

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AGUINALDO CATUIRAN, JR., ELMER DE LA CRUZ, ALIAS
“SMALL,” REY DE LA CRUZ, ALIAS
“PONTOY,” JUSELITO DE PEDRO, ALIAS
“LANO,” RAM...**

G.R. No. 134761. October 17, 2000

Ponente: VITUG, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-134761/>

VITUG, J.:

Accused-appellants were charged with MURDER in an information that read:

"The undersigned First Assistant Provincial Fiscal of Aklan accuses AGUINALDO CATUIRAN, JR., ELMER DELA CRUZ, alias `Small', REY DELA CRUZ, alias `Pontoy,' JUSELITO DE PEDRO, alias `Lano', RAMON PATRICIO, JR., alias `Bogoy', RICARDO DE PEDRO, alias `Cado', FERNANDO LAVAROSA, alias `Fando' and REYNALDO CATUIRAN, alias `Boy' Galding', all of Barangay Lupo, Altavas, Aklan, or elsewhere, of the crime of MURDER, committed as follows:

"That on or about the early morning of November 5, 1983, between 2:00 and 3:00 a.m., in Barangay Lupo, Municipality of Altavas, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with deadly weapons consisting of knives and boloes, conspiring, confederating together and helping one another, with evident premeditation, treachery and intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, stab and bolo one JOEFREDO FLORES TULIO, thereby infliction upon the latter twenty nine (29) wounds on different parts of his body, to wit:

"ANTERIOR WOUNDS

"1.

Wound, hacking, from the right angle of the mouth to the bridge of the nose going below the maxillary prominence of the left fact fracturing the nose and anterior maxillary bone.

"2.

Wound, incised, 1-1/2", superficial, 1-1/2" below the maxillary prominence, left.

"3.

Wound, stab, 1/2", penetrating, 1-1/2" below the mandibular angle, right.

"4.

Wound, stab, 1/4", penetrating, level of thyroid cartilage, 1" from the midline, left.

"5.

Wound, stab, 1/2", penetrating, level of 2nd ICS, 1-1/2" lateral to the midclavicular line, left.

"6.

Wound, stab, 1/2", penetrating, level of 2nd ICS, 1" from the midline, left.

"7.

Wound, stab, 1/2", penetrating, level of 2nd ICS, 1-1/2" from the midline, left.

"8.

Wound, stab, 1/2", penetrating, level of 4th ICS, 1" lateral to midclavicular line, left.

"9.

Wound, stab, 1/2", penetrating, level of 5th ICS, midaxillary line, left.

"10.

Wound, incised, 5", superficial, running obliquely from the sternum to the anterior axillary line passing above the nipple, right.

"11.

Wound, incised, 1-1/2", superficial, level of 7th rib, midclavicular line, left.

"12.

Wound stab, 1/2", penetrating, level of subcostal margin, 2-1/2" from the midline, left.

"13.

Wound, stab, 1/2" penetrating, level 8th ICS, anterior axillary line, right.

"14.

Wound, stab, 3/8" penetrating, level 8th ICS, 1" medial to anterior axillary line, right.

"15.

Wound, stab, 1/2" penetrating, level 8th ICS, midaxillary line, right.

"16.

Wound, incised, 3", superficial, along costal margin, right.

"17.

Wound, stab, 1" medial aspect, middle 3rd, arm, left.

"18.

Wound, stab, 1/2", medial aspect, middle 3rd, arm, right.

"POSTERIOR WOUNDS

"19.

Wound, stab, 1/2", non-penetrating, level of scapular process, right.

"20.

Wound, stab, 1/2", non-penetrating, level of scapular process, left.

"21.

Wound, stab, 3/8", non-penetrating, level of scapular, left.

"22.

Wound, stab, 3/8", non-penetrating, just above the angle of the scapular, left.

"23.

Wound, stab, 1/2", penetrating, 1-1/2" from the shoulder, joint, right.

"24.

Wound, stab, 1/2", penetrating, 1/2" from the shoulder, joint, right.

"25.

Wound, stab, 1/2", penetrating, level of 8th ICS, 1-1/2" from the midline, right.

"26.

Wound stab, 1/2", penetrating, level of 10th ICS, 2-1/2" from the midline, right.

"27.

Wound, stab, 1/2", penetrating, level of 5th ICS, posterior axillary line, right.

"28.

Wound, stab, 1/2", penetrating, level of 9th ICS, posterior axillary line, right.

"29.

Wound, stab, 1/2", posterior aspect, middle 3rd, arm, right.

