

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEMAR PALEC, RONNIE PALEC ALIAS “GIROM” AND ARNEL CAMINOY, ACCUSED. JOEMAR PALEC AND RONNIE PALEC ALIAS “GIROM”, ACCUSED

G.R. No. 135331. November 23, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

On 15 August 1994, accused JOEMAR PALEC, RONNIE PALEC alias GIROM, and ARNEL CAMINOY were charged before the Regional Trial Court of Iloilo City with the crime of Murder in an information which read:

That on about April 27, 1994, in the Municipality of Calinog, Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a firearm and a knife, conspiring, confederating and mutually helping one another, with treachery and evident premeditation and taking advantage of nighttime and superior strength, with decided purpose to kill, did then and there wilfully, unlawfully and feloniously attack, assault, shoot and stab FLORO BATOY with said weapons accused were then provided that time, inflicting gunshot and stab wounds on the vital parts of the body of said Floro Batoy, causing his death thereafter.

Contrary to law.[1]

Upon arraignment, RONNIE and JOEMAR pleaded not guilty to the charge. Meanwhile, accused Arnel Caminoy has remained at large.

In support of the charge, the prosecution presented Dr. Ricardo M. Jaboneta, Alvin Suede, and Melchor Molina as its witnesses.

Dr. Ricardo M. Jaboneta, a medico-legal officer of the National Bureau of Investigation, conducted the autopsy. In his report,[2] he described the cause of death as "massive brain laceration secondary to shotgun wound on the head." Dr. Jaboneta found that Floro Batoy sustained a gun shot wound in the right side of his head above the parietal region, eight stab wounds in the lumbar area, two of which were fatal since they penetrated the abdomen resulting in a laceration of the abdominal aorta and left kidney, and an abrasion wound on the right side of his forehead. Dr. Jaboneta opined that the gun wound was probably inflicted at a very close range of less than a meter; that the stab wounds were caused by a single-bladed pointed instrument; and that the abrasion wound was caused by forcible contact with a "wrapped and hard object." Further, based on the location of the stab and gun shot wounds, Dr. Jaboneta opined that it was most likely that the victim was attacked the from behind.[3]

Alvin Suede and Melchor Molina, both farmers and residents of Barangay Igang, Pototan, Iloilo, gave similar testimonies. They claimed that, on 27 April 1994, they went to Banban Grande, Calinog, Iloilo, in order to visit Roberta Batoy - Alvin's first cousin and Melchor's aunt. They arrived at Banban Grande at 2:00 p.m. At around 7 p.m., Alvin and Melchor were invited by Floro Batoy, Roberta's son, to attend the wedding of a certain Jun in Barangay Datagan, Calinog, Iloilo. As they were walking down a feeder road on their way to Barangay Datagan,

accused suddenly emerged from the tall grasses at the side of the road and assaulted Floro Batoy. JOEMAR pointed a gun at the right side of the back of Floro's head, while RONNIE held down Floro's right hand. ARNEL was standing behind JOEMAR holding a knife. All three accused came up from behind Floro. Although it was dark at the time, they were able to identify accused because Melchor was carrying a flashlight. Upon seeing accused attack Floro, Alvin and Melchor were frightened and they stepped backwards. They heard a gun shot and saw Floro fall to the ground. As they were running away from accused, they heard someone shout, "Arnel, buna na" (Arnel, stab him). Upon reaching Calinog, Alvin and Melchor failed to report the incident to the police for fear that they might be harmed. Instead, they rode a cargo truck to Passi, and from there they made their way to Barangay Igang, Pototan, where they arrived at 9:45 p.m.

Alvin and Melchor first recounted the details of the attack to Vicenta Defensor, the sister of Floro, who arrived at Pototan the following day to inquire about her brother's whereabouts. On 24 May 1994, they were summoned and investigated by the Calinog police, before whom they gave their statement. They also executed a sworn statement before Judge Gaudencio Celeste.[4]

Meanwhile, accused RONNIE and JOEMAR invoked alibi. The witnesses for the defense were Norma Padura, Dr. Juan Masna, Joel Bancuyo, RONNIE and JOEMAR.

