

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL LEE, ACCUSED-APPELLANT.

G.R. No. 139070. May 29, 2002

Ponente: PUNO, J.

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PUNO, J.:

On automatic review is the decision of the Regional Trial Court, Caloocan City, Branch 127 in Criminal Case No. C-54012 (98), which sentenced accused-appellant Noel Lee to death for the murder of Joseph Marquez.

On May 27, 1998, an Information was filed against accused-appellant charging him with the crime of murder committed as follows:

“That on or about the 29[th] day of September 1996, in Kalookan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation did then and there willfully, unlawfully and feloniously attack and shoot one JOSEPH MARQUEZ y LAGANDI, with the use of a handgun, thereby inflicting upon the latter serious physical injuries, which ultimately caused the victim’s death.

CONTRARY TO LAW.”[1]

Accused-appellant pleaded not guilty to the charge. At the trial, the prosecution presented the following witnesses: (a) Herminia Marquez, the mother of the victim; (b) Dr. Darwin Corpuz, a resident doctor at the Manila Caloocan University (MCU) Hospital; (c) PO2 Rodelio Ortiz, a police officer who examined the crime scene; and (d) Dr. Rosaline Cosidon, a medico-legal officer of the Philippine National Police (PNP) Crime Laboratory.

The prosecution established the following facts: At 9:00 in the evening of September 29, 1996, Herminia Marquez, 46 years of age and her son, Joseph, 26 years of age, were in the living room of their house located at No. 173 General Evangelista St., Bagong Barrio, Caloocan City. The living room was brightly lit by a circular fluorescent lamp in the ceiling. Outside their house was an alley leading to General Evangelista Street. The alley was bright and bustling with people and activity. There were women sewing garments on one side and on the other was a store catering to customers. In their living room, mother and son were watching a basketball game on television. Herminia was seated on an armchair and the television set was to her left. Across her, Joseph sat on a sofa against the wall and window of their house and the television was to his right. Herminia looked away from the game and casually glanced at her son. To her complete surprise, she saw a hand holding a gun coming out of the open window behind Joseph. She looked up and saw accused-appellant Noel Lee peering through the window and holding the gun aimed at Joseph. Before she could warn him, Joseph turned his body towards the window, and simultaneously, appellant fired his gun hitting Joseph’s head. Joseph slumped on the sofa. Herminia stood up but could not move as accused-appellant fired a second shot at Joseph and three (3) shots more— two hit the sofa and one hit the cement floor. When no more shots were fired, Herminia ran to the window and saw accused-appellant, in a blue sando, flee towards the direction of his house. Herminia turned to her son, dragged

his body to the door and shouted for help. With the aid of her neighbor and kumpare, Herminia brought Joseph to the MCU Hospital where he later died.

Police investigators arrived at the hospital and inquired about the shooting incident. Herminia told them that her son was shot by Noel Lee. From the hospital, Herminia went to the St. Martin Funeral Homes where Joseph's body was brought. Thereafter, she proceeded to the Caloocan City Police Headquarters where she gave her sworn statement about the shooting.[2]

Upon request of the Caloocan City police, a post-mortem examination was made on Joseph's body. Dr. Rosaline O. Cosidon, a medico-legal officer of the PNP Crime Laboratory Service made the following findings:

“FINDINGS:

Fairly developed, fairly nourished male cadaver in rigor mortis with postmortem lividity at the dependent portions of the body. Conjunctiva are pale, Lips and nailbeds are cyanotic. A needle puncture mark was noted at the dorsum of the right hand.

HEAD:

(1) Gunshot wound, frontal region, measuring 0.5 x 0.5 cm, just right of the anterior midline, 161 cm from heel, with an upbraded collar, measuring 0.2 cm superiorly and laterally, 0.1 cm medially and inferiorly directed posteriorwards, downwards and to the left fracturing the frontal bone, lacerating the brain. A deformed slug was recovered embedded at the left cerebral hemisphere of the brain.

(2) Gunshot wound, occipital region, measuring 0.5 x 0.5 cm, 2 cm left of the posterior midline, 162 cm from heel, with a uniform 0.2 cm upbraded collar, directed slightly anteriorwards, downwards and lateralwards, fracturing the occipital bone and lacerating the brain. A deformed slug was recovered at the left auricular region.

(3) Contusion, right eyebrow, measuring 3 x 2 cm, 3 cm from the anterior midline.

There are subdural and subarachnoidal hemorrhages.

Stomach is ¼ full of partially digested food particles and positive for alcoholic odor.

CONCLUSION:

Cause of death is intracranial hemorrhage as a result of gunshot wounds. Head.”[3]

At the time of his death, Joseph was employed as driver by the Santos Enterprises Freight Services earning P250.00 a day.[4] He left behind two children by his live-in partner who are now under his mother's care and support. Herminia spent approximately P90,000.00 for the funeral and burial expenses of her deceased son. The expenses were supported by receipts[5] and admitted by the defense.[6]

Herminia filed a complaint for murder against accused-appellant. The complaint, docketed as I.S. No. 96-3246, was however dismissed for insufficiency of evidence in a Resolution dated December 4, 1996 by Prosecutor Dionisio C. Sison with the approval of Caloocan City Prosecutor Rosauro J. Silverio.[7] Herminia appealed the order of dismissal to the Secretary of Justice. In a letter dated March 16, 1998, Secretary of Justice Silvestre Bello III reversed and set aside the appealed Resolution and ordered the City Prosecutor of Caloocan City to file an information for murder against the accused-appellant.[8] Accordingly, the Information was filed and a warrant of arrest issued against accused-appellant on June 8, 1998. On October 16, 1998, appellant was arrested by agents of the National Bureau of Investigation (NBI).

