

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOB CORTEZANO Y PAJO, ACCUSED-APPELLANT.

G.R. No. 140732. January 29, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-accused-appellant Job Cortezano y Pajo was charged with Murder in Criminal Case No. RTC ‘98-266 before the Regional Trial Court of Calabanga, Camarines Sur, Branch 63.

At his arraignment, accused-appellant entered a plea of not guilty. Trial on the merits proceeded and thereafter, a judgment was rendered by the trial court convicting accused-appellant of the crime charged. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, accused Job Cortezano is here found GUILTY of the offense of Murder. He is ordered to suffer the penalty of Reclusion Perpetua and to pay the heirs of Roderick Valentin the following amounts:

- actual damages in the amount of P16,520.00;
- P50,000.00 for the death of the victim;
- P30,000.00 for moral damages; and
- to pay the costs.[1]

Accused-appellant is now before this Court, raising the following errors:

I

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE IDENTIFICATION OF THE ACCUSED BY PROSECUTION WITNESS JERNY VALENTIN.

II

THE COURT A QUO GRAVELY ERRED IN CONSIDERING THE ALLEGED DYING DECLARATION OF THE DECEASED IN THE IDENTIFICATION OF THE ACCUSED.

III

THE COURT A QUO ERRED IN NOT GIVING CREDENCE TO THE DEFENSE OF ALIBI INTERPOSED BY THE ACCUSED.[2]

The events of this fateful incident, according to the prosecution, unraveled at 7:00 in the evening of May 30, 1998, when the unsuspecting victim, Roderick Valentin, and his younger brother, Jerny, were on their way to fetch fresh water from a well in Daligan, Bonawon on board a banca. The darkness and silence of the early evening were shattered when a flashlight beam originating from some point along the shore fell on Roderick and a

gunshot rang out. The bullet hit Roderick in the chest. Within seconds, the light shifted and focused on Jerny. Another shot was fired, but it missed him.

The gunman extinguished his light and approached the banca. Jerny, recovering from the shock of the unexpected attack, got hold of his flashlight and beamed it on the approaching shooter. From a distance of about six (6) meters, both Jerny and the wounded Roderick immediately recognized accused-appellant Job Cortezano. Despite the shock and pain, Roderick asked Cortezano why he had shot him (Roderick). Alarmed that he had been recognized and identified, Cortezano hurriedly left the scene. Jerny then started paddling the banca towards the direction of their house to get help for Roderick.

Jimmy Valentin, father of Roderick and Jerny, heard Jerny repeatedly screaming that Roderick had been shot by Cortezano. They immediately transferred Roderick to a rented motorized banca to bring him to the nearest hospital. On the way to the hospital, Roderick kept crying from the pain and muttering that he was shot by Cortezano. Roderick never reached the hospital alive. He expired at 10:00 that very night cradled in the arms of his mother, Tita Valentin.

At the time of his death, Roderick was only 25 years old, and was the eldest child. His P200.00 daily wage as a fishpond worker helped support his parents and siblings. The material loss of the family compounded the emotional trauma that it suffered from Roderick's untimely demise. These events and circumstances were narrated by Jerny, Jimmy and Tita Valentin on direct- and cross-examination.

Jesus Alonzo, barangay captain of Daligan, Tinambac, Camarines Sur, testifying for the prosecution averred that the day after Roderick was shot, Job Cortezano's father informed him that his son wanted to surrender. Upon Alonzo's questioning, Cortezano admitted having shot Roderick with a gun which he turned over to a certain Victor Pelicia, a CAFGU member from Siruma, Camarines Sur. Alonzo turned over Cortezano to the police authorities at the PNP Tinambac Headquarters.

Another prosecution witness, PNP Investigator Crescencio Arganda, testified that the crime was reported by Jimmy Valentin and entered in the police blotter on May 31, 1998, the day after the shooting. He also recorded therein the surrender and detention of Cortezano.[3]

The last witness for the prosecution was Dr. Salvador Betito, Jr., who conducted the post-mortem examination of Roderick's remains. His medico-legal autopsy report showed that the bullet entered Roderick's back, piercing his chest, then exiting 3 inches away from the right nipple. Rapid internal and external hemorrhage secondary to the gunshot wound was the reported cause of death. Judging from the bullet's trajectory and the location of the entrance and exit wounds, Dr. Betito explained that the victim's back was turned to his assailant who was standing not too far to the left and rear of the victim.

