

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFONSO RIVERA @ “PONSO” AND TEDDY RIVERA (AT LARGE), ACCUSED-APPELLANTS.

G.R. No. 139185. September 29, 2003

Ponente: PUNO, J.

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PUNO, J.:

One shot in Jonnifer Losaria's head turned what would have been an evening of fun and drinks into a night of horror and death. On April 24, 1998, an information for Murder was filed against the accused Alfonso Rivera and Teddy Rivera, viz:

That on or about the 19[th] day of October, 1997, in the evening, in Barangay Dumga, Municipality of Makato, Province of Aklan, Republic of the Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, without just motive, with intent to kill one Jonnifer T. Losaria, and armed with a gun, did then and there willfully, unlawfully and feloniously attack, assault and wound said JONNIFER T. LOSARIA, thereby inflicting upon the latter mortal wound, to wit:

"HEENT:

(+) gunshot wound, head

Point of Entry: `½' x `½', temporal area, left

Point of Exit: None

Note: One deformed slug was recovered beneath the scalp, parietal area, right."

As per certification of Dr. Rane L. Tabanar, M.D., Municipal Health Officer, Makato, Aklan, herein attached, which wound directly caused the death of the said Jonnifer T. Losaria.

That as a result of the criminal acts of the accused, the heirs of the victim suffered actual and compensatory damages in the amount of FIFTY THOUSAND PESOS (P50,000.00).

CONTRARY TO LAW.[2]

As the accused Teddy Rivera was at large, only the accused-appellant Alfonso Rivera was arraigned. He entered a plea of "not guilty."

The lone eyewitness for the prosecution was Renato Losaria, younger brother of the victim, Jonnifer Losaria. Renato lives with his parents-in-law at Dumga, Makato, Aklan, while Jonnifer lives in the Losaria abode. Both of them are tricycle drivers.

At about 5:00 p.m. on October 19, 1997, Renato was in his parents-in-law's house. Renato was standing at the

balcony, waiting for Jonnifer to pass by to tell him that Junior Casimero whom he was supposed to fetch in the nearby Casimero residence had already left at about 4:30 p.m. The two were going to drink tuba together. At about 6:00 to 7:00 p.m., Renato saw Jonnifer on his tricycle parked in front of Casimero's house, about ten arm's length from the house of Renato's parents-in-law. Renato headed towards their gate to go to Jonnifer and tell him that Junior already went ahead. But when Renato was already outside the gate, the accused Teddy Rivera and his younger brother Alfonso Rivera, the appellant, suddenly appeared on a motorcycle, coming from the direction of Tangalan to Numancia, or behind Jonnifer. Appellant was the driver while Teddy was the back passenger. The Riveras slowed down in front of the Casimero abode, and upon reaching the left side of Jonnifer, Teddy crossed his arms, left over right, and at a distance of three feet shot Jonnifer once using a 0.38 caliber revolver. Jonnifer, still on his tricycle and holding the handle bars, was shot on the left temple. Renato is familiar with a 0.38 caliber revolver as this is used by the police. The Riveras then sped away. It was about 6:20 p.m. Renato saw the shooting incident as he was just about ten meters in front of Jonnifer and the accused Riveras and the place was illuminated by the street light. Afraid that he might also be shot, Renato hid behind the banana trees near the road. When the Rivera brothers left, Renato went to Jonnifer and checked if he could still be brought to the hospital, but he was already dead. Renato is unaware of the reason why his brother was shot. He knows the accused Riveras as they are his friends. The police investigated Renato. He executed an affidavit^[3] regarding the shooting incident and affirmed its execution and contents during his testimony. He also identified appellant during his testimony.^[4]

SPO2 Ferdinand Relayson corroborated Renato's testimony. He has been a PNP officer in the Makato Police Station since July 1991. At the time of the shooting incident, he was an investigator at the station. He is also a resident of Makato, Aklan. On October 19, 1997, at around 6:25 p.m., Barangay Kagawad Edwin Torrenueva of Barangay Dumga reported the shooting incident to Relayson. He entered the report in the police blotter. He and some companions, including Chief of Police Senior Inspector Rey Tang, proceeded to the crime scene and arrived there at about 6:30 p.m. There were many people gathered around the body of the victim. The police team investigated several people therein, among which was Renato Losaria. The latter told them that he witnessed the crime and that the perpetrators rode a motorcycle. They asked him the name of the assailants and he answered that he was not sure of their names, but was certain that he could identify them. Relayson's team also gathered from the residents of the barangay that the suspects went towards Makato. They went after the Rivera brothers. Upon arrival at the Makato public market, they learned from some tricycle drivers that a motorcycle passed the national road towards Numancia. By nighttime, they were able to talk to one of the tricycle drivers, Juanito Baylon, who informed them that somebody asked him earlier that day if he knew the residence of Jonnifer Losaria.

