PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAYMUNDO VILLAREZ, ACCUSED-APPELLANT.

G.R. No. 133795. July 27, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

After poring over the records of the case, this Court finds no reason to reverse or modify the trial court in its assessment of the witnesses' credibility. It had the unique opportunity to observe their demeanor and conduct on the stand. It did not overlook, misunderstand or misapply any material evidence. Hence, we affirm its judgment as factually and legally correct.

The Case

Before the Court is an appeal by Raymundo Villarez,[1] challenging the February 11, 1998 Decision[2] of the Regional Trial Court (RTC) of Olongapo City (Branch 75), in Criminal Case No. 670-89. The decretal portion of said Decision, which found him guilty of parricide, reads as follows:

> "WHEREFORE, finding the accused Raymundo Villarez guilty beyond reasonable doubt of the offense of parricide defined and penalized under Article 244 of the Revised Penal Code as a principal by direct participation, he is sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties attached to it; and to indemnify the heirs of the deceased Bonifacio Villarez in the amount of P50,000.00.
>
> "The accused shall be credited in full of his preventive imprisonment if he had agreed in writing to abide by the disciplinary rules imposed on convicted prisoners, otherwise to only 4/5 thereof."[3]

The Information,[4] dated October 20, 1989, charged appellant as follows:

> "That on or about the 7th day of July, 1989 at around 6:00 o'clock in the afternoon, at Brgy. San Isidro, in the [M]unicipality of Subic, [P]rovince of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, and armed with an iron pipe, did then and there willfully, unlawfully and feloniously assault, strike and hit therewith Bonifacio Villares, his (accused) natural father, and inflicting upon him physical injuries, described as follows:
> `-Lacerated wound 4 cm. parieto-occipital area;
>
> -Lacerated wounds both 1 cm. at the anterior axillary line 4th and 6th ICS right;
>
> -Cerebral contusion.'
>
> which directly caused the death of Bonifacio Villares."[5]

When arraigned on January 10, 1996, appellant pleaded[6] not guilty.[7] After due trial, the lower court promulgated its assailed Decision.

Hence, this appeal.[8]

The Facts

Prosecution's Version

In its Brief,[9] the Office of the Solicitor General presents the prosecution's version of the facts in this wise:

> "In the early afternoon of July 7, 1989, Conrado Villarez had alighted from a tricycle he rode from his office when he saw his brother Raymundo Villarez (appellant) drinking with one Willie Manahan at Brgy. San Isidro, Subic, Zambales. At about 5:30 P.M. of that same afternoon, Conrado was already resting by the window of his house at Brgy. San Isidro, Subic, Zambales which was located inside a fenced compound wherein the houses of his brother Raymundo Villarez (Appellant) and their parents Bonifacio and Consorcia Villarez were built. Conrado's house was x x x five (5) to six (6) meters away from his brother's house while their parents' house was about ten (10) meters away from appellant's house. At that time, Conrado's mother Consorcia Galang-Villarez was also standing by the window of her house conversing with her husband Bonifacio Villarez who was then in the yard in front of their window.
>
> "Thereupon, Conrado and Consorcia while in their respective houses, heard appellant having an altercation with his second wife Mary Ann Fernandez as they (spouses) shouted invectives at each other. They also overheard one of appellant's children crying and shouting `Tama na po, Itay' after apparently being hit by appellant.
>
> "Afterwards, Conrado saw appellant going down his house and proceeding towards their parents' house nearby. As appellant shouted the words `Putang Ina mo matanda ka, ganid' he approached his father Bonifacio, then in the yard in front of his house, and stabbed him twice with a knife hitting him at the right side of his rib cage. Thereupon, appellant tried to break the door of his parents' house. When he managed to open the door of his parents' house he started to chase his mother Consorcia
>
> "Incensed with his own brother's (appellant's) actuations, Conrado immediately jumped out of the stairs of his house, grabbed a lead water pipe near the door, ran towards his brother and struck his brother Raymundo with it thereby hitting him on the shoulder. As a result of said distraction with appellant chasing Conrado, their father Bonifacio managed to flee to the other side of the yard. Conrado then tried to hit appellant for the second time but the latter evaded the strike and even picked up stones which he threw at Conrado who likewise evaded the stones by running away from appellant towards the street adjacent to their houses. Forthwith, appellant pursued Conrado as he (appellant) threw stones at Conrado who then tried to hit back at appellant with the lead pipe but their mother Consorcia who had caught up with them placed herself between her sons and tried to pacify them.
>
> "While appellant and Conrado were grappling with each other for possession of the lead pipe, appellant's second wife Mary Ann Fernandez arrived and struck Conrado with a piece of wood on his right shoulder. Conrado's sister Ludy Maghirang likewise arrived with a piece of wood and tried to help her mother. Suddenly, appellant grabbed from his sister the piece of wood which he then used in hitting Conrado on his forehead and as a result thereof, Conrado felt dazed which caused him to lie down on the ground for a few seconds. Thereupon, when appellant was already on top of Conrado, he (appellant) grabbed the lead pipe from Conrado and chased his sister Ludy. However, their father Bonifacio, appeared with a wooden stick but when he met appellant, Bonifacio started to turn back but appellant hit him at the back of his head with the lead pipe. As a result, Bonifacio fell face down to the ground so his wife Consorcia rushed to him and placed him on her lap.
>
> "Meanwhile, appellant chased his brother Conrado, then in shock, heading towards the place of the Mirador's but when he failed to catch up with him, appellant returned to where he left his father. Meanwhile, one of Consorcia's neighbors had warned her that her son Raymundo (appellant) was coming back that she felt so scared, left her wounded husband and returned to her house where her youngest child was left inside.
>
> "At that time, Conrado was proceeding towards the Barangay Hall and farther to the house of Barangay

