

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS ENRIQUEZ A.K.A. RODOLFO ENRIQUEZ AND BEBOT ENRIQUEZ, ACCUSED-APPELLANTS.

G.R. No. 138264. April 20, 2001

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

The accused-appellant Tomas Enriquez (hereafter ENRIQUEZ) was charged with the crime of murder for the violent death of Jessie Conlu (hereafter JESSIE) in Criminal Case No. 11858 before the then Court of First Instance of Iloilo City. The information filed against him on 16 November 1979 read as follows:

That on or about the 13th day of October, 1979, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, with deliberate intent, without justifiable motive, with a decided purpose to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and criminally stab, hit and wound Jessie Conlu with a double bladed stainless knife, with which the said accused was provided at the time, causing upon said Jessie Conlu a stab wound on a vital part of his body, which caused his instantaneous death.

CONTRARY TO LAW.

Iloilo City, Philippines, November 16, 1979.[1]

In an Order dated 21 November 1979[2], the trial court issued a warrant of arrest against ENRIQUEZ and fixed a bail bond of P30,000 for his provisional liberty. The case was archived because ENRIQUEZ remained at large.[3]

Several years thereafter, or on 19 April 1991, ENRIQUEZ was arrested. In a petition for habeas corpus docketed as Special Proceeding No. 9676 and assigned to Branch 38 of the Regional Trial Court of Iloilo City, he questioned the legality of the warrant of arrest. In its decision[4] of 30 April 1991, said court declared illegal the arrest of ENRIQUEZ and ordered his release from detention.

On 29 June 1995,[5] an Amended Information was filed against ENRIQUEZ before the Regional Trial Court of Iloilo City. It contained essentially the same allegations as that of the original information, except that the aliases of ENRIQUEZ, namely Rodolfo Enriquez and Bebot Enriquez, were included and no bail was recommended for his temporary liberty.

On 6 July 1995,[6] ENRIQUEZ applied for bail, citing as basis therefor his admission to bail in the original information. On 16 July 1995, and pending the action on his application for bail, ENRIQUEZ was arrested.[7] In its Order of 22 August 1995,[8] the trial court denied the application for bail on the grounds that ENRIQUEZ was a fugitive from justice; he was convicted of several offenses; and the evidence against him was strong. ENRIQUEZ assailed the order before the Court of Appeals in a petition docketed as C.A.-G.R. SP No. 38729. In its decision of 29 February 1996,[9] the Court of Appeals set aside the challenged order because it failed to state clearly the basis upon which ENRIQUEZ's application for bail was denied.

In its order of 16 April 1996,[10] the trial court, citing as basis the facts and evidence on record, denied again the application for bail. ENRIQUEZ challenged this order in a petition he filed with the Court of Appeals which was docketed as CA-G.R. SP No. 41298. In the decision[11] of a Special Division, the Court of Appeals set aside the 16 April 1996 order of the trial court. Accordingly, on 24 March 1997,[12] the trial court fixed at P60,000 the bail bond for the provisional liberty of ENRIQUEZ. On the same date, ENRIQUEZ was released from detention after Congressman Raul Gonzales deposited in court the cash bond of P60,000.[13]

Thereafter, ENRIQUEZ sought the inhibition of Presiding Judge Jose Abdallah of Branch 39 of the trial court. Pursuant to our Resolution[14] of 9 December 1997, Presiding Judge Bartolome M. Fanuñal of Branch 25 of said court was designated to hear and decide the case.

On 8 April 1998,[15] Congressman Gonzalez withdrew the cash bond he posted for ENRIQUEZ. On 29 April 1998,[16] ENRIQUEZ was arrested, but was again released after he posted a cash bond.[17]

After trial on the merits, the trial court rendered on 8 October 1998 a Decision[18] finding ENRIQUEZ guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of death and to indemnify the family of the victim in the amount of P50,000 and to pay the costs. It took into account the qualifying circumstance of treachery and the aggravating circumstance of evident premeditation. The decretal portion of the decision reads as follows:

Accordingly, premises considered, the Court, finding the accused, Tomas Rodolfo Enriquez alias "Bebot," guilty beyond reasonable doubt of the crime of murder and charged with the qualifying circumstance of treachery and an aggravating circumstance of evident premeditation, hereby sentences him to an extreme penalty of death as well as orders him to indemnify the family of the victim the amount of P50, 000.00 and to pay the costs.