Pursuing the lead the police team gathered, Relayson invited the Rivera brothers for identification of the witnesses about two days after the shooting incident. Only the appellant Alfonso Rivera went to the station. Renato Losaria and Juanito Baylon were present. When the appellant was seated at the complaint desk, Losaria identified appellant as one of the two assailants. Baylon also identified appellant as the person who inquired about Jonnifer Losaria on the day he was killed. Appellant was identified not in a police line-up or with other persons, contrary to the police station's standard operating procedure in the identification of suspects. Relayson neither took appellant's statement nor did he arrest him after the identification. Instead, he was made to go home. Relayson also took possession of a slug^[5] which was turned over one day after the shooting incident by the Rural Health Physician, Dr. Rane Tabanar. He examined the body of Jonnifer Losaria. About a month after the shooting incident, or on November 20, 1997, Relayson took Baylon's and Losaria's statements regarding the incident. He then prepared a complaint and explained that he did not immediately file the complaint because one of the witnesses, Renato Losaria, was still busy with the wake of his brother, Jonnifer Losaria. Relayson also prepared a sketch of the crime scene.^[6]

Dr. Rane Tabanar, Rural Health Physician of Makato Rural Health Unit and a resident of Poblacion, Makato,

autopsied the body of Jonnifer Losaria on October 20, 1997 upon request of the Makato Police Station. He reduced his findings into a report[7] and indicated in a sketch of a human body the location of the gunshot wound on the left temporal area.[8] The cause of the victim's death was cardio-respiratory arrest secondary to hemorrhagic shock, secondary to gunshot wound. With this wound, there was no chance for the victim to have survived. Dr. Tabanar did not notice any powder burn or contusion mark at the point of entry of the bullet. There was no point of exit. Dr. Tabanar recovered a slug beneath the victim's scalp, parietal area, and turned this over to the police on October 20, 1997 after the post-mortem examination. In his opinion, the gunman was on the left side of the victim, approximately more than or about one meter.[9]

Juanito Baylon, a tricycle driver and resident of Dumga, Makato, testified that on October 19, 1997, at around 6:00 p.m., he was driving his tricycle towards Barangay Cabatanga, Makato, Aklan to burn rice stalks. On his way there, two men on a black Yamaha motorcycle stopped him. They came from the opposite direction. The driver asked Baylon if he knew Jonnifer Losaria. Baylon saw the two men clearly as he was about only one meter away from them and there was still light coming from the sun. He did not see, however, the face of the back passenger as he was facing sideways and Baylon's attention was focused on the driver who was talking to him. He did not know their names; it was the first time he met them. Later, when he returned home from Barangay Cabatanga, he passed the crime scene at about 7:00 p.m. Chief of Police Rey Tang was there. Baylon told Tang about the two men who had earlier asked him about the victim. About three days after the shooting incident, the police invited Baylon to the police station to identify the suspect. When he met appellant Alfonso Rivera, he immediately told the police that he was the person who asked him about Jonnifer Losaria. The police did not present other suspects with appellant. After identifying him, Baylon learned from a policeman that his name was Alfonso Rivera. On November 20, 1997, he executed an affidavit in relation to the shooting incident.[10] He identified the appellant in open court.[11]

The defense foisted the defense of alibi. Arlenie Villanueva, a resident of Navitas, Numancia, Aklan since birth, testified. He is the neighbor of the accused Riveras.

