

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CORLITO C. LINDO
AND FEDERICO C. LINDO, ACCUSED, FEDERICO C. LINDO,
APPELLANT.**

G.R. No. 134506. December 27, 2002

Ponente: CORONA, J.

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CORONA, J.:

Before us on appeal is the decision[1] dated May 4, 1998 of the Regional Trial Court of Lucena City, Branch 53, finding herein appellant Federico C. Lindo of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of Edgar Landicho the sum of Fifty Thousand Pesos (P50,000) as death indemnity and Sixty-seven Thousand and Eighty Pesos (P67,080) as actual expenses plus the cost of the suit.

The records show that on September 18, 1995, Quezon Provincial Prosecutor Dante H. Diamante filed with the Regional Trial Court of Lucena City an Information charging brothers Corlito and Federico Lindo with murder, allegedly committed as follows:

"xxx xxx xxx

"That on or about the 4th day of April 1995, at Sitio Tahaw, Barangay Cabatang, Municipality of Tiaong, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife (balisong) and a bolo (gulukan), with intent to kill, with treachery and evident premeditation, conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said weapons one Edgar Landicho, thereby inflicting upon the latter stab wounds on different parts of his body which directly caused his death.

"That the accused attacked and stabbed said Edgar Landicho suddenly and unexpectedly without giving the latter any opportunity to defend himself or to escape.

"Contrary to law."[2]

Only appellant Federico was brought to trial as co-accused Corlito eluded arrest and has remained at large. Thus, trial proceeded only against appellant Federico who pleaded "Not Guilty" when arraigned.[3]

The prosecution's case relied primarily on the testimony of witnesses Noel de Rosales and Joselito Landicho who claimed to have personally witnessed the killing, as well the post-mortem examination and findings of Dr. Ma. Wilma Castillo-Laroza.

Prosecution witness Noel de Rosales testified that, on April 4, 1995 at about 1:30 in the afternoon, he together with brothers Joselito and Edgar Landicho were at the tupadahan,[4] along the feeder road in Barangay Cabatang, Tiaong, Quezon to watch the cockfights. The games had not started yet so the people present were just watching the matching of fighting cocks. Noel was eight meters away from the victim, Edgar Landicho, while Joselito was about five meters away from his brother who was then standing surrounded by approximately twenty people. Suddenly, accused Corlito approached Edgar from behind and, without uttering anything, stabbed the latter at the

back several times. Thereafter, appellant Federico who was nearby joined accused Corlito in stabbing Edgar. Appellant Federico and co-accused Corlito continued stabbing the victim even when the latter had already fallen to the ground motionless. The Lindo brothers hurriedly left the place during the commotion that ensued.

Joselito Landicho corroborated the testimony of Noel de Rosales. He testified that, although he saw Edgar being stabbed by appellant Federico and his co-accused Corlito, he was not able to assist Edgar as he was afraid and unarmed. Instead, he went home to inform his children that he was going to the police station. It took him some time to tell his parents what happened to his brother. He then proceeded to the police headquarters at Lusacan, Tiaong, Quezon, accompanied by his cousin, Aniceto Atienza. At the police station, he met Noel de Rosales.

Joselito further declared that he knew appellant Federico because, on February 3, 1994, the latter stabbed his brother Edgar in Bukal Norte, for which a complaint for frustrated homicide was filed against him. Crisanto Lindo, appellant's father, offered to settle the case for P10,000 but the Landicho family refused the offer.

On cross-examination, Joselito admitted that he and Noel de Rosales were charged before the Municipal Trial Court of Tiaong, Quezon for shooting appellant Federico.

Dr. Wilma Castillo-Laroza, Municipal Health Officer of Tiaong, Quezon, testified on the injuries sustained by Edgar Landicho and the cause of his death. She testified that she conducted an autopsy on the body of the victim five hours after the latter's death and thereafter prepared an autopsy report. In her post-mortem examination,[5] she noted the following wounds sustained and the cause of death of the victim:

" -

neck, above the right clavicle along the midclavicular line penetrating stab wound, about 4 cms. in length, directed medial downward.

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deltoid region, one hacking wound inflicted obliquely at the right deltoid area to the right midclavicular line measuring 20 cms. cutting the deltoid muscle and its underlying tissues; one stab wound on right deltoid region, upper portion, 1.7 cm. in length directed medially.

