PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR MANSUETO, ACCUSED-APPELLANT.

G.R. No. 135196. July 31, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

Jacinto Pepito (hereafter JACINTO) lived at his mother's house in Liloan, Cebu with his son Jeovani and 17-year-old daughter Cleofe (hereafter CLEOFE). At around 8:25 p.m. on 26 October 1991, CLEOFE roused JACINTO from his sleep and informed him that a man outside the house was calling for him. JACINTO got up and went down the house. Downstairs, JACINTO saw the man who was standing outside the gate of the house. "Are you Jacinto?" the man asked. "Yes, I am Jacinto," JACINTO replied. Without warning, the man drew a gun and fired one shot at JACINTO.[1]

The man tried to shoot JACINTO a second time but the gun would not fire. Summoning whatever strength was left in him, JACINTO reached out for his assailant. The man, however, hurriedly ran across the street to where a motorcycle was waiting. He boarded the motorcycle; he and the driver sped away. At that point, JACINTO's body lay on the ground lifeless.[2]

The Police Medico-Legal Officer's "Necropsy Report"[3] identified "hemorrhage, acute, severe, secondary to gunshot wound, of the chest" as the cause of JACINTO's death. The report states:

> Gunshot wounds, ENTRANCE, ovaloid, 0.7 x 0.6 cm., with contuso-abraded collar widest supero-late-tally by 0.4 cm., edges inverted, chest, left anterior aspect, 3.0 cm. from the anterior median line and 138.0 cm. above left heel, directed backward, downward and medially, involving skin and the underlying soft tissues, into thoracic cavity, perforating the barta, lacerating the lower border of the lower lobe of the right lung and finally a .38 cal. slug was embedded and recovered underneath skin, back, thoracic region, right, 5.0 cm. from the posterior median line and 127.0 cm. above right heel.

The gunman was never brought to court to answer for his dastardly act. He remained at-large. The driver of the getaway motorcycle was identified at the investigation conducted by the police to be the accused-appellant, Oscar Mansueto (hereafter OSCAR). After the preliminary investigation, the investigating prosecutor filed on 11 November 1992 an Information[4] for Murder with Branch 56 of the Regional Trial Court of Mandaue City. The Information reads as follows:

> The undersigned accuses OSCAR MANSUETO and JOHN DOE whose description in the affidavit is as follows: 5'6" tall, medium built, dark complexion, with moustache, deep cheek, fierce eyes and wearing maong jacket and cloth hat with snap in front, of the crime of Murder, committed as follows:
>
> That on the 26[th] day of October, 1991 at 8:00 o'clock in the evening, more or less, at Sitio Pagutlan, Barangay of Yati, Municipality of Liloan, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with treachery and evident premeditation, with intent to kill, armed with a revolver, and with the use of motorcycle to ensure

escape, willfully, unlawfully and feloniously, unexpectedly shot one Jacinto Pepito hitting the latter on his chest and afterwards, when enfeebled and unable to defend himself, again shoot him, but missed, and fatal gunshot wound of the victim causing his direct and immediate death.

CONTRARY TO LAW.

The case was docketed as Criminal Case No. DU-3235.

Upon arraignment OSCAR pleaded not guilty. Trial ensued.

The State's principal witness, CLEOFE, testified on the circumstances leading to the death of her father as already narrated.[5] When asked whether she had "a good look (at) the man who was driving the motorcycle," CLEOFE said that she is "familiar with his face because (she) often see(s) him." She further explained that she had a good view of said driver for about five seconds as he and the gunman sped away. Besides, the place where the driver waited for the gunman was illuminated by the light coming from a nearby vulcanizing shop owned by one Arnold Hernandez. She then identified the driver of the motorcycle as OSCAR, whom she claimed was the paramour of her mother, Moisesa Pepito.[6]

Another witness for the prosecution, Jose Pepito, a resident of Pag-utlan, Yati, Liloan, Cebu, testified that while he was at Myrna's store at Barangay Pitogo, Consolacion, Cebu at around 7:30 p.m. on the night in question, two persons on board a motorcycle stopped by the store. The two alighted and had some beer. Later, they left in the general direction of Liloan, Cebu. On his way home, Jose again saw the motorcycle along the roadside in Pag-utlan, near the vulcanizing shop of Arnold Hernandez. He then heard a shot and saw a man run towards the motorcycle to board it. He clearly saw the man and the driver of the motorcycle as they sped away because of the light from the electric post; moreover, he had seen them earlier at Myrna's store. He pointed to OSCAR as the motorcycle driver.[7]

The prosecution also presented Dr. Jesus P. Cerna, the medico-legal officer, who identified and authenticated the Necropsy Report[8] and the death certificate of JACINTO.[9]

The defense interposed denial and alibi. Aside from OSCAR, the other witnesses presented by the defense were Patrolmen Absalom Andrino and Allan Tan of the Police Station of San Remegio, Cebu; Patrolman Arcelo Necostrato of the Police Station of Liloan, Cebu; Moisesa Pepito; Judith Alesna; and Jeovani Pepito.