"as per Autopsy Report signed by Dr. Ronnie B. Payba, Resident Physician, Altavas District Hospital, Altavas, Aklan, hereto attached as Annex `A' and made part of this information, which physical injuries caused the death of the victim JOEFREDO FLORES TULIO, as per Certificate of Death signed by the same physician, hereto attached as Annex `B' and likewise made integral part of this information.

"That in the commission of the crime, the aggravating circumstances of nighttime are present and committed by a band.

"CONTRARY TO LAW."[1]

Following arraignment and trial, the court a quo rendered judgment, on 30 March 1990, finding accused-appellants guilty, some as principals and the rest as accomplices, of homicide; viz:

"WHEREFORE, judgment is hereby rendered as follows:

"1. This Court finds the accused AGUINALDO CATUIRAN, JR., REY DELA CRUZ, JUSELITO DE PEDRO, AND REYNALDO CATUIRAN GUILTY as principal (sic) of the crime of Homicide, without mitigating or aggravating circumstances, and they are hereby sentenced to suffer an indeterminate penalty of EIGHT (8) years, and ONE (1) DAY OF PRISION MAYOR as minimum to FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY OF RECLUSION TEMPORAL as maximum, and to indemnify the

heirs of Joefredo Tulio the sum of Thirty Thousand Pesos (P30,000.00), without subsidiary imprisonment in case of insolvency, and to pay the costs;

"2. This Court finds the accused ELMER DELA CRUZ, RICARDO DE PEDRO, and FERNANDO LAVAROSA GUILTY as accomplices of the crime of Homicide, without mitigating or aggravating circumstances, and they are hereby sentenced to suffer an indeterminate penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF PRISION CORRECCIONAL as minimum, to EIGHT (8) YEARS and ONE (1) DAY OF PRISION MAYOR as maximum, and to jointly and severally indemnify the heirs of Joefredo Tulio the sum of Thirty Thousand Pesos (P30,000.00), for the death of the victim, without subsidiary imprisonment in case of insolvency, and also to pay the costs; and

"3. That a separate trial would be conducted for the accused RAMON PATRICIO, JR."[2]

From the above judgment, the accused went on appeal to the Court of Appeals.

The Court of Appeals, through Justice Ricardo P. Galvez concurred in by Justice Pedro A. Ramirez and Justice B. A. Adefuin-dela Cruz, in its decision, dated 31 January 1997, affirmed the trial court but, finding the attendance of treachery in the commission of the crime, the appellate court adjudged:

"WHEREFORE, premises considered, the appealed decision is hereby MODIFIED as to the nature of the offense committed. As MODIFIED, We find accused-appellants Elmer dela Cruz, Fernando Lavarosa, Aguinaldo Catuiran, Jr., Reynaldo Catuiran, Rey dela Cruz, Ricardo de Pedro and Juselito de Pedro guilty beyond reasonable doubt of murder and are each sentenced to suffer an indeterminate penalty ranging from Seventeen (17) years and Four (4) months of Reclusion Temporal as minimum to Reclusion Perpetua as maximum, with the corresponding accessory penalties as provided by law and to pay the costs. The preventive imprisonment which the accused had already undergone shall be credited in their favor in the service of their sentence, in accordance with, and subject to the conditions and exceptions laid down in Article 29 of the Revised Penal Code as amended by R.A. 6127."[3]

The motion for reconsideration filed by accused-appellants before the appellate court was denied in its resolution of 29 June 1998.

The statement of the case and the relevant facts introduced at the trial before the court a quo have been culled by the Court of Appeals in this wise; viz:

"At the trial on the merits, the prosecution, through its witnesses Dr. Ronnie Payba, Cpl. Teofilo Martesano, Henry Candelario, Isidro Peniano, Ricky Vedasto, Flocerfida Tulio Inocencio and Ana May Tulio-Garmino, established the following facts: that at around 8:00 o'clock in the evening of November 4, 1983, a benefit dance sponsored by the Barangay Tanod was being held in an improvised dance hall located at Barangay Lupo, Altavas, Aklan. The place was well-lit. There were many people who attended the festivities including deceased Joefredo Tulio, the above accused, namely, Elmer De la Cruz, Aguinaldo Catuiran, Jr., Rey dela Cruz, Juselito de Pedro, Ricardo de Pedro, Fernando Lavarosa, Reynaldo Catuiran and Ramon Patricio, Jr., and the witnesses Peniano, Candelario and Vedasto, all of whom were residents of Lupo, Altavas, Aklan. Between the hours of 2:00 o'clock and 3:00 o'clock in the morning of the following day, while the dance was in progress, Isidro Peniano saw Aguinaldo Catuiran, Jr. placed his arm over the shoulder of Joefredo Tulio, apparently in an friendly gesture. Later, Catuiran unsuspectingly led Tulio outside the dance hall. Peniano, through the illumination of light from the electric post, noticed that while the two were walking along a path from the hall leading to the street and towards the direction of Catuiran's house, which was a few meters away from the said hall, Catuiran suddenly pulled out his knife and thrust the same at the surprised victim hitting the latter's chest for four (4) times. Tulio struggled with his attacker for the possession of the weapon but his efforts proved futile so, he ran away. Peniano recounted having seen a group of men, later identified as Elmer de la Cruz, Juselito de Pedro, Rey de la Cruz, Ricardo de Pedro and Fernando Lavarosa on the road which was

