PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO GASPAR, CAMILO GASPAR, RODRIGO GASPAR, SIMON GASPAR, ROMEO GASPAR, AND PANTALEON GASPAR, ACCUSED. ROLANDO GASPAR, CAMI...

G.R. No. 131479. November 19, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

Violence begets violence. Vener Roncesvalles (hereafter VENER) -- a mother of two and wife to Jimmy Roncesvalles learned this painful lesson too well. She lost her husband, Jimmy, in a melee of senseless violence that gripped their neighborhood at Sta. Barbara, Victoria, Tarlac in the afternoon of 2 April 1995.

Indicted for the alleged murder of Jimmy were the couple's neighbors, namely: blood brothers ROLANDO, CAMILO, RODRIGO, SIMON, ROMEO and PANTALEON, all surnamed Gaspar. The information[1] against them reads as follows:

> That on or about April 2, 1995 at around 4:00 o'clock in the afternoon in Barangay Sta. Barbara, Municipality of Victoria, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another did then and there, with malice afterthought and with deliberate intent to take the life of Jimmy A. Roncesvalles, willfully, unlawfully, feloniously, suddenly, unexpectedly and treacherously attack the latter with a bolo, first wounding him on the vital parts of his body and afterwards hit him with stones, thereby inflicting wounds on the different parts of his body, thereby causing the direct and immediate death of Jimmy A. Roncesvalles.

Except for CAMILO who was then at large, all the brothers were arraigned on 4 August 1995 and each pleaded not guilty to the charge.[2] Trial then ensued.

Jimmy's wife, VENER testified that at about 1:00 p.m. on 2 April 1995, she was inside her house with the children when she heard a heated argument between her husband and RODRIGO. Jimmy was at that time drinking liquor with their neighbors RODRIGO, Junio Valdez and Bienvenido Gasser in front of the latter's house. VENER went out, intervened in the altercation between her husband and RODRIGO and pacified the two. Without mincing words, VENER told her husband to stop drinking. Jimmy did not say a word.[3]

VENER returned to her house. After some time, she heard another quarrel in the offing. She peered out and saw Jimmy and RODRIGO exchanging fist blows. She intervened again and when both men calmly settled down, she led Jimmy back home. There, she prepared coffee and gave a cup to Jimmy. And while Jimmy was quietly sipping from his cup, four of the Gaspar brothers -- ROLANDO, RODRIGO, ROMEO and CAMILO suddenly barged in. ROMEO instantly threw a big stone at Jimmy who upon being hit on the head, immediately slumped into a sitting position on the floor. ROLANDO broke the mirror of a dresser and used a fragment of the broken glass to stab Jimmy in his left temple first and in the different parts of the body thereafter. CAMILO, who carried a foot-length bolo, hacked Jimmy. The three brothers ROMEO, CAMILO and ROLANDO then relentlessly

mauled, hacked and stabbed Jimmy.[4] RODRIGO for his part urged his brothers saying, "Go ahead, kill him!"[5] VENER begged the brothers to stop the violent rampage while RODRIGO held her and goaded his brothers into killing Jimmy. All this time PANTALEON and SIMON were outside the house, near the door. The four Gaspar brothers only let up in beating Jimmy when they sensed that they had accomplished their purpose. They abruptly left.[6]

VENER assisted her battered husband to get up from the floor and led him towards the kitchen door through which they will go out to proceed to the hospital. But CAMILO, ROLANDO and RODRIGO suddenly and unexpectedly returned. CAMILO was still armed with his bolo while ROMEO was already holding a bolo used for chopping meat. Without much ado, CAMILO and ROMEO repeatedly and persistently hacked and hewed Jimmy. VENER could only plead for mercy as RODRIGO restrained her from interfering. When the attack ceased, CAMILO told RODRIGO, "We already killed him" to which the latter replied, "If he is already killed, you kill her next." Upon hearing this, VENER who was still crying extricated herself from RODRIGO's arms and ran away. But RODRIGO caught her outside the house. A certain Inso Pranil, however arrived and requested RODRIGO to spare VENER since she was but a woman. RODRIGO let her go and she ran directly to the police station and reported the incident.[7] Her husband died of "cardiovascular arrest secondary to irreversible shock secondary to severe hemorrhage secondary to multiple incise wounds."[8] She spent P10,000 for the wake, burial and other related expenses. Her husband allegedly earned about P15,000 a month as tinsmith. He was but twenty-eight years old.[9]

JENNY (Jimmy's younger sister) substantially corroborated VENER's testimony in that she saw (1) CAMILO hack Jimmy with a bolo, (2) ROLANDO stab Jimmy with a piece of broken glass, (3) ROMEO box Jimmy and (4) RODRIGO order his three brothers to kill Jimmy. She claimed she was playing cards with a neighbor when she heard her nieces crying. She immediately went to her brother's house and saw, while she gathered her nieces to safety, how the Gaspar brothers ganged up on Jimmy. She recalled however that PANTALEON and SIMON were outside the house when the mauling took place.[10]