OSCAR disavowed participation in the killing of Jacinto. On the date and time in question, OSCAR claimed that he was at the poblacion of San Remegio, Cebu, which was about 90 kilometers away from the locus criminis - Liloan, Cebu. OSCAR's activities on the evening of 26 October 1991 started at 6:00 p.m. when he and Moisesa proceeded towards Alesna's carenderia. Along the way, they saw Patrolman Tan sitting at the police outpost nearby. They had supper at the carinderia. At 7:30 p.m., while Alesna and her husband left for church, OSCAR and Moisesa went to the second floor with Patrolman Andrino, who was renting a space thereat, to view a Betamax film. Later, Alesna and her husband arrived and joined the group. OSCAR and Moisesa left at around 11:00 p.m. Two days later or on 28 October 1991, his brother informed OSCAR that he was a suspect in the killing of JACINTO. On 31 October 1991, OSCAR went to the Liloan police station to attest to his presence at San Remegio, Cebu on the night of Jacinto's murder.[10]

On cross-examination, OSCAR admitted that: the sidecar of his tricycle is detachable from the motorcycle; he was unsure on how far San Remegio is from Liloan; on the night in question, he began watching Betamax between 7:30 and 8:00 p.m.; he could not recall the titles of the Betamax films they viewed, but the first one starred Lito Lapid; he stayed for three (3) to four (4) hours at Andrino's place. He also claimed that he did not request Patrolman Andrino or Judith Alesna to go with him to the Liloan police station.

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Moisesa Pepito, OSCAR's live-in partner and wife of JACINTO corroborated OSCAR's testimony. She maintained that both of them were at Judith Alesna's carinderia in San Remegio, Cebu before 7:00 p.m. on 26 October 1991. After eating, they went upstairs to Patrolman Andrino's place and watched a Betamax film. They left the place at around 11:00 p.m.[11]

Judith Alesna, owner of the carinderia and Patrolman Andrino who rented a space above said carinderia also corroborated OSCAR's testimony regarding his whereabouts on the night in question.[12]

Patrolman Allan Tan additionally attested to the presence of OSCAR in San Remegio on the fatal night when he saw the latter come out of the carinderia of Judith Alesna at about 8:00 p.m.[13]

As for Patrolman Arselo Necostrato, he declared that he was the desk sergeant on duty when CLEOFE reported the shooting incident at the Liloan Police Station. He entered "author unknown person" in the police blotter since he could not establish, after interrogating CLEOFE, who JACINTO's assailant was.[14] On cross-examination, Patrolman Necostrato clarified that he placed said entry since CLEOFE told him that JACINTO was "shot by a person whom she did not know and identify."[15]

Jeovani, son of JACINTO and Moisesa, testified that his sister "was inside the fence of (their) house shouting" when their father was shot. He, on the other hand, ran to the side of the house and hid behind a stone. When the assailant left, he went outside the fence and saw his father "lying down." However, he did not see any motorcycle. In fact, he could not see anything because "it was dark" and "the light on the post was not lighted."[16]

On cross-examination, Jeovani admitted that his sister was nearer the gunman than he was since she was "immediately behind (their) father when he was shot."[17]

After the defense presented its evidence-in-chief, the prosecution recalled CLEOFE to the witness stand as rebuttal witness. CLEOFE testified that OSCAR was not arrested at the Liloan police station when he ostentatiously submitted himself for interrogation "so that a surveillance (could) be made on his person" and the real killer known.[18]

On 8 December 1995, the trial court promulgated its decision[19] against OSCAR. The dispositive portion of the decision reads:

> FOREGOING CONSIDERED, the Court finds Oscar Mansueto guilty of Murder, for having shot Jacinto Pepito in the evening of October 26, 1991 and, accordingly sentences him to serve the penalty of imprisonment ranging from SEVENTEEN (17) Years, FOUR (4) Months and One (1) Day to TWENTY (20) Years. He is also ordered to indemnify the heirs of Jacinto Pepito in the sum of TWO HUNDRED THOUSAND (P200,000.00) Pesos, to pay attorney's fees of TWENTY THOUSAND (P20,000.00) Pesos and to pay the costs.
>
> SO ORDERED.