The bail bond posted for his provisional liberty is cancelled and returned to him, and that his arrest is hereby ordered for him to serve his sentence.

The bail bond posted for his provisional liberty is cancelled and returned to him, and that his arrest is hereby ordered for him to serve his sentence.

SO ORDERED.

On 29 October 1998,[19] ENRIQUEZ was arrested and committed to the Provincial Jail of Iloilo City.

The witnesses presented by the prosecution were Dr. Tito Doromal, Rene de la Peña and Romeo Ladrillo.

Dr. Tito Doromal, a Medico-Legal Officer of the Philippine National Police, testified that on 13 October 1979, he examined the dead body of a certain Jessie Conlu and prepared an Autopsy Report[20] describing the wound inflicted and the cause of his death and an Anatomical Sketch[21] of the victim's body. Dr. Doromal opined that the wound was inflicted by a "sharp pointed, single bladed instrument," presumably a knife. The wound was fatal as it penetrated the heart of the victim causing his instantaneous death. In all probability the assailant was facing the victim during the attack as evidenced by the stab wound on the chest bone.[22]

Rene de la Peña, a resident of Barangay Duyan-Duyan, Sta. Barbara, Iloilo City, testified that he personally knew ENRIQUEZ because they used to hang around together since 1968. ENRIQUEZ, an amateur boxer then, was the sparring partner of Rene's uncle Rodolfo Tato.[23]

On 13 October 1979, Rene was working as a stevedore in ILIASCO, a company engaged in arrastre service, and was tasked to load and unload cargoes from the ships "Princess of Negros" and "Don Vicente." ILIASCO's office was located at the corner of Blumentritt Street and Muelle Loney Street, in Iloilo City. At about 3:00 to 3:30 p.m.

of 13 October 1979, Rene and his brother Christian were at the Coca-Cola plant located at the corner of Melliza Street and Muelle Loney Street. At that time, Rene was passing on the basket of tomatoes to Christian who in turn loaded the basket to the ship carrier "Princess of Negros." He noticed ENRIQUEZ, then clad in maong pants and white T- shirt, walking along Melliza Street. Rene also saw JESSIE, who was wearing a white shirt with stripes, walking along Muelle Loney Street and heading towards the direction of ENRIQUEZ. Immediately thereafter, ENRIQUEZ armed with a pointed instrument wrapped with a piece of cloth, ran slowly toward JESSIE and stabbed the latter. JESSIE held his chest, vomited blood and fell to the ground. ENRIQUEZ stared at JESSIE and immediately fled. Rene saw all of these because he was standing at a distance of approximately five meters from ENRIQUEZ and JESSIE. After the incident, Rene continued to perform his work since he expected that somebody would come to aid JESSIE. A policeman by the name of Dignadice, Jr. arrived at the scene of the crime and removed JESSIE's body.[24]

Prior to that fateful day, ENRIQUEZ solicited Rene's help to kill JESSIE because the latter was having an affair with ENRIQUEZ's wife. Rene turned down the request.[25]

Rene did not report what he had witnessed to the police authorities. He decided to testify because his conscience bothered him, and a certain Boyboy Cordera prodded him to appear in court to testify. Boyboy had learned from Romeo Ledrillo, a co-worker of Rene at the arrastre, that Rene witnessed the incident. Lastly, Rene denied that he was offered any price or money or that he harbored a grudge against ENRIQUEZ.[26]

Romeo Ladrillo testified that sometime in 1991 he became a resident of Barangay Kasing-Kasing, Molo, Iloilo City. He, too, became familiar with ENRIQUEZ and had known the latter under the name "Rodolfo Enriquez" alias Bebot Enriquez. ENRIQUEZ was the barangay captain of their barangay.[27] Such familiarity began during the time when ENRIQUEZ used to do odd jobs in Muelle Loney Street.[28] Romeo was also familiar with JESSIE who was engaged in the business of selling fighting cocks.[29]

On 13 October 1979, Romeo was working as a foreman of Negros Navigation. At about 3:15 p.m. of that day, he was at Bong-Bong's store located across the Coca-Cola plant at Melliza Street. At a distance of four to five meters, he saw JESSIE walking alongside the Coca-Cola plant. Likewise, Romeo noticed ENRIQUEZ moved near JESSIE and stabbed the latter on the chest with "something in his hand covered by a white cloth." Thereafter, JESSIE spurted blood and fell flat on the ground. ENRIQUEZ ran away.[30] Romeo left the scene immediately after the policemen arrived.[31] Romeo further declared that Rene de la Peña was also present at the scene and witnessed the incident.[32]