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chest, one stab wound along the midclavicular line located about the 3rd intercostal space, penetrating, 2 cms. in length directed medial upward; one stab wound at the 5th intercostal space along the right parasternal line, penetrating about 5 cms. directed medial downward.

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Abdomen, one stab wound inflicted just below the subcostal margin at the right hypochondriac area 3 cms. directed medial downward; three stab wounds about 1 to 2 cms. inflicted close to each other along the left lumbar area, all penetrating and directed posteriorwards.

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arm, two incised wounds on the anterior surface of the left arm lower portion, close to each other inflicted

obliquely, measuring 2 and 3 cms. in length.

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forearm, one incised wound located at the lateral anterior surface of the left forearm, 6 cms. in length, inflicted obliquely; one incised wound, angular in shape located at the wrist joint 4 cms. in length.

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scapular area, three stab wounds inflicted close to each other along the vertebral border of the right scapula, penetrating, all measuring 2.5 cms. with medial downward direction one stab wound located at the lateral superior border of the scapula, penetrating, downward direction, 0.7 cm. in length; one stab wound along the upper portion of the axillary border of the right scapula, inflicted medial downward, 2 cms. in length, penetrating one stab wound measuring 3 cms. with medial downward direction inflicted along the lower portion of the axillary border of the right scapula; one stab wound 0.7 cms. Inflicted along the inferior angle of the right scapula, anteriorwards in direction; one hacking wound above the scapula cutting the deltoid muscle and its underlying tissues 6 cms. in length.

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lower back, two stab wounds inflicted close to each other located above the right costovertebral angle measuring 2 cms. and 3 cms. penetrating anteriorwards; one stab wound at the right costovertebral angle measuring 2.5 cms., penetrating, medial anteriorward in direction; one stab wound along the right midaxillary line midway the right costovertebral angle and iliac crest, 2 cms, in length penetrating medially; three stab wounds inflicted close to each other along the right posterior axillary line above the region of the iliac crest measuring 2 to 2.5 cms. all with medial anterior directions; one stab wound above the left costovertebral angle 1.7 cms. in length, inflicted anteriorward.

Total number of wounds: 29 wounds

Cause of death: Shock, excessive hemorrhage due to multiple stab/hacking wounds."

Dr. Laroza declared that a sharp bladed instrument caused the wounds of the victim, that more than one instrument were used in hacking or stabbing the victim and that the instrument could have been a bolo because of the nature of the hacking wounds. She also declared that, of the 29 wounds inflicted, only 3 were fatal. The remaining wounds were slight, indicating the possibility that the victim might have struggled or fought back.[6]

Prisca Landicho, the mother of the victim, testified on the expenses incurred by the family resulting from her son's death. According to her, she spent P68,080 for the coffin, funeral services and food. She likewise stated that she spent P70,000 for transportation expenses in searching for and effecting the arrest of appellant Federico.[7]

In his defense, appellant Federico offered denial. He claimed that, on April 4, 1995, he went to the tupadahan at Barangay Cabatang, Tiaong, Quezon with his brother Corlito and cousin Florito Boniña. When they reached the tupadahan he separated from the two. Since there was no kristo (the person who calls for bets), he was the one who performed that role and, while doing so, a commotion occurred. People started running in different directions, prompting him to run toward his house. At that point, he saw his brother Corlito and Florito Boniña in one corner of the tupadahan. Corlito was then facing Edgar. The next day, he learned that Edgar was killed and that, up to the time he testified, he did not know his brother's whereabouts.

On cross-examination, he admitted that Edgar had filed a case for frustrated homicide against him for the incident between them on February 3, 1994 and that his family tried to settle the case with the Landichos but failed.

The prosecution also elicited from him that he was arrested on March 7, 1996 at the Philippine General Hospital in Manila where he was being treated for gunshot wounds allegedly inflicted on him by Mario Mercado, and prosecution witnesses Joselito Landicho and Noel de Rosales.

Defense witness Rodrigo Laluz testified that he was also at the tupadahan where he witnessed the stabbing incident. He did not know the victim but he recognized the assailant as accused Corlito. He also declared that appellant Federico was also at the crime scene but did not participate in the stabbing as appellant was on the other side of the tupadahan, away from accused Corlito and the person being stabbed.

