

PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. ERICK MACAHIA, REDENTOR MACAHIA AND REYNALDO MACAHIA, ACCUSED, ERICK MACAHIA AND REDENTOR MACAHIA, APPELLANTS.

G.R. No. 130931. May 19, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The Court invokes the following doctrines in resolving this appeal: (1) the factual findings of the trial court regarding the credibility of witnesses and their testimonies deserve great weight and respect; (2) positive identification prevails over denial and alibi; (3) the credible testimony of a single trustworthy witness is sufficient to convict the accused, even on a charge of murder; (4) where the killing is qualified by treachery, the crime is murder; and (5) direct proof is not necessary to show criminal conspiracy, because its existence may be inferred and proven through acts of the accused that point to a common purpose, a concert of action or a community of interest.

The Case

Erick Macahia, Redentor Macahia and Reynaldo Macahia were charged with murder before the Regional Trial Court of Quezon City in an Information[1] filed on January 25, 1995, which we quote below.

"That on or about the 12th day of September, 1994, in Quezon City, Philippines, the above-named accused, conspiring, confederating with and mutually helping one another, with intent to kill, qualified by evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of CENON GONZALES, by then and there shooting the latter with a gun, hitting him on the head, thereby inflicting upon said offended party serious and grave wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the victim Cenon Gonzales.

CONTRARY TO LAW."[2]

On their arraignment, Erick Macahia and Redentor Macahia, with the assistance of Counsel de Parte Roel A. Pacio, pleaded not guilty.[3] Reynaldo Macahia was and has remained at large. Hence, trial in regard only to the two proceeded in due course. On June 17, 1997, the trial court rendered the assailed nine-page Decision,[4] finding herein appellants guilty of murder and sentencing them to reclusion perpetua, viz.:

"WHEREFORE, judgment is hereby rendered finding the accused Erick Macahia and Redentor Macahia guilty beyond reasonable doubt of the crime of murder defined in and penalized by Article 248 of the Revised Penal Code, as amended, and there being no generic aggravating circumstances except the qualifying circumstances of treachery and abuse of superior strength to warrant the imposition of the death penalty, each of them [is] hereby sentenced to suffer the penalty of reclusion perpetua. They are further ordered to indemnify the heirs of the victim Cenon Gonzales [in] the amount of P74,000.00 as actual damages; P50,000 as moral damages; and

another P50,000 for the death of the victim, Cenon Gonzales." [5]

In view of the penalty imposed, this appeal was filed directly with this Court. [6]

The Facts

Version of the Prosecution

In the Appellee's Brief, [7] the Office of the Solicitor General presented the following facts:

"On September 12, 1994, at about 7:00 in the evening, Loven Magtibay, who was residing at 285 Cana Compound on A. Bonifacio St. in Balintawak, Quezon City, was sitting at a corner of Bonifacio Street with his friends Ronel Alvaro and Dennis Plazo (TSN, Feb. 24, 1997, p. 3). Erick and Redentor Macahia went near them. Erick sat down and casually asked the trio if Cenon Gonzales had already passed. Loven answered in the affirmative but added that Cenon [would] again pass by as he was going to pick up the pancit that he had ordered. Soon, Cenon indeed showed up and when Erick saw him, he and Redentor trailed Cenon. Reynaldo was waiting at the side of a parked jeepney. When Cenon was near the jeep, appellants Erick, Redentor and Reynaldo Macahia, almost simultaneously held Cenon's neck, thighs and body. Erick, who was holding Cenon's neck with his right hand, pulled out a gun with his left hand, pointed it at Cenon's head and pulled the trigger. (TSN, Feb. 24, 1997, pp. 3-4, 9 and 16).

"Cenon was brought to the Chinese General Hospital but he died as a result of the lone gunshot wound. The result of the autopsy showed the following injuries.

