991. The trial court gave credence to the positive testimony of prosecution witness as against the defense of alibi put up by the accused and his witnesses. The court also noted that accused Danilo Suza was one of the seven inmates of the Iloilo Rehabilitation Center who bolted jail and escaped, which is an indicia of his guilt. As stated earlier, accused Danilo Suza was found guilty of the crime of robbery with homicide.[53]

From this judgment, accused-appellant raised the following assignment of errors in his appeal, to wit:

I

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT DANILO SUZA GUILTY OF ROBBERY WITH HOMICIDE DESPITE THE EVIDENCE TO THE CONTRARY.

II

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE WITNESSES FOR THE PROSECUTION AND IN DISREGARDING THE THEORY OF THE DEFENSE.

Accused-appellant centers his arguments on two main issues, to wit: the credibility of the prosecution witness Patricio Panerio and the defense of alibi.

Accused-appellant contends that witness Panerio was not able to conclusively establish his identification as a participant in the killing of Teresita Dañucop. He claims that the alleged robbery incident took place at about 7:00 in the evening and being nighttime, Panerio had no sufficient and clear view of the identity of the malefactors, thus a case of mistaken identity.

We are not persuaded.

Prosecution witness Patricio Panerio positively identified accused-appellant as one of the assailants of Teresita Danucop and we find no reason to disturb the trial court's evaluation of the testimony of Panerio to be credible and believable. His testimony in the direct examination is as follows:

"Q: On March 19, 1991 at about 7:00 in the evening, could you recall where were you?

A: Yes, sir.

Q: Where were you?

A: I was at the sugarcane plantation of Teresita Daet.

Q: Where is that sugarcane plantation located?

A: From the dance hall maybe 400 meters away.

Q: The dance hall of what?

A: Sitio Lampungan, Brgy. Batwan, Dueñas, Iloilo.

Q: At that particular time and on that particular date could you recall whether there was an unusual incident that happened?

A: Yes, sir.

Q: What was that incident about?

A: While I was going home I came from the basketball court when I heard noise coming from the sugarcane plantation and then I crawled towards where the noise came from and I saw Teresita Dañucop being tied in her hands and something was struck inside her mouth.

Q: Beside Teresita Dañucop whom did you see?

A: Danilo Suza, Florencia alias Joel and Remegio Suza alias Ibang.

Q: What were they doing?

A: Remegio Suza was situated at the right side of Teresita Dañucop while alias Joel was pushing Teresita Dañucop while Danilo Suza was following.

Q: What happened next?

A: And then Danilo Suza shouted that they would stretch the victim Teresita Dañucop while Joel was situated at the front of her and alias Ibang was situated at her feet and then immediately Danilo Suza stabbed her 2x. (Witness demonstrating by using his right arm towards the left).

Q: Where was Teresita Dañucop hit?

A: In her chest.

Q: How far were you?

A: Five arms length.

Q: What happened next?

A: Then they placed Teresita Dañucop in the ground and then Ibang shouted to Joel to do the finishing and then Joel slashed her throat.

Q: Who is this Joel?

A: Florencio Suza.

Q: Who is this Ibang?

A: Remegio Suza.

Q: When you saw these being done to Teresita Dañucop, what did you do?

A: Danilo Suza shouted to Joel and Ibang to take off their clothes and then wipe off the finger prints in the body of the victim.

Q: What happened next?

A: While they were wiping off the body of the victim I was backing off then I fled away home little by little backing off.

Q: Home to where?

A: To the house of Jullie Dañucop.

Q: What did you do there?

A: I shouted informing them that Teresita Dañucop was held up by Danilo Suza, Florencio Suza and Remegio Suza.

Q: Did you receive any reply from them?

A: Yes, sir."^[54]

Panerio's detailed account of the incident was made possible by the fact that he was only five arms length away from the malefactors. His testimony was supported by the medical findings of Dr. Angel Lagat who examined the body of the victim Teresita. The medical report submitted by Dr. Lagat indicated that the laceration and stab wounds found in the victim's body corresponded with Panerio's narration of how the victim was killed; thus:

POST MORTEM EXAMINATION^[55]

1. Both hands tied with elastic garter. Handkerchief push through her mouth.
2. Cut throat, big veins and arteries of the neck cut, 3 inches length, 1 inch wide.
3. Stab wound chest, 1 inch below the distal portion of the mid sternal line, 2 inches above the right nipple, 1 1/2 inches length, 1/2 inch wide, 7 inches deep, more on the right, going internally. Heart affected.
4. Stab wound abdomen - 3 inches above the navel, 3 inches below the distal portion of the sternum. Intestine out.