Appellant is a well-known figure in their neighborhood and has several criminal cases pending against him in

Caloocan City. He was charged with frustrated homicide in 1984 and attempted murder in 1989.[9]

For his defense, accused-appellant presented two witnesses: (a) Orlando Bermudez, a neighbor; and (b) himself. He denies the killing of Joseph Marquez. He claims that from 8:00 to 10:00 in the evening of September 29, 1996, he was in his house located at 317 M. de Castro St., Bagong Barrio, Caloocan City. He was having some drinks with his neighbor, Orlando Bermudez, and his driver, Nelson Columba. They were enjoying themselves, drinking and singing with the videoke. Also in the house were his wife, children and household help. At 10:00 P.M., Orlando and Nelson went home and accused-appellant went to sleep. He woke up at 5:30 in the morning of the following day and learned that Joseph Marquez, a neighbor, was shot to death. To appellant's surprise, he was tagged as Joseph's killer.[10]

Accused-appellant had known the victim since childhood and their houses are only two blocks apart. Joseph had a bad reputation in their neighborhood as a thief and drug addict. Six days before his death, on September 23, 1996, accused-appellant caught Joseph inside his car trying to steal his car stereo. Joseph scampered away. As proof of the victim's bad reputation, appellant presented a letter handwritten by his mother, Herminia, addressed to Mayor Reynaldo Malonzo of Caloocan City, and sent through PO3 Willy Tuazon and his wife, Baby Ruth. In the letter, Herminia was surrendering her son to the Mayor for rehabilitation because he was hooked on shabu, a prohibited drug, and was a thief. Herminia was scared that eventually Joseph might not just steal but kill her and everyone in their household because of his drug habit.[11]

The accused-appellant likewise explained the two criminal cases filed against him in 1984 and 1989. The information for attempted murder was dismissed as a result of the victim's desistance while in the frustrated homicide case, the real assailant appeared and admitted his crime.[12]

In a decision dated June 22, 1999, the trial court found accused-appellant guilty and sentenced him to the penalty of death. The court also ordered appellant to pay the heirs of the victim civil indemnity of P50,000.00, actual damages of P90,000.00, moral damages of P60,000.00 and exemplary damages of P50,000.00 and the costs of the suit. Thus:

“WHEREFORE, foregoing premises considered and the prosecution having established beyond an iota of doubt the guilt of accused NOEL LEE of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code as amended by R.A. 7659, this court, in view of the presence of the generic aggravating circumstance of dwelling and without any mitigating circumstance to offset it, hereby sentences the said accused to suffer the extreme penalty of DEATH; to indemnify the legal heirs of the deceased civil indemnity of P50,000.00; to pay the private complainant actual damages of P90,000.00 plus moral and exemplary damages of P60,000.00 and P50,000.00, respectively; and to pay the costs.

Consistent with the provisions of Section 10, Rule 122 of the 1985 Rules on Criminal Procedure, as amended, let the entire records hereof including the complete transcripts of stenographic notes be forwarded to the Supreme Court for automatic review and judgment, within the reglementary period set forth in said section.

SO ORDERED.[13]

Hence, this appeal. Before us, accused-appellant assigns the following errors:

I

THE COURT A QUO GRAVELY ERRED IN RELYING HEAVILY ON THE SELF-SERVING AND CONTRADICTORY TESTIMONY OF THE MOTHER OF THE VICTIM, HERMINIA MARQUEZ, WHOSE NARRATION OF THE CHAIN OF OCCURRENCE THAT LED TO THE DEATH OF JOSEPH MARQUEZ WAS BEYOND BELIEF.

II

THE TRIAL COURT GRAVELY ERRED IN HASTILY TAGGING THE ACCUSED-APPELLANT, NOEL LEE, AS THE ASSAILANT BASED MERELY ON THE BIASED DECLARATION OF THE MOTHER WITHOUT CONSIDERING THE SHADY CHARACTER OF THE VICTIM AGAINST WHOM OTHERS MIGHT HAVE AN AXE TO GRIND.

III

THE TRIAL COURT GRAVELY ERRED IN ITS DECISION OF FINDING GUILT ON THE ACCUSED-APPELLANT WITHOUT EVEN RAISING A FINGER IN SATISFYING ITSELF THAT THE PHYSICAL EVIDENCE OBTAINING IN 1996 ARE STILL PREVAILING IN 1999 WHEN THE CASE WAS TRIED ON THE MERITS SO AS TO ESTABLISH THE IDENTITY OF THE ASSAILANT BEYOND DOUBT.