The evidence for the defense consisted of the testimonies of Job Cortezano himself, his father Hannibal Cortezano, and that of Jovenal Agbones, an acquaintance. Accused-appellant Cortezano denied that he shot Roderick, alleging he was nowhere near the scene of the crime at the time that it was supposed to have been committed. He narrated that he was at the house of his parents in downtown Daligan, Tinambac, Camarines Sur, from 7:00 in the evening of May 30, 1998 until 7:00 in the morning of the following day.

He came from the fiesta celebration of their barangay and was feeling inebriated, so he decided to sleep at his parents' house. Later, Victor Pelicia, a relative of his mother, woke him up and told him that he (Pelicia) had shot somebody. Accused-appellant did not bother to ascertain who had been shot and where it occurred, as he was still in a drunken stupor. He went back to sleep. The next day, he met the elder Valentins and they told him Roderick had been shot. It was only then that he remembered what Pelicia told him the night before.

Accused-appellant Cortezano described Pelicia as a member of the CAFGU who had the same build, height and countenance as him. On the night the shooting took place, Pelicia went to the Cortezanos' house for a drinking session. He brought with him, and even publicly displayed, a .38 caliber handgun. The following day, Cortezano stated, he was threatened by Pelicia when the latter learned that Cortezano was related to the Valentins.

Cortezano also denied having confessed to Barangay Captain Jesus Alonzo that he was the one who shot Roderick. He alleged that Alonzo came to the Cortezano residence upon the request of accused-appellant's father. The elder Cortezano had wanted his son to be escorted to the Tinambac Police Station because they were afraid of Pelicia's threats.

However, on cross-examination, accused-appellant admitted that he confessed to having shot Roderick, but only because of Pelicia's threats against him. He also described his relations with the Valentin family prior to the incident as harmonious, such that they had no reason to testify falsely against him.

Hannibal Cortezano, accused-appellant's father, corroborated his son's testimony. He narrated that in the late afternoon of May 30, 1998, his son and a certain member of the CAFGU, later identified as Pelicia, arrived at the Cortezano residence. Pelicia wanted to take a bath, so his son gave him directions to the well where the local residents fetched fresh water. Some thirty minutes later, Pelicia returned from the well. Hannibal overheard Pelicia say to the accused, "Even if that person will be brought to the hospital, he will not survive." Then Pelicia removed the gun tucked into the waistband of his pants, and took out two (2) bullets from the chamber of the gun. Pelicia dared the people around him to take the gun, but they were all intimidated by his threatening stance. Pelicia warned them not to say anything or something bad would happen to them. He left Cortezano's house the following day, May 31, 1998, at around 2:00 in the afternoon.

Hannibal further denied that he facilitated his son's surrender before Barangay Captain Alonzo, but admitted asking Alonzo to accompany Job to the police headquarters at Tinambac since he had been informed by police investigator Crescencio Arganda that Job was the primary suspect.

Jovenal Agbones testified that at about 7:30 of that fateful evening, he was at the Cortezano residence to attend the barangay fiesta celebration. While there, he heard Pelicia remark that a certain person would not survive even if he were brought to the hospital. After hearing these words, he got scared so he left and went home. He described Pelicia as having the same build as accused-appellant, but a little bit taller than the latter.