EXTERNAL INJURIES: HEAD AND TRUNK:

- 1) Gunshot wound. left occipital region as the point of entry, 161 cms. from heel, 12 cms from posterior midline, measuring 1.5 x 0.9 cm with contusion collar [sic] measuring 1.7 x 1 cm directed slightly upwards, slightly forward, left to right fracturing the left temporal and occipital bones, lacerating the left and right cerebral hemispheres with a deformed slug recovered at the right cerebral hemisphere.
- 2) Linear abrasion, anterior right deltoid region, measuring 3.5 x 0.1 cms from anterior midline.
- 3) Multiple abrasions, posterior left shoulder measuring 7 x 4 cms, 20 cms from posterior midline.
- 4) Multiple abrasions, dorsal aspect of the left hand, measuring 5 x 1.5 cms.
- 5) Multiple abrasions, dorsal aspect of the right hand, measuring 8 x 3 cms, 3.5 cms. lateral to its posterior midline.
- 6) Multiple abrasions, left knee, measuring 8 x 3.4 cms. along its anterior midline.

INTERIOR FINDINGS:

- 1) Subaponeurotic hematoma, subdural and sub arachnoidal hemorrhages.
- 2) Stomach was empty."

Version of the Defense

The appellants, brothers Erick and Redentor Macahia, interposed denial and alibi, asserting that at the time of the killing, they were in Tanauan, Batangas, celebrating the wedding anniversary of their parents. In their 42-page Brief, [8] they adopted the trial court's finding of facts, as quoted below:

"Redentor Macahia denied any participation in the killing of Cenon Gonzales and offered the defense of alibi. He testified that in September 1994, he was residing at his aunt's home located at Block 12, Lot 4[,] Goodwill Homes, Bagbag, Novaliches, Quezon City. On September 11, 1994, a Sunday, he was at Barangay Boot, Tanauan, Batangas, when on the evening of the same date, his younger brother, Erick Macahia, arrived and informed him that he was mauled by Cenon and Rino Gonzales. Redentor was not allowed by his mother to go

to Manila because it was her wedding anniversary and his father was expected to be at their home on September 12, 1994 where they celebrated the wedding anniversary. It was only on September 13, 1994 that he went to Novaliches to report for work. The only reason he could think of why he was implicated in the crime was that the family of Cenon Gonzales had an ax to grind against Ely Lopez who was close to the family of the Macahias.

"Florentino Silva, a provincemate of the two accused, corroborated the testimony of the two accused when he testified that he saw Redentor and Erick Macahia at their house at around 6:00 in the evening of September 12, 1994.

"Ricardo Macahia, the father of the two accused, testified that his two sons could not have been at the scene of the incident where Cenon Gonzales was killed because his two sons were with him at their home at Barangay Boot, Batangas on September 12, 1994 when he and his wife were celebrating their wedding anniversary.

"The other accused, Erick Macahia testified that on September 10, 1994, his uncle Rey Macahia fetched him at Tanauan, Batangas, informing him that he was supposed to start work [o]n September 12, 1994. In the morning and evening of September 11, 1994, he was in Balintawak, Quezon City. On that day, he was beaten up by Cenon Gonzales and Ularico Gonzales who had mistaken his identity for that of another person. He was forced to run to the house of his Uncle Rey. Then the mother of Cenon Gonzales arrived and asked for an apology which he accepted. On September 12, 1994, he was at Tanauan, Batangas together with his family." [9]

The Ruling of the Trial Court

In finding the appellants guilty of murder, the court a quo gave full faith and credence to the testimony of Prosecution Witness Loven Magtibay, who positively identified the appellants as the perpetrators of the crime.

"Culled from the evidence, it is the considered view of the court that the prosecution was able to prove the guilt of the accused beyond reasonable doubt. The eyewitness, in the person of Loven Magtibay, categorically testified that he saw the three accused, Erick Macahia, Redentor Macahia and Reynaldo Macahia, ganging up on Cenon Gonzales. He further testified that accused Reynaldo Macahia put his arms around the body of the victim while accused Redentor Macahia held the thighs of the victim, and while the two were holding the victim, accused Erick Macahia poked and fired the gun at the back of the head of the victim, causing the victim to fall to the ground. The manner by which the witness testified leads the court to conclude that his credibility cannot be doubted. He not only testified categorically, but likewise testified in a candid and straightforward manner." [10]

The trial court added that the witness' testimony was bolstered by the "physical evidence of the crime."

