

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JAIME CASTILLANO, SR. ALIAS “TALINO,” RONALD CASTILLANO ALIAS “NONO” AND JAIME CASTILLANO, JR. ALIAS “JUNJUN,” ACCUSED,

G.R. No. 139412. April 02, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Pili, Camarines Sur, Branch 31, in Criminal Case No. P-2542, convicting appellants Ronald Castellano alias “Nono” and Jaime Castellano, Jr. of murder, meting on each of them the penalty of reclusion perpetua and ordering them to pay, jointly and severally, damages to the heirs of the victim Diosdado Volante.

The Evidence or the Prosecution

Diosdado Volante, who eked out a living as a farmer, his wife Luz,[2] and their four children lived in their farmland located in the outskirts of Sitio Danawan, Barangay Sagrada, Bula, Camarines Sur.

About 200 meters away from Diosdado’s farmland was the farmhouse of Jaime Castellano, Sr.[3] He tasked his son, Jaime Castellano, Jr., to take care of the farmhouse and allowed him to reside there.[4] Jaime, Sr., his wife Concepcion, their son Ronald (Nono) Castellano and other children lived at their family residence in Sagrada, Bula, Camarines Sur, approximately three kilometers away from their farmhouse in Sitio Danawan.[5]

Sometime in the early part of June 1996,[6] Jaime, Sr. fired his gun indiscriminately. Afraid that a stray bullet might hit any member of his family, Diosdado accosted Jaime, Sr. and asked him to desist from firing his gun indiscriminately. Jaime, Sr. resented the intrusion. He remonstrated that neighbors did not even complain about him firing his gun. A heated altercation ensued. Jaime, Sr. then fired his gun towards the house of Diosdado. The incident germinated deep animosity between the two and their respective families.[7] Jaime, Sr. always carried a bolo whenever he passed by the house of Diosdado.

On July 8, 1996, between 5:00 p.m. to 6:00 p.m., Levy Avila, a teacher, was in his house doing some repairs. He noticed Jaime, Jr. and Ronald talking by the roadside near the gate of his (Levy’s) house. Levy overheard the two planning to go to Diosdado’s house. Jaime, Jr. and Ronald even told Levy: “Ayaw namin kasing inaasar.” Suspecting that the two were intending to harm Diosdado, Levy urged them to amicably settle their differences with Diosdado.

At around 8:00 p.m., Luz and Diosdado were about to retire for the night. Their children were already fast asleep. Diosdado was tired after a day’s work of spraying chemicals at the rice field. He reclined on a bamboo bench near the main door of their house. A kerosene lamp lighted the house. Suddenly, Luz heard voices near their house. She saw Jaime, Sr. holding a flashlight and his two sons, Jaime Jr. and Ronald, on their way to the house. Luz immediately alerted her husband and told him that the Castellanos were in their yard. However, Diosdado was nonchalant and simply told Luz not to mind them. All of a sudden, Jaime, Sr. fired his gun at Diosdado’s house. Terrified, Luz hastily carried her baby daughter Mary Jane, sought cover and hid near the rear door. She was

about five meters away from her husband when the Castellanos barged inside their house and ganged up on Diosdado. Jaime, Jr. and Ronald, armed with bladed weapons, took turns in stabbing Diosdado. Ronald stabbed Diosdado on the right side of his breast, right thigh and on the back. He also struck him with a one-meter long pipe. Not satisfied, Jaime, Sr. fired his gun hitting the right thigh of Diosdado. Luz was so shocked by the sudden turn of events. To silence her one year old baby, she breastfed her. As soon as she could, Luz fled to the rice paddies where she hid for a time. The Castellanos fled on board a jeep parked in the NIA road about 200 meters from the house of Diosdado. When Luz returned to their house, she saw her husband sprawled on the ground in a pool of his own blood. Diosdado, at the point of death, asked her for help. Not knowing what to do, Luz lost no time and ran to the house of their neighbor Celedonio Espiritu for help. Celedonio rushed to the Bula Police Station and reported the incident.

A team composed of SPO4 Jaime Javier, SPO3 Jaime Bellano and SPO3 Nilo Fornillos,[8] the duty investigator,[9] went to the crime scene[10] to conduct an on-the-spot investigation. Photographs were taken of the cadaver.[11] SPO3 Fornillo drew rough sketch[12] of the scene. The policemen saw a bolo at the place where Diosdado was sprawled near the door of their house. A scabbard of a bolo was found a meter away from the house of Diosdado.[13] The policemen also found a bullet hole on the wall of the house.[14] Thereafter, the cadaver was placed on a hamak [hammock] brought to the police station. The police investigators turned over the scabbard and bolo to the desk officer of the police station.[15]

