

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTEMIO DICHOSO, CELESTINO TAPAYA AND PEDRO TAPAYA, ACCUSED. ARTEMIO DICHOSO, ACCUSED-APPELLANT.

G.R. No. 131822. July 27, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

On August 5, 1994, ARTEMIO DICHOSO alias Tommy, CELESTINO TAPAYA and PEDRO TAPAYA alias Jose were charged with MURDER before Branch 24 of the Regional Trial Court of Cabugao. All the accused pleaded not guilty to the following information-

That on or about the 28th day of May, 1994, in the municipality of San Juan, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with treachery, evident premeditation, abuse of superior strength and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and hack one Francisco Valderama, thereby inflicting upon the latter mortal hacking wounds on different parts of his body which wounds necessarily produced the death of said Francisco Valderama.

Contrary to law.[1]

The witnesses for the prosecution were Armando Barrios, Dr. Antonio R. Palpal-latoc, Rosalina Valderama, PO3 Meynardo Vivit, and Alicia P. Liberato.

Armando Barrios, a young boy of twelve years, testified that on May 27, 1994, at 9:00 p.m., he went to the neighboring barangay of Cacandongan together with his father, Johnny Barrios, his uncle, Edison Ragasa, and his grandfather, Francisco Valderama, in order to attend the victory ball and oath-taking of the newly elected barangay officials.[2] When they reached the hall, Armando saw ARTEMIO, CELESTINO and PEDRO. He noticed that his grandfather and father had a brief conversation with them, but he did not overhear what they were talking about.[3]

At some point in the evening, he noticed that the accused were drunk.[4] Suddenly, at around 2:30 a.m., CELESTINO pulled his uncle Edison by his shirt saying, "Come here, I will kill you." [5] Edison ran towards Francisco and Johnny, pursued by CELESTINO, PEDRO and ARTEMIO.[6] Johnny ran out of the hall together with Edison.[7] CELESTINO stopped chasing Edison when he reached the end of the dance hall, but PEDRO and ARTEMIO continued to give chase all the way to a nearby bamboo grove, but subsequently, they returned to the dance hall.[8]

Meanwhile, CELESTINO threw a large stone at Francisco, hitting him in the nape and causing him to fall to the ground.[9] Meanwhile, ARTEMIO approached the victim from behind and hacked him three times at the right side of his neck and head, as he was being held down by CELESTINO. PEDRO then delivered several fist blows upon Francisco, who was already lying prostrate on the ground.[10] Armando testified that he was able to clearly see the attack because the place was well-illuminated by the electric lighting coming from the dance hall and due

to the fact that he was standing at a distance of only 1½ meters from his grandfather at the time.[11] After the attack, the three accused fled from the dance hall.[12] Armando ran home and informed his grandmother, Rosalina Valderama, about the incident. Together with several other people, they returned to the scene of the crime, only to find the mortal remains of his grandfather. On that same day, Armando gave a written account of what he had witnessed to PO3 Meynardo Vivit, wherein he identified ARTEMIO, CELESTINO, and PEDRO as the assailants of his grandfather.[13]

Dr. Antonio R. Palpal-latoc, the Municipal Health Officer of San Juan, Ilocos Sur, conducted the autopsy. He described the cause of death as a massive hemorrhage, secondary to the severance of the carotid vessels. It was also found that the victim sustained the following wounds -

1. Hacked wound around 2 inches in length, deep, located at the lateral aspect of the neck, right side, just below the mandible, incising the skin, soft tissues, muscles, cutting the carotid vein and artery.
2. Hacked wound around 1 and 1/2 inches in length, shallow, located at the right mandible, perpendicular bone.
3. Hacked wound around 1 inch, shallow, located at the right side of the forehead above the right eyebrow in a slanting horizontal position.[14]

Rosalina Valderama, the wife of the victim, affirmed that on the evening of May 27, 1994, her husband Francisco attended a dance at Barangay Cacandongan, together with Armando Barrios, Johnny Barrios and Eddie Ragasa. After Francisco had left, she went to sleep, but was later awakened by Armando who told her that her husband was dead and that he was killed by CELESTINO, PEDRO and ARTEMIO.[15] Together with Armando, she ran to where her husband was and found him lying prostrate with his face to the ground.[16]