about twenty-five meters away from the said dance hall, apparently waiting for somebody. Only, it turned out to be Joefredo Tulio. As Tulio was fleeing from Catuiran, he was blocked by this group and thereafter stabbed by Juselito de Pedro and Rey de la Cruz. The others, in turn, kicked him and boxed him several times until the victim fell into a canal. They then carried the prostrate body of Tulio to a nearby ricefield, where they left the victim's body. As soon as these men had left the field and while proceeding towards the dance hall, one of them was heard saying 'ma-surrender kami.' At this juncture, Reynaldo Catuiran, came rushing to the ricefield where Tulio was seen lying. Not satisfied with the wounds and injuries sustained by Tulio, Catuiran unsheathed his bolo and hacked the former with it. In consequence of the assault, Tulio sustained twenty-nine (29) wounds on the different parts of his body. Peniano's narration was corroborated by Ricky Vedasto, who was familiar with all the accused, and by Henry Candelario, who testified having last seen Joefredo Tulio alive in the company of accused Aguinaldo Catuiran, Jr.

"The accused interposed the defense of alibi by claiming that they were somewhere else during the stabbing incident. While admitting that they did attend the dance that very night, Fernando Lavarosa, Rey de la Cruz, Juselito de Pedro and Ricardo de Pedro claim that they left the dance hall between the hours of 10:30 and 12:00 o'clock in the evening of November 4, 1983 and slept till 5:00 o'clock to 6:30 the following morning. For their part, the Catuiran brothers, Reynaldo and Aguinaldo, Jr., maintained that they never left the dance hall that night until 3:30 a.m. of November 5, 1983.[4]

The principal point raised by accused-appellants in the instant petition relates to the credibility of the witnesses. Accused-appellants vehemently assail the appreciation made by both the trial court and the appellate court of the testimony of the prosecution witnesses and point to the prosecution witnesses as being the real assailants.

It is doctrinal that the evaluation by the trial court on the credibility of witnesses is accorded the highest respect on the thesis that it is the trial court, rather than the appellate court, which has an unrestrained and unparalleled opportunity to observe directly their demeanor and determine the veracity of their testimony. Such an assessment is almost invariably binding on this Court unless it finds such assessment to have been reached arbitrarily or, as so often said, when the trial court has evidently overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could affect the result of the case.[5] The rule becomes even more pronounced than usual when the trial court is sustained by the Court of Appeals in the latter's own review.

It might be important to take special note of the fact that accused-appellants were positively identified to be the assailant of Joefredo Tulio not just by a single witness, whose lone testimony could have even sufficed to support a conviction for murder,[6] but by three witnesses who were not shown to have had any strong motive to testify falsely against the accused.

Eyewitness Isidro Peniano positively identified accused-appellants and gave a straightforward and unequivocal account of the stabbing incident that could only inspire belief.

"Q.

Now, you said that at around 2:00 A.M. you were proceeding to the dance hall but you were prevented while you were on the street because you saw a commotion, can you tell us if . . (Unfinished.)

I will reform.

When you were already on the street, did you observe any unusual incident?

"A.

Not yet. When I reached the street, I saw six people.

"Q.

These six persons that you saw, where were they situated or located?

"A.

On the street.

"Q.

When you saw them, were you able to identify them or not? Do you know them?

"A.

Yes, sir.

"Q.

Do you know their names?

"A.

Yes, sir.

"Q.

Do you know their nicknames?

"A.

Yes, sir.

"Q.

If they are inside this courtroom, would you be able to identify them?

"A.

Yes, sir.

"Q.

Please step down from the witness stand and point to us the six persons that you saw and identify them one by one?

"A.

(Witness stepped down from the witness stand and tapped the shoulder of . . . (Unfinished, the adverse counsel interrupted.)

"ATTY. RAZ:

I would like the witness not to be asked of their names unless they are identified. I ask that the accused may not make their answer first unless first identified by the witness. The accused has the right to remain silent.

"WITNESS:

"A.