From the police station, SPO4 Javier, SPO3 Bellano and Sgt. Rogelio Palacio boarded their mobile police car and set out a manhunt for the malefactors. They proceeded towards the boundary in Sto. Domingo where they put up a checkpoint. The police officers inspected every vehicle that passed by. At around 12:45 a.m., SPO4 Javier halted a passenger jeepney. On board were Jaime, Sr. and his two sons, Jaime Jr. and Ronald, each of whom carried a bag containing their clothes. The policemen brought the Castellanos to the police station.[16] The bags of Jaime, Jr. and Ronald were turned over to the police investigators. The three were placed under arrest for the killing of Diosdado. The policemen submitted their investigation report.[17]

In the meantime, at 7:00 a.m., Dr. Evangeline Consolacion, the Municipal Health Officer of Bula, conducted an autopsy on the cadaver of Diosdado. Her autopsy report revealed the following findings:

External Findings

- Incise Wound 3 cm. Superior pinna R ear
 - Incise wound (sic) 10 cm. from nasal bridge extending to mandible R
 - Stab wound 2 cm. x 5 cm. Epigastrium R
 - Stab wound 2 cm. x 4 cm. Epigastrium L
 - Stab wound 2.5 cm. Middle third Arm R
 - Stab wound 2 cm. x 5 cm. posterior Back.
 - Amputating middle third finger L
 - Hacked wound posterior ankle L
 - Gunshot wound POE 2 x 2cm. with contusion collar medial aspect middle third R thigh
- No point of exit noted

Internal Findings:

Fracture femur with Foreign body bullet lodge in middle third femur with hematoma about about 100 cc R thigh

Cause of Death; Hypovolemia secondary to Multiple Stab Wound[18]

The doctor recovered a slug from the right thigh of Diosdado. She later signed the victim's post-mortem certificate of death.[19] Senior Inspector Edgardo B. Sambo, Chief of Police of Bula Police Station, filed with the Municipal Trial Court of Bula, Camarines Sur, a criminal complaint[20] for murder against the Castellano brothers.[21] Judge Francisco O. Tolentino conducted the preliminary examination and thereafter issued an order of arrest against the Castellanos.[22] No bail was recommended for their provisional release. On July 9, 1996, Luz gave a sworn statement to the police investigators.[23]

On July 10, 1996, the accused were transferred to the Tinangis Penal Farm. Senior Inspector Sambo requested the PNP-CLRU5 Provincial Unit to conduct a paraffin test on the Castellanos.[24]

On July 12, 1997, Major Lorlie Arroyo, the Head Forensic Chemist of PNP-Region 5, conducted the paraffin test on the Castellanos. Ronald was found positive for gunpowder residue.[25] Jaime, Sr. and Jaime, Jr. were found negative for gunpowder residue.

The MTC issued a subpoena requiring the accused to submit their counter-affidavits from notice thereof. However, the accused failed to submit any counter-affidavit.[26]

On August 2, 1996, an Information for murder was filed against Jaime, Sr., Ronald and Jaime Jr. with the Regional Trial Court of Pili, Camarines Sur, Branch 31. The accusatory portion of the Information reads:

That on or about the 8[th] day of July 1996 at about 8:00 o'clock in the evening at Barangay Sagra, Municipality of Bula, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another with intent to kill with treachery and evident premeditation armed with a handgun, bladed weapon and piece of wood did then and there wilfully, unlawfully and feloniously attack, assault and shot and stab one DIOSDADO VOLANTE y LOZANO inflicting upon the latter several mortal wounds on the different parts of his body which caused his instantaneous death, to the damage and prejudice of the heirs of said Diosdado Volante the amount of which to be proven in Court.

ACTS CONTRARY TO LAW.[27]

Upon their arraignment[28] on August 29, 1996, accused Jaime Sr., Jaime, Jr and Ronald, duly assisted by counsel de parte, Atty. Avelino Sales Jr., pleaded not guilty to the offense charged. Thereafter, trial on the merits ensued.

Luz testified that when Diosdado was still alive, he had an annual income of over P65,000. She spent P18,000 for the funeral services,[29] P300 for religious services,[30] P9,111 for food and other expenses[31] during her husband's wake and funeral. She suffered sleepless nights and mental anguish for his sudden death.

The Defenses and Evidence of the Accused

Ronald admitted when he testified that he killed Diosdado but insisted that he did so in self-defense and in defense of his brother Jaime, Jr. He asserted that his father Jaime, Sr. and brother Jaime, Jr. had nothing to do with Diosdado's death. Ronald alleged that on September 8, 1996, at about 7:30 p.m., he was driving a passenger jeepney on his way to the poblacion of Bula. Jaime, Jr. flagged down the jeepney. He boarded the jeepney and told Ronald that he was instructed by their mother to go to the house of Jose del Socorro to ask the latter to accompany them to their farmhouse in order to fetch Gilda Albes. Ronald was armed with a .38 paltik gun, while