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> Kagawad Bobis. Subsequently, Kagawad Bobis of Brgy. San Isidro, Subic, Zambales who was resting at her house at Purok 2, near the Post heard somebody calling for her assistance. She saw that it was Conrado Villarez, also a resident of the same barangay, who told her that his father Bonifacio had been hit with a lead pipe by his brother Raymundo. Thereafter, they proceeded towards the spot where Conrado's father Bonifacio lay bloodied. Forthwith, she requested one of her staff members to help bring Bonifacio to the hospital for treatment. When [s]he noticed that Conrado was also wounded in his head, she told him to seek medical assistance. She also asked one of the barangay tanod to accompany Conrado to the police in Subic to report the incident.
>
> "When Bonifacio [had] already boarded the tricycle which [would] take him to the hospital, appellant suddenly appeared holding the lead pipe and upon seeing his brother Conrado chased the latter who managed to go inside the house of one Lina Velacia Unable to find his brother Conrado, appellant walked to and [fro] within the vicinity. Eventually, appellant approached Kgd. Bobis, who as barangay Kagawad, told him to surrender to her the lead pipe. Appellant complied with her directive although he told her that `he was really very mad and that he [would] kill everyone of them' (papatayin ko silang lahat). Subsequently, Kgd. Bobis and a Barangay Tanod brought appellant and the lead pipe to the Barangay Hall where some policemen from the Subic Police Station, including SPO4 Domingo Permison, had already arrived. Thereafter, Kgd. Bobis and several barangay officials surrendered the lead pipe to the police authorities.
>
> "Meanwhile, Bonifacio Villarez was taken to the Olongapo City General Hospital where he was attended to by Dr. Pedro Ferrandiz, then senior resident physician of the hospital. In the course thereof, he found that Bonifacio Villarez sustained the following:
> `- Lacerated wound 4 cm. parieto-occipital area;
>
> - Lacerated wounds both 1 cm. at the anterior
>
> axillary line 4th and 6th ICS right
>
> - Cerebral contusion.'

"Eventually, Bonifacio Villarez died at the hospital. Dr. Susan L. Gutierrez, then resident physician of the hospital, issued a Certificate of Death which stated that the immediate cause of death of the victim was cardiorespiratory arrest, the antecedent cause was the intracerebral hemorrhage and the underlying cause was the head injury.

"In connection with the death of Bonifacio Villarez, SPO4 Domingo Permison of the Subic Police Station's Investigation Section conducted an investigation o[f] the case against appellant on July 11, 1989. He took statements of Consorcia Villarez and Conrado Villarez on the matter on July 11, 1989. On July 12, 1989, he took the statement of Lilia Esposo. Aside from taking the statements of Consorcia Villarez and Lilia Esposo, he also requested autopsy of the victim and also asked appellant if he wanted the case submitted. SPO4 Permison likewise transmitted the lead pipe which was more or less 2 feet by 3 inches long and one (1) knife which was more or less 9 inches long, including the handle, which were previously turned over to him by the desk sergeant then on duty to Police Officer Renato Relocano, then evidence custodian, for which the latter issued a custody receipt.