RONNIE insisted that, on the night of the killing, he was at his home in Barangay Bagacay, Passi, Iloilo, sick with typhoid. He claims that he contracted typhoid as early as 17 April 1994, which made him very weak and gave him a fever, stomachache, and headache. On 25 April 1994, RONNIE was brought by his father and brother to the clinic of Dr. Juan Masna, who examined him and gave him some medicine. Although Dr. Masna recommended his hospitalization, he was brought back home since he could not afford to be hospitalized. On 27 April 1994, RONNIE's condition worsened - he had a very high fever, chills, headache and diarrhea - prompting his father to fetch Dr. Masna. At 6 p.m., Dr. Masna arrived at RONNIE's house, examined him, and injected him with medicine which caused him to fall asleep.

Norma Padura, barangay captain and resident of Barangay Bagacay, Passi, Iloilo, corroborated RONNIE's testimony. Norma alleged that, on 27 April 1994, at around 5 p.m., she was in Barangay Bagacay conducting a house-to-house campaign for the upcoming election when she ran into the mother of RONNIE, who told her that the latter was very sick. Norma then proceeded to the house of RONNIE, and there she found him lying on a mat, with fever and chills. Norma advised the father of RONNIE to fetch the doctor. At around 6:30 p.m, Dr. Masna arrived, examined RONNIE, diagnosed him as having typhoid fever, and issued a receipt. Norma left RONNIE's house at 8 p.m.[5]

Dr. Juan Masna testified that RONNIE came to his clinic on 25 April 1994. After examination, Dr. Masna diagnosed RONNIE as having typhoid fever which was prevalent in the community during that period. However, due to financial constraints, RONNIE was not hospitalized; Dr. Masna merely gave him some medicine for typhoid fever. On 27 April 1994, RONNIE's father asked Dr. Masna to come to their house in order to examine RONNIE, whose condition was worsening. He arrived at the Palec residence at 6 p.m. and found RONNIE suffering from a high-grade fever, chills, diarrhea, and dehydration. Dr. Masna further observed that RONNIE was very weak and could hardly move. Dr. Masna subsequently issued a medical certificate dated 4 August 1994.[6]

Meanwhile, to support JOEMAR's alibi, the defense presented Joel Bancuyo. Joel, a resident of Tabuc Suba, Jaro, Iloilo, testified that he is the owner of a fair which he sets up in different places during fiestas. For the fiestas in Leganes, Iloilo, celebrated on April 5 and April 18, Joel set up his fair therein and hired JOEMAR to work for him. On 24 April 1994, JOEMAR told him that he was going to go home to Barangay Banban Grande for a brief

visit, but that he would be back in three days. On 27 April 1994, JOEMAR arrived at the fair at 5 p.m. and worked until 12 midnight. JOEMAR worked with Joel until April 29, 1994.[7]

JOEMAR affirmed Joel's testimony. He alleged that, in the evening of 27 April 1994, he rode to Leganes to meet Joel. He arrived at the fair at 7 p.m. and immediately reported to Joel. After reporting, JOEMAR worked from 7 p.m. to 12 midnight. During that period of time, JOEMAR insisted that he never left the fair grounds. While on cross-examination, JOEMAR testified that his mother had a child with Floro Batoy's father and that his family was not on good terms with the Batoys.[8]

In rebuttal, the prosecution presented Ronnie Landoy, the Vice Mayor of Leganes, Iloilo. Mayor Landoy testified that the records of the municipality do not reflect that Joel Bancuyo obtained a mayor's permit to set up his fair in Leganes in April, 1994. He claimed that without a permit, Joel's operation of the fair would be in violation of municipal laws.[9]

On June 11, 1998, the trial court rendered its decision, the dispositive portion of which states -

WHEREFORE, the accused Ronnie Palec and Joemar Palec are hereby found guilty beyond reasonable doubt as principals of the crime of Murder, defined and penalized under Art. 248 of the Revised Penal Code and are hereby punished with imprisonment of Reclusion Perpetua to Death, to pay the heirs of the victim the amount of P50,452.80 as actual damages, P50,000.00 as civil indemnity and to pay the costs.[10]

The positive identification of the assailants by the prosecution witnesses was given more weight by the trial court than the alibis offered by the accused. The trial court found the testimonies of the defense witnesses to be "self-serving, conflicting, erroneous and contrary to [the] ordinary course of human conduct." [11] Also, the trial court declared that the killing was committed with treachery since the attack upon the victim was sudden and completely unexpected.[12]

In their brief,[13] accused-appellants prayed for the reversal of the trial court's decision, claiming that the testimonies of the prosecution witnesses were inconsistent and conflicting on material points, specifically with respect to the actual participation of each of the accused in the attack.