Romeo also corroborated the testimony of Rene regarding the plan of ENRIQUEZ to kill JESSIE.[33]

Lastly, Romeo declared that he testified because of his concern for the truth and his conscience bothered him. Through the prodding of Ulysses Corvera, a resident of Barangay Kasing-Kasing, Molo, Iloilo City, Romeo revealed what he knew about the incident to a certain Fiscal Castrojas.[34]

The defense presented as its witnesses Wilfredo Altamia, Christian de la Peña, and ENRIQUEZ.

Wilfredo Altamia, a resident of Tabucan, Mandurriao, Iloilo City, testified that in 1966 he was a great fan of ENRIQUEZ, who was then a singer in the local radio. Sometime in 1978, he joined ENRIQUEZ as vocalist of the Dazzer's Orchestra, a musical band owned by Henrietta Jayme. On 13 October 1979, the band was contracted to perform in Maayon, in the Province of Capiz. At about 10:00 to 11:30 a.m. of that day, the members of the band consisting of about 15 members, including ENRIQUEZ, rode on a truck from Lapaz, Iloilo City for Maayon. They arrived in Maayon at about 3:00 to 4:00 p.m. of the same day. Their musical engagement in Maayon started at 8:00 p.m. of 13 October 1979, and they performed until 2:00 a.m. of the following day, 14 October 1979.

Wilfredo asserted that ENRIQUEZ was with them from the time they left Iloilo City until the end of their performance in Maayon.[35] Thereafter, the group returned to Iloilo City and arrived thereat at around 8:00 a.m. of 14 October 1979.[36]

Wilfredo further declared that he and ENRIQUEZ left the Dazzer's Orchestra in 1983 and 1981, respectively.[37] It was only on 2 June 1998 that he learned about the criminal indictment against ENRIQUEZ.[38]

Christian de la Peña, also a resident of Barangay Kasing-Kasing, Molo, Iloilo City, testified that he became acquainted with ENRIQUEZ sometime in 1992.[39] He worked from 1977 up to 1980 as a stevedore of ILIASCO. He was not aware of any untoward incident that transpired on 13 October 1979; and opined that during those times, stabbing, shooting or robbery was an ordinary occurrence in view of the proliferation of gang wars in the place.[40]

Lastly, Christian declared that he was not familiar with JESSIE not until 1 June 1998 when a certain Atty. Padojinog showed him a document proving that his brother-in-law Romeo and his brother Rene testified in court on the death of JESSIE.[41]

ENRIQUEZ testified that in 1965 he became a resident of Barangay Kasing-Kasing, Molo, Iloilo City, and that he held the position of a barangay captain of the barangay since 1989. ENRIQUEZ admitted that he was christened as Tomas Rodolfo Enriquez, although he was also identified as Tomas "Bebot" Enriquez or Rodolfo "Bebot" Enriquez. He denied having been acquainted with JESSIE and claimed that he became familiar with such name only in 1992 when a warrant of arrest was issued against him. ENRIQUEZ theorized that the present case was politically motivated. He cited the presence in court of Ulysses Colvera, his political rival in the 1997 election, and that he was arrested in 1992 by a certain Mayor Ganzon. To further show his innocence and lack of knowledge of the circumstances surrounding JESSIE's death, ENRIQUEZ declared that he learned about the charge against him only in 1992. Prior to said date, he was not investigated by the police authorities relative to the crime he allegedly committed.[42]

ENRIQUEZ further declared that he was a member of Dazzer's Orchestra. On 13 October 1979, he and the members of the band left Iloilo City for a singing engagement in Maayon, Capiz. They returned to Iloilo City the following day and arrived thereat at about 8:00 a.m.[43]

The trial court's judgment of conviction was primarily based on the testimonial account of Rene de la Peña and Romeo Ladrillo who both witnessed the commission of the crime from a distance of about four to five meters and positively identified ENRIQUEZ as the assailant. The crime was perpetrated in broad daylight, in full view of and within the range of vision of Rene and Romeo who were ENRIQUEZ' co-workers and long-time acquaintances. In view of these, the defense of denial and alibi interposed by ENRIQUEZ has no leg to stand on.[44]

The trial court further observed that there was no showing of a personal hostility between ENRIQUEZ and the prosecution witnesses to raise doubt on the trustworthiness of the latter's testimony. It struck down for lack of merit ENRIQUEZ' claim that his political enemies instigated the charge against him. There was no intimation that Rene and Romeo were influenced by a political ambition neither was there a showing that a promise or reward was offered to them.