PO3 Meynardo Vivit was the investigator-on-duty at the San Juan police station at the time of the incident.[17] On May 28, 1994, at about 3:15 a.m., he received a report from Barangay Captain Constante Vito Cruz of Barangay Malamin regarding the killing. He proceeded to the crime scene where he saw the victim's body sprawled, face down, on the road beside the barangay plaza. He took pictures of the body.[18] He then interviewed Rosalina Valderama and Armando Barrios. Armando told him that ARTEMIO, CELESTINO, and PEDRO were the assailants of his grandfather.[19] At 5:00 a.m., he invited the accused to the police station for interrogation; they went with him voluntarily.[20] All the accused denied that they committed the crime.[21] He noticed that CELESTINO's shirt, shoes and handkerchief were smeared with blood. These blood-stained articles were submitted to the National Bureau of Investigation (NBI) for examination.[22] NBI forensic chemist Alicia Liberato later testified that the blood found on the articles of clothing was type "O" human blood.[23] Vivit also took the sworn statement of a certain Soledad Conseja Dichoso, sister of ARTEMIO, who declared that it was her brother who was responsible for the killing of Francisco, not the Tapaya brothers.[24]

Meanwhile, testifying for the defense were CELESTINO, PEDRO, ARTEMIO, Barangay Captain Medardo Peneyra, Madelyn Conseja, Angelito Tapaya, PO3 Meynardo Vivit, Soledad Conseja, and SPO1 Rogelio Davalos.

CELESTINO claimed that he had absolutely no participation in the killing of Francisco Valderama. He alleged that on the evening of May 27, 1994, at about 9:00 p.m., he was at the victory ball because he had been elected as a member of the barangay council.[25] He saw Francisco in the company of Edison Ragasa, Sito Ragasa, Johnny Barrios, and the barangay captain of Barangay Malamin.[26] However, he claimed that Armando Barrios was not with them. Francisco asked for something to drink and some finger foods and so CELESTINO gave him two bottles of gin and pointed out the food table. After the dance ended at about 3:00 a.m., on May 28, 1994, the group of Francisco remained at the dance hall.[27] A commotion suddenly erupted when Francisco's group started throwing bottles onto the dance floor.[28] Francisco allegedly overturned the food table.[29] During this time, CELESTINO did not know what ARTEMIO and PEDRO were doing.[30] CELESTINO was trying to pacify the

group of Francisco when, for no apparent reason, Edison threw a stone at him, hitting him on his forehead and causing him to bleed.[31] But on cross-examination, CELESTINO said that it was Johnny Barrios who threw the stone at him, and that Edison Ragasa did not do anything.[32] CELESTINO claimed that it was the blood from this wound which stained his shirt.[33] ARTEMIO tried to come to CELESTINO's aid, but was prevented from doing so by Francisco.[34] To avoid any further trouble, CELESTINO left the place with his son, with his wife following them.[35] It was only later on that he learned that Francisco was killed when he heard people shouting the news.[36] He and the other members of the barangay council proceeded to the crime scene where they saw the lifeless body of Francisco on the ground.[37]

In the early morning of May 28, 1994, he was picked up from his house by some police officers, particularly by police investigators Vivit and a ceratin Pizarro and Macadangdang, and brought to the police station of San Juan, Ilocos Sur, On their way to the station, the police also picked up ARTEMIO and PEDRO.[38] Upon investigation, he and the other accused denied that they were responsible for the killing of Francisco.[39] He also executed a counter-affidavit wherein he said that only ARTEMIO killed Francisco. Although he admitted that he did not actually see ARTEMIO commit the crime, he explained that when they were already at the police station ARTEMIO told him that he would own up to the killing of Francisco.[40]

PEDRO's testimony consisted mainly of denial. He, like CELESTINO, claimed that he had no participation in the killing of Francisco, outrightly denying Armando's testimony that he repeatedly boxed the victim.[41] He claimed that he was standing at a place north of the pavement from where the victory ball was being held, about thirty to forty meters away from where the commotion erupted.[42] When he noticed that bottles were being thrown, he brought his son home.[43]

ARTEMIO testified that the trouble began with Edison Ragasa, who, for unknown reasons, started breaking glasses.[44] CELESTINO tried to pacify Edison, but the latter became more aggressive and fought with CELESTINO. ARTEMIO tried to break up the fight.[45] However, CELESTINO followed Edison. It was then that Johnny Barrios hit CELESTINO on his forehead with a stone, causing CELESTINO to bleed.[46] Edison and Johnny started to run away, but Francisco Valderama stayed behind and drew his bolo. ARTEMIO pushed CELESTINO away to protect him from an impending attack by Francisco; thus, Francisco turned upon ARTEMIO instead, but ARTEMIO was able to jump aside and avoid the attack.[47] At that point, someone hit Francisco with a stone, causing him to turn around; ARTEMIO took the opportunity to grab hold of Francisco's bolo. However, CELESTINO took the bolo from ARTEMIO, saying, "Give me that knife, you should not be the one to hit him. I should be the one because I am the one injured." [48] Instead, CELESTINO ordered ARTEMIO to follow PEDRO who was running after Johnny. When ARTEMIO caught up with PEDRO, the latter told him that he had failed to track down Johnny, thus, ARTEMIO and PEDRO decided to return to the hall. When they got there, they saw CELESTINO turning over the knife to the barangay captain of Cacandongan - Medardo Peneyra. CELESTINO told ARTEMIO, "Just keep quiet; I will be the one to answer for everything." [49] When the accused were already being investigated by the police, ARTEMIO testified that CELESTINO told him that if he admitted to killing Francisco, the police would release him.[50]

