

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO DE LEON; FREDDIE DE LEON AND PO3 CESAR CABILDO (AT LARGE), ACCUSED, MARIO DE LEON AND FREDDIE DE LEON, ACCUSED-APPEL...

G.R. No. 132160. June 19, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Appellant Freddie De Leon, along with Mario De Leon and PO3 Cesar Cabildo (at large), were charged with the crime of murder in Criminal Case No. Q-93-47026 before the Regional Trial Court of Quezon City, Branch 102,[1] under an amended Information[2] which reads as follows:

"That on or about April 15, 1993 in Quezon City and within the jurisdiction of this Honorable Court, above-named accused while conspiring, confederating and mutually helping one another with the use of treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack and assault the victim Danilo Añez by shooting the victim several times with a gun thereby inflicting upon the victim gunshot wounds in the different parts of his body which cause his instantaneous death.

CONTRARY TO LAW."

On their arraignment, appellant Freddie de Leon and Mario de Leon pleaded not guilty. PO3 Cesar Cabildo remained at large. Trial in due course proceeded only against Freddie de Leon and Mario de Leon. Thereafter, the trial court rendered the assailed decision[3] dated October 17, 1997, the dispositive portion of which reads:

"WHEREFORE, the Court finds accused Mario de Leon and Freddie de Leon guilty beyond reasonable doubt of the crime of Murder as defined in Article 248 of the Revised Penal Code, and considering that the crime was committed prior to the effectivity of R.A. 7659 on December 31, 1993, the Court imposes upon each of the accused Mario de Leon and Freddie de Leon the penalty of reclusion perpetua. Accused Mario de Leon and Freddie de Leon are likewise ordered to pay in solidum the legal heirs of deceased Danilo Añez, as indemnity, in the amount of fifty thousand (P50,000.00) pesos. Costs against the accused."

Only Freddie de Leon filed a Notice of Appeal.[4]

In its Brief, the Office of the Solicitor General presented the following narration of facts that led to appellant's conviction:

"In the morning of April 14, 1993, the victim Danilo Añez told his wife, Leony Añez, that after finishing his work that day he would be going to the wake of Jojo de Leon at Doña Carmen, Fairview, Quezon City (pp. 4-5 & 15, tsn, Oct. 23, 1993). The following morning of April 15, 1993 at around 4:00 a.m., since the victim had not yet come home, Leony and her brother-in-law, Efren Añez, proceeded to fetch him at the place of the wake (pp. 4-5, *ibid.*). Approximately three [3] meters from the place while still on board the passenger jeepney they took, Leony and Efren, saw about five [5] armed men forcing the victim to board an old white Ford Fiera with license plate No. NAA 711 (pp. 4-5, *id.*).

Since the place of the wake was well lighted, Leony recognized the accused Mario de Leon and appellant Freddie de Leon among the armed persons who were forcing her husband to board the Ford Fiera (pp. 6-7, *id.*). Leony knew appellant Freddie de Leon very well since he was also residing in the area known as "Riverside" where she and her husband lived (p. 6, *id.*). Leony also noticed that appellant was carrying an armalite and that his brother Mario was also holding a gun (pp. 9-10, *tsn*, Nov. 15, 1998).

Leony went home and sought the help of her mother-in-law in locating her husband (p. 8, *tsn*, Oct. 20, 1997). However, not long thereafter, her husband's best friend, Elpidio Puwayen, arrived informing her that her husband was found dead on Icon Street, near the Francisco High School (p. 8, *id.*). Leony immediately went to the place but her husband's cadaver had already been taken by the police (*id.*)

Police Major Florante F. Baltazar, medico-legal officer and Chief of the PNP Crime Laboratory, conducted an autopsy on the cadaver of the victim at 8:30 a.m. on April 15, 1993 at the morgue of the Saint Matthew Funeral Parlor (p. 6, *tsn*, Aug. 16, 1994). Major Baltazar found that the victim sustained six [6] external injuries, four [4] of which were gunshot wounds (pp. 6-7, *ibid.*). The fatal gunshot wounds were those sustained by the victim in the head and in the right side of his body (p. 11, *id.*). Based on the measurements of the entry wounds, the doctor opined that the guns used were either .38 caliber or .45 caliber pistols (p. 10, *id.*).