IV

THE COURT A QUO GRIEVOUSLY ERRED IN TREATING WITH LENIENCY HERMINIA MARQUEZ'S VACILLATION WITH RESPECT TO THE "BUTAS NG BINTANA" AS CONTAINED IN HER SWORN STATEMENT AND THE "BUKAS NA BINTANA" AS PER HER REPAIRED TESTIMONY—A SERIOUS PROCEDURAL ANOMALY THAT ASSAULTED THE SUBSTANTIAL RIGHT OF THE ACCUSED-APPELLANT.

V

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE EXTREME PENALTY OF DEATH UPON ACCUSED-APPELLANT DESPITE OBVIOUS REASONABLE DOUBT.”[14]

The assigned errors principally involve the issue of the credibility of Herminia Marquez, the lone prosecution eyewitness. Accused-appellant claims that the trial court should not have accepted Herminia's testimony because it is biased, incredible and inconsistent.

Herminia's testimony on direct examination is as follows:

“x x x

ATTY. OPENA: Now who was your companion, if any, at that time?

WITNESS: Me and my son, Joseph Marquez, and the wife upstairs putting the baby to sleep.

Q:

What were you and your son, Joseph, doing then?

A:

Watching TV.

Q:

Will you please tell us your position, I am referring to you and your son in relation to the television set where you are watching the show.

A:

We were facing each other while watching television which is on the left side.

Q:

Will you please tell us where exactly was your son, Joseph, seated while watching television?

A:

At the end most of the sofa.

Q:

The sofa you are referring to is the one near the window.

A:

Yes, sir. Dikit lang po.

Q:

Will you give us an idea or describe to us that window which you mentioned awhile ago?

A:

Transparent glass.

Q:

How high is it from the ground?

COURT: Which one?

ATTY. OPENA: The window glass?

WITNESS: About three feet from the ground.

ATTY. OPENA TO WITNESS:

Q:

You said three feet. What do you mean by that? Is that window elevated from the ground?

A:

The same height as this court window which is about three feet from the ground, and from one another about four by four window [sic], three feet by the ground.

Q:

Now, you demonstrated by showing a portion, you mean to tell us that window was mounted on a concrete or hollow block?

A:

Hollow block, po.

Q:

How high is that hollow block that you were referring to?

COURT: She said three feet.

ATTY. OPENA TO WITNESS:

Q:

Which is higher, that sofa which is posted near the window or the hollow block?

A:

Hollow block.

Q:

By how many inches or feet?

A:

About half a foot.

Q:

You said the sofa was long. Will you please tell us in what portion of your sofa your son Joseph was seated?

ATTY. VARGAS: Already answered, your Honor. She said dulo, end of the sofa.

COURT: Sustained.

ATTY. OPENA TO WITNESS:

Q:

When you said end of sofa which portion, the left side or the right side?

A:

The right.

Q:

Now, while you and your son were watching television, was there anything unusual that transpired?

A:

Yes, sir.

Q:

Tell us what was that all about.

A:

Mayroon po akong napansin na kamay na nakatutok sa anak ko. Nakita ko po si Noel Lee na nakatayo sa may bintana.

Q:

What do you mean by the word “kamay?”

A:

Hawak hawak po niya iyong baril, nakatutok po sa anak ko.

Q:

What did you do with what you saw?

A:

Nakita ko pong gumanoon siya, sumilip na ganoon, sabay putok ng baril. Tumingin po siya sa may bintana, ganoon po, sabay putok ng baril.

COURT: You said he turned the head. Who turned the head? Sino ang gumanyan sa sinabi mo?

A:

(Witness demonstrating that the victim peeped through the window).

Q:

And then?

A:

At the same time the firing of the gun [sic] and I saw my son slumped.

ATTY. OPENA TO THE WITNESS:

Q:

And after your son was slumped, what did you do?

A:

I went to my son and carried him to take him to the hospital.

Q:

How many shots did you hear?

A:

Five shots.

Q:

That was prior to helping your son?

A:

Yes, sir.

Q:

And how many times was your son hit?

ATTY. VARGAS:

Q:

Objection, your honor. It was already answered. Because according to her it was five shots.

COURT: It does not follow that the victim was hit. So, the witness may answer.

WITNESS: Twice, Two shots hit my son, two shots on the sofa and one shot on the cement.

COURT: How about the other one?

A:

Doon po sa semento.

ATTY. OPENA TO WITNESS:

Q:

And who fired these shots?

A:

Noel Lee.

Q:

That Noel Lee that you are referring to, will you please point at him if he is around?

A:

(Witness going down the witness stand and pointing to accused Noel Lee).

Q:

How do you know that it was Noel Lee who shot your son?

A:

Kitang kita ko po. Magkatapat po kami.

Q:

Will you please describe to us?

A:

Maliwanag po kasi ang ilaw. Maliwanag din po sa labas, may nananahi doon. Nandoon po kaming dalawa ng anak ko nanonood ng television. (Witness sobbing in tears). Napakasakit sa akin. Hindi ko man lang naipagtanggol and anak ko.

COURT: She was emotionally upset.

ATTY. OPENA: I'll just make it on record that the witness was emotionally upset. May I ask if she can still testify?

x x x x x x x x

WITNESS: Masakit lang po sa loob ko ang pagkawala ng anak ko.