On October 19, 1997, Villanueva was in Merlinda Rivera's house, hauling gravel, sand and water to mix with cement. He was working with Joel, Joe, Rowen, Harry, Pabling and the appellant Alfonso Rivera. They started working at 7:00 a.m. and finished at 4:30 p.m. Upon finishing their work, they washed up and rested, then drank one container of tuba and Tanduay Rhum. They finished drinking at about 10:00 p.m. The whole time, from 7:00 a.m. to 10:00 p.m., the appellant did not leave the group. At past 10:00 p.m., Villanueva went home as he was already dizzy. Appellant was left in the house. As a resident of Navitas since birth, Villanueva testified that neither appellant nor his parents owned any kind of motorcycle. Nobody in Navitas, he said, owned a black motorcycle. The other accused, Teddy Rivera, was not in Aklan at that time. He was employed in the Philippine Army and was assigned in Nueva Ecija.[12]

John Donald Ili, Sangguniang Kabataan (SK) Chairman of Navitas, Numancia, Aklan since June 1996, also took the witness stand. He has known the appellant Alfonso Rivera since 1985 when he (Ili) started living in Navitas. He does not know the victim, Jonnifer Losaria.

On October 19, 1997, the SK sponsored a basketball tournament in Navitas in preparation for the forthcoming fiesta on October 24, 1997. The tournament was scheduled to start at 6:00 p.m. At about 5:45 p.m., he looked for some barangay tanods to maintain peace and order during the game. He found some in the house of Merlinda Rivera, the appellant Alfonso Rivera's mother. They were having a drinking spree with appellant. He approached the tanods and told them to report to duty at the plaza. Only one reported for duty, but the rest assured him that they would follow. Ili then went back to the plaza.

Ili does not know the distance between the crime scene and the house of Merlinda Rivera, thus he could not tell whether the appellant was in the crime scene at the time Jonnifer Losaria was killed. He did not execute an affidavit regarding the whereabouts of the appellant on October 19, 1997 and was asked by Merlinda Rivera to testify only two days before she took the witness stand. She asked him to tell the truth that he knew appellant was in Merlinda's house at the time of the shooting incident. When the prosecutor asked Ili why Merlinda was aware that Ili knew appellant was not involved in the killing of Jonnifer, Ili answered that Merlinda saw him when he went to Merlinda's residence. Upon clarification of the court, he testified that he did not see Merlinda in her residence when he was there.[13]

Finally, the appellant Alfonso Rivera testified. He is a businessman and resident of Navitas, Numancia, Aklan. He lives in the house of his mother, Merlinda Rivera. He knows the victim, Jonnifer Losaria, as he is a friend of his elder brother, his co-accused Teddy Rivera who has been with the 7[th] Infantry Division stationed at Fort Ramon Magsaysay in Palayan City, Nueva Ecija even before the shooting incident. When the accused Teddy Rivera takes a vacation in Navitas, Jonnifer pays a visit in the Rivera abode. The last time Teddy was in Navitas prior to the shooting incident was on October 5, 1997. He stayed for only two days with his wife and three children, then left with his wife for La Carlota, Bacolod City.

The appellant denied the accusation against him. At about 6:20 p.m. on October 19, 1997, he was at home in Navitas, Numancia, Aklan. He was helping out in the construction of his mother's kitchen with some companions, namely, Pabling, Harry, Joel, Joe, and Arlenie Villanueva, in the spirit of bayanihan. The group started working at about 7:00 a.m. and finished at 4:30 p.m. Thereafter, they took a rest, washed up and drank liquor until 10:00 p.m. He then took a rest. Three days after, or on October 22, 1997, the Numancia police summoned him to the police station. He was not told of the reason for the invitation and when he arrived in the station, he was told to wait for a police officer from Makato. When the latter did not arrive, he was told to go home at about noontime. The following day or on October 23, 1997, the Makato police summoned him to the station. The police asked him his whereabouts on the day of the killing and he said that he was working in their house. While he was being questioned, Renato Losaria and Juanito Baylon arrived. Appellant did not know the two. A policeman put his hand on appellant's shoulder and asked the two if he was the one involved in the killing of Jonnifer Losaria. The two looked at each other, then went out. Afterwards, they were told to go home. Neither appellant nor his co-accused brother or parents own a motorcycle. His relative, Noel Castillo, owns a motorcycle but it is not black. Both appellant and accused Teddy Rivera know how to drive a motorcycle. Alfonso does not know the location of Barangay Dumga, the scene of the crime, but knows where Barangay Cabatanga is because his wife has an aunt there. However, on questions by the trial judge, Alfonso declared that Barangay Dumga is about ten kilometers away from Navitas where he claims to have been at the time of the killing. Riding a motorcycle on average speed, the distance could be traversed in twenty minutes. A portion of the road connecting Navitas and Numancia is rough while another portion is asphalted.