"Moreover, his narration of the incident, especially the manner the victim was shot and killed by a caliber .38 gun is strongly substantiated. Said witness clearly testified that the victim was shot and killed by a caliber .38 gun with the assailant at the back of the victim. On the other hand, the physical evidence shows that a single entry gunshot wound is located at the back of the head of the victim, probably caused, according to the doctor, by a caliber .38 gun with the assailant at the back of the victim. The witness also testified that two of the accused held the neck and thighs of the victim during the shooting incident, and right after the shooting incident, the victim fell on the ground which, as explained by the medico-legal doctor, caused the linear abrasion on the neck and other abrasions on the other parts of the body of the victim. The credibility of the testimony of the witness, therefore, has been enhanced and bolstered by the physical evidence." [11]

The appellants' flight from the locus criminis was taken against them by the lower court.

"Furthermore, the act of the two accused in leaving their rented apartment immediately after the incident on September 12, 1994 and the subsequent arrest of the accused Erick Macahia in the latter part of December 1996 and accused Redentor Macahia on January 13, 1997 are clear evidence of flight, an indicium of guilt. For no person would flee and hide for that long period of more than two years, if indeed he was innocent of the

charge against him, especially so if no satisfactory explanation is offered." [12]

The court a quo held that the killing of the victim was qualified by treachery and abuse of superior strength. Likewise, it ruled that there was conspiracy in the killing. Debunking appellants' defense, it held that denial and alibi "cannot prevail over the positive identification [by] a credible witness." [13]

The Assigned Errors

Appellants Erick and Redentor Macahia fault the trial court with the following alleged errors:

"I

THE TRIAL COURT ERRED IN BELIEVING THE TESTIMONIES OF THE PROSECUTION WITNESSES.

"II

THE TRIAL COURT ERRED IN FINDING THE EXISTENCE OF CONSPIRACY.

"III

THE TRIAL COURT ERRED IN FINDING THAT THE KILLING IS QUALIFIED BY TREACHERY AND ABUSE OF SUPERIOR STRENGTH.

"IV

THE TRIAL COURT ERRED IN HOLDING THAT THE DEFENSE FAILED TO SUBSTANTIATE THE DEFENSE OF ALIBI.

"V

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANTS ERICK MACAHIA AND REDENTOR MACAHIA GUILTY BEYOND REASONABLE DOUBT OF MURDER IN THE DEATH OF CENON GONZALES.

"VI

THE TRIAL COURT ERRED IN AWARDING DAMAGES TO THE HEIRS OF THE VICTIMS. "[14]

Essentially, appellants raise questions relating to four points: first, the credibility of witnesses; second, the sufficiency of the prosecution evidence; third, the characterization of the crime; and fourth, the civil liabilities meted out.

This Court's Ruling

The appeal is devoid of merit.

First Issue:

Credibility of Witnesses

The time-tested rule is that the trial judge's assessment of the credibility of witnesses and their testimonies is not disturbed on appeal, in the absence of any clear showing that some facts or circumstances of weight and substance, which would have affected the result of the case, have been overlooked, misunderstood or misapplied. This is because the trial judge is in a better position to decide questions of credibility, [15] having seen and heard the witnesses themselves and having observed their behavior, deportment and manner of testifying. In their appeal, the appellants have not given the Court sufficient reasons to deviate from this doctrine.

Appellants contend that the court a quo erred in giving credence to the testimony of Prosecution Witness Loven Magtibay. They argue that such testimony "suffers from flaws, infirmities, inconsistencies and contradictions on material points," pointing to several contradictions between the witness' sworn statement and his testimony on what transpired before and during the killing of Cenon Gonzales.