In convicting accused-appellant, the trial court lent much weight to Jerny Valentin's eyewitness account of the events and his identification of Cortezano as the perpetrator. The trial court held that Jerny Valentin, who was then 13 years old, delivered a straightforward, unshaken and convincing narrative of the incident about the shooting of his brother, Roderick Valentin by accused-appellant. Secondly, Jerny's testimony was corroborated by the dying declaration of the victim, Roderick. More particularly, the trial court found:

In the instant case, the declaration of Roderick Valentin that he was shot by accused Job Cortezano as told by him to his father and mother is considered by this Court as a dying declaration and an exception to the hearsay rule. He stated until that time that he died that it was Job Cortezano who shot him and while he was telling his father and mother that it was Job Cortezano who shot him, he further told them that he could not bear it anymore. In other words, he knew of his impending death. Under such circumstances, knowing that his injuries were fatal and being aware that he would die soon, he could be expected to tell the truth. There was no motive for him to tell falsehood because of his awareness that he will soon die, as a matter of fact, immediately after and he did not even reach the hospital, he died on their way to the hospital. So that his dying declaration as narrated by him to his parents is entitled to the highest credence because knowing his impending death, he would not make any careless and false accusation. All the requisites as narrated above in order that a dying declaration may be an exception to the hearsay rule has been complied with.[4]

The trial court refused to give credence to accused-appellant's defense of alibi and denial, considering that he was positively identified as the one who shot Roderick Valentin. It found the attendance of the aggravating circumstance of treachery and rejected accused-appellant's claim of the mitigating circumstance of voluntary surrender.

Accused-appellant assails the eyewitness testimony of Jerny Valentin as being riddled with inconsistencies and implausibilities. Firstly, he posits that it is contrary to normal human behavior for a perpetrator to come near his victim after shooting, when the natural instinct of a gunman would be to flee and escape detection or identification. Secondly, accused-appellant points out that while Jerny testified in court that he recognized accused-appellant from the beam of his flashlight, in his earlier sworn statement, Jerny averred that he recognized accused-appellant when the latter ran towards the forested area near the seashore. Considering that it was dark and Jerny was about six meters away from where the gunman stood, the solitary illumination from Jerny's flashlight could not have been sufficient for both Jerny and Roderick to identify the gunman with utmost certainty.

We do not agree. There is no standard form of behavior among perpetrators of crimes. Some may flee from the crime scene, while others may approach the fallen victim to check on his condition or to see the job done. Still others go to take a look at the victim out of sheer morbid curiosity. There is nothing that precludes a gunman from going to his prey after shooting, especially when he does not expect resistance from the victim.

In the instant case, after having fired two shots, one for each of the Valentin brothers, in quick succession, it would not be contrary to known human behavior for accused-appellant to go to the banca, perhaps to ensure the success of his handiwork. Except for the Valentin brothers and accused-appellant himself, the place was deserted. It was dark, and therefore, he had no fear of being identified, much less apprehended. He only fled after Jerny's flashlight beamed on him and he realized his intended victims were not only alive, but were well enough to recognize him. Accused-appellant's actuations, as testified to by Jerny, are much in accordance with the behavior of most assailants. There is nothing implausible or incredible in Jerny's testimony on this matter.

It is of no moment that it was dark and that accused-appellant was about six (6) meters away from the Valentin brothers. We are aware of the fact that in a dark place, the brightness of a single lamp, or in this case a flashlight, is magnified. And when there are no obstructions, the beam of that flashlight can be as effective as the beacon of a lighthouse piercing the fog. Thus, we have repeatedly pronounced that flashlights, even mere moonlight or starlight, provides fair and sufficient illumination to identify an assailant.[5] Accused-appellant's assault on the credibility of the witness' testimony on that ground is therefore unmeritorious.[6]

There is no doubt that the Valentin brothers and accused-appellant knew each other very well. They are practically neighbors, residing in the same barangay. Accused-appellant even claims to be related to the Valentin brothers. Their ability to identify each other, even in unusual circumstances, cannot be easily impaired. Having gained familiarity with one another through the years, identification becomes a relatively easy task even from a considerable distance.[7] It is no wonder, then, that both Roderick and Jerny immediately recognized accused-appellant. Jurisprudence acknowledges that victims of criminal violence have the propensity for seeing, recognizing and remembering the faces and features of their attackers.[8] There is thus no compelling reason to doubt the accuracy of their identification of accused-appellant as their attacker.