On January 30, 1997, a decision was rendered by the trial court finding the appellant guilty of murder. The judgment reads:

"WHEREFORE, the Court finds accused Federico Lindo y Capina guilty beyond reasonable doubt of the crime of murder defined and punished under Article 248 of the Revised Penal Code as amended by Section 6 of Republic Act 7659 and there being neither mitigating nor aggravating circumstance in the commission of the deed, he is hereby sentenced to suffer the penalty of reclusion perpetua and he is ordered to pay the costs.

"Federico Lindo is ordered to pay the heirs of Edgar Landicho P50,000.00 as death indemnity and P67,080.00 as actual expenses they incurred in connection with the victim's death.

"So ordered." [8]

Hence, this appeal.

Appellant raises the following assignment of errors:

"I.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GIVING CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESSES NOEL DE ROSALES AND JOSELITO LANDICHO DESPITE THE PRESENCE OF MATERIAL IRRECONCILABLE (SIC) INCONSISTENCIES IN THEIR TESTIMONY ON THE ONE HAND, AND THE FINDINGS OF PROSECUTION WITNESS DRA. WILMA CASTILLO-LAROZA ON THE OTHER;

"II.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GIVING CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESSES NOEL DE ROSALES AND JOSELITO LANDICHO CONSIDERING THAT THEIR TESTIMONY ARE REplete WITH MATERIAL INCONSISTENCIES AND INCONGRUITIES;

"III.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN NOT GIVING CREDENCE TO THE TESTIMONY OF APPELLANT WHICH WAS SUBSTANTIALLY CORROBORATED (SIC) BY THE TESTIMONY OF DEFENSE WITNESS RODRIGO LALUZ;

"IV.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY AGAINST APPELLANT."[9]

At the core of this case is the credibility of prosecution witnesses Noel de Rosales and Joselito Landicho, upon whose testimonies the appellant was convicted.

To begin with, the findings of the trial court on the credibility of witnesses deserve great weight, given the clear advantage of the trial judge (an opportunity not available to the appellate court) in the appreciation of testimonial evidence. The trial court is always in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses, their demeanor, conduct and attitude on the witness stand. These are the most significant factors in evaluating the reliability of witnesses and in ferreting out the truth, specially in the face of conflicting testimonies.[10] Although the rule admits of certain exceptions,[11] we find no reason to depart from this rule in the case at bar.

Appellant attempts to discredit the testimonies of the prosecution witnesses and cites the following alleged inconsistencies and contradictions therein, to wit:

- Both Joselito Landicho and Noel de Rosales testified that accused Corlito and appellant Federico used a fan knife in assaulting the victim. On the other hand, the medico legal expert declared that the victim's wounds were inflicted by more than one (1) instrument and that the instrument used could have been a bolo because of the hacking wounds that could have been caused by a heavy knife.

- Joselito's testimony contains the following alleged inconsistencies:

- He testified during his direct examination that on April 4, 1995 at around 1:30 o'clock in the afternoon, a commotion occurred in the "tupadahan" and after that commotion, he saw accused Corlito and appellant Federico in the act of stabbing his brother Edgar.[12] However, on cross-examination, he admitted that because of the commotion, they ran in different directions.[13]

- In his direct examination, Joselito professed that after witnessing the stabbing incident he left the place and proceeded to the police headquarters of Tiaong, Quezon.[14] Meanwhile, on cross-examination, he admitted that because of the commotion they ran in different directions and went directly to his house, leaving his brother, Edgar.[15]

- He initially testified on cross-examination that he did not see appellant's first assault on Edgar. Later on, however, he admitted that while accused Corlito was stabbing his brother, he also saw appellant Federico stabbed (sic) his brother at the back for the first time.[16]

- During his cross-examination, Joselito testified that after informing his cousin Aniceto Atienza that Edgar was fatally stabbed, it was only then that he was allegedly able to gather enough strength and requested Aniceto to accompany him to go to the police authorities.[17] Later in his testimony, however, it appears that he has already decided to report the same to the police because according to him in going to the police station he has to pass by his house and informed his children that he will proceed to the police headquarters.[18] Thereafter, he also contradicted this latter statement because when ask (sic) by the trial judge if he intends to tell his parents first before going to the police station, he replied "yes, sir." [19]

- Appellant also impugns Noel's integrity claiming that the latter cannot be believed because of the discrepancies between what he deposed in his affidavit, on the one hand, and on the witness stand, on the other hand.