Dr. Jeanette Lazatin recounted that as the former Municipal Health Officer of Victoria, Tarlac, she conducted a post-mortem examination on the cadaver of Jimmy. She confirmed the findings in her medical report[11] that Jimmy sustained twenty (20) injuries all of which were in most probability caused by a sharp-edged instrument. She declared that the fatal wound was injury no. 8 at the left side of the head, a "crescent-shaped incise wound, about 2 inches long at the left parieto-occipital area." She discounted the possibility that any of the wounds was caused by a hard object or a piece of broken glass as she did not see any glass fragment in the cadaver.[12]

Dr. Allan Vengco confirmed Dr. Lazatin's findings that the injuries sustained by Jimmy were sharply incised and deep, hence they could only have been caused by a heavy and sharp instrument, and not by a blunt instrument or a piece of broken glass. Dr. Vengco was the attending physician when Jimmy was brought to the Tarlac Municipal Hospital.[13]

The defense expectedly painted an entirely divergent version from the prosecution's story.

Accused RODRIGO admitted that he had drank liquor with Jimmy and their two neighbors on the date, time and place in question. But Jimmy left the group and went home first. Sometime after Jimmy left, RODRIGO felt something hit him on the face. He lost consciousness and only regained his senses at the clinic of one Dr. Valdez where he (RODRIGO) discovered that he had sustained injuries on the brow of his right eye. RODRIGO also realized that PANTALEON and a neighbor, Jaime Rafael, took him to the clinic. He stayed there for about an hour.[14] When he returned to his house, he was informed initially by Gloria Alfonso Gaspar (his sister-in-law and wife of his brother ROMEO) that his drinking buddy Jimmy hacked him on the face which caused him to land

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face down on the ground and then later by the members of the Kagawad (barangay officials) that Jimmy was killed. PANTALEON, SIMON and CAMILO were at RODRIGO's residence when he arrived home but he later disclosed that ROMEO who was also present thereat informed him that the barangay officials were investigating Jimmy's death.[15]

Three witnesses, namely ROMEO, Gloria Alfonso Gaspar and Alfonsa Gaspar testified that at the time of the incident, they suddenly heard someone shout "hiya." Their attention naturally riveted to the place where the cry came from and observed Jimmy approach RODRIGO from behind and hack the latter with a bolo while he was drinking with some neighbors in front of the house of Bienvenido Gasser.

Gloria's account differed from her husband's in certain details. She saw Jimmy not only hack RODRIGO but also beat him on the chest and back. She and her husband immediately proceeded near RODRIGO before scurrying towards the direction of Rafael's house to seek his assistance.[16] Accused ROMEO witnessed only the hacking and claimed that since he could not stand the sight of blood and of Jimmy holding a bolo, he immediately ran away from the scene with his wife following at his heels and sought the help of their neighbor Rafael to bring RODRIGO to the hospital.[17] ROMEO and Gloria both claimed that they were sitting on the bamboo bed of Adelfa Alfonso (Gloria's mother) when they saw the hacking incident.[18]

Alfonsa Gaspar, the mother of the Gaspar brood was remitting her sales of smoked fish to one Emil Pranil near the place where her son RODRIGO was drinking when she heard the shout "hiya." She looked towards the direction of the shout and saw Jimmy hack her son who instantly collapsed on the ground. She lost consciousness. The next thing she knew, she was walking towards the "tramo."[19] She stayed there crying until evening while the people told her that RODRIGO was carried to the hospital by Rafael and PANTALEON. She then went to the house of Rafael and waited for the trio to arrive.[20]

Four witnesses saw only RODRIGO lying face down on the ground. They did not witness Jimmy's hacking of RODRIGO. Thus:

> (1)
>
> Jeanette Alfonso was in the house of her mother-in-law in the company of ROMEO and his wife Gloria when she heard a thud. She did not hear anything before the thud but when she turned, she saw RODRIGO lying on the ground with Jimmy behind him holding a bolo. She fled and remained in the house of a certain Mrs. Mina.[21]
>
> (2)
>
> Accused PANTALEON was walking when he saw and heard a commotion. He dashed towards the site of the disturbance and beheld his brother RODRIGO bleeding face down on the ground. He tried to lift RODRIGO but failed to do so. Rafael arrived and helped PANTALEON in bringing RODRIGO to Dr. Valdez' clinic.[22]
>
> (3)
>
> Adelfa Alfonso (ROMEO's mother-in-law) claimed to have seen PANTALEON cradling RODRIGO. Thereafter, she accompanied her son-in-law ROMEO in running away from the scene.[23]
>
> (4)
>
> Accused ROLANDO was playing basketball at about 4:00 p.m. on 2 April 1995 when he noticed people scampering from the house of Bienvenido Gasser. He sprinted towards the place which was about fifty (50) meters from where he was playing and beheld his brother RODRIGO sprawl on the ground face down; blood