Accused-appellant also points out that Jerny gave a different account of the events that fateful night in his sworn statement, casting doubt on the veracity of his testimony in court. Again, we find no merit in accused-appellant's contention. It is well-established that inconsistencies between testimony given in open court and sworn statements given to investigators do not necessarily discredit the witness since ex-parte affidavits are seldom complete.[9]

Moreover, it appears in the records of this case that Jerny was never allowed to explain the inconsistencies

between his testimony and the sworn statement. The records attest to this:

Q:

When you focused your flashlight to (sic) Job Cortezano on May 30, 1998, Mr. Witness, you agree with me that a flashlight was focused on his face that is why you were able to recognize him along the shore, am I right?

A:

I was able to focus the flashlight on the entire body of Job Cortezano

Q:

You mean to say that you were able to focus the flashlight entirely at one flash of your light?

A:

Yes, sir.

Q:

Immediately, you saw him, he was already running when you flash your flashlight?

A:

When I focused the flashlight at him, he was looking at us and after a while, he ran away.

Q:

But can you still remember, Mr. Witness, that you executed a sworn statement in connection with this case?

A:

Yes, sir.

Q:

Now, I am showing this to you, a Sworn Statement now attached to the record of the case appearing to be signed and duly executed by one, Jerny Valintin (sic), will you please go over it and tell the honorable court if this is the one which you executed?

A:

This is the one.

X X X X X X X X

Q:

Of course, in this Sworn Statement you can still remember that you made this statement when you were asked of (sic) this question. I am referring to question number 7 and I quote: “Q: How did you recognize said Job Cortezano who shot your brother inspite of nighttime.” And your Answer, which I quote: “I have with me a flashlight and I saw his face while running towards the forested area of seashore after he shot us.” Do you remember when you made that answer in your Sworn Statement?

A:

Yes, sir.

Atty. Tayer:

We likewise marked, just like the previous marking, for the purpose of the defense in this particular question and answer no. 7 be bracketed and marked as our Exhibit I-B. With that, your honor, I am through with my question.[10]

It is clear that while the pertinent portion of his sworn statement was read to Jerny, counsel for the defense failed to call his attention to the alleged discrepancy in order to elicit a response from him. Considering that the sworn statement was written in English, a language that Jerny admittedly could not understand, a cursory reading of that portion of the sworn statement naturally failed to impress upon Jerny the fact that his testimony differed from his extrajudicial statement. Moreover, the defense counsel never asked him to explain the inconsistency.

We have uniformly held that previous extrajudicial statements cannot be employed to impeach the credibility of a witness unless his attention is first directed to the discrepancies, and he must then be given an opportunity to explain them. It is only when the witness cannot give a reasonable explanation that he shall be deemed impeached.[11]

Besides, there may not even be a conflict at all. Jerny testified that he focused the flashlight on accused-appellant’s face and body, after which the latter ran away. In his sworn statement, Jerny narrated that he saw accused-appellant’s face while he was running towards the mangrove trees along the seashore. These two accounts do not necessarily conflict, but rather clarify further the chronology of events as witnessed by Jerny. He focused the light on accused-appellant, enabling him and Roderick to recognize the latter. When accused-appellant fled, Jerny trained the flashlight on accused-appellant, following his hasty flight towards the mangrove trees. Contrary to accused-appellant’s postulation, there is no inconsistency or discrepancy between Jerny’s testimony and sworn statement, at least none that would negate his creditworthiness.

The trial court correctly appreciated the testimony of Jerny who, at that time, was only thirteen (13) years old. It is the trial court that has the primary opportunity to observe the child-witness as he testifies and to weigh his apparent possession or lack of intelligence, as well as his understanding of the obligation of an oath.[12] The honesty and candor of Jerny is reflected in his testimony before the trial court. Thus, his competence and credibility to testify were properly considered by the trial court. Not only was Jerny a reliable eyewitness; his testimony itself was straightforward and worthy of credence.[13] We find nothing in this appeal that would compel us to rule otherwise.