We are not persuaded. Testimonies of witnesses need only to corroborate each other on important and relevant details concerning the principal occurrence. Minor contradictions and inconsistencies are normal infirmities that

result from individual differences in the appreciation of events, time, place and circumstances. The rule is that inconsistencies on minor details do not destroy the probative value of the testimonies of the witnesses because they may be due to an innocent mistake and not to a deliberate falsehood.[20] Although there may be inconsistencies on minor details, the same do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailant, specially in the face of conflicting testimonies. Slight contradictions in fact even serve to strengthen the sincerity of the witness and prove that his testimony is not rehearsed. They are safeguards against memorized perjury.[21]

Appellant makes much of the alleged inconsistencies in the testimonies of the prosecution witnesses on the kind of weapon used during the incident. We do not, however, find the testimonies of Noel and Joselito inconsistent with or contradictory to the medico-legal findings. At this point, it is relevant to cite the observation of the Solicitor General:

"xxx xxx xxx

"Notably, Dr. Castillo-Laroza never spoke of two different kinds of instrument. She only spoke of more than one (1) instrument, not necessarily of two (2) different kinds. That there were two (2) instruments of two (2) kinds was only the interpretation of appellant in order to support his argument. The fact that Dr. Castillo-Laroza thereafter followed her statement with 'It could have been a bolo because of the hacking wounds that would have [been] cause[d] by a heavy knife, sir' (TSN, September 16, 1996, p. 7) indicated that she never meant two (2) different kinds of instruments, otherwise, she would have mentioned of another kind of weapon aside from the bolo, and not mentioned the bolo alone. The fact that she did means that she was referring to more than one bladed instrument, in terms of number, and not to the kind or type of bladed instrument.

"Further, there is nothing inconsistent between the eyewitnesses' account of having seen appellant and his brother bear a 29-inch fan knife each and Dr. Castillo-Laroza's finding that the wound could have probably been caused by a bolo or any heavy knife, on the basis of the characteristics of the wounds sustained by the victim. Significantly, Dr. Castillo-Laroza was never questioned as to the possibility that the wounds could have been caused by a 29-inch fan knife. Thus, it could not be said that her testimony excluded a 29-inch fan knife as a probable instrument. All that she was asked was as to the kind of bladed instrument to which she offered the possibility that the same could have been a bolo which is a heavy knife, as the appearance of the wounds indicated that they were caused by a heavy instrument. Such testimony, however, does not necessarily negate the probability that a 29-inch fan knife was the weapon used. Being 29 inches, which makes it a knife of considerable size, qualified such instrument as a heavy knife, more or less of the size of a bolo which was described by the physician as could have caused the hacking wounds sustained by the victim." [22]

A closer examination of the records reveals nothing inconsistent in the statement of Joselito which must be considered and evaluated in its entirety and not in incomplete parts or isolated passages.[23] Thus, a perusal of the entire testimony of Joselito reveals that, before the latter ran away during the commotion, he had already seen his brother being stabbed. We quote:

"Atty. Ambas

"Q

So you were some distance apart from each other when you were in the tupadahan?

"A

Yes, sir.

"Q

There was that commotion that occurred?

"A

Yes, sir.

"Q

And you saw that your brother Edgar was being stabbed?

"A

Yes, sir.

"Q

You tried to help your brother, is that correct?

"A

No, sir. I was not able to help my brother.

"Q

Why?

"A

Because I was afraid and unarmed.

"Q

So you merely stand still and watched what was being done to your brother?

"A

Yes, sir. I left.

"Q

So you left your brother there alone?

"A

Yes, sir.[24]

Regarding the alleged strange behavior of Joselito in not extending assistance to his brother when he was only five meters away from the crime scene, we rule that different people react differently to a given stimulus or type of situation. There is no standard form of behavioral response when one is confronted with a strange, startling or

frightful experience. The fact that a witness' reaction does not seem natural to some does not destroy her credibility.[25] In the case of Joselito, his inability to react was understandable as he was shocked by the suddenness of the event and, as he adequately explained, he was overcome by fear. In acting the way he did, Joselito merely reacted naturally to the crime that had just occurred before him.