Madelyn Conseja, the 15-year old niece of ARTEMIO, basically corroborated the testimony of her uncle. She claims that Francisco was chasing ARTEMIO with a knife; that when Francisco was hit with a stone,[51] he stumbled to the ground and ARTEMIO wrested control of the knife; that CELESTINO told ARTEMIO to give him the knife and ARTEMIO obliged; and that ARTEMIO followed PEDRO who was chasing after Johnny Barrios.[52] She further testified that she saw CELESTINO stab Francisco three times.[53] CELESTINO then turned over the knife to the barangay captain of Cacandongan.[54] According to her, PEDRO had nothing to do with the killing of Francisco because he went after Johnny Barrios. After the stabbing, ARTEMIO and PEDRO

returned and saw CELESTINO turning over the bolo to the barangay captain.[55]

The remaining defense witnesses, namely Medardo Peneyra, Angelito Tapaya, Soledad Conseja, PO3 Meynardo Vivit, and SPO1 Rogelio Davalos, were presented in behalf of CELESTINO.

Medardo Peneyra, the barangay captain of Cacandongan, testified that, although he was at the victory ball on May 27, 1994, from 8 p.m. to 2 a.m., he did not notice any commotion.[56] When he heard shouting, he went over to see what was happening and that was when he saw, the lifeless body of Francisco sprawled on the ground.[57] Among the accused, it was only CELESTINO whom he saw at the place of the incident. Peneyra denied ARTEMIO's allegation that CELESTINO had turned over a knife to him.[58]

The 16-year old son of CELESTINO, Angelito Tapaya, insisted that he saw Johnny Barrios throw a plastic chair at his father, which hit him on the forehead.[59] ARTEMIO ran after Johnny; whereas, PEDRO went home because he did not want to get involved. ARTEMIO returned to the hall and was met by Francisco who was wielding a bolo. To ward off the attack, ARTEMIO threw stone at Francisco which landed on the latter's brow, causing Francisco to fall to the ground, face down. ARTEMIO then grabbed Francisco's bolo and hacked him twice.[60] All this time, CELESTINO failed to observe what was happening because he was covering the wound on his forehead with his hand. Angelito helped him walk home.[61] Afterwards, Angelito returned to the hall to look at the body of Francisco.[62] According to Angelito, prosecution witness Armando Barrios only arrived at the scene of the crime after Francisco had already been killed.[63]

Soledad Conseja, sister of ARTEMIO, was presented in order to explain her sworn statement[64] absolving CELESTINO and PEDRO from any liability for the killing and instead, placing all the blame on ARTEMIO. However, when Soledad took the witness stand, she stated that her sworn statement was not freely made; that Pedro Tapaya, Sr., the father of CELESTINO and PEDRO, ordered her to tell the police that it was ARTEMIO who killed Francisco, threatening to harm ARTEMIO if she refused. Soledad testified that she and her brother ARTEMIO were staying with the Tapayas. Soledad admitted that she did not witness the killing since she did not leave her house on the evening of May 27, 1994 or in the early morning of May 28, 1994.[65]

Finally, PO3 Meynardo Vivit and SPO1 Rogelio Davalos were presented in order to testify as to their participation in the taking of the testimony of Soledad Conseja.

The trial court, giving credence to the testimony of Armando Barrios, held CELESTINO and ARTEMIO liable for the crime of murder. The court declared that the qualifying circumstance of treachery attended the killing because, although Francisco was already injured and lying on the ground, ARTEMIO still hacked at him with a bolo while CELESTINO held him, thus ensuring the accomplishment of their criminal objective without risk to themselves. Based upon these same circumstances, the court ruled that the acts of CELESTINO and ARTEMIO clearly establish conspiracy.

On the other hand, the trial court acquitted PEDRO, ruling that he could not have contributed to the death of Francisco since, as testified to by Armando Barrios, PEDRO only boxed Francisco after he had already been hacked by ARTEMIO. In further support of its order of acquittal, the trial court also noted that defense witnesses Madelyn Conseja and Angelito Tapaya declared that PEDRO's only participation in the commotion was that he chased Johnny Barrios.