Absent any showing that it has overlooked, misapprehended, or misapplied some facts of weight and substance which, if properly considered, would have altered the result of the case, the trial court's assessment of the credibility of the witnesses shall be sustained by this Court.[14] Having had the distinct opportunity of directly observing the demeanor of the witnesses, the trial court is in a better position to ascertain whether or not he or she is telling the truth.[15] After a careful and circumspect study of the records of this case, we find that the lower court was justified in upholding the testimony of the prosecution witnesses as being worthy of full faith and credence. The testimonies of Alvin Suede and Melchor Molina, both eyewitnesses to the killing, were direct, straightforward and coincided on all material points. On direct examination, Alvin testified as follows:

FISCAL AMULAR: (To the witness)

Q:

Since you said, you stayed in the house of your cousin Roberta Batoy that evening of April 27, 1994, did you sleep there also?

A:

No, sir.

FISCAL AMULA

(To the witness)

Q:

Why did you not sleep there?

WITNESS ALVIN SUEDE:

A:

Because at about quarter to 7:00, I was invited by Floro Batoy to walk to the place of his friend who was getting married.

Q:

What is the name of the friend of Floro Batoy who was getting married?

A

I know him only by alias John.

Q

Did you happen to reach the house of alias John whom you said was getting married?

A:

No, sir.

Q:

But, did you know at what barangay is the house of alias John was situated?

A

At Barangay Datagan.

Q:

This Barangay Datagan is also part of the municipality of Calinog?

A:

Yes, sir, still part of Calinog.

Q:

When you were invited by Floro Batoy to go to the house of his friend at Barangay Datagan, Calinog, did you go with him?

A

Yes, sir.

Q:

Aside from you[,] were there other persons who went with you and Floro Batoy to the house of alias John at Datagan, Calinog?

A:

Yes, sir, Melchor Molina.

FISCAL AMULAR:

(To the witness)

Q:

Now, do you know how far is this house of your cousin Roberta Batoy at Barangay Banban Grande from Barangay Datagan, which is the place of the friend of Floro Batoy, who was getting married?

WITNESS ALVIN SUEDE:

A:

About three (3) kilometers.

Q:

Were you, Floro Batoy and Melchor Molina were [sic] able to reach the house of alias John at Barangay Datagan, Calinog, Iloilo?

A:

No, sir.

Q:

Why were you not able to reach the house of alias John at Barangay Datagan, Calinog, Iloilo?

A:

Because while we were walking on the feeder road, there were three (3) persons who waylaid us.

Q:

Will you please describe to this Honorable Court the feeder road, which you said, you were waylaid by the three (3) persons?

A

Yes, sir. The feeder road is about two (2) meters wide, on the left side there were "madre de cacao" trees and also on the right side, there was one (1) bamboo grove and "tigbao" grass on the right side and there were tall grasses.

Q

And, how tall were those tall grasses and "tigbao"?

A:

Very tall, like that of sugar cane plants.

Q

You said, while you were walking on that feeder road and you were waylaid by the three (3) persons, where did they come from?

WITNESS ALVIN SUEDE:

A:

From the tall grasses.

FISCAL AMULAR:

(To the witness)

Q:

And, by the way, while you were walking who was ahead?

A:

Floro Batoy.

Q:

Who was next?

A:

Melchor Molina.

COURT:

(To the witness)

Q:

Why you [sic] were not walking side by side?

A:

No, sir.

FISCAL AMULAR:

(To the witness)

Q:

Why did you not walk side by side?

A:

Because the feeder road was narrow.

Q:

Why you said [sic] the feeder road was narrow, when you said [a] few minutes ago that the road was two (2) meters?