The trial court also ruled that ENRIQUEZ cannot make much of the fact of delay in the prosecution of this case. While indeed the crime was perpetrated in 1979, the evidence on record shows that it was only in 1992 when ENRIQUEZ was arrested. The prosecution of the case was further delayed when, by means of a petition for habeas corpus, ENRIQUEZ successfully challenged the validity of his arrest alleging that he was not the Tomas Enriquez referred to in the warrant of arrest.

The trial court appreciated against ENRIQUEZ the qualifying circumstance of treachery. To justify the imposition of the death penalty, the trial court appreciated the generic aggravating circumstance of evident premeditation, which was not offset by any mitigating circumstance. The finding of treachery was based on the swiftness of the attack on a victim who was unsuspecting, unarmed and was not in a position to retaliate.[45] As to evident premeditation, it considered the testimony of Rene and Romeo that a few days prior to the incident ENRIQUEZ revealed to the former the latter's intention to kill JESSIE.

The case is now before us for automatic review of the judgment pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. 7659. In his Appellant's Brief ENRIQUEZ alleges that the court a quo erred in finding that:

I

...THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION ARE CREDIBLE AND DESERVING OF CREDENCE.

II

...THE INSINUATION THAT POLITICS MAY HAVE PROMPTED THE WITNESSES TO TESTIFY AGAINST THE ACCUSED DOES NOT HAVE SUPPORT OF SATISFACTORY PROOF.

III

...THE PRESENCE OF QUALIFYING CIRCUMSTANCE OF TREACHERY AND EVIDENT PREMEDITATION WAS DULY PROVEN.

and that it committed grave or serious error in:

IV

...CONVICTING THE ACCUSED OF DEATH PENALTY.

V

...NOT CONSIDERING THE INORDINATE DELAY IN THE TRIAL OF THE CASE IN VIOLATION OF THE CONSTITUTION OF THE PHILIPPINES ON SPEEDY DISPOSITION OF THE CASE.

ENRIQUEZ attacks the credibility of the prosecution witnesses particularly Rene de la Peña and Romeo Ladrillo. He harps on the alleged material inconsistencies and contradictory statements of Rene and Romeo. On direct examination Rene declared that at the time of the stabbing incident "he was hanging around near the premises of the old site of Coca-Cola plant when the stabbing incident happened because they went there after finishing their work as the ferry boat left." [46] However, in the cross-examination, Rene was clear enough in saying that he was actually "busy with his job putting the basket of tomatoes to the shoulder of his brother Christian de la Peña the one loading it to the ship," [47] at the time of the incident. It was also incredible to believe that Rene would voluntarily testify because of an alleged guilty conscience. Rene, who was not related to the victim, cannot be more interested than JESSIE's wife who had expressed disinterest in the prosecution of the instant case. Further eroding the truthfulness of Rene's testimony were the following: (1) he failed to make an accurate account for the reason of the delay in the departure of the ship; (2) he had known Boyboy Cordera only on 11 June 1996, when in truth and in fact he had been visiting the residence of his parents in Molo, Iloilo City, which was also the place where Boyboy resided; (3) it was physically impossible for Rene to have observed the happening of the incident and at the same time witnessed the activity of ENRIQUEZ and of the victim; and (4) he was not consistent in his declaration that after the incident until July 1995 he had not met and talked with ENRIQUEZ.

ENRIQUEZ further alleges that there were material inconsistencies between the testimonies of Rene and Romeo in that: (1) according to Romeo the crime happened "by the side of the old Coca-Cola plant" while Rene declared that it happened "across the street of the old Coca-Cola plant"[48]; (2) since Rene and Romeo were situated at different locations, it was not possible that they would witness the stabbing incident at the same distance; (3) they were unable to establish with certainty whether Christian de la Peña was present at the scene of the crime; (4) they differed in their testimony on the behavior of ENRIQUEZ after the stabbing incident; and (5) both gave a different version as to the exact number of policemen who arrived at the scene of the crime.