Jaime, Jr. was armed with a bolo sheathed in a scabbard. They fetched Jose and then Ronald parked the jeepney at the NIA road. Jaime, Jr., who was holding a flashlight, walked along the footpath on top of a pilapil (a narrow earthen barrier between two rice fields). Ronald and Jose walked behind Jaime, Jr. As they passed by the house of Diosdado, a man suddenly shouted: “you shit, I have await (sic) for you for a while, why just now.” Surprised, Jaime, Jr. forthwith focused his flashlight towards the man who shouted. He was aghast when he saw Diosdado armed with a bolo running towards them and about to attack them with his bolo. Ronald shoved Jaime, Jr. who fell on the muddy rice paddies below the pilapil. Ronald forthwith shot Diosdado. Diosdado took a step but fell on a kneeling position. Diosdado brandished his bolo. Ronald shot Diosdado once more but his gun misfired. To defend himself, Ronald took Jaime, Jr.’s bolo and hacked Diosdado to death.[32] Ronald then fled from the scene and ran to the jeepney at the NIA road. Jaime, Jr. and Jose boarded the jeep and left the scene. Ronald threw the bolo along the way. He threw his gun into a rice farm in Danawan.

Jaime, Jr. corroborated the testimony of his brother. He, however, testified that he did not see his brother hack and kill Diosdado. He claimed that when Ronald got hold of his bolo, he ran away and proceeded to their jeepney which was then parked at the roadside. Minutes later, Ronald followed. They then hastily went home to Sagrada and told their father Jaime, Sr. of the incident.[33]

Jose Del Socorro corroborated the testimony of Ronald. He testified that on July 8, 1996, at about 5:00 p.m. he was on his way home when he met Diosdado whom he noticed to be inebriated and unruly. Diosdado was throwing dried mud at the farmhouse of the Castellanos and challenging the occupants of the farmhouse to a fight. He advised Diosdado to stop what he was doing and warned him that he was only inviting trouble. Diosdado told him to mind his own business and not to intervene. Jose thereafter left Diosdado and went home.[34] When Jose arrived home, Dominador Briña was waiting for him. He and Dominador talked business for a while and subsequently had dinner. After some time, Jaime, Jr. and Ronald arrived at Jose’s house.

Concepcion Castellano testified that on July 8, 1996 at around 5:00 a.m., her son Jaime, Jr. arrived home and told her that Diosdado threw stones at their farmhouse and challenged everybody to a fight. She felt nervous and reported the incident to the police and caused the same to be entered in the police blotter.[35] Thereafter, she went home and told her sons Jaime, Jr. and Ronald to immediately fetch Gilda. She, likewise, instructed her sons to first drop by the house of Jose so that the latter could accompany them to the farmhouse.

Jaime, Sr. vehemently denied any participation in the killing of Diosdado. He claimed that at the time of the alleged incident, he was at their house in Sagrada, bedridden due to his debilitating diabetes. He narrated to the trial court his medical history and his confinement at the Mandaluyong Medical Center sometime in 1994.[36] He presented documents and receipts showing that he had been and is still under medication.[37] He declared that upon learning from his son Ronald that the latter killed Diosdado, he advised his sons to look for a lawyer for legal representation. He told the trial court that at around 11:30 p.m., he and his two sons had decided to go to Andangan in order to meet a cousin of his who knew of a lawyer named Atty. Botor. As they traversed the road to Andangan, they were stopped by some policemen at a checkpoint and were invited to the police station where they were investigated and eventually incarcerated.[38]

Gilda Abes, the last witness for the defense, affirmed that she was the girlfriend of Jaime, Jr. She told the trial court that on July 8, 1996 she was at the farmhouse of the Castellanos. She corroborated the testimony of Jose that Diosdado was combative and drunk. According to Gilda, Jaime, Jr. left the farmhouse before sundown to go to his parent’s place at Sagrada. Jaime, Jr. never returned to the farmhouse that night. Gilda learned of the incident the next morning when she went home.[39]

The Verdict of the Trial Court

On December 22, 1998, the trial court rendered a decision convicting Jaime, Jr. and Ronald of murder qualified by evident premeditation and treachery. The trial court exonerated Jaime, Sr. of the crime on reasonable doubt. The trial court gave no credence to Ronald's claim that he acted in self-defense. The decretal portion of the decision reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered, finding the two (2) accused RONALD CASTILLANO and JAIME CASTILLANO, JR. guilty beyond reasonable doubt of the offense of MURDER and they are hereby sentenced to suffer the penalty of imprisonment of RECLUSION PERPETUA with all the accessory penalties imposed thereby. Further, as civil liability, the said two (2) accused are hereby ordered to pay the legal heirs of the late Diosdado L. Volante, through his widow Luz R. Volante, the total sum of ONE HUNDRED SEVENTY-SEVEN THOUSAND FOUR HUNDRED TWENTY ONE PESOS (P177,421.00) Philippine Currency as actual and moral damages including death indemnity, with costs against both accused.

The accused Jaime Castellano, Sr. is hereby acquitted on the ground of reasonable doubt.