> oozed out from the right side of RODRIGO's face. ROLANDO also saw Jimmy poise to strike his bolo on the body of the unconscious RODRIGO. ROLANDO quickly grappled with Jimmy for the possession of the bolo and in the process, they rolled down the ground. As ROLANDO and Jimmy tenaciously held on to the handle of the foot-long bolo to gain sole control thereof, they continued to roll on the ground until they reached the house of Jimmy, destroying the gate in the process.[24] Still struggling for the bolo, they rolled inside the living room where ROLANDO hit and broke a square mirror.[25] Jimmy gripped the handle of the bolo with his two hands; ROLANDO clutched at the same handle with his left hand while his right hand grasped the blade.[26] Finally, they were able to stand up and ROLANDO eventually gained possession of the bolo as he perceived Jimmy weaken.[27] Although enfeebled, Jimmy continuously boxed ROLANDO who used the bolo in striking and hacking the former for several times. Save for the very minor bruises on his skin, ROLANDO came out of the skirmish unscathed.[28]

Dr. Fred Valdez recalled that he treated RODRIGO when the latter was brought to his clinic. He observed that RODRIGO's injuries consisted of "a lacerated wound about 1x5 cm. left lower lip at the fuccal area, inside the mouth" and a "deep abbraisal on the lower conjunctiva extended to the malar area of the face."[29] He opined that these wounds were most probably caused by a blunt object or a fist blow and not by a sharp instrument.[30] He was certain that RODRIGO was conscious and coherent throughout the entire treatment.[31]

Accused SIMON claimed that he was at the smoke-fish factory of Oscar Alfonso from 2 a.m. to 6 p.m. on 2 April 1995. He went home at 6 p.m. He initially testified that he learned about the hacking incident from Rafael but changed it later and said he learned it from Rafael's mother.[32] He remarked that upon reaching home, he changed clothes first before going out of the house. He saw his mother crying at the railroad but then Rafael's mother who was sitting at her yard called and told him of his brother's hacking. He thereafter comforted his crying mother.[33]

The prosecution thereafter presented Oscar Alfonso as rebuttal witness against SIMON only. He denied that SIMON worked at his smoke-fish factory on 2 April 1995, a Sunday, since it was always closed on Sundays.[34]

In the meantime, CAMILO was arrested. He was finally arraigned on 17 January 1997. He too pleaded not guilty to the charge. The State then recalled to the witness stand VENER and JENNY. They essentially reiterated their earlier testimonies after which the prosecution rested its evidence-in-chief.

Accused CAMILO thereafter testified that he slept in the afternoon of 2 April 1995 and woke up at 4 p.m. He learned about the death of Jimmy on 3 April 1995, the day after the hacking incident and disclaimed any knowledge on the circumstances surrounding the latter's death. Thereafter, he left Sta. Barbara and went to Cabanatuan City, Nueva Ecija and stayed there for two (2) years until he was apprehended. He did not know that his brothers were arrested as he did not communicate with them.[35]

Angelita Alfonso Gaspar, wife of accused CAMILO testified that she was at her mother's house when she heard a heated exchange of words. She looked out of the window and saw her brother-in-law RODRIGO lying face down on the pavement. She got so nervous that she just stayed inside her mother's house. When she finally mustered enough courage to go home, he found her husband at their residence still sound asleep as when she left him earlier. She woke him up and simply invited him for a stroll.[36] She did not tell him what she saw and that the police authorities were looking for the Gaspar brothers. That night, while they were eating supper, they saw lights coming from flashlights directed at their house and heard some police officers asking about CAMILO. They fled and stayed at a farm.[37] After the incident, CAMILO left without leaving word. Angelita learned from rumors circulating around the neighborhood that her husband was hiding in Cabanatuan. She did not know that her husband was also charged for the slaying of Jimmy. When she delivered the baby (as she was about two months pregnant at the time of the hacking episode), CAMILO did not visit her.[38]

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Last to be presented by the defense was Lamberto Pranil who testified as witness for CAMILO only. He remembered that in the afternoon of 2 April 1995 he was sound asleep when he heard a commotion and loud voices. He went out of his house and saw RODRIGO sprawl on the ground. He then noticed ROLANDO come out of the house of Jimmy clutching a bloodied bolo. Jimmy's father arrived and asked help, so he (Pranil) lent his assistance in bringing Jimmy to the hospital.[39]

In assessing the credibility of the witnesses, the trial court considered the testimonies of prosecution witnesses VENER and JENNY more credible, convincing and trustworthy as against the avowals of the defense witnesses, for three reasons. First, it found implausible RODRIGO's story of becoming unconscious after Jimmy allegedly hacked him; his wounds which were but "superficial and slight xxx could not have caused him to lose consciousness." Second, it perceived as "unbelievable" ROMEO's theory of defense of relative since he bore only very minor bruises despite describing a very physical battle with Jimmy (wrestling for the possession of the bolo, clasping the blade with the right hand, rolling towards the inside of the house of Jimmy, etc.). Further, when he disabled Jimmy of the bolo, there was no longer any threat to his life yet he hacked Jimmy for several times. Third, the trial court considered as an indication of guilt, CAMILO's flight from the scene of the crime immediately after the incident.