The victim's cadaver was later brought home at around six o'clock in the evening by the Saint Angelus Funeral Home (p. 9, *id.*). At that time, Leony was pregnant (p. 10, *id.*). She delivered her baby on April 17, 1993, barely two [2] days after her husband was killed (*ibid.*). They were afraid to report what Leony saw to the police because appellant and Mario were always seen at Station 5, (or Precinct) "lagi silang nakaistambay sa Station 5" (*id.*). However, on June 25, 1993, Leony mustered enough courage to go the PACC where she revealed the identities of her husband's assailants. She executed her affidavit and sought the assistance of then Vice President Joseph Estrada (pp. 10-11, *id.*; pp. 21-22, *tsn*, Nov. 15, 1993).

The shooting of the victim that fateful morning was actually witnessed by Edgardo Miranda who was at the premises of the San Francisco High School in Mangahan, Barangay Commonwealth, Quezon City (p. 4, *tsn*, Nov. 17, 1993) which he was assigned to guard from 10:00 p.m. up to 4:00 a.m. (p. 5, *ibid.*) At around 4:00 a.m. on said April 15, 1993, Miranda had just come out of the school gate on his way home when he saw the assailants and the victim along Ecol's Street, proceeding towards his direction. He saw the victim being held by appellant and co-accused Mario de Leon, with Cesar Cabildo walking ahead of them holding a short firearm (p. 14, *tsn*, Nov. 17, 1993; p. 15, *tsn*, Dec. 17, 1993).

Miranda recognized appellant Freddie de Leon having known him since 1984 or 1985 in Mangahan where the latter had first resided (pp. 13 & 23, *tsn*, Nov. 22, 1993). He also recognized the accused Mario de Leon who used to be his companion as barangay tanod under Councilor Gil Villanueva (*ibid.*). He also knew and recognized Cabildo, whom he met sometime in 1989 as a police officer assigned at Station 5 [or Precinct], Quezon City, and who used to go to Mangahan in 1990 (p. 9, *tsn*, Nov. 17, 1993; pp. 13-14, *tsn*, Nov. 22, 1993). Miranda recognized the members of the group while they were approaching because there were two [2] lighted Meralco posts along Ecol's street (p. 17, *tsn*, Nov. 22, 1993), one of which the group had already passed by, and the other was near the store, around 20 to 25 meters away from the gate of the school (*ibid.*).

Sensing trouble, Miranda went back inside the school (p. 6, *tsn*, Nov. 17, 1993; p. 8, *tsn*, Nov. 22, 1993). When he was inside the school premises, Miranda heard the victim exclaim "Pare, ano bang kasalanan ko?", after which he heard gunfire (p. 24, Nov. 22, 1993). Miranda immediately climbed the 10 meter high concrete fence of the school to see what was happening (p. 7, *tsn*, Nov. 17, 1993). About 15 meters from where he was, he saw the de Leon brothers shooting the victim while Cabildo watched them (pp. 7-8, *id.*). Miranda heard four [4] more gunshots (p. 9, *id.*). Miranda clearly saw the shooting of the victim as the scene was illuminated by an electric light from the nearby store and from the Meralco post around 20-25 meters away from the gate of the school (p. 8, *id.*; pp. 16-17, *tsn*, Nov. 22, 1993). After the victim fell, Cabildo and the de Leon brothers walked away from the scene of the crime (p. 11, Nov. 17, 1993).

When Miranda went out of the gate, a certain Major Neron also came out of his house (p. 11, *ibid.*). Upon seeing the dead victim, Major Neron requested Miranda to call the police at Precinct 5 (p. 11, *id.* and pp. 23-24, *tsn*, Dec. 17, 1993). As soon as the police arrived at the scene, Miranda went home as he did not wish to get involved in the investigation (pp. 11 to 12, *tsn*, Nov. 17, 1993). Later, however, Miranda executed his "salaysay" before the PACC pointing appellant as one of the assailants (pp. 27-28, Dec. 17, 1993).