First, while the witness stated in his affidavit that it was Erick who had approached them during the night in question, he testified that it was both Erick and Redentor who had come near his group. Second, while in his sworn statement the witness intimated that it was Reynaldo who had initiated the assault on Cenon, he testified that it was Erick who did so. Lastly, the witness was allegedly inconsistent on the appellants' participation in the alleged assault, because while he stated that Reynaldo had held the victim's upper body during the attack, he testified that Reynaldo had restrained the victim's thighs instead.

The argument does not persuade. The alleged conflict between the sworn statement and the testimony of Magtibay does not vitiate the credibility of said witness. Basic is rule that "an affidavit taken ex parte is judicially considered to be almost incomplete and often inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected circumstances necessary for his accurate recollection of the subject." [16]

In any event, Magtibay explained on the stand that he was still nervous and confused when he gave his statement. [17] Besides, the discrepancies cited by the appellants do not detract from the fact that they, along with their co-accused Reynaldo, ganged up on the victim. Granting that there were inconsistencies between the earlier statements of Magtibay and his later narration of the appellants' participation in the attack, one thing is clear from his testimony -- Cenon Gonzales was suddenly assaulted by Erick, Redentor and Reynaldo Macahia. It was during that attack that Erick shot and killed Gonzales, while Redentor and Reynaldo were restraining the victim. In other words, the alleged inconsistent statements referred to matters that did not affect Magtibay's credibility as a witness. The responsibility of the accused for Cenon Gonzales' death was indubitably established by the essence of both the sworn statement and, more important, the testimony of said witness who stated:

"xxx xxx xxx

Q Where is Cenon Gonzales now?

A He is already dead sir.

Q And who killed Cenon Gonzales?

A Erick Macahia[.] Cenon Gonzales was killed by Erick Macahia.

Q Would you kindly describe to the Court exactly how Cenon Gonzales was killed?

A He was ganged up, sir.

Q Who ganged [him] up?

A Erick Macahia, Redentor Macahia and Reynaldo Macahia." [18]

Loven Magtibay was clear, consistent and detailed in his identification of the appellants. During his examination-in-chief [19] and the extensive cross-examination conducted by Atty. Pacio, he was categorical in stating that he had indeed seen the appellants commit the crime.

"xxx xxx xxx

Q Would you kindly describe to the court what was the participation of Reynaldo or Rey Macahia?

xxx xxx xxx

A

He was the one who ... Reynaldo Macahia held the victim by placing himself at the back of the victim and holding the victim with his two hands, with his two hands wrapped around the upper body of the victim.

Q

And you also mentioned that the accused Redentor Macahia ganged up on Cenon Gonzales[. C]an you tell the court or describe to the court how Redentor Macahia participated in the ganging up on Cenon Gonzales?

A He was the one who actually held the thighs of the victim Cenon Gonzales.

Q How about the accused Erick Macahia, what did he do?

A He was the one who [strangled] the victim and he was the one who actually poked the gun at the left temple."[20]

"xxx xxx xxx

Q What part of the body of Cenon was held by Reynaldo?

A The arms and the body, your honor, because his hands were wrapped around the body of Cenon.

Q So, while Reynaldo Macahia was holding the body of Cenon, what immediately transpired?

A Redentor Macahia held the thighs of Cenon.

Q So, after Redentor held the thighs of Cenon, what happened?

A Erick Macahia put his right hand on the neck [o]f Cenon and after putting his right hand on the neck of Cenon, Erick Macahia poked a gun at the left head of Cenon.

Q While Reynaldo Macahia [and] Redentor Macahia were holding Cenon's body, did you hear any noise or voice coming from the place where they were holding Cenon?

A None, your honor.

Q So when Erick poked a gun at the left side of the head of Cenon, what happened next?

A Erick fired the gun.

Q How many times?