"During the trial of the case, Dr. Arnildo Tamayo, a physician of the Olongapo City General Hospital, was presented to interpret findings indicated in the medical certificate signed by Dr. Fernandez. Dr. Tamayo declared that he was assigned to conduct an examination on all medico-legal cases in the hospital including stab wounds, vehicular accidents and gunshot wounds and mauling since 1989 and Dr. Ferrandiz was his senior resident. He declared that he d[id] not know if Dr. Ferrandiz was still connected with the hospital as he ha[d] not seen him for some time. When asked what the `cerebral contusion' as indicated in the medical certificate meant, he explained that it was bruise at the cerebral area of the skull where the brain [was] located and [was] permanent in nature. He

declared that said wound at the parieto-occipital area could [have been] caused by a blunt instrument like a water pipe and that a water pipe could possibly cause cerebral contusion. He likewise opined that said injury in the parieto-occipital area could also be fatal if associated with great force as it could blast the meninges of the brain as it is at the meninges where the blood vessels [we]re found. Dr. Tamayo also declared that he [could] not say [i]f the assailant was left-handed or right-handed. He opined that one [could] hit a person at the mid-portion of the head and at the back even when one [was] in front.

"SPO4 Renato Relocano testified during the trial that he [did] not have the police blotter regarding the July 7, 1989 incident because it was destroyed during the Mt. Pinatubo eruption in 1991 as the `bodega' where it was kept collapsed and all records stored there covering the period from the latter part of 1990 to 1991 were destroyed and beyond reconstruction.

"Jane Villarez-Simbulan, one of the sisters of appellant Raymundo Villarez, was likewise presented as a witness for the prosecution. She declared that appellant and his family stayed with her at the house at Naugsol, Subic, Zambales in July 1995 after her father died. She stated that appellant started helping her in farming a lot an[d] during his stay with her family, she observed that her brother was restless and could not sleep and would drink gin heavily and get drunk. She further testified that for about seven (7) times, she overheard appellant muttering to himself about killing his own father and that there was an occasion when appellant quarreled with her and threatened to stab her in front of her children. She explained that thereafter, appellant and his family left but eventually returned after several weeks to her place although they transferred to a separate hut nearby. She declared that although she knew from the start that appellant killed their father, she allowed him and his wife to stay because she really pitied him as he was her brother and because his children were in her custody."[10] (citations omitted)

Defense's Version

On the other hand, appellant in his Brief[11] narrated the facts in this manner:

> "The accused-appellant walking for home passed the house of his parents Bonifacio and Consorcia Villarez of Barangay San Isidro, Subic, Zambales.
>
> "He overheard his mother chiding and nagging over his father's drinking habits. Noticing his presence, the mother with all the insult and sarcasm that she [could] muster, uttered `join him' when loosely translated in tagalog `yan magsama kayo.' He answered that he ha[d] nothing to do with their problem. `Why do you have to answer, I am not talking to you', replied the mother, in a loud angry voice.
>
> "Walking out of his parent's yard to the street R.V. (for Raymundo Villarez) was met by C.V. (for Conrado Villarez), who was then inside his house, overheard the loud voices and suspecting that his brother R.V. was quarreling or picking a fight with their mother, went down his house picked up a lead (water) pipe approached the trio and hit face and head [sic].
>
> "R.V. was not knocked down by the treacherous blows with a pipe from C.V. and R.V. turned around to face his attacker. The brothers poised in their stance for the confrontation, B.V. (for Bonifacio Villarez) the father sensed the inevitable and rushed towards the duo to pacify them. Just when he was behind R.V., C.V. aimed his swing [at] R.V., but the latter ducked the blow for his head and instead hit B.V. in the head and went down. Seeing what happened to his father [C.V.] escaped with R.V. in chase. At a distance in the cou[r]se of the chase C.V. threw and left behind the pipe finding difficulty in his escape. R.V. retrieved the same and went straight to the barangay hall to report the incident and surrendered the fatal weapon to Kagawad Flocerfida Bobis.
>
> "There were no arrests and detentions among the alleged participants. R.V. lived with his sister J.V. (for Jane

Villarez) in another remote barangay to avoid escalation of the family tragedy.

"R.V. with immediacy filed a case against C.V. for Frustrated Homicide, docketed as Crim. Case No. 89-108-0, which [was] x x x resolved [at] the Municipal Trial Court of Subic, Zambales, by Presiding Judge Edilberto Fabunan.

"In the preliminary investigation conducted [at] the municipal court level, the case against R.V. for parricide was dismissed for lack of probable cause and the state witnesses [were] `coached'.