ENRIQUEZ considers as improbable the similarity in the declaration of Rene and Romeo regarding the circumstances surrounding the incident. The "similar pattern" of describing the incident strongly suggests that they were rehearsed and were, therefore, unreliable witnesses. That the witnesses exhibited "extraordinary mental ability" for remembering every detail of the incident does not coincide with the reality taking into account their lowly position as "mere porters." It was also "unusual" that Romeo and Rene did not reveal to anybody what they had witnessed on that fateful day.

In support of the second assigned error, ENRIQUEZ theorizes that the instant case is politically motivated. He capitalizes on the following facts: (1) he was a candidate for the position of and had been elected as barangay captain of Barangay Kasing-Kasing, Molo, Iloilo City; (2) the witnesses for the prosecution Rene and Romeo came out in the open to testify on an incident that occurred sixteen years ago; and (3) Mr. Colvera and a certain Tony, who were both known as his political rivals in the barangay election, orchestrated the move to induce Rene and Romeo to testify against him.

As to the third assigned error, ENRIQUEZ asserts that the evidence of the prosecution on the issue of treachery and evident premeditation was controverted by the following facts: (1) ENRIQUEZ ran towards the victim which necessarily put the latter on guard of the latter's harmful intention; (2) if indeed the knife used to kill the victim was wrapped in a cloth, then the weapon could not have deeply penetrated the victim's body; (3) the attack on the victim was frontal; and (4) the crime was perpetrated within the view of many people.

Anent the fourth assigned error, ENRIQUEZ claims that there was no basis for the trial court's imposition of the penalty of death since the crime was committed in 1979. The death penalty may be imposed only during the operation of the 1987 Constitution and R.A. No. 7659 and not before the enactment of the latter. The trial court's imposition of the death penalty violated the constitutional proscription on the operation of ex post facto law.

Finally, in support of the last assigned error, ENRIQUEZ invokes Section 16 of Article III of the 1987 Constitution on speedy trial. A violation of his right to a speedy disposition of the case entitles him to a dismissal thereof, which is equivalent to an acquittal on the merits.

In the Appellee's Brief, the Office of the Solicitor General (OSG), prays for the affirmance of the trial court's judgment of conviction with the modification that the penalty imposed should be lowered to reclusion perpetua. It argued that the assailed inconsistencies in the testimony of the prosecution witnesses do not refer to material points. The lack of symmetry or exact identity in their testimony served to augment rather than dilute the trustworthiness of their testimony.[49] The alleged discrepancies were insufficient to outweigh the categorical statement of the witnesses for the prosecution on the commission of the crime by ENRIQUEZ. Furthermore, it was not incredible that a witness, who only wanted the dispensation of justice, would voluntarily testify about a crime which happened sixteen years back. There was also insufficient evidence showing that the opponents of ENRIQUEZ in politics had induced the witnesses of the prosecution to falsely testify against him. Moreover, the Appellee was not responsible for the delay in the prosecution of this case and did not violate the right of ENRIQUEZ to speedy trial. ENRIQUEZ was arrested only on 19 April 1991 and shortly thereafter he filed a

petition for habeas corpus which paved the way for his release from detention. He was re-arrested in 1995 only.

The Appellee asserts that there was enough evidence on the record to support the finding of the trial court on treachery. The attack was sudden and unexpected and the victim was caught unaware on the danger to his life.[50] As to evident premeditation, ENRIQUEZ had contrived to kill the victim three days before the incident.

However, the OSG submits that the trial court erred in imposing the death penalty since the crime was committed at the time when under the 1987 Constitution the penalty of death was abolished. The Death Penalty Law, R.A. 7659, cannot be applied to the instant case since it would be unfavorable to the accused.[51]

We shall resolve the first and the second assigned errors since they both pertain to the issue of credibility. It is doctrinally settled that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observe their deportment and manner of testifying during trial. This rule admits of exceptions, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could affect the result of the case.[52] Unfortunately, ENRIQUEZ has failed to show the presence of any of these exceptions.

The conviction of ENRIQUEZ was primarily based on the positive and categorical account of prosecution witnesses Rene de la Peña and Romeo Ladrillo. Their identification of ENRIQUEZ as the assailant was forthright and clear. We affirm the trial court's dissertation on this issue:

That the identity of the accused as the person who stabbed and killed the victim, Jessie Conlu, has been properly established by eye-witnesses Rene de la Peña and Romeo Ladrillo. The stabbing incident took place at past 3 o'clock in the afternoon of October 13, 1979 in Melliza Street near Muelle Loney, Iloilo City. The two witnesses were just some four (4) to five (5) meters away from the scene when the accused, upon approaching the victim stabbed him (victim). There is no reason to doubt the identification made by them of the accused, the accused being their co-resident in Barangay Kasing-kasing, Molo, Iloilo City, having known him, for many years back, that is even as early as 1967 or 1968 and that the incident occurred in broad daylight with nothing to impede or obstruct their view.