Accused-appellant also assails the trial court’s reliance on Roderick’s dying declaration. He insists that the dying declaration is a mere product of the Valentins’ afterthought, considering that when Jimmy reported the crime to the police authorities on May 31, 1998, he stated that the assailant was unidentified. Jimmy’s reason, that he had a headache at that time, is a lame excuse, according to accused-appellant. He claims that the dying declaration is a

mere concoction employed to implicate him just because he closely resembles the real perpetrator.

Accused-appellant's contentions are bereft of merit. In the parallel case of *People v. Lapay*,^[14] we held that "delay in revealing the names of the malefactors does not, by itself, impair the credibility of the prosecution witnesses and their testimonies." Time and again, this Court has ruled that "the nondisclosure by the witness to the police officers of accused-appellant's identity immediately after the occurrence of the crime is not entirely against human experience."^[15]

In his testimony, Jimmy Valentin explained his lapse in making an identification at the time he reported the crime to the police thus:

A:

What I can say about that sir, is that I did not tell the police about the truth that I saw the one who shoot because I know the one who shoot because during that time I was asked by the police I had a headache. In addition I don't want my family to be involved in case I tell the truth to the police regarding the person that I know the one who shoot.^[16]

We find nothing unusual in this explanation of Jimmy Valentin. It is of judicial notice that family members of victims of violent crimes react to an unnatural occurrence in diverse ways. Some, if they have any information about the incident, would waste no time in telling the police everything they know. Others would rather choose, or are forced, to clam up and refuse to divulge any information they may possess. And then, there are the majority of family members who would first hesitate before they reveal what they know. This hesitation can be attributed to various circumstances, some of them attendant in this case.

First, it is understandable that at the time Jimmy reported the crime to the police, he was still reeling from extreme shock and grief due to the unexpected and gruesome death of his son. We note that he had had no rest from the time he heard from Jerny that Roderick had been shot, going through the trauma of watching his son die before his very eyes and hearing his son's cries of pain and despair up to the last breath. After all of that, he had to attend to the preparations for the wake and burial of Roderick's remains. That Jimmy must have suffered a terrible headache when talking to the police the following day is a fact that cannot be dismissed as a lame excuse. We are not unaware that headaches arising from traumatic or stressful events can be debilitating and may even affect a person's perception and judgment.

On the other hand, Jimmy knew that the killer of his son was still on the loose, and he had a very real fear that accused-appellant might turn his ire on the rest of the Valentin family should he point to accused-appellant as the killer. In fact, his other son, Jerny, had already been shot at by accused-appellant. Fear for one's life and that of his loved ones explains the failure on the part of a witness to immediately notify the authorities and identify the culprit.^[17]

In *People v. Santos*,^[18] we have ruled that the revelation by a widow a week later of her deceased husband's ante-mortem statement identifying his killer was a delay that was not without reason. This Court recognizes the inevitable fact that fear was the reason that compelled the victim's wife not to divulge the identity of the assailant when the police first investigated her. Thus, the delay does not detract from the credibility of her testimony in court.

For a man who eked out a meager living for himself and his family from fishing, Jimmy Valentin could only think of the safety of the rest of his family as his primary concern. The idea that failing to name accused-appellant as his son's assailant immediately to the police authorities might jeopardize the case against accused-appellant would not have crossed his mind at that very instant. He needed time to process the events in his mind, to weigh the

consequences, to consider the welfare of his family, even as he had to deal with the grief and pain from the sudden and violent death of his son. Be that as it may, it did not take him long to come to the realization that positively identifying accused-appellant as the killer repeatedly named by his son at the point of death would be the best thing to do.

In fine, when confronted with his omission, the reasons forwarded by Jimmy Valentin satisfactorily explained why he failed to disclose the name of the accused-appellant as the assailant. What is important is that he identified him as the person mentioned by Roderick in his dying declaration, when he testified in court. His delay in revealing the information that accused-appellant was the killer does not, by itself, impair his credibility,[19] nor does it make Roderick's dying declaration a mere figment of Jimmy's imagination. As we held in the Santos case:

Well-settled is the rule that delay in reporting the ante mortem declaration does not automatically render the testimony doubtful. Failure to reveal or describe the assailant's identity at once does not necessarily affect, much less impair, the credibility of said witness.[20]