A Only once.

xxx xxx xxx"[21]

Bolstering this witness' testimony is the fact that he was just about three meters away from the scene of the crime,[22] which was brightly lit by a Meralco lamppost.[23]

The appellants likewise criticize the lower court's finding of compatibility between the physical evidence of the crime and Magtibay's testimony. First, they insist that the entry point of the slug recovered from the victim's body was the occipital region,[24] while the witness testified that the victim had been shot on the left temple. Second, they assert that while Magtibay said that Erick shot the victim with his left hand, the defense was able to establish that Erick was right-handed.

It must be noted that the cause of the victim's death was the penetrating gunshot wound at the left occipital region.[25] The occipital region is the back part of the brain.[26] Dr. Florante Baltazar, the medico-legal officer who conducted the autopsy on the victim's body, hypothesized that the assailant was at the back of the victim when the shot was fired.[27] These facts are not incompatible with Magtibay's testimony.

"xxx xxx xxx

COURT

According to the witness, he put his hand around the victim. If you were Eric Macahia, will you show how Erick held the victim[?]

A

([T]he witness placed his right hand around the neck up to the back of the victim and put his right hand around the neck of the victim with his left hand holding a gun pointed at the left side of the head just above the ear.)

xxx xxx xxx

Q And one of the accused, Erick was also embracing the victim with the gun pointed at the left side of the head near the ear?

A Erick Macahia was at the back but a little bit on the left side of Cenon."[28]

That Erick was right-handed does not negate the possibility of his using his left hand to shoot the victim. Worth repeating is the solicitor general's observation on this matter:

"Furthermore, appellants attempted to discredit Loven's testimony by pointing out that while Loven testified

that Erick used his left hand in shooting Cenon, Erick later on amply demonstrated in court that he [was] right-handed. But this demonstration, on the contrary, proves Loven's credibility.

"Erick was using his right hand to hold Cenon's neck thus necessitating him to use his left hand in poking the gun at Cenon. And since Erick had less control of his left hand, his hand moved when he pulled the trigger, thus explaining why Cenon was shot at the left occipital region where the gun was originally pointed." [29]

In all, the Court finds that the testimony of Prosecution Witness Loven Magtibay identifying Appellants Erick and Redentor Macahia was clear, consistent and cohesive. Furthermore, no ill motive was imputed to said witness.

Second Issue:

Sufficiency of Prosecution Evidence

It is axiomatic that in criminal cases, the guilt of the accused must be proven beyond reasonable doubt. To sustain conviction, the prosecution must stand or fall on its own evidence; it cannot draw strength from the weakness of the defense.

In the present case, Appellants Erick and Redentor Macahia vigorously deny any participation in the death of Cenon Gonzales, maintaining that at the time of the alleged crime, they were in Tanauan, Batangas. However, the prosecution was able to prove their guilt with moral certainty through the clear, detailed and cohesive testimony of Loven Magtibay. In light of the positive identification of the appellants as the perpetrators of the crime, their defense of denial and alibi cannot be sustained.[30] That no other witnesses were presented to bolster the prosecution's case against them is of no moment, as the Court has held that the testimony of a single witness, if positive and credible, will suffice to sustain a judgment of conviction even in a charge for murder.[31]

Third Issue:

Crime and Punishment

The trial court correctly concluded that the crime committed was murder, for the killing was qualified by treachery. Treachery exists when a crime against persons is committed with the employment of means, methods or forms that tend directly and especially to insure its execution, such that the offender faces no risk that may arise from the defense which the offended party might make.[32] In the case at bar, not only was the victim, Cenon Gonzales, caught off guard by the Macahias' simultaneous assault on his person. The evidence likewise established that Appellant Erick Macahia shot the victim when the latter was being restrained by both Redentor and Reynaldo.

True, there was abuse of superior strength in the assault on the victim. After all, in committing the crime, the accused clearly took advantage of their collective strength, which exceeded that of the victim. It is settled, however, that abuse of superior strength is deemed absorbed in treachery.[33] Thus, this circumstance cannot be considered in the determination of the proper penalty to be imposed upon the appellants.