That the testimonies of these witnesses are credible and deserving of credence for they were not shown to have been motivated by any grudge, ill-will or misunderstanding in testifying against the accused. As held in *People vs. Villagrancia*, 219 SCRA 212, in the absence of ill-will, it is hardly credible that witnesses would prevaricate and cause damnation to one who brought them no harm or injury. There is also good person (sic) to believe these witnesses to have actually seen the stabbing incident considering the fact that said incident occurred right near the immediate premises of their place of work where they have the right or supposed to be.[53]

ENRIQUEZ's argument on the alleged inconsistencies in the testimony of the prosecution witnesses does not persuade us. A careful scrutiny of the transcript of stenographic notes of the testimonies of Rene de la Peña and Romeo Ladrillo shows that they gave a clear and affirmative full account of what actually transpired on the fateful day of 13 October 1979. Their separate story agree on material points, specifically on the identity of ENRIQUEZ as the culprit, the manner by which he perpetuated the crime, the motive behind the killing, and the date the crime was committed. The inconsistencies were on minor matters and were trivial and unimportant. Settled is the rule that minor inconsistencies do not affect the credibility of a witness; on the contrary, they may be considered badges of veracity or manifestations of truthfulness on material points and they may even heighten the credibility of the witness.[54]

Further, ENRIQUEZ can not make much of his claim that it was unclear from the testimony of Rene as to what exactly was he doing at the time of the occurrence of the incident. It is clear on the record that Rene was passing the basket of tomatoes to his brother Christian de la Peña, and was explicit in saying that he noticed ENRIQUEZ

pass by in front of him and at a distance of about five meters ENRIQUEZ Approach and stab JESSIE.[55] Rene's declaration that he was hanging around the premises has reference to the time after he had finished his work in the arrastre and not during the time of the incident.

As to the failure of Rene and Romeo to report to the police authorities ENRIQUEZ's identity immediately after the commission of the crime, we need only stress that such was not entirely against human experience. We are not unaware of the natural reticence of most people to get involved in criminal prosecutions against immediate neighbors, as in this case.[56] The fact that Rene and Romeo were unschooled and illiterate does not diminish the trustworthiness of their testimony. The virtue of truthfulness is not a monopoly of the old, the rich, and the learned -- truth can come from the mouths of a child and the lips of the poor, the simple and the unlettered.[57]

We find no factual basis for the claims of ENRIQUEZ that the instant case was maneuvered by his political adversaries. We approve the finding of the trial court, viz:

The insinuation that politics may have caused or prompted the witnesses to testify against him as he, being the barangay captain of Barangay Kasing-kasing, Molo, was or is the object of envy or hatred by his political opponents does not have the support of any satisfactory proof, the fact being that these witnesses were not shown to have been engaged or involved in politics and much less has it been shown that they were merely induced for a fee or promise of reward to testify against the accused.[58]

The defense of alibi interposed by ENRIQUEZ cannot stand in view of his positive testimony of Rene de la Peña and Romeo Ladrillo that he, ENRIQUEZ, was the one who stabbed and killed JESSIE. We have time and again ruled that alibi is the weakest of all defenses for it is easy to fabricate and difficult to prove; it can not prevail over the positive identification of the accused by the witnesses.[59] We are in full agreement with the trial court's finding that the killing was committed with the qualifying circumstance of treachery, hence, the crime committed is murder. There is treachery when the offender commits any of the crime against the person, employing means, methods, or forms in the execution thereof which tend directly to insure its execution, without risk to himself arising from the defense which the offended party might make.[60] For treachery to be appreciated two conditions must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution was deliberately or consciously adopted.[61] In this case, the foregoing requirements of treachery was adequately established and we adopt the trial court's finding thereon, to wit:

The fact as testified to by the witnesses shows that the assault was unprovoked. There was no exchange of words between the victim and the accused at anytime before the actual attack, that the accused, upon approaching and coming near his unarmed victim, immediately stabbed him with something covered by a white cloth, something which turned out to be a knife, which caused the victim to fall, vomit blood and almost instantaneous death. There is no question that the attack although frontal, was unexpected and sudden, and that the victim was unarmed.