"[When the case was r]emanded[12] to the office of the provincial fiscal at Olongapo City, then, assistant provincial prosecutor Benjamin Fadera reviewed and reinvestigated x x x and filed the case docketed as Crim. Case No. 670-89: for PARRICIDE."[13]

Trial Court's Ruling

Ruling that appellant had "delivered the fatal blow,"[14] the trial judge explained:

"In parricide, the prosecution must prove the death of the victim, that he or she was killed by the accused, and that the victim [was] his parent or child, whether legitimate or illegitimate, or the lawful spouse, or legitimate ascendant or descendant of the accused. In the case at bench, the accused is admittedly a legitimate son of the deceased Bonifacio Villarez with the latter's legitimate wife Consorcia Villarez. The deceased Bonifacio Villarez died of `respiratory arrest' caused by `intra-cerebral hemorrhage' due to a head injury. The lacerated wound 4 cm. [at the] parieto-occipital area could have been caused by a strong impact on the head by a blunt instrument like a `waterpipe'. The wound was fatal because it caused the blasting of the meninges of the brain where the blood vessels [we]re found. It is well established therefore that somebody must have hit Bonifacio Villarez on the head with a blunt instrument which caused the fatal wound. The issue therefore is: who delivered the fatal blow?

"While prosecution witnesses testified that i[t] was the accused who hit the deceased on the head with a lead pipe, the accused and his witnesses insisted that it was Conrado Villarez who inflicted the fatal blow on the head of his father, albeit by mistake because the blow was intended for Raymundo Villarez.

"Domingo Carabacan, a disinterested bystander, witnessed the incident when he was in San Isidro, Subic, Zambales, that fateful afternoon of July 7, 1989 while selling fish. He ha[d] been residing at the said place for 34 years and familiar with the Villarez family. He testified:
`q So what happened when Raymundo failed to catch up with his sister?
a He went back to the corner x x x of the street and it was at that point when he met his father, sir.

q What was the name of his father?
a Bonifacio, sir.

q When Raymundo Villarez met his father, Bonifacio Villarez, what happened?
a Raymundo hit him sir. He tried to hit him twice and the victim fell when it found its aim, sir.

q Why did Raymundo Villarez [fail] to hit Bonifacio Villarez for the first time?
a He evaded it, sir.

q And [with] what did Raymundo Villarez hit Bonifacio Villarez?
a With a lead pipe, sir.

q Do you know what part of the body of Bonifacio Villarez was hit with the lead pipe when Raymundo Villarez hit him?
a I saw him hit the head, sir.

q And what happened to Bonifacio Villarez when he was hit with a lead pipe?

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a He fell to the ground, sir.'

x x x x x x x x x

"The testimony of Consorcia Villarez is replete with details that, to the mind of the Court, x x x could not have been a mere fabrication. She also was spontaneous in giving her answers. A mother, by nature, would not resort to falsehood even if the son is utterly discourteous and a drunkard. Consorcia testified in the manner she did because she observed the events first hand while only a few meters away from the protagonists. Her vivid recollections of the events five years after the killing impressed the Court. It must have been a heavy burden on her part which finally found a release when she testified in Court.

"The testimony of Conrado Villarez is likewise replete with details that precludes fabrication. He in effect corroborated the testimony of [his] mother Consorcia on material points. When the accused arrived that afternoon, obviously drunk, he heard him berating his children and abusing them physically. He overheard one of them shouting `Tama na po, itay.' He was only six meters away from his father in the same compound when he saw the accused [approach] the former and [utter] `Putang Ina mong matanda ka, ganid.' The accused then stabbed with a knife his father twice hitting the latter on the `right rib cage.' He went down his house and grabbed a lead pipe by his door to help his father. The accused started throwing stones at him but was able to evade the stones thrown until they reached the street in front of their houses. He was hit with a piece of wood by the accused who grabbed the same from his sister Ludy who also arrived to lend succor to their father. On the street, his father Bonifacio reappeared but was hit on the top of his head by the accused which made him fall to the asphalted road. Shocked, he r[a]n towards the barangay hall to ask for help. The accused appeared to have been shocked also.

x x x x x x x x x

"The version of the prosecution of the incident as testified to by the witnesses appears to the Court as more credible. The accused could only offer a denial of what his own mother, brother, and sister testified to. He did not deny his stabbing with a knife his own father. He suffered a wound on his face because Conrado admitted having hit him with a pipe after he had stabbed his father.

x x x x x x x x x

"The Court finds that the evidence of the prosecution ha[s] established beyond reasonable doubt that it was the accused who killed Bonifacio Villarez. The motive was that Bonifacio Villarez did not give the accused his share of the proceeds of the sale of a house by Bonifacio. Thus, in his drunken state he stabbed with a knife and hit on the head Bonifacio with a lead pipe causing his death. This was manifested when he uttered to his father before the killing `Putang ina mong matanda ka, ganid.' `Ganid' means greedy in local parlance. From the testimonies of prosecution witnesses, the accused must have been inebriated at the time of the killing. There is no evidence to show that he was a habitual drinker of intoxicating liquor. As an alternating [circumstance] therefore, his drunkenness must be considered as a mitigating circumstance under Article 15 of the Revised Penal Code."[15](citations omitted)

The Issues

Appellant submits that the court a quo committed the following errors:

"I

The court a quo was in error in arriving at a verdict of conviction based [o]n an amalgam and [a] milieu of totality of facts and circumstances in a web of material irreconcilabilities, incong[r]uities and improbabilities.