ATTY. OPENA TO WITNESS:

Q:

You saw that the light was bright. Where were those lights coming from?

A:

Maliwanag po sa loob ng bahay namin dahil may fluorescent na bilog. Saka sa labas may nananahi po doon sa alley katapat ng bahay namin. At saka po doon sa kabila, tindahan po tapat po namin, kaya maliwanag ang ilaw.

Q:

After trying to help your son, what happened?

A:

I was able to hold on to my son up to the door. Upon reaching the door, I asked the help of my kumpare.

Q:

Meanwhile, what did the accused do after shooting five times?

A:

He ran to the alley to go home.

Q:

Now you said he ran to an alley towards the direction of their house. Do you know where his house is located?

A:

Yes, sir. 142 M. de Castro Street, Bagong Barrio, Caloocan City.

Q:

How far is that from your residence?

A:

More or less 150 to 200 meters.

Q:

Where did you finally bring your son?

A:

MCU.

Q:

When you say MCU, are you referring to MCU Hospital?

A:

Yes, sir. MCU Hospital.

Q:

At MCU, life-saving devices were attached to my son. Later, after reaching 11:00, he died.

COURT: 11:00 P.M.?

A:

Yes, ma'am.

Q:

Same day?

A:

Yes, ma'am.

x x x x x x x x."[15]

Herminia's testimony is positive, clear and straightforward. She did not waver in her narration of the shooting incident, neither did she waffle in recounting her son's death. She was subjected by defense counsel to rigorous cross and re-cross examinations and yet she stuck to her testimony given in the direct examination. She readily gave specific details of the crime scene, e.g., the physical arrangement of the sofa and the television set, the height of the sofa, the wall and the window, because the crime happened right in her own living room. She explained that she was unable to warn Joseph because she was shocked by the sight of accused-appellant aiming a gun at her son. The tragic events unfolded so fast and by the time she took hold of herself, her son had been shot dead.

A son's death in his mother's house and in her presence is a painful and agonizing experience that is not easy for a mother to forget, even with the passing of time. Herminia's testimony shows that she was living with a conscience that haunted and blamed her own self for failing to protect her son or, at least, save him from death.

Nonetheless, accused-appellant points out inconsistencies in the eyewitness' testimony. In her affidavit of

September 30, 1996 given before PO2 Rodelio Ortiz, Herminia declared that while she and Joseph were watching television, she saw a hand holding a gun pointed at her son. The hand and the gun came out of a hole in the window, i.e., “butas ng bintana.” On cross-examination, Herminia stated that she saw a hand holding a gun in the open window, i.e., “bukas na bintana.” According to accused-appellant, this inconsistency is a serious flaw which cannot be repaired by her statement on the witness stand.

The inconsistency between her affidavit and her testimony was satisfactorily explained by Herminia on cross-examination:

“x x x x x x x x

ATTY. VARGAS

Q:

You said that you saw a hand from a hole in the window with a gun, is that correct?

A:

Bukas na bintana. Not from a hole but from an open window.

Q:

Madam witness, do you recall having executed a sworn statement before the police, right after the shooting of your son?

A:

Yes, sir.

Q:

I will read to you paragraph 8 of your statement which is already marked as your Exhibit “A” in which is stated as follows: “Isalaysay mo nga sa akin ang buong pangyayari? Answer: Sa mga oras ng alas 9:00 ng gabi petsa 29 ng Setyembre 1996 habang ang aking anak ay nanonood ng palabas sa TV ng basketball malapit sa kanyang bintana sa labas at ako naman ay nakaupo sa sofa katapat ko siya subalit medyo malayo ng konti sa kanya, mayroon akong napansin na kamay na may hawak ng baril at nakaumang sa aking anak sa may butas ng bintana,” do you recall that?

A:

Opo.

Q:

What you saw from that butas is a hand with a gun, is that correct?

A:

Opo.

Q:

Madam witness, your window is just like the window of this courtroom?

A:

Yes, sir.

Q:

In your testimony, you did not mention what part of the window was that hand holding a gun that you saw? Is that correct?

A:

Hindi naman po butas, kundi bukas na bintana. Nakabukas iyong bintana namin.

Q:

So in your sinumpaang salaysay in the statement that you said butas na bintana is not correct?

A:

Mali ho kasi, hindi ko na napansin iyan, kasi ito napansin ko, kinorect ko.

COURT: You show to the witness. There, butas na bintana.

WITNESS: Mali po ang letra, Bukas hindi butas.

x x x x x x x x.”[16]

Herminia corrected her affidavit by saying in open court that she saw the hand and the gun coming out of the open window, not from a hole in the window. In her direct testimony, Herminia presented a photograph of her living room just the way it looked from her side on the night of the shooting.[17] The sofa on which Joseph was seated is against the wall, with the window a few inches above the wall. The window is made of transparent glass with six (6) vertical glass panes pushing outwards. The entire window is enclosed by iron grills with big spaces in between the grills. The living room is well-lit and the area outside the house is also lit by a fluorescent lamp.