Moreover, there is nothing inconsistent between (1) the statement of Joselito that he did not actually see appellant's first assault on his brother and (2) his declaration that the first time he saw appellant stab his brother was when the former inflicted the stab wound at the latter's back. These were actually two different answers to two different questions propounded by the defense counsel, thus:

"Atty. Ambas:

"xxx xxx xxx

"Q

The first time Federico Lindo stabbed your brother where was your brother hit?

"A

I did not see his first stabbed blow, sir.

"Q

But the first stabbed blow that you saw where was your brother hit?

"A

At the back sir.

"Q

While Corlito Lindo was also stabbing your brother at his back that was the time that you saw for the first time Federico Lindo stabbed your brother which was also at his back, is that correct?

"A

Yes, sir."[26] (*Italics Ours*)

The first answer states that Joselito did not see appellant in the act of inflicting the first blow while the second refers to the fact that the first time he saw appellant was when said appellant was in the act of stabbing his brother at the back.

Furthermore, appellant cannot impeach Noel's credibility by simply pointing out contradictions in his affidavit or sworn statement vis-à-vis his testimony in open court. In his sworn statement, Noel stated the following: (1) "may tatlong lalaki na pumalibot kay Edgar;" (2) "while accused Corlito was holding the hair of Edgar, appellant lunged at Edgar from his front;" (3) Edgar pleaded for his life when appellant and co-accused Corlito were allegedly stabbing him; and (4) he made mention of a man whom he could only identify by face and who allegedly kept an eye on him that afternoon while the incident was going on. In court, Noel de Rosales declared that (1)"there were

only two assailants;" (2) that "appellant joined co-accused Corlito in stabbing Edgar when the latter fell on his knees; (3) that he heard nothing from accused Corlito, appellant Federico and victim Edgar before, during and after the incident; and (4) he made no mention of the presence of a man while on the witness stand.

We have long adhered to the rule that inconsistencies between the sworn statement and direct testimony given in open court do not necessarily discredit the witness since an affidavit is almost always incomplete and inaccurate due to partial suggestions or want of suggestions and inquiries. They are usually taken ex-parte, in a question-and-answer form and are usually and routinely prepared in police precincts by a police investigator. The investigator propounds questions merely to elicit a general description or idea of the subject matter under investigation.[27] As such, affidavits are generally considered to be inferior to testimonies made in open court.

Lastly, appellant attacks the credibility of eyewitnesses Joselito and Noel, alleging that they implicated and falsely testified against him due to personal grudge and revenge since he filed a case for frustrated homicide against them. This argument of the appellant is more apparent than real. In the case of *People vs. Jose*,[28] we ruled that "hatred cannot be considered a sufficient motive to testify falsely to convict a person for a crime punishable by death." If appellant really had nothing to do with the crime, it is against human nature and the presumption of good faith that the prosecution witnesses would falsely testify against him.[29] There would have therefore been no basis for the lower court to brush aside the testimonies of the important witnesses for the prosecution.

Be that as it may, we note that appellant had in fact already once attempted on the life of the victim Edgar on February 3, 1994, making this actually the appellant's second attempt on Edgar's life. Unfortunately, he succeeded this time. Against this incontrovertible fact, appellant cannot take refuge in mere testimonial inconsistencies to escape punishment for what he did.

Against the strong evidence of the prosecution, appellant can only offer denial. Settled is the rule that bare denial is a weak defense, which becomes even weaker in the face of positive identification by the prosecution witnesses.[30] Denials, if unsubstantiated by clear and convincing evidence, are negative, self-serving and merit no weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters.[31] Appellant's presence at the locus criminis, not as a mere passive spectator but as an active participant in the killing, was adequately established by the prosecution. As described by the trial court, Noel and Joselito, both eyewitnesses to the killing, testified in a direct and candid manner. On direct examination, Noel testified as follows:

"Assistant Provincial Prosecutor Ronaldo Salamillas:

"Q

Will you tell the Honorable Court how did that stabbing incident occur?

"A

I saw Corlito Lindo approached (sic) Edgar Landicho.

"Q

After Corlito Lindo approached Edgar Landicho what else happened?