A:

Because at the both sides of the feeder road there were grasses.

Q:

When you said you were waylaid, what happened next?

A:

Floro Batoy was held on his right arm and a gun was pointed on his head.

Q:

Who held the arm of Floro Batoy?

A:

Ronnie Palec.

Q:

And, who was the one who pointed a gun at the head of Floro Batoy?

A:

Joemar Palec.

FISCAL AMULAR:

(To the witness)

Q:

You mentioned about three (3) persons and you only identified Ronnie and Joemar Palec, who was the other one?

WITNESS ALVIN SUEDE:

A:

Arnel Caminoy, who was holding a knife and behind Joemar Palec.

Q

How about you, what did you do when you witnessed that events [sic]?

A:

I moved backward.

Q:

How about Melchor Molina, what did he do?

A:

He also moved backward.

Q:

After moving backward, what happened next?

A

There was an explosion and we saw Floro Batoy fell [sic] on the ground.

Q: Now, you testified earlier that you heard a gun explosion and after you saw Floro Batoy fell [sic] on the ground, what happened next after that?

A: We ran.

COURT:

(To the Witness)

Q:

You said, we, you and whom?

A:

Melchor Molina.

FISCAL AMULAR:

(To the witness)

Q:

After you ran with Melchor Molina, what else happened, did you observe?

A:

We heard a shout, "what are you waiting for Arnel, you stab him."

Q

You testified earlier that while walking towards Barangay Datagan, first, Floro Batoy, next one, Melchor Molina, and the third one was yourself, how far were you when the holding of the arm and the pointing of the gun [sic], how far were you from Floro Batoy?

A

About three (3) meters.

Q

Mr. Witness, while you were walking that evening, was it dark?

A:

Yes, sir.

Q:

How did you verify the perpetrator of the crime because it was dark and night time according to you?

WITNESS ALVIN SUEDE:

A:

Because of the flash light brought by Melchor Molina."[16]

Alvin's testimony was substantially corroborated by Melchor Molina, who made the following declarations under direct examination:

Q:

You said that at around 7:00 o'clock that day of April 27, 1994[,] you were preparing yourselves to go to Barangay Datagan. What was that affair there all about?

A:

It was the eve of the wedding of the friend of Floro Batoy.

Prosecutor Amular:

Q:

This Barangay Datagan, where is this located in relation to Barangay Banban Grande?

A:

In going to Barangay Datagan there is a feeder road from Banban Grande in going there.

Q:

Approximately how far is Barangay Datagan from Barangay Banban Grande?

A:

I cannot estimate the distance by kilometers, sir.

Q:

Since you said at around that time 7:00 o'clock in the evening of April 27, 1994 you were preparing to go to the house of the friend of your cousin Floro Batoy. Now how many of you actually left the house of your aunt so that you will go to this house of the friend of Floro Batoy?

A:

We were three (3), sir.

Q:

Will you please tell this court who were your other companions?

A:

Alvin Suede and Floro Batoy, sir.

Q:

Now were you - what transportation did you use in going there?

A:

We walked, sir.

Q:

And while you were walking which kind of road you use, where did you pass?

A:

In the feeder road, sir.

Q:

And that feeder road is also - is it the road going to the place of your destination in going to Barangay Datagan, am I correct?

A:

Yes, sir.

Q:

While you were walking in the feeder road towards Barangay Datagan, can you recall whether there was an unusual incident which happened?

A:

Yes, sir.

Q:

By the way, before you were mentioning [sic] to us that incident which happened while you were walking. How were - how will you walk while you were going there when you were walking along that feeder road?

A:

We were following each other.

Prosecutor Amular:

Q:

Who were [sic] the first one?

A:

Floro Batoy, sir.

Q:

Who was the second?

A:

Me, sir.

Q:

And the third?

A:

Alvin Suede, sir.

Q:

And it was already in the evening Mr. Witness and can you please tell the court your observation about this evening, how were you able to see the road since it was already in the evening or nighttime?

A:

I was bringing the flashlight, sir.

Q:

Now what was that incident which you said happened while you were walking along that feeder road going to Barangay Datagan?