In imposing the penalty for murder upon CELESTINO and ARTEMIO, the trial court appreciated in their favor the mitigating circumstance of voluntary surrender.

Thus, the decretal portion of the decision states -

WHEREFORE, finding both accused, Celestino Tapaya and Artemio Dichoso alias "Temmy", GUILTY

beyond reasonable doubt as co-principals in the commission of the crime of murder, and appreciating in their favor the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset the same, each is hereby sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalties provided for by law, to jointly and severally indemnify the heirs of Francisco Valderama in the amount of P50,000.00, without subsidiary imprisonment in case of insolvency, and to pay proportionate costs. They shall be credited in full with the period of their preventive imprisonment.

On reasonable doubt, accused Pedro Tapaya alias "Jose" is hereby ACQUITTED, with one-third (1/3) of the costs de oficio. His immediate release from detention is ordered, unless he is being held for some other lawful cause.

SO ORDERED.

Only ARTEMIO appealed from the decision of the trial court. Thus, the judgment of conviction against CELESTINO has become final and executory.

In his appellant's brief,[66] ARTEMIO makes the following assignment of errors -

- THE TRIAL COURT ERRED IN FINDING THE PRESENCE OF CONSPIRACY IN THE COMMISSION OF THE CRIME.
- THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT ARTEMIO DICHOSO GUILTY.

Accused-appellant claims that the trial court premised its finding of conspiracy on the fact that CELESTINO and ARTEMIO pointed to each other as the one responsible for delivering the fatal blow. According to accused-appellant, the finding of conspiracy cannot be deduced from a mutual imputation of guilt; On the other hand, such "blame-casting" is a clear manifestation that CELESTINO and ARTEMIO acted independently of each other. Also, accused-appellant claims that conspiracy cannot exist since the killing of Francisco was a result of a "spontaneous and impulsive reaction of persons under the influence of liquor."

Also, accused-appellant is asking this Court to accord more credence to the testimony of Madelyn Conseja than to that of Armando Barrios. Madelyn testified that it was CELESTINO who stabbed Francisco Valderama. Accused-appellant asserts that, considering the conflicting testimonies of the prosecution and defense witnesses, the trial court should have exerted "a more circumspect attitude in ascertaining beyond [a] reasonable doubt who committed the crime of murder."

In its Brief,[67] the Office of the Solicitor General (OSG) asserts that accused-appellant was identified by Armando Barrios as the one who hacked Francisco Valderama three times, causing his death. Thus, it is not even necessary to prove conspiracy since accused-appellant's own acts make him liable for murder. Also, the OSG maintains that the positive identification of the accused by Armando Barrios, absent any showing of ill motive, should prevail over the unsubstantiated and self-serving denials of accused-appellant.

Absent any showing that the trial court has overlooked, misapprehended, or misapplied some facts of weight and substance which, if properly considered, would have altered the result of the case, we are compelled to sustain the trial court's assessment of the credibility of Armando Barrios, an eyewitness to the killing of Francisco Valderama.[68] It is doctrinal that the trial court's evaluation of a witnesses' credibility is entitled to the highest respect for it has the distinct opportunity to directly observe the demeanor of a witness and to ascertain whether he or she is telling the truth.[69] Moreover, after our own careful and circumspect study of the records of this case, we find that the trial court was justified in upholding the testimony of Armando Barrios as being worthy of full faith and credence. Armando was examined on four separate occasions, and, despite his tender age, was subjected to the most rigorous and exhaustive interrogation by both his own counsel and those of the defense, yet, he

remained constant and unwavering in his narration of the events. On direct examination, he described the attack in the following manner:

Q

You said that your uncle Edison were [sic] pulled, where [,] in what particular place was he pulled at that time?

A

In the dancing hall, after dancing, sir.

Q

And where was he after dancing when he was pulled?

A

He is about take a sit [sic], sir.

Q

Was that seat in the vicinity of the dancing hall?

A

Yes, sir.

Q

When he was pulled was there any word uttered by Celestino Tapaya?

A

Yes, sir.

Q

What did Celestino Tapaya uttered [sic]?

A

Come here and I will kill you he said, sir.

Q

What did your uncle Edison do?

A

He ran away, sir.

Q

Where were you at that time when your uncle Edison was being pulled?

A

Right there, sir.

Q

How far were you from them?

A

From the witness stand up to the place where Celestino was sitting, sir.

(The witness is indicating a distance which is about 2 1/2 meters more or less)

Q

You said that he ran away when Celestino Tapaya uttered come here, I will kill you[.] [W]as he able to ran [sic] away?

A

Yes, sir, he was able to ran [sic] but his clothes were removed, sir.

Q

When he ran away already naked because his clothes were removed from his body [,] where did he proceed?