CAUSE OF DEATH - MASSIVE HEMORRHAGE DUE TO STAB WOUNDS."

Accused-appellant claims that Panerio's testimony that he was at a distance of only 5 arms length away from the crime scene, and yet his presence was not noticed by the malefactors is inconceivable and unreliable considering that the sugarcanes have been burned to be ready for harvest at the time of robbery. He suggests that the two other accused who are his brothers may be at the crime scene since they remained fugitives from justice up to the present time but this is not so with respect to him.

We do not agree.

The testimony of Panerio during the cross-examination showed that it was not impossible for the appellant not to notice his presence at the crime scene as he crawled through the grasses which were waist high and there were sugarcane plants standing. Said he:

"Q: Could you tell the honorable court where did you come from when you allegedly noticed some noise in the plantation of certain Manoy?

A: I came from the basketball court.

Q: Could you tell us where is this basketball court located?

A: At Sitio Lampungan, Brgy. Batwan, Dueñas, Iloilo.

Q: Could you tell this honorable court how wide is this plantation of Manoy?

A: More than 20 kilometers.

Q: And at that time there were some sugarcane growing?

A: Some were already cut.

Q: In other words there were still some sugarcane standing?

A: Yes, sir.

Q: And in fact the noise that you heard were within the area where in the sugarcane were still standing?

A: Yes, sir.

Q: And since that was 7:00 in the evening that was very dark?

A: There was moon when I passed by.

Q: Were you able to look at the moon at that time?

A: Yes, sir.

Q: Could you tell the honorable court what was the shape of the moon at that time?

A: Just like a scythe, 1st quarter.

Q: And because you heard some noise inside the sugarcane plantation you also went inside the plantation?

A: I stopped for a while and then listen.

Q: And after listening for a while you went inside the plantation?

A: I crawled through the grasses.

Q: Could you tell the honorable court how tall were the grasses at that time?

A: Up to the waist.

Q: Aside from the standing sugarcane were there grasses?

A: Yes, sir."[56]

Panerio's clear and positive identification of accused-appellant as the assailant of the victim as found by the trial court, which we affirm, is not open to doubt as he could not have been mistaken as to the identity of the appellant, his neighbor for 15 years. Moreover, there was a first quarter moon which could provide ample illumination on the night the incident happened at the sugarcane plantation. In Panerio's words, appellant was facing him and the light of the moon was striking appellant's face.[57] Identification of a person is possible even by the light of stars;[58] with more reason one could identify persons by moonlight.[59]

The consistent teaching of our jurisprudence is that the findings of the trial court are given weight and the highest degree of respect by the appellate court.[60] This is the established rule of evidence in view of the fact that the matter of assigning values to the testimony of witnesses is a function best performed by the trial court. It can weigh the testimony of witnesses in the light of the latter's demeanor, conduct and attitude at the trial.[61]

We also do not find any merit in accused-appellant's contention that Panerio's actuation in not accompanying the relatives of the deceased to the crime scene after he had informed them that Teresita Dañucop was held up nor informed them of the identity of the malefactors was illogical and unnatural. It must be remembered that after he had witnessed the killing incident, Panerio immediately went to Jullie Dañucop, brother of Teresita, and informed him that his sister was held up in the sugarcane plantation by the Suza brothers. He had already pinpointed the place to the relatives and the fact that he did not accompany them thereat would not affect his credibility.

Witnessing a crime is an unusual and no less frightening experience, which elicits different reactions from the witnesses. There is no standard form of behavior when one is confronted with a shocking incident.[62] Thus, it is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case, as in

fact the natural reticence of most people to get involved is of judicial notice.[63] This is especially true when townmates are involved in the commission of a crime. Witnesses are usually afraid they might provoke reprisals from the accused.[64] Thus, the initial silence of Panerio will not detract from the credibility of his testimony. In fact, when Panerio accompanied the relatives of the victim to the crime scene the following day, they found the body of Teresita therein but Panerio could not look at the victim and he immediately returned home because he was afraid.[65] Manikanã

Accused-appellant's defense of alibi is that on March 19, 1991, he was at the place of his employment in Iloilo City which was about 2 hours by bus away from the crime scene.

We are not convinced.