OSCAR appealed to the Court of Appeals which was docketed as CA-G.R. CR No. 19782.

On 15 June 1998, the Court of Appeals promulgated its Decision,[20] the decretal portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered AFFIRMING the trial court's decision subject to the MODIFICATION that accused-appellant is hereby sentenced to a penalty of RECLUSION PERPETUA. In view thereof, and in conformity with Rule 124, Section 13 of the Rules of Court, the Court refrains from entering judgment, certifies the case and elevates the entire records hereof to the Supreme Court for Review.
>
> SO ORDERED.

Conformably with our policy in criminal cases certified by the Court of Appeals pursuant to Section 13 of Rule 124 of the Rules of Court, we required OSCAR in our Resolution of 5 December 1998 to file an additional Brief, if he is so minded. He did file an Appellant's Brief on 16 February 1999. He alleges therein that the Court of Appeals gravely erred in (1) holding that he conspired with an unknown person in the killing of JACINTO, (2) giving credence to the statements of witness CLEOFE immediately after the shooting incident as part of the res gestae, and (3) finding him guilty beyond reasonable doubt of the crime of murder.

The Office of the Solicitor General filed the Appellee's Brief on 25 August 1999. It urges us to affirm the challenged decision of the Court of Appeals, except as to the indemnity which it proposed reduced to P50,000.

At the outset, it must be stated that unless the prosecution proves the guilt of the accused in a criminal suit beyond reasonable doubt, the constitutional presumption of innocence applies and the accused must be acquitted. Even though an accused invokes the inherently weak defense of alibi, such defense acquires commensurate strength where no positive and proper identification has been made by the prosecution witnesses, as the prosecution still has the onus probandi in establishing the guilt of the accused.[21]

Before we can apply the rule that positive identification prevails over mere denial and alibi, it is necessary that the credibility of the eyewitness be first put beyond question. This Court has always recognized that the trial courts are best equipped to pass upon the credibility of witnesses, having had the opportunity to observe firsthand the demeanor and actuations of the witness while on the witness stand.[22] The matter of assigning values to declarations at the witness stand is most competently carried out by the trial judge who, unlike appellate judges, can weigh such testimony in light of the witness's behavior and attitude at the trial, and the conclusions of the trial judge command great weight and respect.[23] We see no cogent reason to depart from this rule.

The trial court believed CLEOFE and found her to be a credible witness when she testified that OSCAR was the driver of the getaway motorcycle. In its decision, the trial court stated that:

On the other hand, the identification by witness, Cleofe Pepito of the accused as the motorcycle driver, who was waiting in the wings to facilitate the escape of the gunman was never destroyed by the defense. In fact, in answer to the question of private prosecutor whether witness Cleofe Pepito had a good look at the man who was driving the motorcycle, her answer was a definite yes, and when she was asked as to why she was definite, her answer was that she was familiar with his face because she had often seen him. Later on, as records show, this witness was able to explain her familiarity and it was the result of having been instructed by her mother to collect accounts supposedly due her mother from the accused...[24]

OSCAR, however, argues in his Appellant's Brief that CLEOFE could not have recognized him as the driver of the motorcycle during the five (5) seconds that she claimed to have glanced at him and the gunman while fleeing. OSCAR claims that (1) CLEOFE's view of the driver was obstructed by the gunman, who boarded the motorcycle behind the driver; (2) CLEOFE was facing the backs of the driver and the gunman as they sped off towards Cebu City; and that (3) there was no light from the lamppost. He cited CLEOFE's testimony as follows:

Atty. Alo:

Q:

My question is, when you saw the motorcycle for a period of five (5) seconds the situation in the motorcycle was that, the rider was there already behind the driver?

A:

Yes, he was already there.

. . .

Q:

Now the motorcycle when you saw it for five (5) seconds was already facing towards Cebu City?

A:

Yes.

Q:

And there was a motion already, the engine was started [sic]?

A:

Yes.

Q:

And you notice(d) it only when the rider sat at the back. That is the time you saw the motorcycle?