A

He went to the place where my grandfather was, sir.

Q

And how about the three (3) [,] Celestino, Temy and Pedro, what did they do?

A

They ran after him, sir.

xxx xxx xxx

Q

You said a while ago that your uncle Edison went to the place where your grandfather was and the three (3) chased him, what happened next?

A

When they followed him [,] he ran away, sir.

Q

How about you[,] what did you do?

A

I just stay[ed] there, sir.

Q

You said that your uncle continued to ran [sic] away when the three (3) followed him[.] [W]hat then happened?

A

When we were about to left [sic], Celestino threw stones to [sic] my grandfather Francisco Valderama, sir.

Court

Q

Is it not that when your uncle Edison ran away he went to the place where your grandfather was?

A

Yes, Your Honor.

Q

But they were able to take him?

A

No, Your Honor.

Q

At that place it was your grandfather who was left behind?

A

Yes, Your Honor.

Q

You have then to start to go home?

A

Yes, Sir.

Q

And according to you Celestino threw stones to [sic] your grandfather?

A

Yes, Your Honor.

Q

At what particular place did Celestino threw [sic] [a] stone to [sic] your grandfather?

A

Right at the dancing hall, Your Honor.

Fiscal

Q

Lets go to that point when your uncle continued to ran [sic] away when he was being chased [.] [H]ow about the other two (2) Artemio and Pedro [-] what did they do?

A

They ran after my uncle Edison and my father, sir.

Q

By the way, where was your father at the time your uncle Edison was being pulled?

A

They were there with my grandfather watching the dance, sir.

Q

You said that your uncle and your father were being chased by Artemio and Pedro[.] [D]id you ever see these two (2) persons Artemio and Pedro coming back to the scene?

A

Yes, Sir.

Q

You said that Celestino threw [a] stone against [sic] your grandfather, was your grandfather hit?

A

Yes, Sir.

Q

What part of his body was hit?

A

The head, sir.

Q

What happened to your grandfather?

A

He fell to the ground lying face downward, sir.

Q

And what did they do if any?

A

They hacked, sir.

Q

Who was hacked?

A

My grandfather, sir.

Q

Who hacked him?

A

Artemio hacked my [grand]father, sir.

Q

He was alone?

A

Jose even boxed him, sir.

Q

How about Celestino?

A

Celestino hold [sic] my grandfather, sir.

Q

Was your grandfather hit when he was hacked by Artemio?

A

Yes, Sir.

Q

What part of his body was hit?

A

His neck and head, sir.

Q

How about you [,] what were you then doing at that time?

A

I just watch[ed], sir.

Q

Did you not asked [sic] for help?

A

No, Sir.

Q

Why?

A

I was afraid, sir.

Q

How about those other people in the surrounding inasmuch it was a victory ball was there anyone who came for help?

A

None, Sir.

Q

After these three (3) persons whom you specify having hacked your father by Artemio, Celestino holding him and Pedro boxed him respectively, after that what happened next?

A

They ran away, Sir.[70]

On cross-examination, Armando did not digress from his testimony. He related the material events as follows:

Q Did you say that Celestino Tapaya pulled Edison Ragasa while he was dancing?

A After the dance, sir.

Q Edison Ragasa was at the middle of the dance hall when he was pulled by Celestino Tapaya?

A He was about to go to his seat, sir.

Q He was pulled because he was creating trouble at the time?

A No, sir.

Q What did Edison Ragasa do when he was pulled by Celestino Tapaya?

A He followed him, sir.

Q And they have [sic] conversation?

A Yes, sir.

Q Where was your father at the time?

A At the place where they were drinking, sir.

Q Together with your grandfather?

A Yes, sir.

Q So, at the time Edison Ragasa was pulled by Celestino Ragasa, "Temy" and Jose were also there?

A Yes, sir, watching the dance.

Q They were not dancing at the time?

A No, sir.

Q Before Edison Ragasa was pulled by Celestino Tapaya, was there no trouble right at the middle of the dance hall?

A None, sir.

Q Were there policemen present at the time?

A They went home already, sir.

Q When Celestino Tapaya pulled Edison Ragasa, that was the time when your father and your grandfather who were still drinking went to the rescue of your uncle.

A They were not able to go, sir.

Q Why?

A They did not witness the pulling, sir.

Q Did you not report what happened to your father and your grandfather?

A No, sir.

Q After Celestino Tapaya pulled your uncle, nothing more happened?

A They were about to hack my uncle Edison, sir.

Court

Q Who among the three (3)?

A Celestino Tapaya, Your Honor.

Atty. Rubio, Jr.

Q But suddenly, Celestino Tapaya did not hack you uncle?

A Because my uncle Edison was able to run away, sir.