The trial court also appraised VENER and JENNY's narrative as free from any malevolent desire to bring all the Gaspar brothers behind bars. Their desire to bring to justice only the persons liable for the death of Jimmy was evident in their open and frank admission that PANTALEON and SIMON did not join their other brothers in the killing of Jimmy. The trial court maintained this high regard for the testimonies of said prosecution witnesses even though it doubted ROMEO's participation in the killing of Jimmy for two reasons. First, the autopsy on the body of Jimmy disclosed no injuries that could have been caused by a hard object, referring to the stone allegedly thrown by ROMEO which hit Jimmy. Second, it is unlikely that ROMEO could have boxed or beat Jimmy while CAMILO and ROLANDO hacked and stabbed their perceived nemesis (Jimmy).

Thus, in its decision[40] of 18 June 1997, the trial court therefore, acquitted PANTALEON, SIMON and ROMEO on reasonable doubt and convicted CAMILO, ROLANDO and RODRIGO. It found that treachery attended the slaying of Jimmy when the three brothers returned to his house after they had already hacked and left him for dead. The trial court conceded that "at [that] point, [Jimmy was] no longer in a position to defend himself or pose a threat to the accused." It also believed the testimonies of the prosecution witnesses that RODRIGO incited CAMILO and ROLANDO into chopping and beating Jimmy thus establishing the presence of conspiracy among and between said brothers. The trial court then appreciated the attenuating circumstance of immediate vindication of a grave offense but assessed that this was offset by the aggravating circumstance of dwelling. The dispositive portion[41] reads as follows:

> WHEREFORE, the Court finds the accused Rodrigo Gaspar, Rolando Gaspar, and Camilo Gaspar guilty of the crime of murder defined and penalized under Article 248 of the Revised Penal Code, as amended by R.A. 7659 and are hereby sentenced to suffer the penalty of reclusion perpetua, with all accessory penalty [sic] imposed by law and to indemnify the heirs of Jimmy Roncesvalles in the amount of FIFTY THOUSAND PESOS (P50,000,00.) as actual damages and to pay the costs.
>
> The accused Simeon Gaspar, Pantaleon Gaspar and Romeo Gaspar are hereby acquitted.
>
> SO ORDERED.

RODRIGO, ROLANDO and CAMILO now appeal the aforestated decision convicting them of murder and assign as errors of the trial court the (1) rejection of RODRIGO's denial of not only his responsibility for the death of Jimmy but also of any knowledge of the events pertaining to such slaying, (2) disregard of ROLANDO's claim of

defense of relative and self-defense considering that the requisites for the same were complied with, (3) dismissal of CAMILO's alibi and denial, and (4) the acceptance of the contradictory and conflicting testimonies of VENER and JENNY as credible and trustworthy.

We now resolve the issues raised.

RODRIGO postulates that he was unconscious, hence unaware of the circumstances that led to Jimmy's demise. In effect, he denies his presence at the scene of the crime and his participation thereof. His evidentiary bases include the attestations of (1) three defense witnesses who claimed to have seen Jimmy struck RODRIGO with a bolo from behind and (2) six other defense witnesses who like the first three witnesses beheld RODRIGO lying on the ground face down. The trial court however, did not believe that RODRIGO was unconscious. So do we. But the trial court failed to categorically make a factual finding that Jimmy hacked RODRIGO, and yet paradoxically,[42] referred to said episode as a mitigating circumstance of immediate vindication of a grave offense.[43] This Court however, oppugns the veracity of this version of the defense.