SO ORDERED.[40]

The accused, now appellants, interposed their appeal from the decision of the trial court contending that it committed reversible errors: (a) in rejecting appellant Ronald's plea of self-defense; and (b) in not acquitting appellant Jaime, Jr. of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

Anent the first issue, appellant Ronald posits that he adduced proof that he acted in self-defense when he stabbed the victim.

The Court disagrees with appellant Ronald. The Court has consistently held that like alibi, self-defense is inherently weak because it is easy to fabricate.[41] In a case where self-defense and defense of relatives is invoked by the accused, the burden of evidence is shifted to him to prove with clear and convincing evidence the essential requisites of self-defense, namely (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to repel or prevent it; and (c) lack of sufficient provocation on the part of the person defending himself. There can be no complete or incomplete self-defense or defense of relatives unless the accused proves unlawful aggression on the part of the victim.[42] The accused must rely on the strength of his evidence and not on the weakness of the evidence of the prosecution for by pleading self-defense, the accused thereby admits having killed the victim and he can no longer be exonerated of the crime charged if he fails to prove the confluence of the essential requisites for self-defense and defense of a relative.[43]

Appellant Ronald failed to discharge his burden.

First. After shooting and stabbing Diosdado, appellant Ronald fled from the situs criminis. Flight from the situs of the crime is a veritable badge of guilt and negates his plea of self-defense.[44]

Second. Appellant Ronald threw away his paltik .38 gun and the bolo he used in hacking Diosdado as he fled from the scene of the crime instead of surrendering the same to the police authorities. Appellant Ronald admitted that he had no license for the gun:

Q Where is that gun now that you use?

A I do not know, Your Honor, I think I was able to throw it away.

Q Where?

A At Danawan, Your Honor.

Q Danawan, is that a lake?

A No, Your Honor, it is a ricefarm.

Q What kind of gun is this?

A Paltik .38, Your Honor.[45]

ATTY. BALLEBAR:

q By the way, where is that bolo that you used in hacking and stabbing Diosdado Volante?

a I do not know anymore because I was able to throw it away also when I ran away.

q Where is that place where you throw it?

a It was by the NIA road.

q You mentioned also a while ago that this gun that you said is a “paltik” and you throw it away also, is it not?

a Yes, Ma’am.

q And that gun had been in your possession the whole day that you are driving up to the time you shot the victim, Diosdado Volante?

a Yes, Ma’am.

q Do you have license to possess that firearm?

a None, Ma’am.[46]

The failure of appellant Ronald to surrender the bolo and his gun to the police authorities belies his claim of self-defense.

Third. Appellant Ronald failed to report the incident to the police authorities even when they arrested him. Curiously, he failed to inform the police officers who arrested him that he acted in self-defense when he shot and stabbed the victim. The resounding silence of the appellant is another indicium of the incredibility of his defense.[47] Moreover, the records show that the municipal trial court issued a subpoena on July 9, 1996 requiring appellant Ronald to submit his counter-affidavit but he refused and/or failed to submit the same despite service on him of the subpoena. It was only during the trial that appellant Ronald, for the first time, invoked self-defense and defense of a relative.

Fourth. The cadaver of the victim was found inside his house when the police investigators arrived.[48] This belies appellant Ronald’s claim that he shot the victim in the rice paddies, near his house and that he (appellant Ronald) took the bolo of appellant Jaime, Jr. and used it to stab the victim. Appellant Ronald failed to prove his claim that when the police investigators arrived in the victim’s house, they carried his (the victim’s) body from the rice paddies to the house. The only evidence adduced by appellant Ronald was his testimony which is hearsay, and besides being hearsay, it is speculative and mere conjecture.

Fifth. Appellant Ronald hacked the victim no less than five times. Two of the stab wounds sustained by the victim were at his back and posterior portion of his left ankle. The number and nature of the wounds of the victim negate the appellant’s claim that he shot the victim in self-defense. On the contrary, they prove that appellant Ronald was determined to kill the victim.[49]

Appellant Jaime, Jr. avers that the prosecution failed to prove his guilt beyond reasonable doubt of the crime

charged. He asserts that the testimony of Luz Volante, the widow of Diosdado, was inconsistent with her testimony during the preliminary examination in the municipal trial court and her sworn statement before the police investigators as well as the testimonies of SPO1 Fornillos and SPO4 Jaime Favier, and the physical evidence on record. The appellant catalogued said inconsistencies, thus:

- He was lying on the bench inside just upon entering. (Tsn p. 9, 2/17/97).

- I was lying down with my husband inside our house but we were still awake (9[th] Answer, Prel. Exam. MTC, 7/9/96).

- JCS fired towards our house hitting the wall (Tsn p. 11, 2/17/96).

JCS fired twice (16[th] answer, Prel. Exam. MTC, 7/9/96).

JCS kept on firing the gun pointing towards the body of my husband (9[th] Answer, Sworn Statement, PNP, 7/9/96).