A:

I saw him when he rode the motorcycle when the motorcycle was running.[25]

OSCAR further maintains that:

Witness could not have recognized [him] at that time because the assailant and the driver were facing against her [sic], which means that Cleofe Pepito could not have had a glimpse of the driver's face because he was covered by the trigger man who was then seated at the back of the driver of the motorcycle. . .[26]

CLEOFE, however, testified that:

Atty. Alo:

Q:

But you must remember that at 8:30 o' clock in the evening, it is already night (sic). It is (sic) already very dark, is that correct?

A:

Yes.

Q:

And because of that, even you who is very young can make a mistake of looking at the light that comes across the street towards a person, is that correct?

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A:

I was not mistaken in that because I am so familiar with his face. I can recognize him even when his back is turned. (Witness saying that at the same time pointing to the accused).[27]

In fact, CLEOFE confirmed that everything that happened that fateful evening of 26 October 1991 was captured like a "photograph (in) her mind."[28]

As to the allegation that there was no light at the lamppost, a review of the transcript of stenographic notes reveals that CLEOFE testified that the place where OSCAR waited with his motorcycle was lighted by a "mercury" bulb from the vulcanizing shop of Arnold Hernandez. She elaborated:

Atty. Alo:

Do you recall having made an affidavit in connection with your investigation before the Fiscal's Office?

A:

I remember having executed an affidavit at the police station at the Ramos Supermarket.

Q:

Now, you remember what you have stated in your affidavit?

. . .

Court:

Answer the question. Can you still recall what you stated?

A:

Yes.

Atty. Alo:

Q:

Now, on this important question of identity, could you recall if you stated in that affidavit that the light from the vulcanizing shop was the light that caused you to see the motorcycle and the driver?

A:

That was not the only light. The light coming from the vulcanizing shop was not the only source of light at that time. There was a motorcycle vehicle coming or passing by at that time.

Q:

Now, you said that it was the light of Arnold Hernandez's shop that lighted the motorcycle and the driver when you saw the driver. Do you recall that?

A:

Yes.

. . .

Q:

That is why you made the statement that the light of the vulcanizing plant was the one that lighted the motorcycle, is that correct?

A:

It was one of the sources of the light.[29]

Cross Examination

By Atty. Alo:

Q:

Going back to the subject matter of light. You mentioned that there was a light coming from the vulcanizing plant of Arnold Hernandez. This light of Arnold is in his shop?

A:

Yes.

Q:

While the motorcycle is across the road?

A:

Yes.

Q:

So, the light involves only a bulb?

A:

Mercury.

Q:

And it is under the roof of his house?

A:

Inside the vulcanizing there is a light but there are also lights in post(s) around the shop.

. . .

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Q:

You describe the light. What was that again?

A:

Mercury.

Q:

Similar to the (sic) used by the Visayan Electric Company in the post(s) here, in Cebu City?

A:

No, sir.

Q:

You mean to say the light of the Visayan Electric is much brighter (than) the one used by Arnold?

A:

The light in the post of the shop of Arnold is brighter than the Visayan Electric.

Q:

Now when you were outside your gate, could you tell us how fast was that car passed (sic) the motorcycle during that time?

A:

Natural.

Q:

That car was going to the north or to the south?

A:

To the north.

Q:

Meaning to say, it was proceed(ing) to Danao?

A:

Yes.

Q:

And it was timely when you looked at the motorcycle that car was passing alighted (sic) to (sic) the motorcycle. Is that correct?

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A:

Yes.

Q:

The lights of the car hit the motorcycle directly. Is that correct?

A:

It was lighted.[30]

We have said before that:

> Visibility is indeed a vital factor in the determination of whether or not an eyewitness could have identified the perpetrator of a crime. However, it is settled that when conditions of visibility are favorable, and the witnesses do not appear to be biased, their assertion as to the identity of the malefactor should normally be accepted. Illumination produced by kerosene lamp or a flashlight is sufficient to allow identification of persons. Wicklamps, flashlights, even moonlight or starlight may, in proper situations be considered sufficient illumination, making the attack on the credibility of witnesses solely on that ground unmeritorious.[31]

In lending added credence to CLEOFE's testimony, it is not amiss to state that "relatives of a victim of a crime have a natural knack for remembering the face of the assailant and they, more than anybody else, would be concerned with obtaining justice for the victim by the malefactor being brought to the face of the law." Indeed, family members who have witnessed the killing of a loved one usually strive to remember the faces of the assailants.[32]

Even assuming that CLEOFE did not actually identify OSCAR as the driver of the getaway motorcycle, sufficient circumstantial evidence was established to uphold his conviction.