The unassailed expert testimony of Dr. Valdez on the nature and extent of RODRIGO's wounds revealed that: RODRIGO's wounds were but superficial, slight, and insignificant which required no special medical attention or hospitalization and hence, they could not have caused RODRIGO to lose consciousness; the healing period was for less than nine (9) days;[44] and that the wounds were not and could not have been inflicted by a sharp instrument like a bolo but in most likelihood dealt by a fist punch. In all probability, RODRIGO's wounds as assessed by the doctor belied the story of the defense but they corresponded to VENER's account that (1) Jimmy and RODRIGO were engaged in a fist fight prior to the hacking by the Gaspar brothers and that (2) RODRIGO was in full command of his senses when he urged his brothers to strike Jimmy and prevented VENER from providing any assistance or interfering with the slaughter. Truth is therefore established in this case not by the number of witnesses but by the quality of their testimonies,[45] for in determining the value and credibility of evidence, the witnesses are to be weighed not numbered.[46] Further, a positive testimony or an affirmative testimony is far stronger that a negative testimony, especially so when it comes from a credible witness.[47] Positive testimony prevails over the defense's alibi.[48] In other words, denials and alibis unsubstantiated by clear and convincing evidence are negative and self-serving which deserve no weight in law and cannot be given greater evidentiary weight over testimonies of credible witnesses who testified on affirmative matters.[49]

The probability that Jimmy hacked RODRIGO is further diminished by the uncanny similarity in the behavior and attitude of most of the defense witnesses. While there is no standard form of human comportment when one is confronted by a startling, strange or frightful occurrence and there is no uniform measure by which witnesses to a crime may react,[50] the defense witnesses, most of whom are relatives of RODRIGO however, behaved in a disturbingly similar fashion. ROMEO and his wife Gloria fled upon witnessing Jimmy's alleged hacking of RODRIGO. They did not help RODRIGO and passed the buck of assisting their prostrate relative to a neighbor, Rafael. Granting that ROMEO was really afraid of blood, her wife offered no similar excuse. They did not even follow RODRIGO to the clinic. RODRIGO's mother for her part was shocked by what she saw hence it was but natural that she could not have helped her son. But when she recovered her equanimity, she did not follow her son to the hospital nor appeared interested in knowing the whereabouts of his son. RODRIGO's sister-in-law Angelita saw RODRIGO sprawl on the ground from the window of her mother's house. But she did not offer help. She did not even tell her husband (Rodrigo's brother CAMILO) about the incident. Adelfa Alfonso, ROMEO's mother-in-law saw RODRIGO on the ground but instead of helping him, she chose to accompany ROMEO in fleeing from the scene. SIMEON learned that RODRIGO was allegedly hacked but he (SIMEON) did not inquire about RODRIGO's whereabouts and condition. He was not outraged and appeared unperturbed when he learned of the grim events. Witness Pranil admitted that RODRIGO was his "kumpadre" but he did not help RODRIGO

whom he saw lying face down on the pavement, yet he did not hesitate to assist Jimmy's father in bringing Jimmy to the hospital.[51] It seems unusual, even bizarre, that given the close-knit familial ties of Filipinos, the mother, brothers, relatives by consanguinity and affinity and "kumpadre" of RODRIGO not only appeared reluctant to offer him aid and express their concern, they even exhibited such cold and distant indifference to his supposed misfortune. Contrast this with the declarations of VENER and JENNY that the Gaspar brothers closed in fraternal ranks in mauling Jimmy. This conduct fairly portrayed, albeit to the extreme and in a negative way, the typical Filipino family and sibling closeness. This Court therefore suspects the truthfulness of the testimonies of the defense witnesses but finds the same augmenting the truthfulness of the prosecution's tale.

In light of this discussion, ROLANDO's fantastic narration of defense of relative and in this appeal, the assertion of self-defense assume comical triviality. If Jimmy did not hack RODRIGO, ROLANDO's defense of relative and self-defense became non-sequiturs for the first requisite for both -- unlawful aggression on the part of the victim -- was not complied with. Unlawful aggression is a condition sine qua non to a successful invocation of self-defense and defense of relative or a stranger.[52]

So, even if we accept as possible the outlandish tale of ROLANDO, the second element for both self-defense and defense of relative, namely, reasonable necessity of the means employed to prevent or repel the aggression, is still sourly lacking. The threat to ROLANDO's life and limb ceased when he obtained sole possession of the bolo. Therefore, ROLANDO's persistent hacking of Jimmy to repel allegedly the latter's continuous feebled and ineffectual punches remained unjustified and unreasonable. Further, ROLANDO refuted his own argument that the aggression continued because Jimmy kept on punching him with his observation that the latter was already weak, thus:

> Q
>
> And after the mirror fell on you, you were able to get possession of the bolo?
>
> A
>
> Yes, sir.
>
> Q
>
> Because according to you, Roncesvalles weakened?
>
> A
>
> Yes, sir.
>
> Q
>
> After getting the possession of the bolo, you hacked Jimmy Roncesvalles?
>
> A
>
> Yes, sir.
>
> Q
>
> Despite the fact, according to you, he was already weak, you still hacked him with that bolo?
>
> A
>
> Yes, sir.
>
> Q

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Why did you still hack him, when according to you he was already weakened?

A

Because he was still hitting me with his fists.

Q

And you hacked him several times, not only once?

A

Several times.

xxx

Q

After getting possession of the bolo, why did you not run? Why did you still have to hack him?

A

Because I thought my brother was dead.