It is equally established that an ante-mortem statement or a dying declaration is evidence of the highest order and is entitled to the utmost credence because no person who knows of his impending death would make a careless and false accusation.[21] At the brink of death, all thoughts of concocting lies are banished.[22]

The same declaration may even be considered as part of the *res gestae*. Roderick's declaration was made spontaneously after a startling occurrence; his statements were made before he had time to contrive or devise; and his statement concerned his attacker and the immediately attending circumstances of the attack.[23] Thus, the statements of Roderick, uttered shortly after he was shot and hours before his death identifying the accused-appellant as the gunman qualifies both as a dying declaration and as part of the *res gestae*. [24]

The trial court did not err in relying on Jimmy's and Tita Valentin's testimonies concerning Roderick's dying declaration. The trial court had the opportunity to observe the said witnesses firsthand and to determine if they were telling the truth or not.[25] Even if it were said that the Valentins are biased witnesses on account of their relationship with the victim, in the absence of a showing of improper motive on their part, their testimonies are not affected by the fact that the victim was their son.[26] It is a fundamental precept that relationship per se does not give rise to a presumption of bias, or ulterior motive, nor does it ipso facto impair the credibility or tarnish the testimony of a witness.[27]

Accused-appellant himself testified that he had harmonious relations with the Valentins prior to the incident; that he and Roderick were like brothers.[28] He admitted that the Valentins had no reason to implicate him for they were relatives. There was no shred of evidence to indicate that the witnesses for the prosecution were impelled by any improper motive. It is evident that they had no reason to falsely testify and thereby cause damnation to accused-appellant. Thus, their positive identification of accused-appellant as the perpetrator must prevail over accused-appellant's bare denials and contrived alibi.[29]

Anent accused-appellant's defense of alibi, we find no reason to depart from the well-entrenched rule that alibi is unavailing as a defense where there is positive identification, or when there is an ante-mortem declaration received in evidence either as a dying declaration or as part of the *res gestae* or both.[30]

Moreover, while accused-appellant was unable to prove that it was physically impossible for him to be at the scene of the crime at the time of its commission, several material points in his version of the events do not dovetail with that of his father's testimony. Accused-appellant stated that he arrived at his parents' house, drunk and alone, at around 7:00 in the evening of May 30, 1998. He then fell asleep and even missed eating dinner.[31] On the other hand, his father, Hannibal Cortezano, testified that accused-appellant arrived at his house with a

member of the CAFGU, later identified as Victor Pelicia, at 5:00 in the afternoon of the same day. After resting for a while, Hannibal narrated, accused-appellant directed Pelicia to the well because the latter wanted to take a bath. Pelicia returned thirty minutes later and stayed in the kitchen, where he had a drinking spree with several other persons.[32] It was then that Hannibal overheard Pelicia say that even if the victim was to be brought to the hospital, he would not survive. Hannibal further testified that accused-appellant went to sleep at around midnight at the end of the drinking session.[33]

In contrast, accused-appellant testified that Pelicia arrived at his parents' house at about 7:30 that night. He also categorically stated that only his parents, apart from himself, learned that night that Pelicia had shot someone, and that no one else knew or heard about the incident.[34]

While Hannibal Cortezano denies that he knew Pelicia before the incident, accused-appellant was aware that Pelicia was the relative of his mother and that he was an occasional guest at his parents' home during fiesta celebrations.[35]

The apparent discrepancies in their testimonies bore gaping holes in accused-appellant's defense of alibi. One did not corroborate the other. These are material because they failed to establish accused-appellant's true whereabouts and his activities on that night. Furthermore, the alleged participation of a certain Victor Pelicia in the commission of the crime is laden with doubt due to their conflicting depictions of his character and actuation.

The testimony of Jovenal Agbones did not help accused-appellant either. Whereas accused-appellant said he was sleeping, Jovenal narrated that accused-appellant was not yet drunk but was among those having a drinking session at the Cortezano house that night. He did state hearing someone say that even if the victim were brought to the hospital, he would not survive. Jovenal hurriedly left after hearing that remark because he got scared.[36] His testimony does not in any way bolster accused-appellant's claim that it was Victor Pelicia who shot Roderick. In fact, Jovenal's testimony only highlights accused-appellant's futile attempt to escape culpability by using alibi as a defense.