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The unexpectedness (sic) and suddenness of the attack coupled by the fact that the accused concealed his weapon with a cloth as he approached and until he finally delivered a fatal stab blow on the thoraco-abdominal region of his victim which did not only penetrate and perforate the thoracic cavity and mid-anterior pericardial sac but the mid-upper 3[rd] of the right ventricle of the heart as well clearly characterize the assault as treacherous. This manner of assault positively points to the fact that the accused consciously and deliberately employed a form of attack to ensure the consummation of his objective with certainty.[62]

As regards evident premeditation, the following requisites must be proved before it may be appreciated: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has

clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[63] While the first and third requisites may have been proven by the fact that a few days prior to the incident, ENRIQUEZ told Rene and Romeo that he wanted to kill JESSIE because of the latter's alleged illicit relationship with him, ENRIQUEZ's wife, no convincing evidence was offered to prove how ENRIQUEZ planned and prepared to kill JESSIE to show that he had clung to his determination.

We cannot also agree with the trial court's imposition of the death penalty. The crime was committed on 13 October 1979 at a time when the imposable penalty for murder was reclusion temporal in its maximum period to death. Since there was neither aggravating nor mitigating circumstance attending the commission of the crime, the penalty should be imposed in its medium period,[64] that is, reclusion perpetua. Besides, it was committed at the time when the imposition of the death penalty was suspended pursuant to Section 19(1) of Article III of the Constitution. The death penalty was restored by R.A. No. 7659,[65] which took effect on 31 December 1993.[66]

Finally, the right to speedy trial is violated only where there is an unreasonable, vexatious and oppressive delay without the participation or fault of the accused, or when unjustified postponements are sought which prolong the trial for unreasonable length of time.[67] We find that the constitutional right of ENRIQUEZ to a speedy trial was not impaired since the delay in the prosecution of the instant case cannot be characterized as "unreasonable, vexatious and oppressive" and not one "without the participation or fault of the accused." Notably, the trial began only on 13 July 1995 or more than a decade after the filing of the original information on 16 November 1979. However, it was evident on the record that the accused left for Manila⁶⁸ immediately after the filing of the criminal indictment presumably to evade the strong arm of the law. ENRIQUEZ was arrested only sometime in 1991 but the trial of the case was further delayed by the habeas corpus proceeding⁶⁹ that he initiated. In the final analysis, ENRIQUEZ cannot attribute the delay to anyone else but himself.

WHEREFORE, the decision of 8 October 1998 rendered by the Regional Trial Court of Iloilo City, Branch 25, in Criminal Case No. 11858 finding accused-appellant TOMAS ENRIQUEZ guilty beyond reasonable doubt as principal of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, as amended, is hereby AFFIRMED with the modification that the penalty is reduced from death to reclusion perpetua. The rest of the judgment stands.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Pardo, J., on sick leave.

[1] Original Record (OR), 1; Rollo, 11.

[2] Per Executive Judge Carlos Y. Gonzales. Court of First Instance of Iloilo City, 11[th] Judicial District. O.R. 7.

[3] Pursuant to the Order dated 30 June 1980 issued by Judge Josue N. Bellosillo (now Senior Associate Justice of the Supreme Court), Branch VII, of the then Court of First Instance of Iloilo City.

[4] Per Judge Jose G. Abdallah. OR, 130-143.

[5] OR, 19.

[6] Id, 27-28.

[7] Id.,26.

[8] Per Edgar D. Gustilo, Branch 28, Regional Trial Court, Iloilo City. OR, 117.

[9] Per Associate Justice Fermin A. Martin, Jr., concurred in by Associate Justices Fidel P. Purisima and Conchita Carpio Morales. OR, 200-208.

[10] OR, 246-258.

[11] Per Associate Justice Bernardo Ll. Salas, concurred in by Justices Arturo B. Buena and Conchita Carpi-Morales. However, Justice Ricardo Galvez inhibited himself while Justice Ma. Alicia Austria Martinez gave a dissenting opinion. OR, 481-495.

[12] OR, 496.

[13] Id, 504-514.

[14] Id., 641.

[15] Id., 678.

[16] Id., 698.

[17] Id., 703.