To prove that the accused Teddy Rivera was not in Aklan at the time of the killing, the defense presented to the court the mission order of the accused Teddy Rivera dated October 4, 1997 authorizing him to proceed to La Carlota, Bacolod City[14] and a certification dated November 24, 1998 issued by Mess Sgt. Arturo Sabado stating that Teddy Rivera has been dropped from his mess effective October 5, 1997 to October 15, 1997 and assumed his mess upon reporting on October 16, 1997. Attached to the certification was the daily disposition of troops stating that on October 16, 1997, the accused Teddy Rivera was included in his daily disposition of troops.[15] Merlinda Rivera secured the documents from the accused Teddy Rivera. Appellant Alfonso Rivera executed an affidavit relating his version of the case.[16]

The trial court upheld the prosecution and convicted the appellant Alfonso Rivera, viz:

WHEREFORE, the Court finds the accused ALFONSO RIVERA Y URETA alias "Ponso" GUILTY beyond reasonable doubt of MURDER and hereby imposes upon him the penalty of DEATH.

Further, the Court hereby orders the said accused to pay to the heirs of the victim Jonnifer T. Losaria, the amount of P50,000.00 as indemnity for the death of the latter.

Furthermore, the Court hereby orders that the case filed herein against the accused Teddy U. Rivera, who, up to this point, is still at large, be ARCHIVED,[17] without prejudice to its revival upon his apprehension.

With COSTS against the accused.

SO ORDERED.[18]

Hence this automatic review where the appellant Alfonso Rivera claims that the trial court erred, viz:

- IN HOLDING THAT THE PROSECUTION'S SOLE WITNESS TESTIFIED IN AN UNREHEARSED, NATURAL AND POSITIVE MANNER;
- IN HOLDING THAT THE RELATIONSHIP OF THE SAID EYEWITNESS, THEY BEING BROTHERS, RENDERS HIS TESTIMONY MORE WORTHY OF BELIEF;
- IN HOLDING THAT THERE WAS NO EVIDENCE TO SHOW, OR INDICATION, OF ANY DUBIOUS REASON OR IMPROPER MOTIVE WHY SAID EYEWITNESS SHOULD TESTIFY FALSELY AGAINST THE APPELLANT OR FALSELY IMPLICATE HIM TO THE HEINOUS CRIME CHARGED;
- IN HOLDING THAT THERE EXISTS NO DISCREPANCIES BETWEEN SAID EYEWITNESS' TESTIMONY IN OPEN COURT AND THE STATEMENTS IN HIS AFFIDAVIT, EXCEPT MERE LAPSES PERTAINING TO TRIVIAL MATTERS OR MINOR DETAILS AND NOT TO THE VERY CORE OF HIS ACCOUNT;
- IN HOLDING THAT THE DEFENSE OF ALIBI PROPPED UP BY APPELLANT IS PRACTICALLY WORTHLESS IN THE LIGHT OF THE POSITIVE IDENTIFICATION BY SAID EYEWITNESS PLACING THE APPELLANT AT THE SCENE OF THE CRIME; AND
- IN HOLDING THAT APPELLANT IS GUILTY OF THE CRIME CHARGED BEYOND REASONABLE DOUBT.[19]

The Court finds no reason to disturb the trial court's assessment of the credibility of the sole eyewitness, Renato Losaria. Well-settled is the rule that the findings of a trial court on the credibility of witnesses deserve great weight as the trial judge has a clear advantage over the appellate magistrate in appreciating testimonial evidence. The trial judge is in the best position to assess the credibility of the witness as he had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination. Absent any showing that the trial court's calibration of credibility was flawed, we are bound by its assessment.[20]

Neither can the defense fault the trial court for relying on a lone eyewitness account in convicting the appellant Alfonso Rivera. Time and again, we have held that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court.[21] The trial court noted that Renato Losaria was an "unrehearsed eyewitness who testified in a natural and straightforward manner." [22] The appellant, however, stresses Renato's testimony that the triggerman was three feet away from the victim and the arm he used in shooting the victim was extended when he shot him, thus the distance between the gun and the victim was less than three feet. However, Dr. Tabanar opined that the gunman must have been "approximately more than or about one meter." There is no substantial inconsistency between Renato and Dr. Tabanar's testimonies for Renato stated that the distance of the gunman from the victim was about three feet while

Dr. Tabanar stated that it was about one meter or more. One meter is equivalent to three feet and three inches or approximately one meter.