The easiest excuse accused-appellant can concoct is to claim that he was asleep when the crime was committed. Unfortunately for accused-appellant, his corroborating witnesses both declared that he was very much awake and was seen drinking with others before and after the crime occurred. It is, therefore, obvious that accused-appellant's alibi is not only inherently weak, but is also a potent fabrication.[37]

Furthermore, accused-appellant failed to prove that it was physically impossible for him to be at the scene of the crime or within its immediate vicinity. The records show that the Cortezanos' house was less than one (1) kilometer away from the place where the crime was committed.[38] Apart from saying that he was asleep at that time, accused-appellant presented no other credible evidence to prove that he was not at the locus delicti or scene of the crime when it was committed and that it was physically impossible for him to be at the crime scene at the proximate time of its commission.[39] The law dictates that the requirement of time and place must be stringently complied with.[40]

Where accused-appellant's alibi is established only by himself, his family and friends, his denial of culpability should pass the strictest scrutiny.[41] In this case, the defense dismally failed to establish any plausible alibi. Hence, it cannot prevail over the testimonies of the more credible witnesses for the prosecution.[42]

The trial court correctly appreciated the aggravating circumstance of treachery against accused-appellant. It held:

In the instant case, the victim Roderick Valentin was shot while on board a motorboat (sic). The assailant who was identified as the accused in this case was on the shore. The attack was so sudden which shows a treacherous execution of the criminal act. The unexpected and sudden attack by the accused rendered the

victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack, which constitutes alevosia. The evidence shows that when Roderick Valentin was attacked, he was on board the boat while his assailant was on the shore. So that with that situation, he could not defend himself and the assailant, the accused in this case employed means and method of execution which will insure the offender's safety from defensive or retaliatory act on the part of the offended party, which means that no opportunity is given the latter to defend himself or to retaliate. Furthermore, the severity and the location of the injuries as testified to by Dr. Betito shows that the attack was sudden. Such act of the accused, the means or method of execution was deliberately chosen by him, considering that the victim was on board the boat so he could not really defend himself which the assailant was on the shore. The qualifying circumstance of treachery having been proven by the prosecution, qualifies this case to the offense of murder as charged.[43]

On the other hand, the trial court rejected the mitigating circumstance of voluntary surrender, as claimed by accused-appellant. We quote with approval the trial court's ruling in this regard:

In the instant case no mitigating nor aggravating circumstances have been proven. In order that voluntary surrender can be considered as a mitigating circumstance, the following requisites must be present:

a)

the offender has not been actually arrested;

b)

the offender surrendered himself to a person in authority or to the latter's agent; and

c)

the surrender was voluntary. For a surrender to be voluntary, it must be spontaneous and show the intent of the accused to submit himself unconditionally to the authorities, either: 1) because he acknowledges his guilt; or 2) because he wishes to save them the trouble and expense incidental to his search and capture. (People vs. Disu, G.R. No. 109617, August 11, 1997).

The accused had testified that he voluntarily surrendered not because he has acknowledged his guilt but because there was a threat made by the person whom he alleged to be the real assailant. However, this alibi of the accused was not considered by the court.

As enunciated in the above ruling of the Supreme Court, in order for a voluntary surrender to be considered as a mitigating circumstance, it must show the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense incidental to his search and capture. This was not the main purpose of the accused when he surrendered, as a matter of fact, he denied in his defense that he had committed the crime charged. Because of such denial, his voluntary surrender cannot be considered a mitigating circumstance in his favor. There being no mitigating and no aggravating circumstances proven by the parties, the penalty to be imposed in accordance with Article 63 of the Revised Penal Code is the lesser penalty of what is provided for under Article 248 of the Revised Penal Code.[44]

Lastly, the trial court's award of P30,000.00 as and for moral damages should be increased to P50,000.00, in accordance with prevailing jurisprudence.[45]