(Witness tapped the shoulder of the man whom he identified as Fernando Lavarosa alias Fando; witness tapped the shoulder of another man whom he identified as Ricardo de Pedro alias Cado; witness tapped the shoulder of the other man whom he identified as Rey Dela Cruz alias Pontoy; witness pointed to another man whom he

identified as Juselito de Pedro alias Lano; witness again pointed to another man whom he identified as Elmer De la Cruz alias Small.) The other one is not in the courtroom.

"ATTORNEY CASTUCIANO:

"Q.

Now after seeing these six people, where did you proceed or what did you do next?

"A.

I proceeded.

"Q.

Now what happened next?

"A.

I saw Aguinaldo Catuiran place his hand on the shoulder of Jeofredo Tulio.

"Q.

Where did you see these two persons?

"A.

Going down towards the road.

"Q.

Where did they come from?

"A.

From the dance hall.

"x x x x x x x x.

"Q.

When you saw them going down from the dance hall towards the street, towards what direction were they going?

"A.

Towards upstream.

"Q.

Is that direction 'ilawod' going to town or going to the barrio?

"A.

Going to town.

"Q.

And then what happened next?

"A.

When they reached certain place, Aguinaldo stabbed Jeofredo Tulio.

"Q.

This certain place where the stabbing incident occurred, how far is this from the dance hall?

"A.

Maybe fifteen meters.

"Q.

At that moment when you saw Aguinaldo Catuiran, Jr. stab Jeofredo Tulio, where were you exactly?

"A.

I was on the road.

"Q.

How far were you from these two persons when this moment of stabbing occurred?

"A.

Maybe five arms stretch.

"Q.

Now, considering that that was early morning 2:00 o'clock or past 2:00 o'clock how did you conclude that you saw the stabbing of Aguinaldo Catuiran, Jr. on the person of Jeofredo Tulio?

"A.

I saw it.

"Q.

Now, how were you able to see considering that it was wee hour in the morning?

"A.

There was still light.

"Q.

Where was this light coming from?

"A.

From the auditorium.

"Q.

No, you testified earlier that the auditorium is that found in Exhibit 'D-1' which is marked as Exhibit 'D-1-b.' You again testified that you saw the stabbing incident by reason of the light coming from the auditorium. Can you tell us where was that light coming from if shown to you the picture that you identified a while ago as the auditorium?

"A.

(Witness is shown looking at the picture and pointed to a portion on the picture where he said there was a post

which a sound system was installed.

"Q.

And where was that light coming from by the way?

"A.

From the post. (Witness pointing to a portion in the picture).

"x x x x x x x x.

"Q.

You said, Aguinaldo Catuiran, Jr. stabbed Jeofredo Tulio, with what weapon if any?

"A.

A knife, `siyaw.'

"Q.

Can you describe to us in terms of length or the description or the kind of knife `siyaw'?

"A.

May be seven inches.

"x x x x x x x x.

"ATTORNEY CASTUCIANO:

"Q.

Relative to their position, where were you actually located?

"A.

At the back.

"Q.

And you said, you were five arms length away from them?

"A.

Yes, sir.

"Q.

Can you tell us or can you demonstrate how Aguinaldo Catuiran, Jr. stabbed Jeofredo Tulio? Let us simulate another person assuming that he is Jeofredo Tulio.

"A.

(Witness placed his arm over the right shoulder of the Court employee simulated as Tulio and with the left hand of the witness demonstrating by raising his left hand and stabbed him on the left breast.

"x x x x x x x x.

"ATTORNEY CASTUCIANO:

"Q.

How many times?

"A.

Four times.

"Q.

Seeing this stabbing movement of Aguinaldo Catuiran, Jr. on the person of Jeofredo Tulio with the knife, what did Jeofredo Tulio do, if any?

"A.

He tried to wrestle the knife but he was not able to do it, so he ran away.

"x x x x x x x x.

"ATTORNEY CASTUCIANO:

"Q.

How many persons stabbed Jeofredo Tulio?

"COURT:

Witness may answer.

"WITNESS:

"A.

Two persons.

"ATTORNEY CASTUCIANO:

"Q.

You mentioned already one. Who was the other one who stabbed him?

"A.

Juselito de Pedro.

"Q.

If Rey dela Cruz is here, just stand up and point Rey dela Cruz.

"COURT:

Let him go down the witness stand.

"WITNESS:

"A.

(Witness stepped down from the witness stand and pointed to the man in blue T-shirt whom he identified as Rey dela Cruz.)

"ATTORNEY CASTUCIANO:

May we ask the name of the person whom he identified, please.

"ATTORNEY RAZ:

I ask, your Honor, that the accused will not answer. That is his right to remain silent.