II

> The trial court was in error for in its decision it overlooked, misapplied, misunderstood and misinterpreted material facts of importance which if considered in favor of the appellant would acquit him of the charge."[16]

To put it more succinctly, appellant questions (1) the credibility of the prosecution witnesses and (2) the trial court's appreciation of the facts.

The Court's Ruling

The appeal has no merit.

First Issue:

Credibility of Witnesses

Appellant insists that there are material inconsistencies in the "totality of factual, circumstantial and evidentiary proofs."[17] However, as pointed out by the Office of the Solicitor General,[18] he fails to specify these alleged inconsistencies. What we find instead is a confusion of arguments in his 12-page Brief. At bottom, he merely claims that the prosecution's evidence conflicts with his own version of the facts. The trial court, unfortunately for him, chose to rely on the narration of the prosecution's witnesses. On this score, we have often ruled as follows:

> "The trial court has the singular opportunity to observe and consider certain potent aids in understanding and weighing the testimony of witnesses, such as the emphasis, gesture, and inflection of the voice of the witnesses while they are on the witness stand. As these are not incorporated into the record, the appellate court cannot avail of them and must therefore rely on the good judgment of the trial court."[19] (emphasis ours)

After going over the records of the case, we see no reason to deviate from the aforecited principle. We have examined the testimonies of all the witnesses and find no material error in the trial court's assessment of their credibility.

Contrary to Human

Experience

In trying to make sense of the assertions of appellant, we can see his belabored attempt to characterize the prosecution's evidence as being contrary to human experience. He dismisses as implausible the prosecution's theory that he had wrested from Ludivina Villarez a piece of wood that he used to hit Conrado who was thereby overpowered, and that appellant was then able to snatch the latter's lead pipe which was described by the defense as a "superior" weapon.

We find nothing wrong with the narration of the prosecution witnesses that Ludy Maghirang[20] was indeed carrying a piece of wood while trying to help her mother, who was sandwiched between Conrado and appellant. Similarly, we find credible the prosecution's claim that appellant grabbed the piece of wood from Ludy and used it to hit Conrado. Appellant's insistence that she should have been presented to corroborate the prosecution's story has no legal basis. We agree with the following arguments of the solicitor general on this point:

"With respect to the prosecution's alleged failure to present Ludivina Villarez, the same is not fatal to the prosecution's case as appellant claims because the testimony of Conrado Villarez that it was from their sister Ludy Villarez that appellant got a piece of wood which he used in hitting Conrado and thereby momentarily disabling him which led to his subsequent loss of hold of the water pipe, sufficiently established such fact. Moreover, if appellant believed that her testimony would be fatal to the prosecution's case by casting doubt on Conrado's credibility, there was no cogent reason why he did not call on her as a defense witness considering that the rule that `evidence willfully suppressed would be adverse if produced does not apply if: (a) the evidence is at the

disposal of both parties; (b) the suppression was not willful; (c) it is merely corroborative or cumulative; and (d) the suppression is an exercise of a privilege."[21]

The theory of the defense that it was preposterous for Conrado to flee from appellant while the former was holding the "superior weapon"[22] does not hold water. There is hardly any difference between a piece of wood and a lead pipe when both are used as weapons. Notwithstanding his assertion, appellant admits that he chased Conrado.[23] This mix-up merely demonstrates the contradiction in the arguments of the former. The denunciation by appellant of the flight of Conrado does not deserve much credence, because the prosecution witnesses sufficiently repudiated the former's self-serving claims. They clearly established that Conrado was pursued by appellant.