On July 16, 1993, both the de Leon brothers were arrested by the PACC (p. 36, *Records*). The following day, on July 17, 1993, accused Mario de Leon, with the assistance of counsel, Atty. Francisco Sababan, executed his extrajudicial confession attesting to the fact that he and Cabildo killed Danilo Añez (pp. 4-13, *tsn*, Feb. 23, 1994)."[5]

Appellant interposed denial and alibi as his defenses. According to him, he used to work as a volunteer reporter of DZEC radio and the newspaper "Taliba". On April 13, 1993, Freddie de Leon's brother Rosendo de Leon was killed and a suspect for the said killing was apprehended and detained on the same day at Police Station 5 in Fairview, Quezon City, which happens to be a regular post of appellant as a newsbeat reporter. On April 14, 1993 at about 7 o'clock in the evening, appellant was fetched by SPO2 Romeo Campo of the said station to confer with the suspect who intimated that he will reveal the identity of the real culprits if he is made a state witness. From then on, appellant never left Station 5 waiting for news to cover. Finally, at 4 o'clock in the morning of the next day, or on April 15, 1993, a report of a shooting incident was received by the station. Freddie de Leon proceeded to the scene of the crime together with the responding policemen, namely SPO2 Benuel Rosello and PO2 Rodel Diongco. They arrived at the place at around 4:30 in the morning. Upon arrival, Freddie de Leon immediately took pictures of the victim whose identity was later learned to be Danilo Añez y Mariano based on the identification card in his wallet. Appellant stayed at the scene of the crime for almost two (2) hours and proceeded back to the police station at past 6 o'clock in the morning. In short, appellant claims that he was in Police Station 5 in Fairview, Quezon City, from 8 o'clock in the evening of April 14, 1993 up to 4 o'clock in the morning of April 15, 1993. He left the station only at 4 o'clock in the morning to respond to the gun shooting incident.

The trial court held that the prosecution established the guilt of the accused beyond reasonable doubt "through the clear, positive, straightforward and convincing testimony of witnesses Leony Añez, widow of the deceased, and Edgardo Miranda." Leony Añez testified that she saw the accused Mario de Leon and Freddie de Leon with two others dragging her husband to an old white Ford Fiera at around 4 o'clock in the morning of April 15, 1993. Edgardo Miranda, a barangay tanod patrolling the area, testified that at about the same time, while he was coming out of the San Francisco High School at Mangahan, Barangay Commonwealth, Quezon City, he saw the deceased with Cesar Cabildo, Mario de Leon and Freddie de Leon walking towards the direction of the school and he saw Mario de Leon and Freddie de Leon shoot Danilo Añez.

In the instant appeal, appellant submits for the consideration of this Court the following alleged errors:

I

THE LOWER COURT ERRED IN CONVICTING FREDDIE DE LEON OF THE CRIME OF MURDER CONSIDERING THAT THERE EXISTS REASONABLE DOUBT AS TO HIS IDENTITY AND ALLEGED PARTICIPATION IN THE CRIME, IN THAT:

- HE WAS NOT AT THE SCENE OF THE CRIME WHEN IT WAS SUPPOSEDLY COMMITTED;
- THE TESTIMONY OF PROSECUTION WITNESSES ARE FULL OF LOOPHOLES AND THUS, GROSSLY UNRELIABLE TO SUSTAIN CONVICTION;
- THE SUPPOSED EXTRAJUDICIAL CONFESSION OF ACCUSED MARIO DE LEON CONSPICUOUSLY REVEALS THAT FREDDIE DE LEON HAD NO PARTICIPATION WHATSOEVER

IN THE KILLING OF DANILO AÑEZ;

- IT WOULD BE HIGHLY ILLOGICAL AND CONTRARY TO HUMAN EXPERIENCE FOR FREDDIE DE LEON, ASSUMING FOR THE SAKE OF ARGUMENT THAT HE WAS INDEED AMONG THOSE WHO SHOT DANILO AÑEZ, TO HAVE COME TO THE SCENE OF THE CRIME BARELY THIRTY (30) MINUTES AFTER IT WAS SUPPOSEDLY COMMITTED, TOOK PICTURES AND TOOK STEPS TO INFORM THE VICTIM'S RELATIVES; and

- FREDDIE DE LEON WAS NOT ARRESTED FOR THE OFFENSE OF MURDER BUT FOR THE ALLEGED ILLEGAL POSSESSION OF FIREARMS. IN FACT, HE WAS ARRESTED ILEGALLY AND, HAD HE NOT FILE (sic) A PETITION FOR HABEAS CORPUS, HE WOULD NOT HAVE BEEN FORMALLY CHARGED IN COURT AND ONLY AFTER ABOUT EIGHTY FIVE (85) DAYS AFTER HIS ILEGAL ARREST.