Section 4, Rule 133 of the Revised Rules of Court provides that:

> Circumstantial evidence, when sufficient. -- Circumstantial evidence is sufficient for conviction if:
>
> (a) There is more than one circumstance;
>
> (b) The facts from which the inferences are derived are proven; and
>
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. Such evidence is founded on experience and observed facts and coincidences establishing a connection between the known and proven facts and the facts sought to be proved.[33]

The following circumstances based chiefly on Jose Pepito's testimony35 were established by the State:

> 1. Jose Pepito saw OSCAR and a companion drinking beer at Myrna's store at Bo. Pitogo, Consolacion, Cebu in the evening of 26 October 1991, and then leaving towards Pag-utlan, Yati, Liloan, on board a motorcycle.
>
> 2. Several minutes later, an unidentified man shot JACINTO at the gate of his mother's house in Pag-utlan, Yati, Liloan, Cebu.
>
> 3. On the road to Pag-utlan, Jose Pepito heard the shot, after which, he saw a man run to the other side of the road where another man waited on a motorcycle. As soon as the gunman boarded, the duo fled.
>
> 4. Jose Pepito observed that the men and the motorcycle he had seen at Myrna's store were the same persons

and motorcycle he saw near Arnold Hernandez's vulcanizing shop immediately prior and after the shooting. Pepito saw the gunman and OSCAR flee on board the motorcycle.

5. Jose Pepito positively identified OSCAR as the driver of the motorcycle.

Piecing this together with CLEOFE's undisputed testimony that she saw her father's gunman run to a getaway motorcycle driven by OSCAR, the State has successfully conjured up a murder picture attributable to an unidentified gunman and OSCAR as the motorcycle driver.

In his Appellant's Brief, OSCAR additionally attempts to impeach the credibility of CLEOFE on the grounds of bias and her failure to mention OSCAR as the driver of the getaway motorcycle when she reported the shooting incident to the Liloan Police immediately after it occurred should form part of the res gestae. OSCAR contends that the omission, as part of the res gestae, should have been afforded evidentiary weight.

OSCAR, however, misunderstands the admissibility in evidence of statements as part of the res gestae which is considered in Section 42, Rule 130 of the Rules of Court as an exception to the rule on hearsay evidence. Res Gestae refers to those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.[34] The rule in res gestae applies when the declarant himself did not testify and provided that the testimony of the witness who heard the declarant complies with the following requisites: (1) that the principal act, the res gestae, be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.[35]

Since CLEOFE herself testified, there is absolutely no room for the application of the rule on res gestae. Besides, subject matters not mentioned or are outside the statements or explanations given by the declarant, in this case CLEOFE, obviously do not form part of the res gestae.

It is also stressed that CLEOFE reported the shooting incident at the Liloan Police Station some thirty minutes after. Her declaration disclaiming knowledge of the name of JACINTO's assailant was not inconsistent with her belated claim that OSCAR was the driver of the getaway motorcycle. CLEOFE's alleged omission is more or less attributable to the fact that her interrogation at the Liloan police station centered on the identity of the gunman not on the driver of the motorcycle. In any event, she testified that she mentioned OSCAR as the companion of the gunman when she first reported the shooting incident, but was uncertain whether her statement "was entered in the (police) blotter," thus:

Atty. Alo:

Q:

It is only now that you told the court that they did not ask so you did not give the statement. So, when you were asked who was the author (of the crime), you answered the author is unknown, is that correct?

A:

The question that was asked of me was who shot (JACINTO) and then I answered I do not know. I really do not know the person and I was not asked whether he had a companion.

Q:

So, when for the first time were you asked if there was a companion of the one who shot your father?

A:

Because when I arrived at the (Liloan) police station, somebody asked me what happened and then I told him that a shooting incident took place, that somebody shot my father and then another asked me who was the one who shot my father and I answered I do not know. Then again, somebody else asked me was there a companion of the one who shot your father? And there were many more questions asked of me all around.

Court:

When you were asked if there was any companion of the person who shot your father, did you answer?

A:

I answered Your Honor but I do not know whether it was entered into the blotter because they let me sit down already since I was still very scared at the time and I do not know what transpired next.