Q Celestino Tapaya did not run after your uncle?

A Why not, sir?

Q Did you not report that to your father and your grandfather?

A Uncle Edison went to their place to seek refuge, sir.

Q That was the time when there was a fight between your group and the group of the accused?

A My father and my grandfather did not make any move, sir.

Q It was Celestino Tapaya who ran after your uncle Edison?

A Together with his two (2) companions, sir.

Q Up to what place did they run after your uncle?

A Celestino ran only up to the dance hall, while the two (2) others ran after my uncle up to the uphill leading to the place the light bamboos [sic] are, sir.

Q Did you not say awhile ago that your uncle went to seek refuge at the place where your father was drinking?

A Yes, sir, but when he saw them running after him, he continued to run away.

Q And the two (2) continued chasing your uncle?

A Yes, Sir.

Q After that, the two (2) returned to the dance hall?

A Yes, Sir.

Q And the dance continued?

A No more, sir. We went home and on our way home, Celestino Tapaya threw [a] stone at my grandfather, Francisco Valderama, Sir.

Q You mean to say that the three (3) accused went home ahead?

A Not yet, sir.

Court

Q Where was Celestino Tapaya when he threw [a] stone at your grandfather?

A He came to run after him, Your Honor.

Atty. Rubio, Jr.

Q You mean to say that you were already walking towards home when Celestino Tapaya threw [a] stone at your grandfather?

A Yes, Sir.

Q And your father was also with you at the time?

A They ran ahead, sir.

Q At what precise moment did your father run?

A When my uncle Edison ran, my father followed him, sir.

Q So, your grandfather was left behind?

A The two (2) of us, sir.

Q When Celestino Tapaya threw [a] stone at your grandfather, the two (2) other accused were chasing your uncle?

A They have already returned, sir.

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Q What part of the body of your grandfather was hit?

A His nape, sir.

Q Do you know of any reason why Celestino Tapaya threw [a] stone at your grandfather?

A None that I know of, sir.

Q Your [grand]father did not retaliate?

A He was not able to retaliate because he fell, face down, and then, he held him, sir.

Court

Q Who held him?

A Celestino Tapaya, Your Honor.

Atty. Rubio, Jr.

Q Your grandfather and Celestino Tapaya grapple with each other?

A No, sir, because he held him on his back.

Q And while Celestino Tapaya was holding your grandfather, that was the time when he was hacked by Artemio Dichoso, is that correct?

A Yes, sir.

Q Artemio Dichoso came from behind?

A Yes, sir.

Q After that, the three (3) ran away?

A Yes, sir.

Q In relation to your grandfather who was being held by Celestino Tapaya, where were you?

A At their back, sir.

Q So, you mean to say that Artemio Dichoso also came from your back?

A Yes, sir.

Q You did not notice him passing by your place?

A Why not, sir?

Court

Q Was Celestino Tapaya still holding your grandfather when Artemio Dichoso hacked your grandfather?

A Yes, Your Honor.

Atty. Rubio, Jr.

Q And your grandfather was trying to free himself from the hold of Celestino Tapaya at the time when he was hacked by Artemio Dichoso?

A Yes, sir.

Court

Q What about Pedro Tapaya alias "Jose," where was he at the time?

A He went to help, Your Honor.

Q In what way?

A He boxed my grandfather repeatedly, Your Honor.

Atty. Rubio, Jr.

Q You did not do anything when your grandfather was being hacked by Artemio Dichoso?

A None, sir.

Q You did not even cry for help?

A I only called for help when he was already dead, sir.

Q You did not even try to prevent Artemio Dichoso from hacking your grandfather?

A No, sir, because I was afraid.[71]

Armando was undeviating in asserting that CELESTINO threw a rock at Francisco causing him to fall to the ground; that ARTEMIO, coming up from behind the victim, hacked him three times on the neck and head while the victim was being held down by CELESTINO; and that PEDRO boxed Francisco several times. In short, Armando delivered a detailed account of the attack in a clear and straightforward manner, obvious earmarks of an honest and unrehearsed testimony. Furthermore, his testimony was also supported by the autopsy report wherein it was indicated that the victim sustained three hack wounds on the neck and head.