II

THE SUPPOSED "POSITIVE IDENTIFICATION" OF FREDDIE DE LEON BY PROSECUTION WITNESS EDGARDO MIRANDA CANNOT BE TAKEN AT FACE VALUE AND THUS, INSUFFICIENT TO SATISFY THE EXACTING STANDARD OF GUILT BEYOND REASONABLE DOUBT.

III

THE LOWER COURT ERRED IN SUMMARILY DISREGARDING FREDDIE DE LEON'S DEFENSE.

In sum, appellant questions the trial court's: (1) failure to give credence to his defense of alibi; (2) assessment of the credibility of the prosecution witnesses; and lastly, its (3) appreciation of the sufficiency of the evidence of the prosecution.

After a thorough and careful examination of the records, this Court is convinced beyond reasonable doubt that appellant is, indeed, guilty as charged.

Firstly, this Court is not persuaded by appellant's alibi that at the time of the killing he was at Police Station 5 in Fairview, Quezon City, following up the developments on the case of his murdered brother and waiting for news that he can pick up for publication in the 'Taliba', a newspaper he was working for. He claims that this fact was corroborated by witnesses SPO4 Jacinto Basilio and SPO2 Romeo Campo. True, SPO4 Jacinto Basilio together with SPO2 Romeo Campo, testified that appellant spent the night in the police station from April 14, 1993 up to the early morning of April 15, 1993, however, their testimony could hardly prove the presence of appellant at the police station at the time of the killing. It is settled that for alibi to be plausible the accused must not only prove that he was somewhere else at the time of the commission of the crime, but he must also prove that it was highly impossible for him to be present at the crime scene at the time of its occurrence.[6] SPO2 Romeo Campo testified that at about 7 o'clock in the evening of April 14, 1993 he was ordered by his superior to fetch Freddie de Leon because there was a lady who wanted to talk to him at the station. Appellant did not go with SPO2 Campo but followed later at the precinct and was turned over to SPO2 Basilio who was the duty desk officer at that time. According to him, appellant stayed in the police station until 8 o'clock the following morning of April 15, 1993 as he saw him around that time talking to some policemen.[7] However, on cross-examination, he admitted that he rested and took a nap and that there were many persons coming in and out of the precinct and that he was not aware of everything that was transpiring at that time in the precinct.[8] On the other hand, SPO4 Jacinto Basilio testified that he had no supervision and control over appellant;[9] that appellant can leave the place anytime he wants to;[10] and it was established through his testimony that Police Station 5 in Fairview, Quezon City, where appellant claimed he was at the time of the incident is two (2) kilometers away from the place of the crime and may be traversed by motor vehicle in two (2) minutes.[11] Verily, no evidence was presented to show that it was

impossible for appellant to physically traverse the two places within a short span of time as to preclude his presence in the locus criminis. Significantly, the two policemen, SPO2 Rosello and Diongco whom he claimed he accompanied as they proceeded to the crime scene after the station received reports of a gun shooting incident did not take the witness stand to corroborate his statement.

In relation to the foregoing, it is argued that it would be highly illogical and contrary to human experience for Freddie de Leon assuming for the sake of argument that he was indeed among those who shot Danilo Añez to have come to the scene of the crime barely thirty (30) minutes after it was supposedly committed, took pictures and took steps to inform the victim's relatives. He adds, that "if it were true that he was among the assailants, he could have proceeded to other places far from the scene of the crime to create a more believable alibi. He could have done what Cabildo did, who even at present, remains at large." The mere fact that appellant did not flee from the scene of the crime but even went back thereto, may not be deemed as indicative of his innocence. There is no law or dictum holding that non-flight of an accused is conclusive proof of innocence.[12] As aptly observed by the Office of the Solicitor General there were good reasons for appellant to be present at the scene of the crime after it was committed and does not belie his participation in the killing:

"It is submitted, however, that appellant's presence at the scene of the crime after its commission was precisely to avoid being suspected of complicity. Being a news beat reporter, he was expected to be present there. And by being there, he would know if there were persons who had actually seen him shoot Danilo Añez. Considering also his perceived closeness to the police at the nearby precinct 5, his presence at the scene would also discourage witnesses to come forward and report his complicity. His prolonged stay at the scene for almost two (2) hours instead of reporting the incident for immediate broadcast was rather uncommon and shows that his interest in the crime was other than as a mere member of the press." [13]

In a last ditch effort to buttress his alibi, appellant insists that the extrajudicial confession of his co-accused Mario de Leon clearly confirms that appellant was never present at the scene nor did he ever participate in the alleged crime because Mario failed to mention therein Freddie's presence or participation. Suffice it to state that the alleged confession of Mario de Leon may be admissible only against him (Mario) but not against nor in favor of the appellant.[14] An extrajudicial confession is binding only upon the confessant and is not admissible against his co-accused. As against the latter, the confession is hearsay,[15] subject of course to certain exceptions which do not obtain in the instant case.

Secondly, appellant's contention that the testimony of the two (2) witnesses who implicated him, namely, Edgardo Miranda and Leony Añez cannot sustain the conviction is simply unavailing. Appellant's claim that eyewitness Edgardo Miranda failed to identify him is without merit. Edgardo Miranda's narration of the incident and his identification of the appellant as one of the culprits was direct and definite. Miranda positively identified appellant as one of the killers of Danilo Añez. He could not have been mistaken in identifying appellant as the scene of the crime was sufficiently illuminated and he was only at a distance of fifteen (15) meters from where the appellant and his companions were standing and he has known appellant for a number of years already since 1984 or 1985. We quote pertinent portions of his testimony as follows:

Q:

Mr. Witness, do you remember where you were in the evening of April 14, 1993?

A:

I was at the San Francisco High School, Mangahan, Barangay Commonwealth, Quezon City.

Q:

What were you doing there?

A:

I was helping in guarding the students going to school at night session.

Q:

You said you are helping in guarding the children going to school, by the way, Mr. Witness, what is your job?

A:

I am a vendor and also a barangay tanod, sir.

Q:

As a barangay tanod, what is your duty and responsibilities?

A:

To help in keeping peace and order in our place.

Q:

Mr. Witness, what were you doing in the evening of April 14, 1993 at the Mangahan High School?

ATTY. UY:

Already answered, he was guarding children in going to school.

COURT:

Sustained.

STATE PROS. VILLANUEVA:

Q:

What was your tour of duty as barangay tanod at Mangahan High School?

A:

At Mangahan, I guard the school at night.

Q:

What time do you go on duty at night?

A:

At 10:00 o'clock in the evening, sir.

Q:

Mr. Witness, did you report for work on April 14, 1993?

A:

Yes, sir, I reported to our team leader.

Q:

Who is your team leader?

A:

George Ramos, sir.

Q:

Mr. Witness, where were you on the early morning hours of April 15, 1993 at around 4:00 o'clock?

A:

I was going out of the gate of San Francisco High School, sir.

Q:

What was your reason for going out from San Francisco High School?

A:

I was about to go home, sir.

Q:

On your way out from San Francisco High School, what happened, Mr. Witness?

A:

I saw people coming, sir.

Q:

Who are these persons that you saw?

A:

They are Cesar Cabildo, Danilo Añez, Mario de Leon and Freddie de Leon.

Q:

Upon seeing them, what happened next, Mr. Witness?

A:

When I saw Cesar Cabildo carrying a gun, I immediately enter again the premises of the school.

Q:

Why did you enter the premises of the school?

A:

I was afraid, sir.

Q:

While inside the school premises, what happened next?

A:

When I entered the gate of the school premises I heard a gunshot.

Q:

Why do you say that there was a gunshot?

ATTY. UY:

The question is hypothetical, Your Honor.

COURT:

Witness may answer. Why do you know that is a gunshot?

WITNESS:

Because a gunshot is different from a firecracker, sir.

Q:

What did you do after hearing the gunshot, Mr. Witness?

A:

I climbed the wall to see.

Q:

After climbing the wall, what happened next, Mr. Witness?

A:

I saw Mario de Leon and Freddie de Leon holding a gun.

Q:

What happened next, Mr. Witness?

A:

I saw they were shooting Danilo Añez.

Q:

Mr. Witness, can you tell us in brief, can you describe the place - I withdraw the question.