Between Herminia’s testimony in open court and her sworn statement, any inconsistency therein does not necessarily discredit the witness.[18] Affidavits are generally considered inferior to open court declarations because affidavits are taken ex-parte and are almost always incomplete and inaccurate.[19] Oftentimes, they are executed when the affiant’s mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident that transpired.[20] They are usually not prepared by the affiant himself but by another who suggests words to the affiant, or worse, uses his own language in taking the affiant’s statements.[21]

Accused-appellant argues that since Herminia declared in her affidavit that she saw a hand coming from the window, she did not see the person holding the gun, let alone who fired it.[22] A complete reading of the pertinent

portion of Herminia's affidavit will refute appellant's arguments, viz:

"x x x x x x x x

T-

Isalaysay mo nga sa akin and buong pangyayari?

S –

Sa mga oras ng alas 9:00 ng gabi, petsa 29 ng Setyembre 1996, habang ang aking anak ay nanonood ng palabas sa T.V. ng basketball malapit sa aming bintanan [sic] sa labas, at ako naman ay nakaupo sa sofa katapat ko siya subalit medyo malayo ng kaunti sa kanya, mayroon akong napansin akong [sic] kamay na hawak-hawak na baril na nakaumang sa aking anak sa butas na bintana na nakaawang, maya-maya ng kaunti ay nakarinig na ako ng putok at ang unang putok ay tumama sa ulo ng aking anak kaya napayuko siya, pagkatapos noon ay sunod-sunod na ang putok na narinig ko, mga limang beses, kaya kitang kita ko siya ng lapitan ko ang aking anak at nakita ko itong si NOEL LEE, pagkatapos noon ay tumakbo na ito papalabas ng iskinita papunta sa kanila.

x x x x x x x x."[23]

It is thus clear that when Herminia approached her son, she saw that the person firing the gun was accused-appellant. Appellant continued firing and then ran away towards the direction of his house. This account is not inconsistent with the witness' testimony in open court.

Herminia's declarations are based on her actual account of the commission of the crime. She had no ill motive to accuse appellant of killing her son, or at least, testify falsely against appellant. Accused-appellant himself admitted that he and Herminia have been neighbors for years and have known each other for a long time. Appellant is engaged in the business of buying and selling scrap plastic and Herminia used to work for him as an agent.[24] She would not have pointed to appellant if not for the fact that it was him whom she saw shoot her son.

Indeed, the Solicitor General points out that it was appellant himself who had strong motive to harm or kill Joseph.[25] Appellant revealed that six days before the shooting, he caught Joseph inside his car attempting to steal the stereo. The alibi that appellant was drinking with his friends that fateful night of September 29, 1996 does not rule out the possibility that he could have been at the scene of the crime at the time of its commission. The victim's house is merely two blocks away from appellant's house and could be reached in several minutes.[26]

The lone eyewitness' account of the killing finds support in the medico-legal report. Dr. Rosalie Cosidon found that the deceased sustained two gunshot wounds—one to the right of the forehead, and the other, to the left side of the back of the victim's head.[27] Two slugs were recovered from the victim's head. Judging from the location and number of wounds sustained, Dr. Cosidon theorized that the assailant could have been more than two feet away from the victim.[28] Both gunshot wounds were serious and fatal.[29]

Accused-appellant makes capital of Joseph's bad reputation in their community. He alleges that the victim's drug habit led him to commit other crimes and he may have been shot by any of the persons from whom he had stolen.[30] As proof of Joseph's bad character, appellant presented Herminia's letter to Mayor Malonzo seeking his assistance for Joseph's rehabilitation from drugs. On rebuttal, Herminia admitted that she wrote such letter to Mayor Malonzo but denied anything about her son's thievery.[31]

Character evidence is governed by Section 51, Rule 130 of the Revised Rules on Evidence, viz:

“Section 51. Character evidence not generally admissible; exceptions:--

(a) In Criminal Cases:

(1)

The accused may prove his good moral character which is pertinent to the moral trait involved in the offense charged.

(2)

Unless in rebuttal, the prosecution may not prove his bad moral character which is pertinent to the moral trait involved in the offense charged.

(3)

The good or bad moral character of the offended party may be proved if it tends to establish in any reasonable degree the probability or improbability of the offense charged.

x x x x x x x x.”

Character is defined to be the possession by a person of certain qualities of mind and morals, distinguishing him from others. It is the opinion generally entertained of a person derived from the common report of the people who are acquainted with him; his reputation.[32] “Good moral character” includes all the elements essential to make up such a character; among these are common honesty and veracity, especially in all professional intercourse; a character that measures up as good among people of the community in which the person lives, or that is up to the standard of the average citizen; that status which attaches to a man of good behavior and upright conduct.[33]

The rule is that the character or reputation of a party is regarded as legally irrelevant in determining a controversy, so that evidence relating thereto is not admissible. Ordinarily, if the issues in the case were allowed to be influenced by evidence of the character or reputation of the parties, the trial would be apt to have the aspects of a popularity contest rather than a factual inquiry into the merits of the case. After all, the business of the court is to try the case, and not the man; and a very bad man may have a righteous cause.[34] There are exceptions to this rule however and Section 51, Rule 130 gives the exceptions in both criminal and civil cases.