The appellant points out that the prosecution did not establish the motive for the killing. However, with Renato's positive identification of the appellant Alfonso Rivera, it is not essential to establish motive to convict him.[23] Neither is there any showing of any ill intent for Renato to falsely testify against the appellant. The running case law is that where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[24] Moreso in the case of Renato who was the victim's brother as we have ruled that relatives of the victim have a natural knack for remembering the face of the assailant for they, more than anybody else, would be concerned with seeking justice for the victim and bringing the malefactor to face the law.[25] In addition, Baylon's testimony that the accused brothers, riding a motorcycle, asked him about Jonnifer Losaria earlier on the day of the latter's killing, corroborated Renato's identification of the appellant as the culprit.

The defense makes much of the fact that there are discrepancies between the affidavit of Renato Losaria and his testimony in court regarding the time Renato saw Jonnifer Losaria in front of Casimero's house,[26] the presence of Renato's father in the crime scene,[27] and the direction from which the accused Riveras came,[28] among others. The appellant asserts that these inconsistencies are not only minor and thus erode the credibility of Renato's testimony. Whether the discrepancies are minor or major, we have ruled that affidavits are generally subordinate in importance to open court testimonies. Affidavits are not complete reproductions of what the affiants have in mind because they are generally prepared by the administering officer and the affiants simply sign them after the same have been read to them.[29]

The appellant Alfonso Rivera also alleges that Renato Losaria and Baylon identified him as the culprit upon suggestion of the policemen at the police station. He has not adequately proven this allegation. The police investigators are presumed to have performed their duties regularly and in good faith,[30] and in the absence of adequate proof to overthrow this presumption, appellant's positive identification remains free from any taint of irregularity. Baylon testified that when he saw appellant at the police station, he immediately told the police that he was the person who asked him about Jonnifer Losaria on the day the latter was killed. SPO2 Ferdinand Relayson also testified that Renato Losaria and Baylon independently identified appellant Alfonso Rivera at the police station. While it is true that the latter was identified not in a police line-up or in the company of other suspects, appellant's out-of-court identification is nevertheless valid.

We explained the procedure for out-of-court identification and the test to determine the admissibility of such identification in *People v. Teehanke, Jr.*,[31] viz:

Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose. . . In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

Applying the totality-of-circumstances test to the case at bar, we find that eyewitness Renato Losaria's identification of appellant Alfredo Rivera as one of the malefactors through a show-up is credible as borne out by several salient facts. From a distance of about ten meters and with light provided by the street lamp, Renato saw

the appellant driving a motorcycle with the gunman as the back passenger. Renato's attention was focused on the accused Riveras and the victim, Jonnifer Losaria, as he (Renato) was approaching the latter to talk to him. When Renato was investigated at the crime scene, he stated with certainty that he could identify the culprits and did not vacillate when he identified the appellant Alfredo Rivera at the police station. The identification took place within three days from the shooting incident.

Even assuming *arguendo* that the appellant Alfonso Rivera's out-of-court identification was tainted with irregularity, his subsequent identification in court cured any flaw that may have attended it. Without hesitation, the two prosecution witnesses, Renato Losaria and Juanito Baylon identified the appellant as one of the assailants. In *People v. Timon*,^[32] the accused were identified through a show-up. The accused assailed the process of identification because no other suspect was presented in a police line-up. We ruled that a police line-up is not essential in identification and upheld the identification of the accused through a show-up. We also held that even assuming *arguendo* that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the "inadmissibility of a police line-up identification x x x should not necessarily foreclose the admissibility of an independent in-court identification."^[33]

It is not decisive whether Juanito Baylon did not know or Renato Losaria was not certain of the appellant's name when Jonnifer Losaria was killed and when appellant was identified at the police station. We have previously held that identification of a person is not solely through knowledge of his name. In fact, familiarity with physical features, particularly those of the face, is the best way to identify a person. One may be familiar with the face but not necessarily the name. It does not follow therefore that to be able to identify a person, one must necessarily know his name.^[34] "Experience shows that precisely because of the unusual acts of bestiality committed before their eyes, eyewitnesses, especially the victims to a crime, can remember with a high degree of reliability the identity of criminals."^[35] Even if Renato Losaria was initially not certain of the name of the appellant Alfonso Rivera, the appearance of the latter was etched in his memory as he brought about the tragic death of his brother.