Q

In other words, it was really your intention to kill him because you thought your brother was already dead?

A

No, sir.

Q

Then why did you hack him several times?

A

Yes, sir, because of my anger, I did not think of that anymore.[53]

The additional admission by ROLANDO that he was spurred by anger into hacking Jimmy several times militates against the necessity of deliberating on the third requisite of defense of relative or stranger (the person defending be not induced by revenge, resentment or other evil motive). As for discussing the third requisite of self-defense (lack of sufficient provocation on the part of the person defending himself), suffice it is to state that where the accused owned up to the killing of the victim, the burden of evidence shifts to him; perforce he must show by clear and convincing proof that he indeed acted in self-defense or in defense of a relative or stranger.[54] ROLANDO failed to do so. Besides, the inherent implausibility of ROLANDO's tale could only be appreciated as fiction. The scenes he described -- the protagonists rolling down from the ground fronting Gasser's house to the living room of Jimmy's house, breaking in the wake of their struggle, house gates and mirrors, yet, he miraculously sustained no injuries or cuts -- were but apropos to an action movie.

As with his brother RODRIGO, CAMILO similarly interposes the defense of alibi and denial. But as we reject RODRIGO's convenient excuse of "losing consciousness," so do we discard CAMILO's pretext of being blissfully asleep at his residence at the time of Jimmy's death. His wife failed to substantiate this lame attempt at extenuation as she was in her mother's house when the gruesome killing happened. No other proof was adduced to corroborate CAMILO's alibi. Like his brothers RODRIGO and ROLANDO, CAMILO was positively identified as one of Jimmy's assailants. Hence, we reiterate here, the legal axiom already referred to earlier, that where no

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proof was adduced indicating ill-motive on the part of eyewitness, the positive identification of the accused as the culprits of the crime, if categorical and consistent prevails over alibi and denial, which if unsubstantiated by clear and convincing proof, are negative and self-serving evidence, and therefore undeserving of weight in law.[55] Besides, we approve the trial court's finding that CAMILO's immediate flight from their neighborhood after the fatal assault on Jimmy clearly indicated a guilty conscience. CAMILO simply disappeared from and left his neighborhood without even leaving a note or message to his then pregnant wife. Flight of an accused from the scene of the crime removes any remaining shred of doubt on his guilt.[56] Another telltale sign of CAMILO's culpability is that he scurried away from his residence when he overheard the police officers inquiring about his whereabouts.[57]

Appellants also contend that the testimonies of VENER and JENNY are tainted with glaring inconsistencies and contradictions, all earmarks of falsehood and lack of spontaneity. These testimonial incongruencies refer to: (1) VENER's testimony pertaining to ROMEO's throwing of a stone at Jimmy contradicted the autopsy finding that Jimmy sustained no injury caused by a hard object; (2) VENER's chronicle of Jimmy's killing on her first foray to the witness stand differed from the narration given on her subsequent excursion to the witness stand; (3) VENER failed to share JENNY's observation that the children cried when the assault on Jimmy happened; and that (4) JENNY's statement that her brother Jimmy died in the house was belied by the medical findings that he expired in the hospital.[58]

These alleged discrepancies affect only inconsequential and tangential details which will not affect the outcome of the case. ROMEO's liability is no longer an issue in this appeal. The trial court already pronounced his acquittal in its challenged decision. VENER's averred contradictory testimonies do not detract nor gainsay from the ascertained fact that the prosecution proved the guilt of CAMILO, ROLANDO and RODRIGO beyond reasonable doubt for the slaying of Jimmy. The variance in VENER's and JENNY's perception of certain details relating to the attack on Jimmy is irrelevant and picayunish. Such inconsistencies do not affect the credibility of the witnesses; on the contrary, they may be considered badges of veracity or manifestations of truthfulness on material points in the testimonies, or that may even heighten the credibility.[59] Anyway, the testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the improbabilities and probabilities of the crime.[60] Moreover, errorless testimonies cannot be expected, especially when a witness is recounting details of a harrowing experience and as long as the agglomeration of testimonies concurs on material points, the slight clashing statements dilute neither the witnesses' credibility nor the veracity of their testimonies.[61] The test is whether the testimonies agree on essential facts and substantially corroborate a consistent and coherent whole.[62] Verily, we reiterate the jurisprudential doctrine that great weight is accorded to the factual findings of the trial court particularly on the ascertainment of the credibility of witnesses; this can only be discarded or disturbed when there appears in the record that the trial court overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result.[63]

We will now discuss the trial court's appreciation on the presence of aggravating and mitigating circumstances. On the subject of treachery, it must be considered if these two elements concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.[64]

The trial court is convinced that treachery was not present at the onset of the assault intimating that Jimmy was in a position to avert it and protect himself. We are not persuaded. A careful review of the records disclosed that there was already treachery when RODRIGO, CAMILO, ROMEO, and ROLANDO unexpectedly intruded into the residence of the Roncesvalles. The four Gaspar brothers immediately commenced their concerted attack upon