In criminal cases, sub-paragraph 1 of Section 51 of Rule 130 provides that the accused may prove his good moral character which is pertinent to the moral trait involved in the offense charged. When the accused presents proof of his good moral character, this strengthens the presumption of innocence, and where good character and reputation are established, an inference arises that the accused did not commit the crime charged. This view proceeds from the theory that a person of good character and high reputation is not likely to have committed the act charged against him.[35] Sub-paragraph 2 provides that the prosecution may not prove the bad moral character of the accused except only in rebuttal and when such evidence is pertinent to the moral trait involved in the offense charged. This is intended to avoid unfair prejudice to the accused who might otherwise be convicted not because

he is guilty but because he is a person of bad character.[36] The offering of character evidence on his behalf is a privilege of the defendant, and the prosecution cannot comment on the failure of the defendant to produce such evidence.[37] Once the defendant raises the issue of his good character, the prosecution may, in rebuttal, offer evidence of the defendant's bad character. Otherwise, a defendant, secure from refutation, would have a license to unscrupulously impose a false character upon the tribunal.[38]

Both sub-paragraphs (1) and (2) of Section 51 of Rule 130 refer to character evidence of the accused.[39] And this evidence must be "pertinent to the moral trait involved in the offense charged," meaning, that the character evidence must be relevant and germane to the kind of the act charged,[40] e.g., on a charge of rape, character for chastity; on a charge of assault, character for peacefulness or violence; on a charge for embezzlement, character for honesty and integrity.[41] Sub-paragraph (3) of Section 51 of the said Rule refers to the character of the offended party.[42] Character evidence, whether good or bad, of the offended party may be proved "if it tends to establish in any reasonable degree the probability or improbability of the offense charged." Such evidence is most commonly offered to support a claim of self-defense in an assault or homicide case or a claim of consent in a rape case.[43]

In the Philippine setting, proof of the moral character of the offended party is applied with frequency in sex offenses and homicide.[44] In rape and acts of lasciviousness or in any prosecution involving an unchaste act perpetrated by a man against a woman where the willingness of a woman is material, the woman's character as to her chastity is admissible to show whether or not she consented to the man's act.[45] The exception to this is when the woman's consent is immaterial such as in statutory rape[46] or rape with violence or intimidation.[47] In the crimes of qualified seduction[48] or consented abduction,[49] the offended party must be a "virgin," which is "presumed if she is unmarried and of good reputation,"[50] or a "virtuous woman of good reputation." [51] The crime of simple seduction involves "the seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age x x x." [52] The burden of proof that the complainant is a woman of good reputation lies in the prosecution, and the accused may introduce evidence that the complainant is a woman of bad reputation.[53]

In homicide cases, a pertinent character trait of the victim is admissible in two situations: (1) as evidence of the deceased's aggression; and (2) as evidence of the state of mind of the accused.[54] The pugnacious, quarrelsome or trouble-seeking character of the deceased or his calmness, gentleness and peaceful nature, as the case may be, is relevant in determining whether the deceased or the accused was the aggressor.[55] When the evidence tends to prove self-defense, the known violent character of the deceased is also admissible to show that it produced a reasonable belief of imminent danger in the mind of the accused and a justifiable conviction that a prompt defensive action was necessary.[56]

In the instant case, proof of the bad moral character of the victim is irrelevant to determine the probability or improbability of his killing. Accused-appellant has not alleged that the victim was the aggressor or that the killing was made in self-defense. There is no connection between the deceased's drug addiction and thievery with his violent death in the hands of accused-appellant. In light of the positive eyewitness testimony, the claim that because of the victim's bad character he could have been killed by any one of those from whom he had stolen, is pure and simple speculation.

Moreover, proof of the victim's bad moral character is not necessary in cases of murder committed with treachery and premeditation. In *People v. Soliman*, [57] a murder case, the defense tried to prove the violent, quarrelsome or provocative character of the deceased. Upon objection of the prosecution, the trial court disallowed the same. The Supreme Court held:

"x x x While good or bad moral character may be availed of as an aid to determine the probability or

improbability of the commission of an offense (Section 15, Rule 123),[58] such is not necessary in the crime of murder where the killing is committed through treachery or premeditation. The proof of such character may only be allowed in homicide cases to show “that it has produced a reasonable belief of imminent danger in the mind of the accused and a justifiable conviction that a prompt defensive action was necessary (Moran, Comments on the Rules of Court, 1952 ed., Vol. 3, p. 126). This rule does not apply to cases of murder.”[59]

In the case at bar, accused-appellant is charged with murder committed through treachery and evident premeditation. The evidence shows that there was treachery. Joseph was sitting in his living room watching television when accused-appellant peeped through the window and, without any warning, shot him twice in the head. There was no opportunity at all for the victim to defend himself or retaliate against his attacker. The suddenness and unexpectedness of the attack ensured his death without risk to the assailant. Following the ruling in *People v. Soliman*, where the killing of the victim was attended by treachery, proof of the victim’s bad character is not necessary. The presence of this aggravating circumstance negates the necessity of proving the victim’s bad character to establish the probability or improbability of the offense charged and, at the same time, qualifies the killing of Joseph Marquez to murder.