How far were you from where you saw Freddie de Leon and Mario de Leon shooting Danilo Añez?

A:

More or less fifteen (15) meters away.

Q:

Were you able to identify these persons which you have just mentioned?

A:

Yes, sir.

Q:

How were you able to identify?

A:

Because there was a Meralco post near the school lighted, and in front of the school there was a store with electric light outside.

Q:

By the way, Mr. Witness, you identified - How were you able to know that - I withdraw the question.

Do you know Mario de Leon and Freddie de Leon? Do you know these persons which you have identified?

A:

Yes, sir.

Q:

Why do you know them?

A:

I was formerly an Iglesia Ni Cristo, and I also stayed at Mangahan for a long time.

Q:

You mentioned that you saw Freddie de Leon, Mario de Leon, Cesar Cabildo and Danilo Añez coming, since when have you known these persons you have just mentioned?

A:

Since I started living at Mangahan in 1983.

Q:

How about Cesar Cabildo?

A:

About 1990 he used to come to Mangahan.

Q:

By the way, Mr. Witness, do you know the occupation of the persons you have just mentioned?

A:

I know that Freddie de Leon was a former electrician. Mario de Leon was working at a car repair shop, their own car repair shop. Cesar Cabildo was a police officer assigned at Precinct 5, Quezon City police station.

Q:

Do you remember what clothes they were wearing these persons you have mentioned?

A:

I did not bother to look at anything but only the act of shooting Danilo Añez. I do not remember their clothes.

Q:

You mentioned that you saw Mario de Leon and Freddie de Leon shooting Danilo Añez, how many shots did Mario de Leon make?

A:

I only saw two (2) guns firing and I heard four (4) shots.

COURT:

Whom did you see?

WITNESS:

I saw the two of them, Mario de Leon and Freddie de Leon shooting Danilo Añez until Danilo Añez fell down.[16]

During cross-examination, Edgardo Miranda remained firm and certain on what transpired that fateful day.

As to Leony Añez, appellant makes much of the alleged defects, inconsistencies and discrepancies in her testimony as creating a reasonable doubt on his guilt. Evidently, appellant loses sight of the fact that the minor lapses in the testimony of Leony Añez which is merely corroborative, do not detract from the eyewitness account of Edgardo Miranda positively identifying appellant as one of the killers. It is settled that the testimony of a single eyewitness is sufficient to support a conviction so long as it is clear and straightforward and worthy of credence by the trial court. In any event, we find that appellant's protestations as regards the testimony of Leony Añez are likewise without merit.

Appellant claims that Leony's testimony implicating him as one of the assailants is based on mere suspicion. We find that it was but natural and logical for Leony to suspect appellant as one of her husband's killers as she saw him among those who dragged and forced her husband to board a vehicle sometime before she found out that her husband was killed. In this respect, her testimony corroborates the eyewitness account of Edgardo Miranda. Likewise, we reject appellant's claim that it is highly unbelievable as it is contrary to human experience that upon seeing her husband being dragged by armed men, she and her brother-in-law did nothing to stop them and that she did not reveal to SPO4 Basilio, the investigating officer any particular person she suspected of having killed her husband. It is axiomatic that different people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[17] The fact that the witness' reaction does not seem natural to some does not destroy her credibility.[18] Also, it has been frequently held that delay in making a criminal accusation does not impair the credibility of a witness if such delay is satisfactorily explained.[19] At the time Leony and her brother-in-law saw her husband being dragged into the Ford Fiera, she was heavy with child and both feared for their lives at the sight of the armed men. It was also explained that she wanted to report what she saw to the police but the fact that the assailants, including herein appellant were always seen in the company of the police at precinct 5 discouraged her. Nevertheless, she did not give up and later went to the PACC for assistance. As to appellant's claim that Leony does not know how appellant looks like before he was arrested because Leony slapped appellant mistaking him for Mario de Leon, we agree with the OSG that "it is clear from the transcript of stenographic notes that appellant's testimony that Leony had mistaken his brother to be him was a bare assertion without any factual support". Lastly, appellant cannot destroy the credibility of Leony on the basis of the alleged discrepancy between the time she witnessed her husband being dragged by armed men, which according to appellant was around 4:25 a.m., and the time the crime was reported to the police precinct no. 5, which according to appellant was at 4 a.m. Appellant's claim that Leony saw her husband being dragged by armed men at 4:25 a.m. is appellant's own estimate, it is not based on her testimony. Leony merely testified that she fetched her husband at around 4 o'clock

in the morning of April 15, 1993. In this regard, it has been held that misestimating time is too immaterial to discredit the testimony of a witness, especially when time is not an essential element or has no substance bearing on the fact of the commission of the offense.[20]