Jimmy who was oblivious to their malevolent intention as he was simply drinking coffee. The four Gaspar brothers ganged up on him with Rodrigo inflaming the brothers' apparent resolve to harm Jimmy by repeating the words, "Go ahead, kill him!" Jimmy had no chance to defend himself. He was simply overwhelmed by the swiftness of the attack and the superiority in the number of the attackers. Indeed, the Gaspar brothers consciously and deliberately employed means of execution which gave Jimmy no opportunity to defend himself. The treachery was even more conspicuous on the second phase of the attack when after leaving Jimmy almost dead, CAMILO and ROLANDO returned to Jimmy's house and armed with bolos hacked, hewed and chopped the helpless and defenseless Jimmy. RODRIGO prevented VENER from aiding her husband. Thus, the three brothers ensured the accomplishment their evil purpose.

From this, conspiracy can also be readily gleaned. CAMILO, RODRIGO and ROLANDO each performed overt acts which were direct or indirect contributions to the execution of the crime thus planned and transparent manifestations of their joint purpose, design, concerted action and community of intent of inflicting harm and injury upon Jimmy.[65]

The aggravating circumstance of dwelling was also rightfully established with the obvious fact that Jimmy was purposely assaulted in his residence.

We disagree however, with the trial court's appreciation of the mitigating circumstance of immediate vindication of a grave offense in view of the doubt we already expressed that Jimmy hacked RODRIGO. This will not affect however the penalty imposed considering the attendance of the qualifying circumstance of treachery.

On a final note, we observe that the trial court did not award the amount of P10,000 disbursed by VENER for the wake and burial expenses. The amount was amply supported by receipts and should be awarded. The trial court was correct however, in not awarding compensation for loss of income in view of the absence of proof that such damage was suffered and of the deceased's living expenses.[66]

WHEREFORE, in view of all the foregoing, the instant appeal is DISMISSED and judgment is hereby rendered AFFIRMING the 18 June 1997 decision of the Regional Trial Court, Branch 63, Tarlac, Tarlac, finding herein accused-appellants Rolando Gaspar, Camilo Gaspar and Rodrigo Gaspar guilty beyond reasonable doubt of the crime of murder and sentencing each to suffer the penalty of reclusion perpetua and to indemnify the victim in the sum of P50,000, with the modification that burial expenses in the amount of P10,000 should be additionally awarded.

No pronouncement as to costs.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Original Record (OR), 1.

[2] Id., 37.

[3] TSN, 28 August 1995, 5-7.

[4] TSN, 28 August 1995, 8-12.

[5] Spoken by Rodrigo in the Ilocano dialect as "Sigue, patayin, niyon!" but witness Vener understands and speaks the dialect. Id., 12-13.

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[6] Id., 13, 15.

[7] Id., 14-20.

[8] OR, 68-69; Exhibit "C."

[9] TSN, 28 August 1995, 21; TSN, 11 September 1995, 3. See also Exhibits "B," "B-1" and "B-2."

[10] TSN, 11 September 1995, 17-22.

[11] Supra note 8, Exhibit "C."

[12] TSN, 25 September 1995, 14.

[13] TSN, 9 October 1995, 35-36.

[14] TSN, 16 October 1995, 5-10.

[15] Id., 29-32.

[16] TSN, 26 February 1996, 5-6.

[17] TSN, 22 April 1996, 6 & 8-10, 13.

[18] TSN, 26 February 1996, 4-5. See also TSN, 22 April 1996, 4.

[19] TSN, 11 March 1996, 4-6.

[20] Id., 17-19.

[21] TSN, 12 February 1996, 71-78.

[22] See TSN, 27 November 1995, 6-7; TSN, 6 November 1995, 5-7.

[23] TSN, 18 March 1996, 4-7.

[24] TSN, 27 November 1995, 19-22.

[25] Id., 23; See also TSN, 12 February 1995, 66.

[26] TSN, 12 February 1996, 63.

[27] Id., 67.

[28] Id., 68; TSN, 27 November 1995, 22-24.

[29] TSN 26 February 1996, 34.

[30] Id., 35-37.

[31] Id., 39-40.

[32] TSN, 17 June 1996, 18-19.

[33] Id., 29.

[34] Id., 10-12.

[35] Rollo, 26.

[36] TSN, 19 May 1997, 94-96.

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[37] Id., 78-103.

[38] Id., 104-110.

[39] TSN, 23 May 1999, 8-10.

[40] Per Judge Arsenio P. Adriano.

[41] Rollo, 29-20.