Q:

And what was your answer when you were asked if there was a companion of your father?

A:

That there was. . .[36]

Further, the entry in the police blotter[37] indicating the "author" of the crime as an "unknown person" failed to impeach the credibility of CLEOFE. It is clear from the "facts" of the police blotter that the "unknown person" referred to therein is the gunman:

Facts:

Daughter of the victim reported and alleged that at the aforestated place, time and date author went to their house looking for his father; when his father acosted (sic) the author same with deliberate intent to kill shoot once hitting the victim's breast and fled away with a motorcycle.

We held in People v. Dacibar and Dicon,[38] that:

> In addition, the fact that the first blotter report made by the victim's wife refers to the assailants as "unidentified persons" does not detract from the veracity of her positive identification of appellants as the perpetrators of the crime in a later report, and in the course of trial. In the first place, we have held that entries in the police blotter should not be given undue significance or probative value, as they do not constitute conclusive proof.

Incidentally, OSCAR made it appear in his Appellant's Brief that the entry for "author" in the police blotter was "UNKNOWN PERSONS" and not "UNKNOWN PERSON." He also averred that "in the police report, witness (CLEOFE) mentioned that the authors of the crime were UNKNOWN PERSONS who fled away with a motorcycle." We see this as a desperate ploy to mislead this Court.

In support of his claim that CLEOFE showed bias in testifying against him, OSCAR states in his Brief:

> The testimony of Cleofe Pepito undisputably [sic] showed bias against the appellant. Her pointing to appellant

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> as the driver of the motorcycle is clearly an afterthought after she learned of her mother's illicit relationship with the appellant (TSN, 24 August 1993). She had all the reasons to falsely testify against the appellant whom she and his deceased father's relatives blames [sic] as the cause of her parent's [sic] break-up. Remorse moved her to press appellant as one of the perpetrators of her father's death.[39]

The illicit affair between her mother and OSCAR is too trivial a reason for CLEOFE to wrongfully accuse OSCAR as one of the perpetrators in the murder of her father. The earnest desire to seek justice for a dead kin is not served should witnesses abandon their conscience and prudence and blame one who is innocent of the crime. It would be unnatural for a person who is interested in vindicating the crime committed against his relative to accuse somebody other than the real culprit as the perpetrator.[40] We agree with the trial court's finding on CLEOFE's credibility.

Considering that the prosecution discharged its burden of proving that OSCAR aided the gunman in slaying JACINTO by driving the getaway motorcycle, this Court is not convinced of OSCAR's innocence on the basis of an alibi. It is settled that alibi is an inherently weak defense, easy to fabricate and highly unreliable.[41] For said defense to prosper, the accused must not only prove that he was at some other place at the time the crime was committed but that it was, likewise, physically impossible for him to be at the locus criminis at the time of the alleged crime.[42]

The State showed that it was not physically impossible for OSCAR to be at the locus criminis since, by his own admission, Liloan is only 90 kilometers away from San Remegio, Cebu where he allegedly was in the evening of 26 October 1991. He also admitted that the sidecar of his tricycle could be detached from the motorcycle, hence, he could have used said motorcycle in traveling to Liloan.

Finally, OSCAR's claim that conspiracy was not proved should not detain us further.

The well-settled rule is that conspiracy must be proven as clearly as the commission of the offense itself. True, direct proof is not essential, because conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design.[43]

Unity in purpose and design between OSCAR and the gunman are evident from the following circumstances:

> 1. OSCAR and the gunman were seen together at Myrna's store drinking beer shortly before the shooting of JACINTO. They also left the store together.
>
> 2. Before the shooting incident, OSCAR, was seen at the crime scene on a motorcycle. After the shooting incident, OSCAR and the gunman (who climbed on board the motorcycle) were seen quickly driving away from said place.

Is OSCAR guilty of homicide or murder? In charging OSCAR of the crime of murder, the Information alleges three (3) of the qualifying circumstances, mentioned in Article 248 of the Revised Penal Code, to wit: treachery, evident premeditation and use of motor vehicle.