At this juncture, it bears stressing that findings of the trial court pertaining to the credibility of witnesses deserve great respect since it had the opportunity to hear and observe their demeanor as they testified on the witness stand and, therefore, it was in a better position to discern if such witnesses were telling the truth or not based on their deportment while testifying.[21]

Thirdly, we cannot see how the failure of the prosecution to immediately include appellant in the original information for murder may justify his acquittal. It is argued that appellant may have been unfortunately dragged into the case of which he had nothing to do upon his inclusion in the amended information for the reason, as speculated by appellant himself, that the prosecution only wanted the dismissal of the petition for habeas corpus. This theory is truly farfetched and as explained by the OSG, "it is evident that such failure was occasioned by procedural lapses resulting from the investigating PACC agents' desire to acquire additional proof to justify appellant's inclusion in the murder charge, but does not in any way create reasonable doubt on appellant's culpability for the crime charged."

We hold that the trial court correctly appreciated the qualifying circumstance of treachery. Treachery is deemed present in the commission of the crime when the accused employed a method which tended directly and specifically to insure the execution of his dastardly act without any risk to himself arising from whatever defense the victim might make.[22] The trial court found that the accused were all armed with guns while the hapless victim was unarmed and obviously not in any position to defend himself as he was shot several times from behind to insure his death. We also find that the trial court correctly held that treachery absorbs the generic aggravating circumstance of abuse of superior strength.[23]

Considering the evidence for the prosecution and for the defense, we are in accord with the verdict that the appellant is guilty beyond reasonable doubt of the crime charged. The penalty for murder under Article 248 of the Revised Penal Code is reclusion temporal[24] in its maximum period to death. There being no aggravating or mitigating circumstances, the mid-range penalty of reclusion perpetua should be imposed upon appellant. Consistent with prevailing jurisprudence, we sustain the award of P50,000.00 to the heirs of the victim as indemnity for his untimely demise.[25]

WHEREFORE, the Decision of the Regional Trial Court of Quezon City (Branch 102) is AFFIRMED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Presided by Judge Perlita J. Tria Tirona.

[2] Original Records, pp. 27-28.

[3] Rollo, pp. 38-65.

[4] OR, p. 271; Rollo, p. 66.

[5] Rollo, pp. 213-218.

[6] *People vs. Magpantay*, 284 SCRA 96 (1998); *People vs. Ravanese*, 284 SCRA 634 (1998).

- [7] TSN dated March 14, 1996, pp. 20-25.
- [8] Ibid., pp. 26-33.
- [9] TSN dated May 3, 1995, p. 33.
- [10] Ibid.
- [11] TSN dated May 3, 1995, p. 25.
- [12] *People vs. Pareja*, 265 SCRA 429 (1996).
- [13] Appellee's Brief, p. 24; Rollo, p. 235.
- [14] *People vs. Fuster*, 179 SCRA 781 (1989); *People vs. Caritativo*, 256 SCRA 1 (1996).
- [15] *People vs. Camat*, 256 SCRA 52 (1996).
- [16] TSN dated November 17, 1993, pp. 4-10.
- [17] *People vs. Luzorata*, 286 SCRA 487; *People vs. Oliano*, 287 SCRA 158; *People vs. Maguad*, 287 SCRA 535 (1998);
- [18] Oliano case.
- [19] *People vs. Tanail*, 323 SCRA 667 (2000).
- [20] *People vs. Alfeche*, 294 SCRA 352.
- [21] *People vs. Bawar*, 262 SCRA 325 (1996).
- [22] *People vs. Tulop*, 289 SCRA 316 (1998).
- [23] *People vs. Caritativo*, 256 SCRA 1 (1996).
- [24] Prior to RA 7659, which made murder punishable by reclusion perpetua to death.
- [25] *People vs. Pugong*, G.R. No. 119013, March 6, 1998.

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