JCS shot my husband three (3) times (Tsn p. 16, 2/17/97)

- My husband was shot and hit on the right thigh (Tsn p. 14, 2/17/97). He was hit on the left lap (23rd Answer, Prel. Exam. MTC, 7/9/96). He was hit on his side (Tsn p. 43, 2/17/97).

- RC struck my husband with a 1-meter long Pipe (Tsn p. 13, 2/17/97).

RC & JCJ smashed my husband with a hard object (5[th] Answer, Sworn Statement, 7/9/96).

RC smashed my husband (22[nd] Answer, Prel. Exam. MTC, 7/9/96).

- He was not able to fight back (Tsn p. 43, 2/17/97).

He was standing and was trying to parry the attack of the accused (26[th] Answer, Prel. Exam. 7/9/96).

- When I went back to the house, he was still alive (Tsn p. 19, 2/17/97). - LV "Yes," the victim could have died instantly (Tsn p. 35, 2/3/97) With wounds sustained, he could have died instantly (p. 8, Complainant's Memorandum).

- It was bright inside our house with a kerosene and a bottle lamp (Tsn pp. 33-34, 2/17/97). Only one kerosene lamp - bottle of gin with wick and light (Tsn p. 10, 4/1/97 - SPO1 Pornillos).

Surrounding house, dark, total darkness (Tsn pp. 12-13, 4/1/97).

- Scene Photography by Jaime Jorales (Tsn, p. 21, 2/17/97).

- do- by Mr. Lozano (Tsn., p. 12, 3/7/97).

- SPO1 Nilo Pornillos learned of the incident at 8:00 o'clock of July 8, 1996 (page 5 of Complainant's Memorandum).

SPO4 Jaime Javier received report at 9:00 o'clock P.M. of July 8, 1996 of Complainant's Memorandum.

SPO4 Jaime Javier received report at 8:00 P.M. (page 7 of Complainant's Memorandum).[50]

On the other hand, the Office of the Solicitor General asserts that the credibility of the testimony of Luz, the prosecution's principal witness, cannot be impeached via her testimony during the preliminary examination before the municipal trial court nor by her sworn statement given to the police investigators for the reason that the transcripts and sworn statement were neither marked and offered in evidence by the appellants nor admitted in evidence by the trial court. Moreover, the appellants did not confront Luz with her testimony during the

preliminary examination and her sworn statement to the police investigators. Luz was not, therefore, accorded a chance to explain the purported inconsistencies, as mandated by Section 13, Rule 132 of the Revised Rules of Evidence which reads:

How witness is impeached by evidence of inconsistent statement. - Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them.

The Court agrees with the Office of the Solicitor General. Before the credibility of a witness and the truthfulness of his testimony can be impeached by evidence consisting of his prior statements which are inconsistent with his present testimony, the cross-examiner must lay the predicate or the foundation for impeachment and thereby prevent an injustice to the witness being cross-examined. The witness must be given a chance to recollect and to explain the apparent inconsistency between his two statements and state the circumstances under which they were made.[51] This Court held in *People v. Escosura*[52] that the statements of a witness prior to her present testimony cannot serve as basis for impeaching her credibility unless her attention was directed to the inconsistencies or discrepancies and she was given an opportunity to explain said inconsistencies. In a case where the cross-examiner tries to impeach the credibility and truthfulness of a witness via her testimony during a preliminary examination, this Court outlined the procedure in *United States vs. Baluyot*,[53] thus:

...For instance, if the attorney for the accused had information that a certain witness, say Pedro Gonzales, had made and signed a sworn statement before the fiscal materially different from that given in his testimony before the court, it was incumbent upon the attorney when cross-examining said witness to direct his attention to the discrepancy and to ask him if he did not make such and such statement before the fiscal or if he did not there make a statement different from that delivered in court. If the witness admits the making of such contradictory statement, the accused has the benefit of the admission, while the witness has the opportunity to explain the discrepancy, if he can. On the other hand, if the witness denies making any such contradictory statement, the accused has the right to prove that the witness did make such statement; and if the fiscal should refuse upon due notice to produce the document, secondary evidence of the contents thereof would be admissible. This process of cross-examining a witness upon the point of prior contradictory statements is called in the practice of the American courts "laying a predicate" for the introduction of contradictory statements. It is almost universally accepted that unless a ground is thus laid upon cross-examination, evidence of contradictory statements are not admissible to impeach a witness; though undoubtedly the matter is to a large extent in the discretion of the court.

In this case, the appellants never confronted Luz with her testimony during the preliminary examination and her sworn statement. She was not afforded any chance to explain any discrepancies between her present testimony and her testimony during the preliminary examination and her sworn statement. The appellants did not even mark and offer in evidence the said transcript and sworn statement for the specific purpose of impeaching her credibility and her present testimony. Unless so marked and offered in evidence and accepted by the trial court, said transcript and sworn statement cannot be considered by the court.[54]

On the purported inconsistencies or discrepancies catalogued by the appellants relating to the testimony of Luz during the preliminary examination and her sworn statement, the Office of the Solicitor General posits that:

... ..