That there was conspiracy between the accused Riveras is clearly borne out by the records. It is immaterial therefore that it was the accused Teddy Rivera, and not the appellant Alfonso Rivera, who fatally shot Jonnifer Losaria. In conspiracy, the act of one is the act of all.^[36] There is conspiracy among perpetrators of a crime when there is a unity in purpose and intention in the commission of a crime.^[37] It does not require a previous plan or agreement to commit assault as it is sufficient that at the time of such aggression, all the accused manifested by their acts a common intent or desire to attack.^[38] The appellant Alfonso Rivera and accused Teddy Rivera manifested at the time of the attack a common purpose to kill Jonnifer Losaria when they rode one motorcycle, slowed down at the left side of the tricycle Losaria rode, shot him, then sped away. The trial court correctly observed, viz:

Accused Alfonso Rivera's acts of driving the motorcycle asking for the whereabouts of the victim, maneuvering their motorcycle towards the victim upon seeing the latter, slowing down the speed of their motorcycle when they were already aligned and near the victim and then, making their motorcycle run at a high speed away from the victim after the backrider (accused Teddy Rivera), shot the victim, indubitably showed that he acted in conspiracy with his brother in bringing about the success of their mission – the killing of their quarry.^[39]

In light of eyewitness Renato Losaria's positive identification of appellant Alfonso Rivera as one of the assailants of Jonnifer Losaria and his testimony detailing how the accused brothers attacked Jonnifer Losaria, the appellant's defense of alibi will not prevail.^[40] Moreover, this defense requires proof (1) that the accused was present at another place at the time of the perpetration of the crime and (2) that it was physically impossible for him to be present at the crime scene during its perpetration.^[41] Appellant himself testified, however, that riding a

motorcycle on average speed, the distance between the crime scene and his mother's house where he claims to have been at the time of the killing, could be traversed in only twenty minutes.

We now come to the aggravating circumstances attending the killing of Jonnifer Losaria. That the attack was treacherous is beyond doubt. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus insuring its commission without risk to the aggressor and without any provocation on the part of the victim.[42] Needless to say, the unsuspecting Jonnifer Losaria who was riding his tricycle was taken by surprise as the malefactors came from behind him. He had no means to defend himself, having been shot while still holding the handle bars of the tricycle.

We find, however, that evident premeditation cannot be appreciated. The following are the elements of evident premeditation: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act.[43] The essence of premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[44] For this aggravating circumstance to be considered, it is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out. There is a dearth of evidence on such a plan. Neither can we appreciate use of a motor vehicle which the trial court appreciated as this was not alleged in the information.[45]

Anent the damages, the trial court was correct in ordering the appellant to pay the heirs of the victim P50,000.00 as civil indemnity. Additionally, the appellant is ordered to pay them P25,000.00 as temperate damages.

IN VIEW WHEREOF, the impugned decision is AFFIRMED with the MODIFICATION that the appellant is sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of the victim, Jonnifer Losaria, P50,000.00 as civil indemnity and P25,000.00 as temperate damages. Costs against the accused-appellant.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Tinga, JJ., concur.
Azcuna, J., on leave.

[1] The accused Teddy Rivera was at large from the inception of the case and was not arraigned. The decision of the trial court convicted only the accused Alfonso Rivera @ "Ponso" and archived the case with respect to the accused Teddy Rivera. Therefore, only Alfonso Rivera @ "Ponso" and not Teddy Rivera is an appellant in this automatic review before the Court. All references to the appellant in this Decision mean the appellant Alfonso Rivera @ "Ponso".

[2] Original Records, p. 1.

[3] Exhibit C; Original Records, p. 8.

[4] TSN, Renato Losaria, February 19, 1999, pp. 17-44.

[5] Exhibit H; TSN, Ferdinand Relayson, February 23, 1999, p. 73.