As to the aggravating circumstance of evident premeditation, this cannot be appreciated to increase the penalty in the absence of direct evidence showing that accused-appellant deliberately planned and prepared the killing of the victim.[60]

Neither can the aggravating circumstance of dwelling found by the trial court be applied in the instant case. The Information alleges only treachery and evident premeditation, not dwelling. Under Sections 8 and 9, Rule 110 of the Revised Rules of Criminal Procedure, a complaint or Information must specify the qualifying and aggravating circumstances in the commission of the offense.[61] The Revised Rules of Criminal Procedure took effect on December 1, 2000, and Section 8, Rule 110 is favorable to the accused. It may be applied retroactively to the instant case.

Accordingly, without the aggravating circumstance of dwelling, the penalty of death was erroneously imposed by the trial court. There being no aggravating circumstance, there is no basis for the award of exemplary damages.[62]

IN VIEW WHEREOF, the decision dated June 22, 1999 of the Regional Trial Court, Caloocan City, Branch 127 in Criminal Case No. C-54012 (98) is affirmed insofar as accused-appellant Noel Lee is found guilty of murder for the death of Joseph Marquez. The death sentence imposed by the trial court is however reduced to reclusion perpetua, there having been no aggravating circumstance in the commission of said crime. Except for the award of exemplary damages, the award of civil indemnity, other damages and costs are likewise affirmed.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

[1] Information, Records, p. 1.

[2] Exhibit “A,” also Exhibit “2,” Folder of Exhibits, p. 5.

[3] Exhibit “L,” Medico-Legal Report, Folder of Exhibits , p. 29.

[4] Exhibit “B,” Identification Card, Folder of Exhibits, p. 2; TSN of January 19, 1999, p. 20.

- [5] Exhibits “D,” “D-1” to “D-17,” Folder of Exhibits, pp. 4-21.
- [6] TSN of January 25, 1999, p. 4.
- [7] Exhibit “5,” Folder of Exhibits, pp. 40-45.
- [8] Exhibit “O,” Folder of Exhibits, pp. 32-34.
- [9] Informations in Criminal Cases Nos. C-23084 (84) and C-32351 (89), Exhibits “G” and “H,” Folder of Exhibits, pp. 23, 24.
- [10] TSN of April 7, 1999, pp. 3-5.
- [11] Exhibit “3,” Folder of Exhibits, p. 36.
- [12] TSN of April 7, 1999, p. 13.
- [13] Decision, p. 16, Rollo, p. 34.
- [14] Accused-Appellant’s Brief, pp. 1-2, Rollo, pp. 89-90.
- [15] TSN of January 19, 1999, pp. 5-11.
- [16] TSN of January 26, 1999, pp. 10-12.
- [17] Exhibit “F,” Folder of Exhibits, p. 22-A.
- [18] *People v. Templo*, 346 SCRA 626, 641 [2000]; *People v. Ferrer*, 255 SCRA 19, 34 [1996]; *People v. Abrenica*, 252 SCRA 54, 61 [1996].
- [19] *People v. Jaberto*, 307 SCRA 93, 100 [1999]; *People v. Silvestre*, 307 SCRA 68, 83 [1999]; *People v. Mercado*, 304 SCRA 504, 527 [1999]; *People v. Botona*, 304 SCRA 712, 733 [1999].
- [20] *People v. Ortiz*, 266 SCRA 641, 650 [1997].
- [21] *People v. Panela*, 346 SCRA 308, 315-316 [2000]; *People v. Ortiz*, *supra*.
- [22] Reply Brief, p. 4, Rollo, p. 339.
- [23] Exhibit “A,” also marked as Exhibit “2,” Folder of Exhibits, p. 5; emphasis supplied.
- [24] TSN of April 14, 1999, pp. 6-7.
- [25] Plaintiff-Appellee’s Brief, p. 20; Rollo, p. 20.
- [26] TSN of April 7, 1999, pp. 9-10.
- [27] TSN of February 15, 1999, pp. 6, 9; Exhibit “M,” Sketch of human body, Folder of Exhibits, p. 30.
- [28] TSN of February 15, 1999, pp. 6-7.
- [29] *Id.*, at p. 8.
- [30] Appellant’s Brief, p. 18, Rollo, p. 106.
- [31] TSN of May 5, 1999, p. 12.
- [32] *Bouvier’s Law Dictionary*, vol. I, 3rd revision, p. 457 [1914]. Strictly speaking, character is not synonymous with reputation. “Character” is the nature of a person, his disposition generally, or his disposition in respect to a

particular trait such as peacefulness or truthfulness. “Reputation” is the community estimate of him. Under the Federal Rules of Evidence in the United States, failure to make the distinction may result in confusion. “Character evidence” is governed by Rule 404 while reputation is a method of proving character in Rules 405 and 608—M. Graham, *Federal Rules of Evidence in a Nutshell Series*, 2nd ed., p. 94 [1987].