"ATTORNEY CASTUCIANO:

The right to remain silent is only available to a person when he is being investigated or being presented as a witness under direct or cross-examination. And the same is not available to a person when his identity is being asked for the sake of clarification, identification and to whereby the Court arrives at a precise conclusion as to the identity of the person. The right of self-incrimination is not available to the person whose identification is being asked.

So, for purposes of identification, your Honor Please, I beg that the accused identified by the witness may give his name. We know precisely that this has been an acceptable practice for purposes of identification so that the Court may not be misled and be guided to conclude.

"ATTORNEY RAZ:

May I know if he was naming? Has he named the accused?

"COURT:

Yes. You ask him if he is Rey dela Cruz.

"INTERPRETER:

(The accused was asked if he is Rey dela Cruz and he stood up and answered `Yes, sir.')

"ATTORNEY CASTUCIANO:

"Q.

You mentioned of certain person who stabbed Joefredo Tulio by the name of Juselito de Pedro. Please point him.

"A.

(Witness pointed to the man in yellow T-shirt and identified him as Juselito de Pedro. The accused stood up and answered `Yes, sir."

"COURT:

Go back to the witness stand.

"ATTORNEY CASTUCIANO:

"Q.

Can you remember what were the weapons used by these two persons, namely, Rey de la Cruz and Juselito de Pedro in stabbing Joefredo Tulio?

"A.

No, sir.

"Q.

Now, do you remember to what portion of the body of Joefredo Tulio did Rey dela Cruz and Juselito de Pedro

delivered the stabbing that you saw?

"A.

His front and his back.

"Q.

Now, you said, the other four also kicked and boxed Joefredo Tulio. These other four that you are referring if they are inside the courtroom would you be able to identify them?

"A.

Yes, sir.

"Q.

Please point to them and name them?

"A.

(Witness again stepped down from the witness stand and pointed to the man and identified him as Fernando Lavarosa.)

"ATTORNEY CASTUCIANO:

For purposes of Identification and verification, your Honor please, we ask the Court to ask his name whom the witness named as Fernando Lavarosa.

"COURT:

You ask his name.

"INTERPRETER:

The man whom the witness identified answered to the name of Fernando Lavarosa when asked.

"ATTORNEY CASTUCIANO:

"Q.

You have named one. And who else?

"A.

(Witness pointed to the man in white T-shirt and identified as Ricardo de Pedro who answered to the name of Ricardo de Pedro when asked.)

"Q.

How about the other two?

"A.

(Witness again pointed to a man whom he identified as Elmer dela Cruz and who answered to the name of Elmer dela Cruz when asked.)

"Q.

And the last person?

"A.

Ramon Patricio is not inside."[7]

Prosecution witness Ricky Vedasto likewise positively identified accused-appellants as having been the perpetrators of the crime.

"Q.

During the last hearing Mr. witness, you mentioned that you saw Aguinaldo Catuiran, and the victim here Jeofredo Tulio coming from the inside of the dance hall and were walking and according to you, you saw them also while Aguinaldo Catuiran was having his right arm on the shoulders of Jeofredo Tulio. Now, my question is, to what direction were they going when you saw them walking?

"A.

Towards the house of Aguinaldo Catuiran.

"Q.

You are referring to Aguinaldo Catuiran, Sr. or Aguinaldo Catuiran, Jr.?

"A.

Aguinaldo Catuiran, Jr.

"Q.

And according to you when they were walking towards that direction, you were on your left side of these two. Now my question is, more or less how far were you from these two persons?

"A.

Around five arms stretch.

"Q.

Now, let us consider where you are seated as the place where you were at that time. Can you point to any direction here in Court or even outside the court room and point at least approximately the distance when you saw these two persons Jeofredo Tulio and Aguinaldo Catuiran were walking?

"INTERPRETER:

Witness pointed to a bench inside the court room which is approximately three (3) meters.

"ATTY. CASTUCIANO:

"Q.

And then what happened next after you saw them?

"A.

I saw that Aguinaldo Catuiran, Jr. stabbed Jeofredo Tulio.

"x x x x x x x x.

"Q.

Now, according to you, you saw Aguinaldo Catuiran stabbed Jeofredo Tulio. Now my question is, you have

seen the stabbing, how many times have you seen this Aguinaldo Catuiran, Jr. stabbed Jeofredo Tulio?

"A.

Four times.

"Q.

Now, since you saw the stabbing incident and saw the stab action four times, if you can remember please tell this Honorable Court to what portion of the body was Jeofredo Tulio hit?

"A.

On his chest. (Witness pointing to his chest.)

"Q.

Can you describe to us what kind of weapon did Aguinaldo Catuiran, Jr. use in stabbing?