There is treachery when the offender commits any of the crimes against persons employing means, methods or forms of attack which tend directly and specially to insure the execution of the crime without risk to himself arising from the defense which the offended party might make.[44]

Evident premeditation is appreciated upon proof of (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[45]

But the prosecution failed to prove both treachery and evident premeditation. However, it duly proved use of

motor vehicle. There is no dispute that OSCAR and the gunman utilized a motorcycle in going to the scene of the crime and in facilitating their escape after consummating the crime thus charged.[46]

On 26 October 1991, when OSCAR and the gunman killed Jacinto Pepito the penalty for murder under Article 248 of the Revised Penal Code was reclusion temporal maximum to death.[47] There being no other modifying circumstances proven, the penalty imposable should be the medium thereof per Article 64 of the Revised Penal Code, which is reclusion perpetua.

The amount of P50,000 is awarded as indemnity under Article 2206 of the New Civil Code in favor of the heirs of JACINTO. The award of moral damages of P200,000 declared by the trial court should, however, be deleted since none of the heirs and relatives of JACINTO testified on his or her sufferings as a result of JACINTO's death.

WHEREFORE, in view of all the foregoing, judgment is hereby rendered AFFIRMING the 15 June 1998 Decision of the Court of Appeals, finding herein accused-appellant Oscar Mansueto guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, except as to the award of moral damages, which is hereby deleted. He is also ordered to indemnify the heirs of the victim Jacinto Pepito in the amount of P50,000.

No pronouncement as to costs.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1]TSN, 18 August 1993, 4-5.

[2]TSN, 18 August 1993, 4-5.

[3]Original Record (OR), 83; Exhibit "B."

[4]OR, 1.

[5]TSN, 18 August 1993, 4-5.

[6]Id., 7, 9, 11, 13, 14.

[7]TSN, 25 August 1993, 5-7.

[8]Exhibit "B."

[9]OR, 84; Exhibit "C."

[10]TSN, 14 November, 4-7.

[11]TSN, 4 February 1994, 5, 9, 10.

[12]TSN, 31 May 1994, 4-5; TSN, 26 October 1993, 5-6.

[13]TSN, 19 October 1993, 4.

[14]Id., 4.

[15]Id., 13, 29.

[16]TSN, 25 October 1994, 4-7.

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[17]Id., 10.

[18]TSN, 26 April 1995, 3.

[19]OR, 171-183; Rollo, 56-68. Per Judge Augustine A. Vestil.

[20]Per Barcelona, J., with the concurrence of Reyes, M.G. and Demetria, D., JJ.

[21]See People v. Crispin, G.R. No. 128360, 2 March, 2000.

[22]People v. Crispin, supra, citing People v. Vidal, 308 SCRA 1 [1999].

[23]People v. Crispin, supra, citing People v. Magallanes, 23 SCRA 1275 [1968].

[24]OR, 180-181; See also TSN, 18 August 1993, 6.

[25]TSN, 19 August 1993, 24-26.

[26]Rollo, 28.

[27]TSN, 18 August 1993, 14.

[28]Id.

[29]TSN, 18 August 1993, 15.

[30]TSN, 19 August 1993, 2-5.

[31]People v. Binas, G.R. No. 121630, 8 December 1999, citing People v. Adoviso, 309 SCRA 1 [1999].

[32]People v. Binas, supra, citing People v. Bundang, 272 SCRA 641 [1993]; and People v. Cawaling, 293 SCRA 267 [1998].

[33]People v. Rondero, G.R. No. 125687, 9 December 1999.

[34]People v. Manhuyod, Jr., 290 SCRA 257, 272 [1998]

[35]Id., 272.

[36]TSN, 18 August 1993, 16.

[37]OR, 129; Exhibit "1."

[38]G.R. No. 111286, 17 February 2000.

[39]Rollo,

[40]People v. Dacibar and Dicon, supra, citing People v. Realin, 301 SCRA 495 [1999]; People v. Villanueva, 302 SCRA 380 [1999].

[41]People v. Llanes, G.R. No. 116986, 4 February 2000, citing People v. Viovicente, G.R. No. 118707, 2 February 1998.

[42]People v. Llanes, supra, citing People v. Pagal, 272 SCRA 443 [1997].

[43]People v. Quilaton, G.R. No. 131835, 3 February 2000, citing People v. Sumalpong, 284 SCRA 464 [1998].

[44]People v. Marcelino, G.R. No. 126269, 1 October 1999.

[45] People v. Marcelino, supra.

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[46] Peole v. Espejo, 36 SCRA 400, 418 [1970]

[47]Pursuant to the amendment introduced by Section of R.A. No. 7659, which took effect on 31 December 1993 (People v. Simon, 234 SCRA 555 [1994]), the penalty for murder is now reclusion perpetua to death.

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