A:

While we were walking, I was surprised when the 3 men came out, one was wearing a white t-shirt with a short arm and one was wearing a black jacket and it was the one who grabbed the arm of Floro Batoy and the other one was wearing a white t-shirt was holding an arm and the one wearing the black jacket was the one - - -

Q:

What about the other person as you said there were three, what is the other person doing that evening?

A:

He was standing beside the road with a knife.

Q:

Since you were - were you frightened when these 3 persons suddenly appeared before you and took their respective positions?

Atty. Divinagracia:

Objection that is leading.

Court:

Yes, reform.

Prosecutor Amular:

Q:

How did you feel when those 3 persons suddenly appeared along your path and took their respective positions as you described earlier?

A:

I was frightened, sir.

Prosecutor Amular:

Q:

Now you mentioned to us about that first person wearing a t-shirt and carrying an unknown or short firearm and you also mentioned about the other person wearing a black jacket who grabbed the arm of Floro Batoy and the other person standing near Floro Batoy holding a knife. How did you able to come that observation [sic] Mr. Witness?

A:

Because I was able to beam my flashlight towards them.

Q:

By the way, how far were you from Floro Batoy at the time when suddenly these 3 persons waylaid you?

A:

About two armlengths, sir.

Q:

From where you are sitting right now there, where would be the position of Floro Batoy?

Court:

You are the witness, the other one is there.

Two to three meters, agreed? From the end of the witness stand or in your chair.

Atty. Divinagracia:

That would be 3 to 4 meters.

Court:

Two to three meters. Anyway when you said two armlengths full armlength or what? Two full armlength.

Prosecutor Amular:

Q:

You said you were frightened when suddenly the three persons appeared along your way, what did you do if any?

A:

Alvin Suede and I stepped or moved backwards, sir.

Q:

After moving backward, what happened next if there [was] anything which happened at all?

A:

Thereafter I heard the explosion. I saw Floro Batoy fall down.

Q:

When Floro Batoy fall [sic] on the ground, what did you do if any together with your companion Alvin Suede?

A:

We both ran away from them because they might also harm us.

Prosecutor Amular:

Q

While you were running, you and Alvin Suede, did you hear anything at all?

A

Yes, sir.

Q:

What was that which you heard?

A:

We heard someone shouted, "Arnold stab him." [17]

Both Alvin and Melchor testified to the effect that, on 27 April 1994, at around 7 p.m., they were walking down a

feeder road in Barangay Banban Grande, Calinog, Iloilo, on their way to attend a party in Barangay Datagan, together with Floro Batoy, when they were waylaid by RONNIE PALEC, JOEMAR PALEC, and ARNEL CAMINOY; that JOEMAR pointed a gun to Floro's head, RONNIE held Floro's right hand, and ARNEL stood beside JOEMAR holding a knife; that being afraid for their own safety, they started to move backwards; that they heard a gunshot and saw Floro fall to the ground; and that as they were running away, they heard someone shout, "What are you waiting for Arnel, you stab him." The defense has not presented any evidence to show that Alvin and Melchor were impelled by improper or dubious motives. Thus, their credibility stands unimpaired.[18]

The testimonies of Alvin and Melchor are also supported by the medical findings of the NBI medico-legal officer - Dr. Jaboneta found that Floro sustained a gun shot wound in the right side of his head, which was probably inflicted at a very close range, and several stab wounds. This coincides with Alvin and Melchor's declaration that JOEMAR held a gun to the right side of Floro's head and that Arnel had a knife. Further, Dr. Jaboneta's pronouncement that the location of the victim's wounds pointed to a rear attack corroborates Alvin and Melchor's testimony that accused approached Floro from behind.