"A.

A knife.

"Q.

While Mr. Jeofredo Tulio stabbed by Mr. Aguinaldo Catuiran, what did Jeofredo Tulio do if any?

"A.

I tried to wrestle the knife from Aguinaldo Catuiran.

"Q.

Was he able to wrestle the knife from Aguinaldo Catuiran?

"A.

No, sir.

"Q.

And then what happened next?

"A.

Jeofredo Tulio was able to free himself and he ran.

"Q.

To what direction did he run?

"A.

Towards the North 'ilawod.'

"Q.

Was he able to run away?

"A.

He was able to run for about two arms stretch and he was met by six persons.

"Q.

Before going to that point, you are mentioning Aguinaldo Catuiran, Jr., if you will see him again will you be able to identify him?

"A.

Yes, sir.

"Q.

If he is inside the court room, please point to him?

"INTERPRETER:

(Witness stepped down from the witness stand and tapped the shoulder of the man who answered to the name of Aguinaldo Catuiran, Jr. when asked).

"Q.

Now, according to you Jeofredo Tulio was able to ran for around two meters and then he was met by six persons. Now, what did these six persons do when they meet Jeofredo Tulio?

"A.

They surround Jeofredo Tulio and they stabbed, boxed and kicked him.

"Q.

Who stabbed Jeofredo Tulio among the six persons?

"A.

Joselito de Pedro and Rey de la Cruz.

"Q.

If you really saw the stabbing, can you describe what weapons did Rey dela Cruz and Joselito de Pedro use?

"A.

A knife also.

"Q.

Now, if you can remember, how many times did Rey dela Cruz stab Jeofredo Tulio?

"A.

I cannot count because the incident happened too fast.

"Q.

Can you remember what portion of the body of Jeofredo Tulio was hit by the stabbing action of Rey dela Cruz?

"A.

No, sir, I cannot.

"Q.

Why?

"A.

The stabbing happened so fast.

"Q.

How about Joselito de Pedro, can you recall how many times did he stab Jeofredo Tulio?

"A.

I cannot remember, sir.

"Q.

How about the portion of the body that was hit?

"A.

I cannot.

"Q.

Why?

"A.

The stabbing was very fast.

"Q.

Now, who kicked Jeofredo Tulio?

"A.

Ramon Patricio, Elmer de la Cruz, Ricardo de Pedro and Fernando Lavarosa.

"Q.

Who boxed Jeofredo Tulio?

"A.

The four of them.

"Q.

Will you please name them again?

"A.

Ramon Patricio, Fernando Lavarosa, Ricardo de Pedro and Ramon Patricio.

"Q.

Now, these two persons that stabbed Jeofredo Tulio, namely: Rey de la Cruz and Joselito de Pedro, if you will see them will you be able to identify them?

"A.

Yes, sir.

"Q.

If they are inside the court room, please point to them?

"INTERPRETER:

(Witness stepped down again from the witness stand and identified the man as Joselito de Pedro who when asked answered to the name Joselito de Pedro and witness again pointed to the man as Rey de la Cruz who when asked answered to the name of Rey de la Cruz.

"Q.

Now, you mentioned there are four other persons who were participating in that incident boxing and kicking. Now, you mentioned the name of Fernando Lavarosa. If you will see him will you be able to identify him?

"A.

Yes, sir.

"Q.

If he is inside the court room, please point to him?

"INTERPRETER:

(Witness pointed again to the man Fernando Lavarosa and answered to the name Fernando Lavarosa when asked).

"Q.

You also mentioned the name of Ricardo de Pedro, if you will be able to see him, will you be able to identify him and please point to him?

"INTERPRETER:

(Witness pointed to the man who answered to the name of Ricardo de Pedro when asked).

"ATTY. CASTUCIANO:

"Q.

"Q. You also mentioned the name of Elmer dela Cruz, if you will be able to see him, will you be able to identify him and point to him?

"INTERPRETER:

(Witness pointed and touched the shoulder of Elmer de la Cruz who answered to the name of Elmer dela Cruz when asked).

"Q.

You also mentioned the name of Ramon Patricio, if you will see him again will you be able to identify him?

"A.

Yes, sir.

"Q.

Is he inside the court room?

"A.

He is not here.

"Q.

While Jeofredo Tulio was being stabbed, boxed, kicked by these group of persons, what did Jeofredo Tulio do if any?

"A.

He fell down on the canal of the ricefield.

"Q.

What happened next after that?

"A.

He was not able to stand up.

"Q.

What happened next after that?

"A.

He was carried towards the ricefield.

"Q.

Who carried Jeofredo Tulio?

"A.

Elmer dela Cruz.