"A Corlito Lindo suddenly stabbed Edgar Landicho.

"Q Was Edgar Landicho hit by the stab blow of Corlito Lindo?

"A Yes sir.

"Q In what part of the body?

"A At his back

"Q How many times?

"A Several times sir.

"Q After that what else was done by Corlito Lindo?

"A After Corlito stabbed Edgar Landicho for several times Edgar Landicho fell on his knees and also it was on that point that Federico joined Corlito in stabbing Edgar Landicho.

"Q When Corlito Lindo approached Edgar Landicho where was Federico Lindo then?

"A He was nearby. He was near the two.

"Q You said near how near?

"A Only five meters.

"COURT

"Q And how about you how far away were you from them?

"A About eight meters.

"Assistant Provincial Prosecutor Ronaldo Salamillas

"Q How many times was Edgar Landicho hit by the stab blow of Federico Lindo?

"A Several times.

"Q And what happened to Edgar Landicho after he was stabbed by Corlito and Federico Lindo?

"A He was already dead but the two continue on (sic) stabbing him." [32]

Noel's testimony was substantially corroborated by Joselito who made the following declaration under direct

examination:

"Q

While you were there do you remember of (sic) anything unusual that place?

"A

Yes sir, there was.

"Q

What was that unusual incident?

"A

There was a commotion sir.

"Q

Do you know what was the commotion all about?

"A

I saw Edgardo Landicho being stabbed.

"Q

By whom?

"A

Corlito Lindo and Federico Lindo.

"Q

Was Edgardo Landicho hit by the stab blows of Corlito Lindo and Federico Lindo?

"A

Yes sir.

"xxx xxx xxx

"Q

What happened to Edgardo Landicho after he was stabbed by Corlito and Federico Lindo?

"A

He fell on the ground facing the ground.[33]

We agree with the trial court's finding that the concerted acts of appellant and his co-accused were indications of a criminal conspiracy. Although there was no proof of a previous agreement by the two assailants to commit the crime, conspiracy was evident from the manner of its perpetration. It is a settled rule that conspiracy need not be proved by direct evidence. It may be inferred from the concerted acts of the accused, indubitably revealing their unity of purpose, intent and sentiment in committing the crime.[34] In the case at bar, conspiracy was apparent from the way the victim was simultaneously attacked by the Lindo brothers. The victim was already on his knees when appellant joined his brother in stabbing the victim to death. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident.[35]

We now pass upon the propriety of the trial court's appreciation of the qualifying circumstance of treachery.

In ruling that treachery attended the commission of the crime, the trial court held that:

"The presence of treachery in the attack cannot be disputed. Noel de Rosales described the attack by Corlito on Edgar as coming from behind, unexpected and so sudden the victim did not have a chance to defend himself. And while already being helpless, Federico joined Corlito in inflicting more wounds on the hapless Edgar. It is evident Federico and his co-accused made sure that in attacking Edgar they would be free of any risk from the defense Edgar might make."[36]

We agree with the findings of the trial court. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense with the offended party might make.[37]

In the case at bar, the victim was standing unmindfully when accused Corlito suddenly approached the victim Edgar from behind and, without uttering anything, stabbed him at the back several times. His brother/appellant Federico then joined him in stabbing the victim to death. The attack was brutal, unexpected and swift. The victim, who suffered 29 stab wounds, had no opportunity to defend himself. The accused Corlito and appellant Federico were never, even for a moment, exposed to any danger. Clearly, the aggravating circumstance of treachery was established.

The records of this case, however, do not show any evidence to prove the aggravating circumstance of evident premeditation, as alleged in the information. There is no showing when and how appellant and the other accused planned and prepared for the killing of the victim.[38]

With treachery proven beyond the shadow of doubt, appellant Federico Lindo is guilty of murder. There being no mitigating nor aggravating circumstance, the trial court correctly imposed the penalty of reclusion perpetua on the appellant under Article 63 of the Revised Penal Code.