Sixth, Volante indeed testified that when she returned to their house from the ricefield, after the three accused had left the premises, her husband was still alive (TSN, February 17, 1997, p. 19) as he was still able to ask for her assistance (Ibid, p. 20). But it is not inconsistent with the expert opinion of Dr. Consolacion that by the

nature of the wounds sustained by the victim, the latter could have died thereof instantaneously (TSN, February 3, 1997, p. 35). It is clear that the said physician was merely stating a possibility and not what happened in the instant case because in the first place, she was not present at the scene right after the incident.

Seventh, Volante was insistent in her testimony that at the time of the commission of the subject crime, it was bright inside their house because they had a “kerosene lamp” and a “bottle lamp” both lighted up, one placed on the wall and the other on the ceiling (Ibid, pp. 33, 52-53). While it may appear contradictory to SPO1 Pornillos’ testimony that there was only a kerosene lamp at the time, he could not have been expected to notice all the things found inside the house, including the “bottle lamp”, because he might not have been familiar with its interiors. Or, he could have focused his attention primarily on the body of the fallen victim and the objects that may be used later as evidence against the perpetrators of the crime.

Eight, it is admitted that the testimonies of Volante and SPO1 Pornillos as to who took pictures of the crime scene including the lifeless body of the victim are contradictory. But again, such contradiction, being only minor and irrelevant, does not affect the credibility of their testimonies.

And ninth, the apparently inconsistent statements of the prosecution witnesses (SPO1 Pornillos and SPO4 Javier) as to the exact time the subject incident was reported to the police authorities are similarly irrelevant to the matters in issue. Of consequence here is the fact that on the night the crime was committed, it was reported to the authorities who later effected the arrest of the perpetrators thereof.[55]

The Court fully agrees with the foregoing ruminations of the Office of the Solicitor General. The inconsistencies adverted to by the appellants pertained only to minor and collateral matters and not to the elements of the crime charged; hence, they do not dilute the probative weight of the testimony. It bears stressing that even the most truthful witness can make mistakes but such innocent lapses do not necessarily affect his credibility. The testimonies of witnesses must be considered and calibrated in their entirety and not by their truncated portions or isolated passages.[56] And then again, minor contradictions among several witnesses of a particular incident and aspect thereof which do not relate to the gravamen of the crime charged are to be expected in view of their differences in impressions, memory, vantage points and other related factors.[57]

Contrary to appellant Jaime, Jr.’s claim, the prosecution adduced proof that he and appellant Ronald conspired to kill and did kill Diosdado by their simultaneous acts of stabbing the victim. As narrated by Luz:

ATTY. BALLEBAR:

Q Now after Jaime Castellano Sr. fired at your house, what happened next if any?

A They entered our house.

Q Now, when you say they to whom are you referring to?

A Jaime Castellano Sr., Jaime Castellano, Jr., and Ronald Castellano.

Q Now, where did they enter?

A In the other door.

Q Now at the time they entered your house was the door of your house closed or opened?

A It was closed.

Q Now, after the accused entered your house what happened next, if any?

A Jaime Castellano Jr. stabbed my husband and also Ronald Castellano stabbed my husband.

Q Now, was your husband hit by the stabbing of Ronald Castellano, Jr. (sic)?

A Yes, sir.

Q Will you tell us on what part of his body was he hit?

A My husband was still struck by Ronald Castellano hitting him on his right side of his body including on his right thigh and also on his back.

ATTY. BALLEBAR:

Q Now, you said Ronald Castellano struck your husband, now with what instrument did he use in striking (sic) your husband?

ATTY. BERNALES:

We object, misleading, your Honor.

COURT:

Witness may answer.

WITNESS:

A A pipe.

ATTY. BALLEBAR:

Q Now, will you tell us more or less how long was that pipe that was used by Ronald Castellano?

A About one (1) meter, Maam.[58]

Luz was merely five meters away from where Diosado was attacked and stabbed by the appellants. Appellant Jaime, Jr. even tried to cut the ankle of the victim:

ATTY. BALLEBAR:

Q Now, during this incident, how far were you from the accused and your husband?

A From where I am sitting up to that window which is about five (5) meters.

Q Now after the accused struck (sic) and shot your husband, what else happened if any?

A Jaime Castellano, Jr. stabbed my husband on his breast (Witness is pointing to her breast).

ATTY. BERNALES:

We will move that the answer be stricken off from the records because it is not responsive to the question. The question is after your husband has been stabbed struck (sic) and shot.

COURT:

Q You are being asked what happened after the accused was already stabbed, struck (sic) and shot, what happened next?

WITNESS:

Q Jaime Castellano Junior still stabbed my husband and try to cut his ankle, Your Honor.

COURT:

Strike our (sic) the previous answer of the witness.