"Q.

Was he the only one who carried him?

"A.

The four of them.

"Q.

Please identify the other four persons?

"A.

Fernando Lavarosa, Ramon Patricio, Ricardo de Pedro and Elmer dela Cruz.

"Q.

How about the two other persons?

"ATTY. RAZ:

What is the question about the two other persons.

"ATTY. CASTUCIANO:

"Q.

How about the two other persons when they saw the four companions carried Jeofredo Tulio?

"ATTY. RAZ:

It is leading, it presume the other persons did something.

"ATTY. CASTUCIANO:

"Q.

How about the two others, what did they do if any?

"A.

They followed the persons who were carrying the victim.

"Q.

You said they carried him towards the ricefield, were they able to reach the ricefield?

"A.

Yes, sir.

"Q.

And then what happened next?

"A.

They threw him to the ground and stepped on him.

"Q.

Who stepped on the body of Jeofredo Tulio?

"A.

The six of them.

"Q.

And then what happened next?

"A.

The six of them went back to the road and I saw Rey dela Cruz with a knife on his hand and with a blood and they shouted we are going to surrender.

"Q.

What happened next?

"A.

Then I did not see them anymore.

"Q.

After that what happened next?

"A.

Then I saw Reynaldo Catuiran went towards Tulio in the ricefield.

"Q.

And then what happened next after that?

"A.

He drew his bolo and boloed Tulio once.

"Q.

At the time that you saw this act of hacking or boloing, what was the position of Jeofredo Tulio, was he standing, lying or sitting?

"A.

He was lying.[8]

Eyewitness Henry Candelario, a nephew of accused-appellant Aguinaldo Catuiran, Jr., corroborated Peniano and Vedasto. He testified that the victim was last seen alive when the latter, together with accused-appellant Catuiran, Jr., left the dance hall towards the street, near the place where the victim's body was later found.[9]

No plausible reasons have been shown that would have impelled the prosecution witnesses to testify falsely against accused-appellants.[10] The mere allegation that the eyewitnesses are relatives of the victim cannot be a valid ground for denying probative value to their testimony.[11] Indeed, if there are persons more interested and concerned than anyone else in vindicating the death of the victim and bringing to justice the real perpetrators of the crime, they would be the relatives of the victim themselves.

In professing their innocence, and denying involvement in the crime, accused-appellants would insist on their alibi, asseverating that they had left the dance hall between the hours of 10:30 and 12:00 in the evening of 04 November 1983 for their respective houses. For the defense of alibi to prosper, an accused should prove, not only that he was at some other place at the time of the commission of the crime, but that also it would have been physically impossible for him to be at the locus delicti or within its immediate vicinity.[12] The respective places where accused-appellants claimed to be at the time of the incident were just some distance away from the scene of the crime.

In any case, the positive identification of accused-appellants as being the perpetrators of the crime has virtually demolished their alibi.[13] Positive identification by eye-witnesses, when categorical and where no ill-motive is shown, definitely prevails over alibi and denial. No jurisprudence in criminal law is perhaps more settled than that alibi and denial, unless substantiated by clear and convincing evidence, is undeserving of weight[14] and is thus normally discarded.[15]

Treachery has attended the killing of the victim and qualified the offense to murder. 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 which the offended party might make.[16] The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim.[17]

Evidently, the victim was totally unaware of the intention of the accused-appellants to kill him. In fact, in a friendly gesture, accused-appellant Aguinaldo Catuiran, Jr., had placed his arms around the shoulder of the victim

and led him outside the dance hall where he was suddenly stabbed several times on the chest with no real opportunity to defend himself. The twenty-nine stab and hack wounds sustained by the victim would indicate nothing less than that accused-appellants had consciously, deliberately, and manifestly employed means to insure the death of the victim without risk to themselves. The qualifying circumstance of abuse of superior strength, even if extant, was absorbed by treachery.[18]

The concerted acts of accused-appellants established the existence of conspiracy among them. Their concordant conduct during the attack, manifested by their coordinated acts and movements, in the killing of the victim was a clear manifestation of their joint purpose and design, as well as community of interest, in the perpetration of the crime.[19] The narration made by eyewitness Isidro Peniano could only characterize a unity of purpose, intent and design of all accused-appellants.

"Q.

Now, how many seconds or how many minutes or how long a time did the stabbing, kicking and boxing incident occur?

"A.

May be ten seconds.

"Q.

And then what happened next?

"A.

Joefredo fell on a canal. And they carried him and brought him to the riceland.

"Q.

Who carried Joefredo Tulio to the ricefield?

"A.

All of them.

"Q.

When you said, 'them,' to whom are you referring to?

"A.