In light of the prosecution's evidence, accused-appellants' denials and proffered alibis cannot stand. It is a firmly established doctrine in jurisprudence that alibi is the weakest of all defenses since it is easily concocted, therefore, it should be rejected where the identity of the accused is sufficiently and positively identified by credible eyewitnesses to the crime.[19] Moreover, RONNIE's defense is weakened by the inconsistencies in the testimony of Dr. Masna, who declared on direct examination that the second time he saw RONNIE was when he went to the latter's house on 27 April 1994, having been fetched by RONNIE's father.[20] However, on cross-examination, Dr. Masna stated that it was RONNIE who went to his house and that such visit was made four days after RONNIE came to his clinic on 25 April 1994, or on 29 April 1995.[21] Also, the medical certificate issued by Dr. Masna on 4 August 1994 only states that he treated RONNIE for typhoid on 25 April 1994, without mention of the medical care allegedly given to RONNIE on 27 April 1994.[22] Insofar as Norma Padura's testimony is concerned, we sustain the trial court's finding that the same is dubious because -

A candidate running for Barangay Captain at that time, her testimony that after being told by the mother of Ronnie Palec that the latter was sick she proceeded to their house at 5:00 o'clock that afternoon of April 27, 1994, and saw Palec on the mat chilling; told his father to get a doctor from the Poblacion and stayed there up to 8:00 o'clock in the evening despite her conducting a house to house campaign, does not inspire belief but made said testimony suspecting [sic]. The time from 5:00 to 8:00 that evening with Ronnie Palec was time uselessly spent during her house to house campaign considering that the Palec family was not her supporter as they belong to a different barangay.[23]

As to JOEMAR, the defense's evidence failed to establish that it was physically impossible for him to have been at the locus criminis at the time of the alleged crime.[24] Defense witness Joel Bancuyo, JOEMAR's alleged employer, testified that, on 24 April 1994, JOEMAR told him that he was going home to Banban, Grande, Calinog, but that he would be back after three days, or on 27 April 1994.[25] Thus, it was expressly admitted by the defense that JOEMAR was in the same barangay as the victim on the day of the killing. Another factor weakening JOEMAR's alibi is the inconsistency in the testimonies of JOEMAR and Joel as to the time that JOEMAR allegedly arrived at the fair in Leganes. Joel testified that JOEMAR arrived at the fair as early as 5 p.m.,[26] on the other hand, JOEMAR claimed that he arrived at Leganes and reported to Joel only at 7 p.m.[27] Although inconsistencies in the testimonies of witnesses with respect to minor details and collateral matters do not affect the substance, veracity, or weight of their declarations,[28] when such inconsistencies refer to material matters, such as the whereabouts of the accused at the time of the perpetration of the offense, the same is fatal.

Accused-appellants contend that if Floro was indeed attacked by them in a feeder road in Banban Grande, then

Alvin and Melchor should have run back to the house of Floro Batoy, which was only two kilometers away from the scene of the crime, in order to tell his mother about the attack, instead of running all the way to Calinog, then heading for Passi, and finally for their own home in Pototan. Even after reaching Pototan, Alvin and Melchor did not report the incident to the police. According to accused-appellants, Alvin and Melchor's claim that they were afraid to inform the authorities about the attack is not worthy of belief and that such unusual behavior effectively impairs the credibility of the prosecution witnesses.

We do not agree. Alvin and Melchor testified that, after seeing accused attack Floro, they were scared and their only thought was to get home. They also stated that they had planned to report the incident to the police the following morning, but their plan was preempted by the arrival of Floro's sister, to whom they confided all that had transpired the night before.[29] After having witnessed the violent attack upon their companion, it was but natural that Alvin and Melchor were shocked and scared. In this state, the impulse to seek refuge in one's own home is not unreasonable. Furthermore, it is a matter of common observation and knowledge that people react differently when confronted with a shocking incident; there is no standard form of human behavioral response to any given situation.[30]

Accused-appellants contend that the prosecution had failed to show that the accused acted in conspiracy, pointing out that Alvin and Melchor did not make any positive and categorical declaration as to who actually stabbed and shot Floro Batoy. Also, it was not determined who among the alleged assailants gave the order to stab the victim. Conspiracy exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution.[31] The prosecution need not present proof of a previous plan or agreement to commit the assault; it is sufficient if, at the time of such aggression, all the accused manifested by their acts a common intent or desire to attack.[32] The trial court found that JOEMAR pointed a gun at Floro's head, while RONNIE held Floro's right hand. ARNEL stood beside JOEMAR holding a knife. Clearly, the concerted acts of accused disclose one intention - to kill Floro Batoy. Thus, it becomes unnecessary to pinpoint who among the accused inflicted the fatal blow because when conspiracy is established, the act of one is the act of all.[33]