Sister's Testimony as
Hearsay

Appellant denounces as hearsay Jane Villarez's testimony that she heard him admit having killed his father. We emphasize that the declarations given in open court by Jane, his sister, were subjected to contemporaneous cross-examination, which placed them beyond the ambit of the hearsay rule.[24] He was present to deny what was being imputed to him; hence, the hearsay rule did not apply.[25]

Second Issue:
Trial Court's Appreciation of Facts

We find no reason to deviate from the general rule that factual findings of the trial court are accorded respect, even finality.[26] Indeed, we have pored over the records, and we are convinced that appellant killed his father by hitting him with a lead pipe. The testimonies of the prosecution witnesses, particularly Consorcia Villarez and Domingo Carabacan, provide us with a complete picture of what transpired that day. Consorcia testified thus:

> "q Now, on 7 July 1989, at around 5:30 o'clock in the afternoon, do you recall where you were, Mrs. Villarez?
> a Yes, sir, I was inside our house.
>
> q What were you doing at that ti[m]e inside your house?
> a I was having a conversation with my husband, sir.
>
> x x x x x x x x x
>
> PROS. FLORESTA
>
> q Now, while you [we]re inside you[r] hut conversing with your husband on said date and time, do you recall any unusual incident that called your attention?
> a Yes, sir.
>
> q Could you please tell this Honorable Court what was that unusual incident?
> a He had a quarrel with his second wife, sir.
>
> q To whom are you referring to [who] had quarreled with his second wife?
> a Raymundo, sir.
>
> q And where [was] Raymundo [when he] quarreled with his wife?
> a Inside their house, sir.
>
> q Now, how did you see them quarrel inside their house?
> a I overheard them and they [we]re NAGMUMUR[A]HAN (throwing invectives), sir.
>
> q Now, when you heard them throwing [at] each other invectives, what happened next if you know?

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a His children were hit, sir. (PINAGPAPALO)

q And who struck his children?
a He did, sir, Raymundo.

x x x x x x x x x

q Now, after Raymundo hit his three (3) children, what happened what next?
a He went out of the house, sir.

x x x x x x x x x

q And what did Raymundo do after getting out [of] his house?
a He shouted PUTANG INA MONG MATANDA KA, GANID KA, sir.

q To whom were those word[s] directed?
a To his father, sir.

x x x x x x x x x

COURT

q Where was your husband at that time?
a He was by the window. sir. We were talking with each other.

x x x x x x x x x

q And what then did the accused Raymundo do?
a After saying PUTANG INA MONG MATANDA KA, GANID KA, he stabbed my husband with a knife, sir.

x x x x x x x x x

q Where was the accused when he stabbed your husband? Was Raymundo outside the hut or inside the house when he stabbed your husband?
a He was outside and he started to face me, sir.

q When your husband was stabbed, where was your husband?
a He ran [to] the back of the house, sir.

q At the exact [time] when your husband was stabbed, was he outside you house?
a Outside of the window[,] sir.

PROS. FLORESTA

q Outside of the window of your hut when he was stabbed by Raymundo Villarez?
a Yes, sir, my husband was outside of the hut and I was inside the house, sir.

x x x x x x x x x

COURT

q How many times was your husband stabbed?
a Twice, sir.

q How may times was he hit?
a Twice, sir.

q In what parts of the body was he hit?

a Right portion, sir.

q Of what?
a Here, sir.

INTERPRETER

Witness indicating an area over the armpit side.

x x x x x x x x x

PROS. FLORESTA

q How about you, what did you do?
a I was just inside our house, sir.

q And when your husband was already at the back of the house, do you know what did Raymundo Villarez do?

a Yes, sir, he started to chase me.
q And what happened when he chased you?

a He opened the small [door] about this wide, sir.

x x x x x x x x x

PROS. FLORESTA

q Was he able to open the door?
a Yes, sir.

q And when he was able to open the door what did Raymundo do?
a When he was able to enter, Conrado arrived, sir.

q And who is this Conrado?
a My eldest son, sir.

q And when your eldest son arrived, what did you do?
a Conrado hit Raymundo with a lead pipe on the shoulder, sir.

q And when Raymundo was hit with a lead pipe by Conrado, what did Raymundo do?
a I saw Raymundo chase Conrado, sir.

q Was Raymundo able to r[u]n after Conrado?
a Yes, sir.

q And what happened. . . . . .

COURT

q You mean Raymundo was able to catch up with Conrado?
a Raymundo Villarez was able to catch [up with] Conrado and they wrestled, sir.

q When you saw you[r] two sons wrestling with each other, what did you do?
a I was trying to pacify them, sir.

q And were you able to pacify them?
a Raymundo started to pick up stones and started throwing them at Conrado, sir.

q Was he able to hit Conrado with the stone?

a No, sir.

q So after that, what happened next?
a Afterwards, Raymundo was able to pick up a piece of wood about 1 1/2 meter this big, sir.

q And what did Raymundo Villarez do with this piece of wood?
a He thrust that wo[o]d towards Conrado, sir.

q Was he able to hit Conrado with that piece of wood?
a Yes, sir, and he sustained wounds, sir.

q And what did Conrado do when he was hit?
a He was still lying down. He fell to the ground when he was hit on the forehead, sir.