As civil liability of the appellant for the death of Edgar Landicho, we affirm the award of P50,000. An award of P50,000 as moral damages should also been given to the heirs of the victim in line with the recent rulings of this court.[39] However, we find no basis for the trial court's award of P67,080 as actual damages for the expenses of the victim's wake and funeral, considering that no receipts or other evidence were presented to substantiate the same, other than the testimony of the victim's mother. The award of actual damages cannot rest on the bare allegation of the heirs of the offended party.[40]

WHEREFORE, the appealed decision dated May 4, 1998 of the Regional Trial Court of Lucena City, Branch 53, in Criminal Case No. 95-521 finding Federico C. Lindo guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of reclusion perpetua is hereby **AFFIRMED** with the **MODIFICATION** that appellant is

ordered to pay the amount of P50,000 as civil indemnity and P50,000 as moral damages to the heirs of Edgar Landicho. The award of P67,080 as actual damages is deleted for lack of evidence.

SO ORDERED.

Puno (Chairman), Panganiban, Sandoval-Gutierrez, and Carpio Morales, JJ., concur.

[1] In Criminal Case No. 95-521, penned by Judge Guillermo R. Andaya; Rollo, pp. 16-24.

[2] Rollo, pp. 5-6.

[3] Original records, p. 41.

[4] A place where illegal cockfighting takes place.

[5] Exhibit "B"; Original Records, p. 64.

[6] TSN, September 16, 1996, pp. 6-7, 9.

[7] TSN, January 31, 1997, pp. 3-9.

[8] Rollo, p. 24.

[9] Rollo, pp. 46-47.

[10] *People vs. Antonio*, 335 SCRA 646, 662 [2000] citing *People vs. Pili*, 289 SCRA 118, 131 [1998].

[11] Namely: (1) when patent inconsistencies in the statements of witnesses are ignored by the trial court, or (2) when the conclusions arrived at are clearly unsupported by the evidence; *People vs. Acaya*, 327 SCRA 269, 277 [2000].

[12] TSN, October 16, 1996, p. 3.

[13] TSN, January 3, 1997, p. 8.

[14] TSN, October 16, 1996, p. 5.

[15] TSN, January 3, 1997, p. 8

[16] *Ibid.*, pp. 11-12.

[17] *Ibid.*, p. 9

[18] *Ibid.*, p. 15

[19] *Ibid.*, p. 16

[20] *People vs. Vital*, 341 SCRA 375, 381 [2000], citing *People vs. Moka*, 196 SCRA 378 [1991].

[21] *People vs. Pirame*, 327 SCRA 552, 564 [2000], citing *People vs. Sanchez*, 302 SCRA 21, 51-52 [1999].

[22] Rollo, pp. 84-85.

[23] *People vs. Dela Cruz*, 335 SCRA 620, 634 [2000], citing *People vs. San Gabriel*, 253 SCRA 84, 93 [1996].

[24] TSN, January 3, 1997, pp. 7-8.

[25] *People vs. Oliano*, 287 SCRA 158, 176 [1999], citing *People vs. Layaguin*, 262 SCRA 207, 213 [1996] and

People vs. Atuel 261 SCRA 339, 352 [1996].

[26] TSN, January 3, 1997, pp. 11-12.

[27] People vs. Espanola, 271 SCRA 689, 709 [1997], citing People vs. Gabas, 233 SCRA 77 [1994].

[28] 307 SCRA 571, 578 [1999].

[29] People vs. Mercado, 346 SCRA 256, 283 [2000].

[30] People vs. Llanes, 340 SCRA 564, 585 [2000].

[31] People vs. Quilang, 312 SCRA 314, 329 [1999].

[32] TSN, August 7, 1996, pp. 4-6.

[33] TSN, October 16, 1996, pp. 3-4.

[34] People vs. Sinda, 346 SCRA 600, 607 [2000], citing People vs. Albao, 287 SCRA 129 [1998].

[35] People vs. Villarba, 344 SCRA 464, 477 [2000], citing People vs. Andal, 279 SCRA 474 [1997].

[36] Rollo, p. 23.

[37] Article 14, par. 16 of the Revised Penal Code.

[38] People vs. Sinda, 346 SCRA 600, 607 [2000], citing People vs. Albao, 287 SCRA 129 [1998].

[39] People vs. Caber, 346 SCRA 166, 176 [2000], citing People vs. Berzuela, 341 SCRA 46 [2000].

[40] People vs. Nacario, 346 SCRA 478, 484 [2000], citing People vs. Aguilar, 292 SCRA 349 [1998].

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