Conspiracy Present

Appellant Redentor Macahia asserts that, granting *arguendo* that he was at the *locus criminis*, the trial court nonetheless erred in holding that he had conspired with Erick in the killing of Cenon Gonzales. Redentor alleges that his knowing that Erick had a gun or that the latter had intended to kill the victim was not clearly proven. He contends that even if there was proof that he had held the thighs of the victim, it did not mean that he had resolved to kill him.

We agree with the trial court's finding that the appellants' concerted acts were indubitable indications of criminal conspiracy. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[34] The existence of conspiracy may be inferred and proven through acts of the

accused that point to a common purpose, a concert of action, or a community of interest.[35] That there was conspiracy in the killing of the victim in the case at bar can be seen from the way the victim was simultaneously attacked by the appellants. Undoubtedly, Redentor proved to be an indispensable ally of his brother Erick in the killing of Cenon Gonzales. The appellants' concerted acts in consummating the dastardly deed were enough proof of their unity of criminal purpose and design. That it was not Redentor who pulled the trigger does not detract from the fact that both he and Erick were liable for murder; in conspiracy, the act of one is the act of all.[36]

In sum, we sustain the ruling of the trial court convicting appellants of murder and imposing upon them the penalty of reclusion perpetua.

Fourth Issue:

Damages

The award of P50,000 as indemnity ex delicto is consistent with current jurisprudence and should be affirmed. We cannot, however, sustain the award of moral damages, in the absence of evidence to support it. Likewise, we find that the records of the case do not sustain the court a quo's award of P74,000 as actual damages. To justify a grant of actual damages, it is necessary to show the amount of actual loss with the best evidence obtainable.[37] In the present case, while Herminia Gonzales, the mother of Cenon Gonzales, testified that P74,100 had been spent for the wake and burial of her son, she did not present receipts or any other documents to substantiate her claim, despite having been given adequate time by the trial court.

WHEREFORE, the appeal is hereby DENIED. The assailed Decision is AFFIRMED, but the award of actual and moral damages is DELETED for insufficiency of evidence. Costs against appellants.

SO ORDERED

Romero (Chairman), Vitug, and Gonzaga-Reyes, JJ., concur.

Purisima, J., did not participate in the deliberations.

[1] Signed by Assistant City Prosecutor Victoria C. Yap.

[2] Rollo, p. 5; records, p. 1.

[3] Records, pp. 28 & 30.

[4] Penned by Judge Diosdado Madarang Peralta.

[5] Rollo, p. 26.

[6] The case was deemed submitted for decision upon receipt by this Court of the Appellee's Brief on January 29, 1999. The filing of a reply brief was deemed waived, as none was submitted by the appellants within the reglementary period.

[7] The Appellee's Brief was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Azucena R. Balanon-Corpuz and Associate Solicitor Sarah Jane T. Fernandez.

[8] Signed by Atty. Roel A. Pacio.

[9] Appellants' Brief, pp. 12-14; rollo, pp. 48-50.

[10] RTC Decision, p. 5; rollo, p. 23.

[11] Ibid.

[12] Ibid. p. 6.; rollo, p. 24.

[13] Ibid., p. 6; rollo, p. 24.

[14] Appellants' Brief, pp. 14-15; rollo, pp. 50-51.

[15] People v. Sabalones, et al., GR No. 123485, August 31, 1998; People v. Cawaling et al., GR No. 117970, July 28, 1998; People v. Molina et al., GR Nos. 115835-36, July 22, 1998; People v. Albao and Oleno, GR No. 117481, March 6, 1998; People v. Oliano, GR No. 119013, March 6, 1998; People v. Quinao, 269 SCRA 1997; People v. Ocsimar, 253 SCRA 689, February 20, 1996.