[33] 14 C.J.S. Character p. 400 [1939]; also cited in V. Francisco, *Revised Rules of Court of the Philippines*, vol. VII, Part I, p. 743. The concept of character has acquired strong moral overtones over the years owing perhaps to the far greater frequency with which it is encountered in criminal cases. Inquiry into the nature of the person has largely been confined to considerations which can be characterized as either goodness or badness. As psychiatry and psychology progress and win increasing acceptance in the law, the concept seems destined to encompass a broadened view of human nature-- Graham, *supra*, at 94-95.

[34] Jones on Evidence, Civil and Criminal, vol. I, 5th ed., Sec. 165, p. 294 [1958] citing *Thompson v. Church*, 1 Root (Conn) 312, and other cases; also cited in O. Herrera, *Remedial Law*, vol. V, p. 834 [1999].

[35] 29 Am Jur 2d, Evidence, Sec. 367 [1994 ed.].

[36] McCormick on Evidence, vol. I, 4th ed., Sec. 190, p. 797 [1992]; 29 Am Jur 2d, Evidence, Sec. 365 [1994 ed.]; see also *People v. Rabanes*, 208 SCRA 768, 780 [1992].

[37] Wharton’s Criminal Evidence, vol. I, 12th ed., Sec. 221, p. 456 [1955].

[38] Wigmore on Evidence, vol. I, 3rd ed., Sec. 58, p. 458 [1940]; see footnotes for English and American cases.

[39] In the case at bar, it was the prosecution that first presented evidence of the bad moral character of the accused-appellant by citing the two criminal cases pending against him. The presentation of this evidence, however, was not objected to by the accused-appellant.

[40] Francisco, *supra*, at 746; see also Wharton’s Criminal Evidence, vol. I, 12th ed., Sec. 221, pp. 459-461 [1955].

[41] Francisco, *supra* citing Wigmore on Evidence (Stud. Txt) 62.

[42] With respect to a witness in both criminal and civil cases, his bad moral character may be proved by either party as provided under Section 11, Rule 132 of the Revised Rules on Evidence – see Regalado, *Remedial Law Compendium*, vol. II, p. 631 [1995].

[43] R. Lempert & S. Saltzburg, *A Modern Approach to Evidence*, American Casebook Series, p. 238 [1982]; McCormick on Evidence, vol. I, 4th ed., Sec. 193, pp. 820-822 [1992] at Sec. 193, pp. 820-822. In the American jurisdiction, courts in the past generally admitted evidence of the victim’s character for chastity. In the 1970’s however, nearly all jurisdictions enacted “rape shield” laws. The reforms range from barring all evidence of the victim’s character for chastity to merely requiring a preliminary hearing to screen out inadmissible evidence on the issue. Federal Rule of Evidence 412 lies between these extremes Reversing the traditional preference for proof of character by reputation, it bars reputation and opinion evidence of the victim’s past sexual conduct, but permits evidence of specific incidents if certain substantive and procedural conditions are met.--McCormick on Evidence, *supra*, Sec. 193, p. 822.

[44] Francisco, *supra*, at 751.

[45] *Naval v. Panday*, 321 SCRA 290, 302 [1999].

[46] *Ibid.*, at 302 citing Wigmore on Evidence (Stud. Text) 63; see also Wharton’s Criminal Evidence, vol. 1, 12th ed, Sec. 229 [1955].

[47] *People v. Tadyo*, 154 SCRA 349, 361 [1987]; *People v. Blance*, 45 Phil. 113, 116 [1923].

[48] Article 337, Revised Penal Code.

[49] Article 343, Revised Penal Code.

[50] *II L. Reyes*, *The Revised Penal Code* 862 [1981].

[51] *Ibid.*, at 882.

[52] Article 338, Revised Penal Code.

[53] *Francisco*, *supra*, at 752.

[54] *Wharton's Criminal Evidence*, vol. I, 12[th] ed., Sec. 228, p. 474 [1955]; also cited in *Francisco*, *supra*, at 752; see also *Herrera*, *supra*, at 839-840.

[55] In *People v. Gungob*, 108 Phil. 1174 [1960], it was found that the character of the deceased as reflected by his criminal record of theft and physical injuries was consistent with the provocative acts ascribed to him by the witnesses.

[56] In *People v. Sumicad*, 56 Phil. 645 [1932], the deceased was a bully of known violent character, although himself unarmed, he attempted to take from the accused a bolo, the only means of defense possessed by the latter. Under the circumstances, it was observed that it would have been an act of suicide for the accused to allow the bolo to pass into the hands of the victim.

[57] 101 Phil. 767 [1957].

[58] Now Section 51 (a) (3), Rule 130.

[59] *People v. Soliman*, *supra*, at 772; emphasis supplied.

[60] *People v. Platilla*, 304 SCRA 339, 354 [1999]; *People v. Basao*, 310 SCRA 743, 778-779 [1999].

[61] *People v. Edgar Legaspi*, G.R. Nos. 136164-65, April 20, 2001, pp. 14-16; *People v. Joel Bragat*, G.R. No. 134490, September 4, 2001, pp. 16-17; *People v. Melecio Sagarino*, G.R. Nos. 135356-58, September 4, 2001, pp. 10-11; *People v. Noel Feliciano*, G.R. Nos. 127759-60, September 24, 2001, pp. 15-16.

[62] Civil Code, Article 2230.

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