ATTY. BALLEBAR:

Q By the way, will you tell us how many times did Ronald Castellano stab your husband?

A I cannot determine how many times he even stabbed my husband on his left eye.

Q How about Jaime Castellano Jr., how many times did he stab your husband?

A I cannot determine exactly how many times but he repeatedly stabbed my husband.[59]

The mere denial appellant Jaime, Jr. of the crime charged is but a negative self-serving which cannot prevail over the positive and straightforward testimony of Luz and the physical evidence on record.[60]

The Crime Committed by Appellants

The trial court correctly convicted the appellants of murder, qualified by treachery, under Article 248 of the Revised Penal Code. The Court, however, does not agree with the trial court's finding that evident premeditation attended the commission of the crime.

Case law has it that the prosecution has the burden to prove beyond reasonable doubt qualifying circumstances in the commission of the crime. For evident premeditation to qualify a crime, the prosecution must prove the confluence of the essential requisites thereof: (a) the time when the offender has determined to commit the crime; (b) an act manifestly indicating that the offender has clung to his determination; (c) an interval of time between the determination and the execution of the crime enough to allow him to reflect upon the consequences of his act.[61] There must be proof beyond cavil when and how the offender planned to kill the victim and that sufficient time had elapsed between the time he had decided to kill the victim and the actual killing of the victim, and that in the interim, the offender performed overt acts positively and conclusively showing his determination to commit the said crime.[62] In this case, the only evidence adduced by the prosecution to prove evident premeditation is the testimony of Levy Avila that between 5:00 p.m. and 6:00 p.m. on July 8, 1996, he heard the appellants planning to go to the house of Diosdado and that he heard them say: "Ayaw namin kasing inaasar," and that at 8:00 p.m., the appellants arrived in the house of the victim and stabbed him to death. There is no evidence of any overt acts of the appellants when they decided to kill Diosdado and how they would consummate the crime. There is no evidence of any overt acts perpetrated by the appellants between 5:00 and 8:00 p.m. that they clung to their determination to kill Diosdado.

There is treachery in the commission of a crime when (a) at the time of attack, the victim was not in a position to defend himself; (b) the offender consciously and deliberately adopted the particular means, methods and forms of attack employed by him.[63] Even a frontal attack may be treacherous when unexpected on an unarmed victim who would not be in a position to repel the attack or avoid it.[64] In this case, the victim was unarmed and was supinely resting before sleeping after a hard day's work. Although Luz warned the victim that the appellants were already approaching their house, however, the victim remained unperturbed when the appellants barged into the victim's house. They stabbed him repeatedly with diverse deadly weapons. The victim had nary a chance to defend himself and avoid the fatal thrusts of the appellants.

The crime was committed in the house of the victim. There was no provocation on the part of the victim. Dwelling thus aggravated the crime. However, dwelling was not alleged in the information, as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure:

Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

The use by appellant Ronald of an unlicensed firearm to shoot Diosdado on the thigh is not an aggravating circumstance because (1) there is no allegation in the information that said appellant had no license to possess the firearm. That appellant lacked the license to possess the firearm is an essential element of the crime and must be alleged in the information.[65] Although the crime was committed before the new rule took effect on December 1, 2002, the rule should, however, be applied retroactively as it is favorable to the appellants.[66]

The appellants are not entitled to the mitigating circumstance of voluntary surrender. The evidence shows that the appellants were arrested when the police officers manning the checkpoint stopped the passenger jeepney driven by appellant Ronald and arrested the appellants. The fact that the appellants did not resist but went peacefully with the peace officers does not mean that they surrendered voluntarily.[67]

There being no mitigating and aggravating circumstances in the commission of the crime, the appellants should be meted the penalty of reclusion perpetua conformably with Article 63 of the Revised Penal Code.

The Civil Liabilities of the Appellants

The trial court awarded the total amount of P177,421 as civil indemnity, actual and moral damages in favor of the heirs of the victim Diosdado. The Court has to modify the awards.

Appellants Ronald and Jaime, Jr. are obliged to pay jointly and severally the amount of P50,000 as civil indemnity; P50,000 as moral damages; P25,000 as exemplary damages in view of the aggravating circumstance of dwelling;[68] and the amount of P18,300 for funeral and religious services. The heirs of the victim failed to adduce in evidence any receipts or documentary evidence to prove their claim for food and other expenses during the wake. However, they are entitled to temperate damages in the amount of P5,000, conformably with the ruling of the Court in *People v. dela Tongga*. [69] His wife Luz's testimony that the victim had an annual income of more than P65,000 is not sufficient as basis for an award for unearned income for being self-serving. There was no proof of the average expense of the victim and his family and his net income. In *People v. Ereño*, [70] this Court held that:

... It bears stress that compensation for lost income is in the nature of damages and as such requires due proof of the damage suffered; there must be unbiased proof of the deceased's average income. In the instant case, the victim's mother, Lita Honrubia, gave only a self-serving hence unreliable statement of her deceased daughter's income. Moreover, the award for lost income refers to the net income of the deceased, that is, her total income less her average expenses. No proof of the victim's average expenses was presented. Hence, there can be no reliable estimate of the deceased's lost income.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Camarines Sur, Branch 31 in Criminal Case No. P-2542 is **AFFIRMED** with **MODIFICATION**. Appellants Ronald Castellano alias "Nono" and Jaime Castellano, Jr. alias "Junjun" are found guilty beyond reasonable doubt of murder, qualified by treachery, punishable by reclusion perpetua to death, under Article 248 of the Revised Penal Code. There being no modifying circumstances in the commission of the crime, the appellants are sentenced to suffer the penalty of reclusion perpetua, conformably with Article 63 of the Revised Penal Code. They are, likewise, ordered to pay

jointly and severally to the heirs of the victim, Diosdado Volante, the amounts of P50,000 as civil indemnity; P50,000 as moral damages; P18,300 as actual damages; P25,000 as exemplary damages; and P5,000 as temperate damages. Costs against the appellants.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Austria-Martinez, JJ., concur.

- [1] Penned by Judge Martin P. Badong, Jr.
- [2] Exhibit “B;” born on September 9, 1962; died July 8, 1996 (see Exhibit “E.”)
- [3] TSN, February 17, 1997, p. 33.
- [4] TSN, August 1, 1997, p. 15.
- [5] Id, at 14.
- [6] Records, p. 10.
- [7] Exhibit “G,” No. 8.
- [8] Also spelled as “Pornillos” in the Records.
- [9] TSN, March 7, 1997, p. 4.
- [10] TSN, February 3, 1997, p. 5.
- [11] Exhibits “D” to “D-4.”
- [12] Exhibits “H” to “H-7.”
- [13] Exhibit “H-3.”
- [14] Exhibit “7.”
- [15] Exhibit “I.”
- [16] TSN, February 3, 1997, p. 11.
- [17] Exhibit “G.”
- [18] Records, p. 2, Exhibit “A.”
- [19] Id., at 8, Exhibit “E.”
- [20] Id., at 6.
- [21] Id., at 6-8.
- [22] Id. at 9.
- [23] Id.
- [24] Exhibit “M.”
- [25] Rollo, pp. 24.

- [26] Records, pp. 20-21.
- [27] Id., at 1.
- [28] Id., at 31 & 33.
- [29] Exhibit “F-5.”
- [30] Exhibit “F-6.”
- [31] Exhibit “F.”
- [32] TSN, September 23, 1997, pp. 8-9.
- [33] TSN, November 4, 1997, p. 10.
- [34] TSN, July 22, 1997, pp. 5-6.
- [35] Exhibit “4.”
- [36] TSN, November 27, 1997, pp. 5-6.
- [37] Exhibits “5” to “9.”
- [38] TSN, November 27, 1997, pp. 12-14.
- [39] TSN, March 3, 1998, pp. 4-6.
- [40] Records, p. 297.
- [41] *People v. Ocsimar*, 253 SCRA 689 (1996).
- [42] *People v. Ignacio*, 270 SCRA 445 (1997).
- [43] *People v. Hubilla, Jr.*, 252 SCRA 471 (1996).
- [44] *Ingles v. Court of Appeals, et al.*, 269 SCRA 122 (1997); *People v. Gregorio*, 255 SCRA 380 (1996).
- [45] TSN, September 23, 1997, p. 12.
- [46] Id., at 29.
- [47] *People v. Caras*, 234 SCRA 199 (1994).
- [48] Exhibit “H-1.”
- [49] *People v. Real*, 308 SCRA 244 (1999).
- [50] Rollo, pp. 64-65.
- [51] 4 JONES ON EVIDENCE, 5[th] ed., pp. 1768-1769.
- [52] 82 Phil. 41 (1948).
- [53] 40 Phil. 385 (1919).
- [54] *United States v. Grant*, 18 Phil. 122 (1910).
- [55] Rollo, pp. 131-133.
- [56] *People v. Calegon*, 233 SCRA 537 (1994).

[57] *People v. Antonio*, 273 SCRA 426 (1997).

[58] TSN, February 17, 1997, pp. 11-13.

[59] *Id.*, at 15-16.

[60] *People v. Manuel*, 236 SCRA 545 (1994).

[61] *People v. Abalde*, 329 SCRA 424 (2000).

[62] *People v. Cual*, 327 SCRA 623 (2000).

[63] *Id.*

[64] *People v. Andrade*, 322 SCRA 424 (2000).

[65] *Idem.*, *supra*.

[66] *People v. Salvador*, G.R. No. 132481, August 14, 2002.

[67] *People v. Deopante*, 263 SCRA 691 (1996).

[68] *People v. Rios*, 333 SCRA 823 (2000); *People v. Catubig*, 363 SCRA 621 (2000).

[69] 336 SCRA 687 (2000).

[70] 326 SCRA 157 (2000).

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