Elmer dela Cruz, Ramon Patricio, Juselito de Pedro, Rey dela Cruz, Ricardo de Pedro, Fernando Lavarosa.

"Q.

From the road or from the canal where Joefredo Tulio fell to the riceland where Joefredo Tulio was brought by these persons you mentioned, how far or what is the distance of this place?

"A.

May be seven arms stretch.

"Q.

Upon reaching the riceland, what happened next?

"A.

They buried him and stepped on him `tapac.'

"Q.

When you said, `buried,' how deep was he buried?

"A.

Only shallow.

"Q.

From the place where you were standing to the place where according to you Joefredo Tulio was buried, would you be able to see the body of Joefredo Tulio?

"A.

Yes, sir.

"Q.

For how long a time did they step on the body of Joefredo Tulio?

"A.

May be for three seconds."[20]

Where conspiracy has been adequately shown, the precise modality or extent of participation of each individual conspirator becomes but secondary since the applicable rule is that the act of one conspirator shall be deemed to be the act of all of them.[21]

The crime having been committed in 1983, the penalty prescribed in Article 248 of the Revised Penal Code prior to its amendment by Republic Act No. 7659,[22] being slightly more lenient than that expressed in the later enactment, should apply. The penalty for murder under the then Article 248 was reclusion temporal in its maximum period to death. There being neither ordinary mitigating nor ordinary aggravating circumstance proved, the penalty that could be imposed on accused-appellants would be its medium period, or reclusion perpetua, pursuant to Article 64(1) of the Revised Penal Code.

Quite unfortunately for accused-appellants, the Indeterminate Sentence Law (Act No. 4103, as amended) cannot be used. Section 1 of the law states that "(i)n imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense." In determining whether an indeterminate sentence, and not a straight penalty, will apply, what matters is not the penalty prescribed by law but the penalty that can actually be imposed by the trial court after considering the attendant circumstances.[23] Once it is established that the Indeterminate Sentence Law can apply, the penalty next lower (for the minimum term) is then computed on the basis of the penalty prescribed by the Revised Penal Code for the offense without considering any modifying circumstance attendant to the commission of the crime which circumstances would be considered in the imposition of the maximum term of the indeterminate sentence.[24] Since the penalty that can be imposed in the instant case is reclusion perpetua, as hereinbefore discussed, the exclusionary clauses of the Indeterminate Sentence Law preclude its application to the situation of accused-appellants.

Pursuant to the latest jurisprudence, the civil indemnity for the death of the victim should be increased to P50,000.00.

WHEREFORE, the conviction of accused-appellants ELMER DE LA CRUZ, FERNANDO LAVAROSA, AGUINALDO CATUIRAN, JR., REYNALDO CATUIRAN, REY DE LA CRUZ, RICARDO DE PEDRO, and JUSELITO DE PEDRO by the appellate court for the crime of MURDER is AFFIRMED but the sentence is now hereby MODIFIED by imposing on each of them the penalty of Reclusion Perpetua. Accused-appellants are also ordered to indemnify, jointly and severally, the heirs of Joefredo Tulio the amount of P50,000.00 by way of civil indemnity. Costs against accused-appellants.

SO ORDERED.

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

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- [1] Records, pp. 36-38.
 - [2] Records, p. 71.
 - [3] Records, p. 98.
 - [4] Records, pp. 91-92.
 - [5] People vs. Obello, 284 SCRA 79.
 - [6] Ibid.
 - [7] TSN, 08 July 1985, pp. 61-79.
 - [8] TSN, 21 January 1986, pp. 147-159.
 - [9] TSN, 11 March 1985, pp. 30-31.
 - [10] People vs. Villamor, 292 SCRA 384.
 - [11] People vs. Tulop, 289 SCRA 316.
 - [12] People vs. Ballesteros, 285 SCRA 438.
 - [13] People vs. Navales, 266 SCRA 569.
 - [14] People vs. Javier, 269 SCRA 181.
 - [15] People vs. Sumalpong, 284 SCRA 464, People vs. Aranjuez, 285 SCRA 466.
 - [16] People vs. Sumalpong, 284 SCRA 464.
 - [17] People vs. Oliano, 287 SCRA 158.
 - [18] People vs. Cawaling, 293 SCRA 267.
 - [19] People vs. Sumampong, 290 SCRA 471.
 - [20] TSN, 08 July 1985, pp. 80-81.
 - [21] People vs. Mercado, 275 SCRA 581.
 - [22] The amendatory law prescribes the penalty of reclusion perpetua to death for murder.

[23] See *Ladino vs. Garcia*, 265 SCRA 422.

[24] *People vs. Saley*, 291 SCRA 715.

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