[16] People v. Siguin, GR No. 126517, November 24, 1998, per Panganiban, J; People v. Barredo et al. GR No. 122850, October 7, 1998; People v. Layno, 264 SCRA 558, November 21, 1996;

[17] TSN, February 24, 1997, pp. 13-14 Cross-examination of Loven Magtibay.

"xxx xxx xxx

Q Why did you state a while ago that Reynaldo Macahia held the body of Cenon and Redentor held the thighs of Cenon?

A Because when I gave that statement, I was nervous and I was a little bit rattled at the time of the incident.

xxx xxx xxx

Q Why did you not volunteer to go to the police because according to you, you were able to see the incident.

A Because I was afraid."

[18] TSN, February 24, 1997, p. 4.

[19] Conducted by Atty. Rodolfo Marquez under the control and supervision of Prosecutor Rebecca Villanueva-Maala.

[20] TSN, February 24, 1997, p. 4. Direct Examination of Loven Magtibay.

[21] TSN, February 24, 1997, p. 10. Cross-examination of Loven Magtibay.

[22] Ibid., p. 9.

[23] Ibid., pp. 17-18.

[24] Appellants' Brief, p. 24; rollo, p. 60.

[25] TSN, February 21, 1997, p. 16.

[26] Bernard S. Malloy, Medical Dictionary for Lawyers, 2nd ed., p. 422.

[27] TSN, February 21, 1997, pp. 16-17. Direct Examination of Dr. Florante Baltazar.

"xxx xxx xxx

Q Will you know Doctor the position of the wound where the victim was shot by the accused? In what position was the accused ...

COURT

(to the Fiscal)

What you mean is that, can you tell the relative position of the assailant or assailants and the victim?

PROS. MAALA (to the Court)

Yes, your Honor.

A The relative position of the assailant could be at the back of the victim."

[28] TSN, February 24, 1997, pp. 12-13.

[29] Appellee's Brief, pp. 12-13; rollo, pp. 102-103.

[30] *People v. Balmoria*, GR No. 120620-21, March 20, 1998; *People v. Baydo*, 273 SCRA 526, June 17, 1997; *People v. Datun*, 272 SCRA 380, May 7, 1997; *People v. Apongan*, 270 SCRA 713, April 4, 1997; *People v. Caritativo*, 256 SCRA 1, April 1, 1996.

[31] *People v. Batidor*, GR No. 126027, February 18, 1999; *People v. Navarro*, GR No. 129566, October 7, 1998; *People v. Daraman*, GR No. 126046, August 7, 1998; *People v. Tulop, et al.*, GR No. 124829, April 21, 1998; *People v. Obello*, GR No. 108772, January 14, 1998; *People v. Salcedo*, 273 SCRA 473, June 17, 1997.

[32] *People v. Dela Cruz*, GR No. 109619-23, June 26, 1998; *People v. Pallarco*, GR No. 119971, March 26, 1998; *People v. Sumalpong et al.*, GR No. 124705, January 20, 1998; *People v. Alas*, 274 SCRA 310, June 19, 1997; *People v. Santos*, 270 SCRA 651, April 4, 1997; *People v. Isleta*, 264 SCRA 374, November 19, 1996.

[33] *People v. Lapay et al.*, GR No. 123072, October 14, 1998.

[34] Article 8, Revised Penal Code.

[35] *People v. Andres, et al.*, GR No. 122735, September 25, 1998; *People v. Cawaling, et al.*, GR No. 117970, July 28, 1998; *People v. Molina et al.*, GR Nos. 115835-36, July 22, 1998.

[36] *People v. Obello*, GR No. 108772, January 14, 1998; *People v. Nardo*, 270 SCRA 672, April 4, 1997.

[37] *People v. Navarro*, GR No. 129566, October 7, 1998; *People v. Oliano*, GR No. 119013, March 6, 1998; *People v. Villamor et al.*, GR No. 111313-14, January 16, 1998; *People v. Salcedo*, 273 SCRA 473, June 17, 1997; *People v. Sol*, 272 SCRA 393, May 7, 1997.

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