No jurisprudence in the prosecution of criminal cases perhaps is more settled than the rule that alibi is a weak defense and that, corollarily, it should be rejected when the identity of the accused-appellant is sufficiently and positively identified by an eyewitness to the offense.[66] Furthermore, the accused must establish not only that he was somewhere else when the crime was committed but that it was also physically impossible for him to have been at the scene of the crime at the time of its commission.[67]

Panerio positively identified accused-appellant placing him at the crime scene at the time of its commission. He has given a complete account of Teresita's death in the hands of accused-appellant and his two brothers, and he could not be mistaken since he had known the accused-appellant for fifteen (15) years for they were neighbors.

Moreover, on rebuttal, Panerio testified that at around 9:00 in the morning of March 19, 1991, on his way to the sugar plantation of his sister, he passed by accused-appellant and his two brothers drinking tuba at the coconut plantation situated at the boundary of Barangay Pequeño and Lampuyang and had a conversation with accused-appellant and even joined them in drinking tuba. He testified that he saw accused-appellant at the basketball court at about 2:00 in the afternoon of the same day. Faced with a direct accusation, however, appellant never even attempted to prove that Panerio was motivated by ill-feelings as to falsely impute to him the commission of such a serious crime; hence Panerio's testimony is worthy of full faith and credit.[68]

With respect to the charge of robbery, however, we agree with the Solicitor General that the testimony of witness Panerio in the direct examination only showed the circumstances surrounding the victim's death but the fact of robbery was neither testified to nor inferable therefrom. While the killing of Teresita was sufficiently established by the evidence of the prosecution, we find no conclusive evidence proving the physical act of asportation thereof by the accused-appellant. In fact, Panerio testified during his cross-examination that he did not actually see appellant take the money or jewelry from the victim. He merely stated that since they were the ones who held her up, surely, they took the money and jewelry which were in the possession of the victim in the morning of March 19, 1991.[69]

The Solicitor General correctly opined that while Dañucop had money and some pieces of jewelry in the morning of March 19, 1991, the interval of time between that period and the commission of the crime was long enough to allow for the possibility that she could have placed the money and said jewelry elsewhere. We ruled in *People vs. Pacala*,[70]

"It is well settled that in order to sustain a conviction for robbery with homicide, it is necessary that the robbery itself be proven conclusively as any other essential element of a crime. In order for the crime of robbery with homicide to exist, it is necessary that it be clearly established that a robbery has actually taken place, and that, as a consequence or on the occasion of such robbery, a homicide be committed. Where the evidence does not conclusively prove the robbery, the killing of the victim would therefore, be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the

complex offense of robbery with homicide."

We also agree with the Solicitor General that the qualifying circumstance of abuse of superior strength should be appreciated here as alleged in the information which would classify the felonious act as murder. It was established that the assailants ganged up on Teresita Danucop and while the two other assailants held her hand and feet, accused-appellant stabbed her twice and the other accused finished the victim by slashing her throat. There was a clear and notorious disparity of force between the victim and the aggressors as the former was unarmed and alone. The felons took advantage of their collective strength to overwhelm their comparatively defenseless victim.[71] Thus, it was held that "an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself." [72]

However, we cannot appreciate the presence of the aggravating circumstance of disregard of sex as advanced by the Solicitor General. Disregard of sex is not aggravating because there is no evidence that the accused deliberately intended to offend or insult the sex of the victim or showed manifest disrespect of her womanhood.[73]

Under Article 248 of the Revised Penal Code,[74] abuse of superior strength qualifies the killing to murder which is punishable by reclusion temporal in its maximum period to death. There being no aggravating or mitigating circumstance, the penalty should be imposed in its medium period, which is reclusion perpetua.

WHEREFORE, accused-appellant is found guilty beyond reasonable doubt of the crime of murder, and the judgment of the trial court is accordingly modified. Accused-appellant is sentenced to suffer reclusion perpetua and ordered to pay the heirs of the victim P50,000.00 as civil indemnity.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Penned by Judge Jonas A. Abellar; Criminal Case No. 36192.

[2] Rollo, pp. 29-30.

[3] Rollo, p. 8.

[4] Records, p. 26.

[5] TSN, September 5, 1991, pp. 3-7.

[6] TSN, September 5, 1991, p. 8.

[7] Ibid, p. 9.

[8] Ibid, p. 10.

[9] Ibid, p. 11.

[10] Ibid, p. 12.