The defense has not shown that Armando was impelled by dubious or improper motives, therefore, it must be presumed that no such aberrant motives existed and that he was moved solely by the desire to bring the persons responsible for his grandfather's death to justice.[72] Neither does Armando's tender age detract from his credibility. It is well-established that any child, regardless of age, can be a competent witness if he can perceive, and perceiving, can make known his perception to others and that he is capable of relating truthfully facts upon which he is examined.[73] By his plain and direct testimony, and his responsiveness to the questions propounded, Armando has proven to be a competent and capable witness, with a keen capacity for observation and recollection. Neither may Armando's relationship to the victim be pleaded against him for relationship per se, without more, does not affect the credibility of a witness.[74]

ARTEMIO staunchly refutes the testimony of Armando. He claims that he was only defending CELESTINO from an imminent bolo attack by Francisco; that when somebody hit Francisco with a stone, he grabbed the bolo, but CELESTINO subsequently took the bolo from him, declaring that he should be the one to attack Francisco because he was the one injured; that he left the dance hall in order to help PEDRO chase after Johnny; that when he and PEDRO returned, Francisco was already dead and they only saw CELESTINO handing the bolo over to Barangay Captain Medardo Peneyra. ARTEMIO's testimony, however, is directly contradicted by Armando's positive identification of ARTEMIO as one of his grandfather's assailants. In fact, according to Armando, it was ARTEMIO who delivered the mortal blows which violently ended Francisco's life. It is settled dicta that the

categorical identification of the accused by a credible prosecution witness is always entitled to greater weight than the accused's plain denial of participation in the commission of the crime.[75] Moreover, Medardo Peneyra flatly denied having received a bolo from CELESTINO, thus further eroding the credence of ARTEMIO's testimony.

The attack upon Francisco was undoubtedly committed with treachery. Treachery exists when the offender employs means, methods, or forms in the execution of the crime which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[76] In the instant case, there was nothing at all to warn Francisco that he was about to become the victim of a sudden and violent aggression from accused. After he was already lying helpless on the ground after having been hit by a stone thrown at his head by CELESTINO, ARTEMIO stealthily approached Francisco from behind and hacked him with a bolo on the head and neck while he was held down by CELESTINO. As if the injury inflicted was not enough, PEDRO still delivered several fist blows upon the dying man. Francisco was totally defenseless against his attackers - he was unarmed and accompanied only by a child, since his two male adult companions - Johnny and Edison - ran away before the attack. Yet for no apparent reason, accused, taking advantage of the element of surprise, ganged up on him, swiftly overpowering him with their superior strength and number. Francisco never stood a chance. This undoubtedly constitutes treachery for the means employed by accused ensured the execution of their nefarious designs upon the victim without risk to themselves arising from any defense which the offended party might have made.[77] Moreover, these same acts establish that accused acted in conspiracy for they obviously had the same purpose - the killing of Francisco - and were united in its execution.[78]

We cannot uphold the trial court's appreciation of the mitigating circumstance of voluntary surrender. For voluntary surrender to be appreciated as a mitigating circumstance, the following requisites must concur: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary.[79] The circumstances of the surrender must show that it was made spontaneously and in a manner clearly indicating the intent of the accused to surrender unconditionally, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense which will necessarily be incurred in searching for and capturing him.[80] We have clarified that "[v]oluntary surrender does not simply mean non-flight. As a matter of law, it does not matter if the accused never avoided arrest and never hid or fled." [81]

According to PO3 Meynardo Vivit, he went to the homes of accused and invited them to go with him to the police station for investigation.[82] We have held that voluntary surrender cannot be appreciated where the evidence adduced shows that it was the authorities who came looking for the accused,[83] as in the present case.

Under Article 248 of the Revised Penal Code, the penalty for the crime of murder is reclusion perpetua to death. There being no aggravating or mitigating circumstances, accused shall suffer the penalty of reclusion perpetua.[84] Pursuant to current jurisprudence, accused ARTEMIO DICHOSO and CELESTINO TAPAYA are also jointly and severally liable to the heirs of the victim in the amount of Fifty Thousand Pesos (P50,000) by way of indemnity for the killing.[85] However, no actual damages may be awarded since the prosecution failed to produce receipts to substantiate the same.[86]

WHEREFORE, the decision appealed from is hereby AFFIRMED. Costs against accused.

SO ORDERED.

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

[1] Rollo, 3.