[6] Exhibit G; Original Records, p. 47; TSN, Ferdinand Relayson, February 23, 1999, pp. 47-68.

[7] Exhibit A; Original Records, p. 3.

- [8] Exhibit B; Original Records, p. 4.
- [9] TSN, Dr. Rane Tabanar, February 25, 1999.
- [10] Exhibit F; Original Records, p. 7.
- [11] TSN, Juanito Baylon, March 3, 1997, pp. 81-94.
- [12] TSN, Arlenie Villanueva, March 10, 1999, pp. 96-105.
- [13] TSN, John Donald Ili, March 11, 1999, pp. 108-118.
- [14] Exhibit 3; Original Records, p. 12.
- [15] Exhibit 4; Original Records, pp. 70-A to 70-C.
- [16] Exhibit 1; Original Records, p. 10; TSN, Alfonso Rivera, March 12, 1999, pp. 122-146.
- [17] See *People v. Abria*, 300 SCRA 556 (1998).
- [18] Original Records, p. 86.
- [19] Rollo, pp. 47-48.
- [20] *People v. Pardua, et al.*, 360 SCRA 41 (2001), citing *People v. Mosqueda*, 313 SCRA 694 (1999).
- [21] *People v. Quillosa*, 325 SCRA 747 (2000), citing *People v. Lotoc*, 307 SCRA 471 (1999); *People v. Platilla*, 304 SCRA 339 (1999).
- [22] Decision, p. 5; Original Records, p. 83.
- [23] *People v. Quillosa*, *supra*, citing *People v. Tan*, 315 SCRA 375 (1999); *People v. Laceste*, 293 SCRA 397, 408 (1998).
- [24] *People v. Alfeche*, 294 SCRA 352, 376 (1998); *People v. Mostrales*, 294 SCRA 701, 712 (1998).
- [25] *People v. Bundang*, 272 SCRA 641 (1997).
- [26] Rollo, p. 56.
- [27] *Id.*, p. 60.
- [28] *Id.*, p. 63.
- [29] *People v. Sanchez*, 313 SCRA 254 (1999), citing *People v. Lusa*, 288 SCRA 96 (1998).
- [30] Sec. 3 (m), Rule 131, Revised Rules of Court.
- [31] 249 SCRA 54 (1995), p. 95, citing *Neil v. Briggers*, 409 US 188 (1973); *Manson v. Brathwaite*, 432 US 98 (1977); Del Carmen, *Criminal Procedure, Law and Practice*, 3rd Edition, p. 346. See also *People v. Verzosa, et al.*, 294 SCRA 466 (1998), citing *People v. Teehankee, Jr.*, *supra*.
- [32] 281 SCRA 577 (1997).**
- [33] *People v. Timon*, *supra*, citing *People v. Lapura*, 255 SCRA 85, 96 (1996).
- [34] *People v. Verzosa, et al.*, 294 SCRA 466 (1998), citing *People v. Reception*, 198 SCRA 670 (1991). See also *People v. Barrientos*, 285 SCRA 221 (1998), citing *People v. Reception*, *supra*.

[35] *People v. Teehankee, Jr.*, supra, citing *People v. Campa*, 230 SCRA 431 (1994) and *People v. Apawan*, 235 SCRA 355 (1994).

[36] *People v. Tumayao, et al.*, 356 SCRA 491 (2001).

[37] *People v. Lising*, 285 SCRA 595 (1998).

[38] *People v. Robedillo*, 286 SCRA 379 (1998).

[39] Decision, p. 7; Original Records, p. 85.

[40] *People v. Yambot*, 343 SCRA 20 (2000).

[41] *People v. Tumayao*, 356 SCRA 491 (2001).

[42] *People v. Feliciano*, 365 SCRA 613 (2001), citing *People v. Tan*, 315 SCRA 375 (1999).

[43] *People v. Sapigao (At large), et al.*, G.R. No. 144975, June 18, 2003. See also *People v. Tan, et al.*, 359 SCRA 283 (2001).

[44] *People v. Ariola*, 100 SCRA 523 (1980).

[45] *People v. Gano*, 353 SCRA 126 (2001), citing Rule 110, Secs. 8 and 10 of the Revised Rules of Criminal Procedure effective December 1, 2000.

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