[11] Ibid, p. 16.

[12] Ibid, p. 18.

[13] Ibid, p. 16-18.

[14] TSN, Oct. 12, 1991, pp. 2-4.

[15] Ibid, p. 9.

[16] Ibid, p. 10.

[17] Ibid.

[18] Ibid, p. 11.

- [19] Ibid.
- [20] Ibid.
- [21] Ibid.
- [22] Ibid, p. 12.
- [23] Ibid, p. 13.
- [24] Ibid.
- [25] TSN, Oct. 9, 1991, p. 4.
- [26] Ibid, p. 5.
- [27] Ibid, p. 5.
- [28] Ibid, p. 5.
- [29] Ibid, p. 7.
- [30] Ibid, p. 7.
- [31] Ibid, p. 9.
- [32] Ibid.
- [33] Ibid, p. 10.
- [34] TSN, Oct. 24, 1991, p. 3.
- [35] Ibid, p. 4.
- [36] Ibid, p. 4.
- [37] Ibid, p. 5.
- [38] TSN, Dec. 4, 1991, pp. 3-6.
- [39] TSN, December 5, 1991, p. 2.
- [40] Ibid, p. 3.
- [41] Ibid, pp. 4-5.
- [42] Ibid, pp. 6-7.
- [43] Ibid, p. 8.
- [44] Ibid, p. 9.
- [45] Ibid, p. 10.
- [46] Ibid, p. 13.
- [47] Ibid, p. 14.
- [48] TSN, January 15, 1992, p. 4.
- [49] Ibid, p. 6.
- [50] Ibid.
- [51] Ibid, p. 7.
- [52] TSN, December 12, 1992, pp. 2-4.
- [53] The judgement was promulgated only on December 6, 1996 in view of the fact that accused-appellant broke jail on April 1, 1992, before the judgment was rendered on April 10, 1992. (Records, p. 245). He was subsequently recaptured sometime in October 1996. (Records, p. 262)
- [54] TSN, October 2, 1991, pp. 9-11.
- [55] Records, p. 96.
- [56] TSN, October 2, 1991, pp. 16-18.
- [57] TSN, October 2, 1991, p. 20.
- [58] *People vs. Vacal*, 27 SCRA 24.
- [59] *People vs. Pueblos*, 127 SCRA 746; *People vs. Gamboa, Jr.*, 145 SCRA 289.
- [60] *People vs. Rubio*, 257 SCRA 528 citing *People vs. Bondoc*, 232 SCRA 478; *People vs. Nimo*, 227 SCRA 69; *People vs. dela Cruz*, 217 SCRA 283.

- [61] People vs. Rubio, *supra* citing People vs. Bondoc, *supra*, People vs. Ocampo, 226 SCRA 1; People vs. Juma, 220 SCRA 432; People vs. Banez, 214 SCRA 109.
- [62] People vs. Radomes, 141 SCRA 548; People vs. Amoncio, 122 SCRA 686; People vs. Navales, 266 SCRA 569.
- [63] People vs. Pacabes, 137 SCRA 158; People vs. Coronado, 145 SCRA 250.
- [64] People vs. Sabellano, 198 SCRA 196; People vs. Rosario, 134 SCRA 496.
- [65] TSN, October 2, 1991, p. 13.
- [66] People vs. Jimenez, 235 SCRA 322; People vs. Jose, 250 SCRA 319; People vs. Torrefiel, 256 SCRA 369.
- [67] People vs. Torrefiel, *supra*,; People vs. Dominguez, 217 SCRA 170; People vs. Cabuang, 217 SCRA 675; People vs. Agcaoile; 206 SCRA 606.
- [68] People vs. Tabao, 240 SCRA 758; People vs. Nitcha, 240 SCRA 283.
- [69] TSN, October 2, 1991, pp. 23-27.
- [70] 58 SCRA 370.
- [71] People vs. Waggay, 218 SCRA 742.
- [72] People vs. Puno, 105 SCRA 151 citing People vs. Guzman, 107 Phil 1122.
- [73] People vs. Puno, 105 SCRA 151 citing People vs. Mangsant, 65 Phil 548; People vs. Mori, 55 SCRA 382.
- [74] RA 7659 which took effect on Dec. 31, 1993, restored the death penalty for heinous crimes among which is murder. It also changed the penalty from three periods: reclusion temporal in its maximum period to death—to a penalty consisting of two indivisible penalties: reclusion perpetua to death.

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