- [2] TSN, September 15, 1994, 2-3.
- [3] TSN, September 21, 1994, 4; TSN, June 30, 1995, 18; TSN, July 6, 1995, 3.
- [4] TSN, September 15, 1994, 11; TSN, September 21, 1994, 6.
- [5] TSN, September 15, 1994, 4-6.
- [6] TSN, September 15, 1994, 5-6. Armando Positively identified the three accused in court.
- [7] TSN, September 21, 1997, 9.
- [8] TSN, September 21, 1994, 8.
- [9] TSN, September 15, 1994, 6-7.
- [10] TSN, September 15, 1994, 7-8; TSN, June 30, 1995, 13-15; TSN, July 5, 1995, 9-12.
- [11] TSN, June 30, 1995, 12-13.
- [12] TSN, September 15, 1994, 8.
- [13] TSN, September 15, 1994, 8-10.
- [14] Exhibit B.
- [15] TSN, July 10, 1995, 2-3, 8.
- [16] TSN, July 10, 1995, 3-4.
- [17] TSN, November 8, 1994, 2.
- [18] TSN, November 8, 1994, 3-4.
- [19] TSN, November 8, 1994, 4-5.
- [20] TSN, November 15, 1994, 2; TSN, June 30, 1995, 5.
- [21] TSN, November 8, 1994, 5-6.
- [22] TSN, November 8, 1994, 7.
- [23] TSN, February 19, 1995, 5.
- [24] TSN, November 8, 1994, 8-9; TSN, November 15, 4-5.
- [25] TSN, January 19, 1996, 2.
- [26] TSN, January 19, 1996, 4.
- [27] TSN, January 19, 1996, 6.
- [28] TSN, January 19, 1996, 7.
- [29] TSN, January 19, 1996, 8.
- [30] TSN, January 19, 1996, 9.
- [31] TSN, January 19, 1996, 8.
- [32] TSN, October 2, 1996, 2.

- [33] TSN, January 19, 1996, 13.
- [34] TSN, October 2, 1996, 5.
- [35] TSN, October 2, 1996, 3-4.
- [36] TSN, January 19, 1996, 6.
- [37] TSN, February 13, 1996, 6.
- [38] TSN, January 19, 1996, 9-10.
- [39] TSN, October 2, 1996, 12.
- [40] TSN, January 19, 1996, 15; TSN, October 9, 1996, 2.
- [41] TSN, June 18, 1996, 7.
- [42] TSN, June 18, 1996, 2.
- [43] TSN, June 18, 1996, 9, 11.
- [44] TSN, September 10, 1996, 3.
- [45] TSN, September 10, 1996, 4.
- [46] TSN, September 10, 1996, 5.
- [47] TSN, September 10, 1996, 6.
- [48] TSN, September 10, 1996, 7.
- [49] TSN, September 10, 1996, 7-9.
- [50] TSN, September 10, 1996, 10, 12-13.
- [51] TSN, October 24, 1996, 3.
- [52] TSN, October 24, 1996, 6-7.
- [53] TSN, October 24, 1996, 3-4, 8, 13.
- [54] TSN, October 24, 1996, 8
- [55] TSN, October 24, 1996, 20.
- [56] TSN, October 9, 1996, 4-5, 7-9.
- [57] TSN, October 9, 1996, 5.
- [58] TSN, October 9, 1996, 6.
- [59] TSN, February 5, 1997, 4.
- [60] TSN, February 5, 1997, 5-7.
- [61] TSN, February 5, 1997, 8.
- [62] TSN, February 5, 1997, 9-10.
- [63] TSN, February 5, 1997, 11-12.

- [64] Exhibit 1.
- [65] TSN, March 11, 1997, 6, 9-10.
- [66] Rollo, 73-81.
- [67] Rollo, 101-112.
- [68] *People v. Viovicente*, 286 SCRA 1 (1998); *People v. Atop*, 286 SCRA 157 (1998).
- [69] *People v. Albao*, 287 SCRA 129 (1998); *People v. Obello*, 284 SCRA 79 (1998).
- [70] TSN, September 15, 1994, 5-8.
- [71] TSN, September 21, 1994, 6-11.
- [72] *People v. Ravanes*, 284 SCRA 634 (1998); *People v. Mendoza*, 284 SCRA 705 (1998).
- [73] *People v. Nang*, 289 SCRA 16 (1998).
- [74] *People v. Nang*, 289 SCRA 16 (1998).
- [75] *People v. Balmoria*, 287 SCRA 687 (1998); *People v. Correa*, 285 SCRA 679 (1998); *People v. Baccay*, 284 SCRA 296 (1998).
- [76] *People v. Gungon*, 287 SCRA 618 (1998).
- [77] *People v. Sumalpong*, 284 SCRA 464 (1998).
- [78] *People v. Hilario*, 284 SCRA 344 (1998).
- [79] *People v. Timblor*, 285 SCRA 64 (1998).
- [80] *People v. Sambulan*, 289 SCRA 500 (1998).
- [81] *Quial v. Court of Appeals*, 126 SCRA 28 (1983).
- [82] TSN, November 15, 1994, 2.
- [83] *People v. Sumalpong*, 284 SCRA 464 (1998); *People v. Flores*, 237 SCRA 653 (1994).
- [84] Revised Penal Code, art. 63, par. 2.
- [85] *People v. Solis*, 291 SCRA 529 (1998).
- [86] TSN, July 10, 1995, 5; *People v. Oliano*, 287 SCRA 158 (1998).

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