COURT

q When Conrado was hit on his forehead, was he lying on the ground and [was he] still standing?
a He was lying down and Raymundo was able to lake hold of the pipe, sir.

PROS. FLORESTA

q After Raymundo was able to take hold of the pipe, what did Raymundo do?
a Just as when he was to take hold of the pipe that was the time the father came out [to] the street, sir.

q And when his father, and your husband, came out [to] the street, what happened next?
a When Raymundo saw his father, he came back and struck his father. The first time, it did not hit his father. The first blow did not [find] x x x its aim, sir.

q Why? Was there a second blow?
a Yes, sir, there was a second blow when my husband started to turn his back that was when Raymundo hit him again for the second time and it found its aim, sir.

q What happened [to] your husband when it hit its blow?
a He fell to the ground, face down because he was hit at the back of his head, sir."[27]

This narration was corroborated by the other witnesses, including Conrado Villarez[28] who was directly involved in the incident. What happened next was aptly recounted by Domingo Carabacan, as follows:

PROS. FLORESTA

q Now, on 7 July 1989, at around 5:30 o'clock in the afternoon, do you recall where you were, Mr. Carabacan?
a Yes, sir, I was at the corner of San Isidro, Subic, because I was a fish vendor.

x x x x x x x x x

q Now, while you were vending fish at the corner of San Isidro, Subic, Zambales do you recall of any unusual incident that took place?
a Yes, sir.

q Could you please tell this Honorable Court that incident which you witnessed or saw on 7 July 1989 at 5:30 o'clock in the afternoon?
a I saw that Raymundo and Conrado [were] grappling, sir.

q And do you know this Conrado?
a Yes, sir.

q What is the relation of this Conrado to Raymundo?

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a They are brothers, sir.

q What happened next when they were grappling with each other?
a When they were grappling, I saw him stand up and he was holding a lead pipe, sir. It seems that the lead pipe was the cause of the grappling, sir.

q What did you do with the lead pipe?
a When Raymundo got hold of the lead pipe and he saw Ludy, he ran after her, sir.

q Was he able to catch [up with] his sister Ludy?
a No, sir.

q So what happened when Raymundo failed to catch up with his sister?
a He went back [to] the corner of the street and it was at that point when he met his father, sir.

q What was the name of his father?
a Bonifacio, sir.

q When Raymundo Villarez met his father, Bonifacio Villarez, what happened?
a Raymundo hit him, sir. He tried to hit him twice and the victim fell when it found its aim, sir.

q Why did Raymundo Villarez fail to hit Bonifacio Villarez for the first time?
a He evaded it, sir.

q And with what did Raymundo Villarez hit Bonifacio [V]illarez?
a With a lead pipe, sir.

q And do you know what part of the body of Bonifacio Villarez was hit with the lead pipe when Raymundo Villarez hit him?
a I saw him hit the head, sir.

q And what happened to Bonifacio Villarez, when he was hit with a lead pipe?
a He fell to the ground, sir.

q And when he fell to the ground, what happened?
a He ran after his brother Conrado, sir."[29]

Again, this testimony is supported by Conrado Villarez[30] and the other prosecution witnesses. At this point, we must add that despite appellant's assertions, he neither denied nor repudiated having stabbed his father twice.

MTC Judge's Order
of Dismissal

Appellant harps on the fact that during the preliminary investigation of this case, Judge Edilberto Fabunan[31] found no probable cause and issued the corresponding Resolution to that effect. Obviously, the former imputes impropriety to the prosecutor for disregarding the findings of the judge. We see no such impropriety. First, the Rules of Court[32] gives the prosecutor the discretion whether or not to adopt the findings of the investigating judge. Second, the Resolution of Judge Fabunan did not comply with the requirements of law. He merely relied on the testimonies of the witnesses for the defense without considering those for the prosecution. Moreover, he failed to state the findings of fact and the law supporting his action.[33]

Motive to Implicate
Appellant

The appellant also imputes improper motive to his relatives for testifying against him. He argues that since he was

admittedly the drunkard and the irresponsible sibling, he was chosen as the scapegoat to exonerate Conrado. The argument is unmeritorious. If he is right, the family could have simply made the killing appear accidental, thereby obviating the need for a scapegoat. Moreover, even appellant's mother pointed her finger at him. A mother would not just casually accuse her son of a crime if the latter did not commit it.