[18] OR, 756-766; Rollo, 20-29. Per Judge Bartolome M. Fanuñal.

[19] OR, 767, 770.

[20] Exhibit "A"; OR, 73.

[21] Exhibit "B"; Id., 74.

[22] TSN, 13 July 1995, 3-12.

[23] Id., 14-15, 29.

[24] Id., 15-17, 19-26, 38.

[25] TSN, 13 July 1995, 17-18.

[26] Id., 28, 30-34.

[27] TSN 3 August 1995, 4, 10-11.

[28] Id, 31.

[29] Id. 30-31.

[30] Id., 5-7; 28-30.

[31] Id., 34.

[32] Id., 38-40.

[33] TSN 3 August 1995, 7-8.

[34] Id., 12-16.

[35] TSN, 8 June 1998, 10-17.

[36] Id., 27.

[37] Id., 9.

[38] Id., 33-34.

[39] TSN, 22 June 1998, 15.

[40] Id., 27.

[41] Id., 19-23.

[42] TSN, 15 July 1998, 4-5, 8, 11-20.

[43] TSN, 15 July 1998, 21-26; TSN, 22 July 1998, 2-16.

[44] Citing *People v. Cabuang*, 217 SCRA 675, 684 [1993]; *People v. Agaurino*, 222 SCRA 102, 107 [1993]; *People v. de la Cruz*, 224 SCRA 506, 522 [1993].

[45] Citing *People v. Kempis*, 221 SCRA 628, 646 [1993]; *People v. Javar*, 226 SCRA 103, 111[1993]; *People v. Buila*, 227 SCRA 534, 539 [1993].

[46] Rollo, 56.

[47] Id., 57.

[48] Id., 62.

[49] Citing *People v. Pulusan*, 290 SCRA 353, 374[1998]; *People v. Llaguno*, 285 SCRA 124, 140 [1998].

[50] Citing *People v. Kempis*, 221 SCRA 628, 646 [1993].

[51] Citing Article 22 of the Revised Penal Code.

[52] *People v. Albarico*, 238 SCRA 203, 212-213 [1994]; *People v. Delovino*, 247 SCRA 637, 646-647 [1995]; *People v. Bayani*, 262 SCRA 660, 678-679 [1996].

[53] Rollo, 27.

[54] *People v. Padilla*, 242 SCRA 629, 642 [1995]; *People v. Villegas*, 262 SCRA 314, 321 [1996].

[55] TSN, 13 July 1995, 19-20; 25-26.

[56] *People v. Lase*, 219 SCRA 584, 595 [1993]; *People v. Viente*, 225 SCRA 361, 370 [1993] *People v. Landicho*, 258 SCRA 1, 37 [1996].

[57] *People v. Malunes*, 247 SCRA 317, 327[1995].

[58] Rollo, 27.

[59] *People v. Pidia*, 249 SCRA 687, 703-704 1995]; *People v. Quijada*, 259 SCRA 191, 214 [1996]; *People v. De Guzman*, 265 SCRA 228, 245 [1996].

[60] *People v. De la Cruz*, 129 SCRA 142-143 [1995]; *People v. Villegas*, 262 SCRA 314, 323 [1996]; *People v. Tobias*, 267 SCRA 229, 255-256 [1997].

[61] *People v. Estrellanes*, 239 SCRA 235, 249-250 [1994]; *People Landicho*, 258 SCRA 1, 27 [1996]; *People v. Cabodoc*, 263 SCRA 187, 203 [1996].

[62] *Rollo*, 28.

[63] *People v. Estrellanes*, 239 SCRA 235, 250-251 [1994]; *People v. De la Cruz*, 242 SCRA 129, 142 [1995]; *People v. Compendio*, 258 SCRA 254, 264 [1996].

[64] Article 64, Revised Penal Code.

[65] Entitled "An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Code, As Amended, Other Special Penal Laws, And For Other Purposes"; *People v. Simon*, 234 SCRA 555 [1994].

[66] *People v. Simon*, 234 SCRA 555 [1994].

[67] *Guerrero v. Court of Appeals*, 257 SCRA 703, 713 [1996]. Citing *Gonzales v. Sandiganbayan*, 199 SCRA 298, 307 [1991]; *People v. Tampal*, 244 SCRA 202, 207 [1995]; *People v. Leviste*, 255 SCRA 238, 248-249 [1996].

[68] OR, 14.

[69] *Id.*, 130-143.

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