The circumstance of treachery was undoubtedly present in this case, qualifying the killing to murder. Treachery exists when the offender employs means, methods, or forms in the execution of the crime which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[34] There is treachery when the attack is sudden and unexpected, rendering the victim unable to defend himself.[35] In the present case, Floro Batoy had no reason to anticipate any aggression from accused-appellants as there had been no previous altercations or quarrels with any of them. Thus, he was taken completely by surprise when RONNIE, JOEMAR, and ARNEL emerged from the tall grasses at the side of the road and assaulted him from behind. Floro had no means of defending himself as he was totally unarmed. A swift and unexpected attack on an unarmed victim without the slightest provocation on his part undoubtedly constitutes treachery.[36]

The trial court mistakenly imposed the penalty of reclusion perpetua to death. Although under Article 248 of the Revised Penal Code, the penalty for murder is reclusion perpetua to death, in the absence of any aggravating or mitigating circumstances, the proper penalty is reclusion perpetua, pursuant to Article 63 of the Revised Penal Code.

Consistent with current jurisprudence, the award of P50,000.00 as indemnity in favor of the heirs of Floro Batoy is affirmed.[37] However, only P33,482.00 may be awarded as actual damages as this is the amount supported by the receipts[38] presented in evidence by the prosecution.[39]

WHEREFORE, the 11 June 1998 Decision of Branch 33 of the Regional Trial Court of Iloilo City is hereby

AFFIRMED, with the modification that the penalty to be imposed upon accused-appellants shall be reclusion perpetua and the actual damages awarded by the trial court shall be decreased to P33,482.00. Costs against accused-appellants.

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.

- [1] Records, 2.
- [2] Exhibit A; Records, 151.
- [3] TSN, 12 December 1994, 1-32.
- [4] TSN, 21 April 1995, 1-18; TSN, 12 May 1995, 1-21; TSN, 21 July 1995, 1-24.
- [5] TSN, 14 November 1995, 1-9.
- [6] TSN, 16 April 1996, 1-17.
- [7] TSN, 21 May 1996, 1-11.
- [8] TSN, 2 July 1996, 1-8.
- [9] TSN, 22 April 1997, 1-9.
- [10] Rollo, 33.
- [11] Ibid., 31.
- [12] Ibid., 32-33.
- [13] Ibid., 53-72.
- [14] People v. Atop, 286 SCRA 157 (1998); People v. Viovicente, 286 SCRA 1 (1998).
- [15] People v. Albao, 287 SCRA 129 (1998); People v. Obello, 284 SCRA 79 (1998).
- [16] TSN, 21 April 1995, 5-9, 11-12.
- [17] TSN, 21 July 1995, 3-7.
- [18] People v. Mendoza, 284 SCRA 705 (1998).
- [19] People v. Sumalpong, 284 SCRA 464 (1998); People v. Cabiles, 284 SCRA 199 (1998).
- [20] TSN, 16 April 1996, 7.
- [21] Ibid., 14.
- [22] Exhibit I; Records, 227.
- [23] Rollo, 31.
- [24] People v. Balmoria, 287 SCRA 687 (1998).
- [25] TSN, 21 May 1996, 3.

- [26] Ibid., 4.
- [27] TSN, 2 July 1996, 3.
- [28] People v. Llaguno, 285 SCRA 124 (1998).
- [29] TSN, 21 April 1995, 12-13; TSN, 21 July 1995, 10, 15.
- [30] People v. Aranjuez, 285 SCRA 466 (1998).
- [31] People v. Hilario, 284 SCRA 344 (1998).
- [32] People v. Robedillo, 286 SCRA 379 (1998).
- [33] People v. Sumalpong, supra; People v. Obello, supra.
- [34] People v. Gungon, 287 SCRA 618 (1998).
- [35] People v. Cortes, 286 SCRA 295 (1998).
- [36] People v. Matubis, 288 SCRA 210 (1998).
- [37] People v. Solis, 291 SCRA 529 (1998).
- [38] Records, 152-163.
- [39] People v. Oliano, 287 SCRA 158 (1998).

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