WHEREFORE, the appeal is hereby DENIED and the Decision of the Regional Trial Court AFFIRMED. Costs against appellant.

SO ORDERED.

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

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[1]Also spelled "Villares" in the Information.

[2]Written by Judge Leopoldo T. Calderon Jr.

[3]Decision, p. 13; rollo, p. 47.

[4]Signed by Assistant Provincial Prosecutor Benjamin A. Fadera.

[5]Information, dated October 20, 1989; records, p. 1.

[6]Assisted by Counsel de Oficio Santiago Cabrera.

[7]See the lower court's Order dated January 10, 1996; records, p. 7.

[8]This case was deemed submitted for resolution on March 31, 2000, when the Court received the Appellee's Brief. The filing of a reply brief was deemed waived, as none had been submitted within the reglementary period.

[9]Signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Cecilio O. Estoesta and Solicitor Anna Esperanza R. Solomon.

[10]Appellee's Brief, pp. 3-11; rollo, pp. 218-226.

[11]Signed by Counsel de Oficio Santiago A Cabrera.

[12]§5, Rule 112 of the Rules of Court, uses the word "transmit," not "remand."

[13]Appellant's Brief, pp. 2-4; rollo, pp. 79-81.

[14]Decision, p. 8; rollo, p. 42.

[15]Decision, pp. 7-13; rollo, pp. 41-47.

[16]Appellant's Brief, p. 1; rollo, p. 78; all caps in original.

[17]Appellant's Brief, p. 4; rollo, p. 81.

[18]Appellee's Brief, p. 22; rollo, p. 237.

[19]People v. Lorenzo, 240 SCRA 624, 635, January 26, 1995, per Davide Jr., J. (now CJ). See also People v. Mendoza, 254 SCRA 18, February 22, 1996; People v. Arcilla, 256 SCRA 757, May 15, 1996; People v. De Vera, 263 SCRA 725, October 30, 1996.

[20]Or Ludivina Villarez as used in Appellant's Brief.

[21]Appellee's Brief, p. 21; rollo, p. 236, citing People v. Andal, 279 SCRA 479, September 25, 1997. See also People v. Lorenzo, supra

[22]Referring to the lead pipe or water pipe used in hitting Bonifacio Villarez.

[23]See Appellant's Brief, p. 3; rollo, p. 80.

[24]See People v. Martinez, 274 SCRA 259, June 19, 1997; People v. Basao, GR No. 128286, July 20, 1999; Rodriguez v. CA, 273 SCRA 607, June 17, 1997.

[25]Justice Paras, citing Graham on Evidence, explained:

"The four risks to be considered in evaluating the testimony of a witness are (1) perception in the sense of capacity and actuality of observation by means of any of the senses, (2) recordation and recollection [sometimes called memory], (3) narration [sometimes called ambiguity], and (4) sincerity [sometimes called fabrication). In order to encourage the witness to testify to the best of his ability with respect to each of the four risks, and to expose inaccuracies in the witness' testimony, a witness is required to testify at trial (1) under oath or affirmation, (2) personally so that the trier of fact may observe the witness' demeanor, and (3) subject to contemporaneous cross-examination. Hearsay evidence is excluded because an out of court statement is not subject to each of these three tests for ascertaining truth. Of the three, inability to conduct cross-examination is the essential factor underlying the rule excluding hearsay." (Paras, Rules of Court Annotated, Vol. 4, 1991 ed., pp. 325-326.)

[26] See Almeda v. CA, 269 SCRA 643, March 13, 1997.

[27]TSN, June 6, 1996, pp. 5-15.

[28]TSN, May 8, 1996, pp. 29-39.

[29]TSN, April 17, 1996, pp. 5-7.

[30]TSN, May 8, 1996, pp. 29-39.

[31]MTC Judge of Subic, Zambales, acting as investigating judge.

[32]Section 5, Rule 112, provides:

"Sec. 5. Duty of investigating judge. -- Within ten (10) days after the conclusion of the preliminary investigation, the investigating judge shall transmit to the provincial or city fiscal, for appropriate action, the resolution of the case, stating briefly the findings of facts and the law supporting his action, together with the entire records of the case which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused; (d) the order of release of the accused and cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

Should the provincial or city fiscal disagree with the findings of the investigating judge on the existence of probable cause, the fiscal's ruling shall prevail, but he must explain his action in writing furnishing the parties with copies of his resolution, not later than thirty (30) days from receipt of the records form the judge. If the accused is detained, the fiscal shall order his release." (emphasis supplied)

[33]Ibid.

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