[42] Rodrigo testified that he was hit on the head so sudden that he did not know what hit him. If this is so, Jimmy could have hacked Rodrigo several times before the arrival of Rolando. Thus, Rolando arrived after the trouble between Rodrigo and Jimmy had already happened. Decision of the RTC, Rollo, 27.

[43] While the attenuating circumstance of immediate vindication of a grave offense had preceded the killing of Jimmy Roncesvalles, this mitigating circumstance is offset by the aggravating circumstance of dwelling xxx, Id., 29.

[44] See Exhibit "2," Medical Certificate.

[45] People v. Ramirez, 266 SCRA 335, 353 [1997]; People v. Matubis, 288 SCRA 210, 220 [1998].

[46] See Marco v. Court of Appeals, 273 SCRA 276, 283 [1997]; People v. Villanueva, 284 SCRA 501, 509 [1998]. Moreover, in People v. Hayahay, 729 SCRA 567 and US v. Oracion and Lambino, 18 Phil 530, the Court held that the credibility of witnesses does not depend on their number or the coincidence of their statements.

[47] People v. San Juan, 270 SCRA 693, 712 [1997]; See also People v. Bundang, 272 SCRA 641, 651 [1997].

[48] See People v. Enciso, SCRA 223 SCRA 675, 686 [1993]; People v. Pidia, 249 SCRA 687, 703 [1995]; People v. De Guzman, 265 SCRA 228, 245 [1996]; People v. Realin, G.R. No. 126051, 21 January 1999.

[49] See People v. Gayon, 269 SCRA 587, 592 [1997]; Caca v. Court of Appeals, 275 SCRA 123, 126 [1997].

[50] See People v. Gomez, 251 SCRA 455, 468-469 [1995]; People v. Apongan, 270 SCRA 713, 728 [1997]; People v. Pontiliar, 275 SCRA 338, 355 [1997]; People v. Mahinay, G.R. No. 125311, 17 March 1999.

[51] TSN, 23 May 1997, 20.

[52] See People v. Balamban, 264 SCRA 619, 631 [1996].

[53] TSN, 12 February 66-68.

[54] See People v. Gutual, 254 SCRA 37, 45-46 [1996]; People v. Tobias, 267 SCRA 229, 254-255 [1997]; People v. Galapin, 293 SCRA 474, 488 [1998]; People v. Dorado, G.R. No. 122248, 11 February 1999.

[55] See People v. Javier, 269 SCRA 181, 195 [1997].

[56] People v. Cahindo 266 SCRA 554, 559 [1997]; See also People v. Dorado, supra note 54.

[57] See TSN, 19 May 1997, 78-103.

[58] TSN, 19 May 1997, 58-59.

[59] See People v. Conde, 252 SCRA 681, 691 [1996]; People v. Villegas, 262 SCRA 314, 321 [1996]; People v. Diaz, 262 SCRA 723, 732 [1996].

[60] See People v. De La Cruz, 242 SCRA 129, 140 [1995] discussing the principle of falsus in uno, falsus in

omnibus. See also Batiquin v. Court of Appeals, 258 SCRA 334, 343 [1996]; People v. Julian, 270 SCRA 733, 751-752 [1997]; People v. Garcia, 271 SCRA 621, 630 [1997].

[61] Antonio v. Court of Appeals, 273 SCRA 328, 342-343 [1997].

[62] See People v. Realin, supra note 48.

[63] See People v. Pidia, supra note 48, at 696; People v. Chua Ho San, G.R. No. 128222, 17 June 1999. The rationale for this is it is the trial court which has the distinct advantageous position to examine the witnesses' deportment and manner of testifying. See People v. Gornes, 230 SCRA 270, 275 [1994]; People v. Gutual, supra note 54, at 43-44; People v. Villanueva, G.R. No. 122746, 29 January 1999; People v. Eribal, G.R. No. 127662, 25 March 1999.

[64] See People v. De la Cruz, 207 SCRA 632, 650 [1992]; People v. Garcia, 209 SCRA 164, 178 [1992]; People v. Tampon, 258 SCRA 115, 132 [1996]; People v. Bionat, 278 SCRA 454, 468 [1997]; People v Tumaob, Jr., 291 SCRA 133, 138-139 [1998]

[65] See People v. Landicho, 258 SCRA 1, 31 [1996]; Pecho v. People, 262 SCRA 518, 530-531 [1996]; People v. Sequiño, 264 SCRA 79, 101-102 [1996]; See also People v. Laurente, 255 SCRA 543, 564 [1996].

[66] See People v. Villanueva, supra note 63, citing Heirs of Raymundo Castro Bustos, 27 SCRA 327, 334-335 [1969]; De la Paz v. Intermediate Appellate Court, 154 SCRA 65, 76 [1987]; Scott Consultants & Resource Development Corporation v. Court of Appeals, 242 SCRA 393, 404-405 [1995]; and Fabre v. Court of Appeals, 259 SCRA 426.

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