The prosecution has also amply demonstrated that Roderick was 25 years old and was earning a daily wage of P200.00. Because Roderick was the eldest child and he was the family's source of financial support, it is but just

that the family be compensated for his loss of earning capacity. The formula for computing loss of earning capacity is $\frac{2}{3} \times [80 - \text{age of the victim at the time of death}] \times [\text{reasonable portion of the annual net income which would have been received as support by the heirs}]$.^[46] Hence, the lost earnings of the deceased Roderick Valentin is computed as follows:

$$= [\frac{2}{3} \times (80-25)] \times [P36,000.00]$$

$$= \textbf{P1,320,000.00}$$

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63, finding accused-appellant guilty beyond reasonable doubt of the crime of Murder, and sentencing him to suffer the penalty of reclusion perpetua, is **AFFIRMED** with **MODIFICATION**. As modified, accused-appellant is ordered to pay the heirs of the deceased, Roderick Valentin, the increased amount of P50,000.00 as moral damages and the amount of P1,320,000.00 for loss of earning capacity, in addition to the actual damages of P16,520.00 and civil indemnity of P50,000.00 awarded by the trial court. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Rollo, p. 100.

[2] Ibid., p. 65.

[3] Marked Entry No. 1733, page 572 dated June 1, 1998.

[4] RTC Decision, pp. 16-17.

[5] *People v. Lopez*, 312 SCRA 684, 696 (1999).

[6] *People v. Adoviso*, 309 SCRA 1, 11 (1999).

[7] *People v. Reyes*, 309 SCRA 622, 634-635 (1999).

[8] *People v. de la Cruz*, 313 SCRA 189, 201-202 (1999).

[9] *People v. Banela*, 301 SCRA 84, 92 (1999); *People v. Reduca*, 301 SCRA 516, 531 (1999).

[10] TSN, September 2, 1998, pp. 7-8.

[11] *People v. De Guzman*, 288 SCRA 346, 354 (1998).

[12] *People v. Garigadi*, 317 SCRA 399, 415 (1999).

[13] *People v. Villanueva*, 284 SCRA 501, 509 (1998); *People v. De Roxas*, 241 SCRA 369, 376 (1995).

[14] G.R. No. 123072, 298 SCRA 62, 78 (1998).

[15] *People v. Malimit*, 264 SCRA 167, 174-175 (1996).

[16] TSN, May 12, 1999, p. 2.

[17] *People v. Beduya*, 182 SCRA 57, 64 (1990).

[18] 270 SCRA 650, 668-669 (1997).

[19] *People v. Rosario*, 246 SCRA 658, 667 (1995); *People v. Ompad, Jr.*, 233 SCRA 62, 66 (1994).

[20] 270 SCRA 650, 668 (1997).

[21] *People v. Santos*, *supra*, p. 665.

[22] *People v. Rada*, 308 SCRA 191, 204 (1999).

[23] *People v. Peralta*, 237 SCRA 218, 224 (1995); *People v. Maguikay*, 237 SCRA 587, 600 (1994).

[24] *People v. Garma*, 271 SCRA 517, 522 (1997).

[25] *People v. Pelen*, 313 SCRA 683, 692 (1999).

[26] *People v. Durado, Sr.*, 321 SCRA 498, 512 (1999).

[27] *People v. Quilang*, 312 SCRA 314, 328 (1999).

[28] TSN, November 17, 1998, p. 7.

[29] *People v. Raganas*, 316 SCRA 457, 467 (1999); *People v. Aquino*, 314 SCRA 543, 554 (1999).

[30] *People v. Santos*, *supra*, p. 670.

[31] TSN, November 17, 1998, p. 3.

[32] TSN, January 12, 1999, pp. 3-4.

[33] *Ibid.*, pp. 10-12.

[34] TSN, November 17, 1998, p. 6.

[35] *Ibid.*, p. 9.

[36] TSN, February 3, 1999, pp. 3-6.

[37] *People v. Cabiles*, 284 SCRA 199, 216 (1998).

[38] TSN, November 17, 1998, p. 7.

[39] *People v. Ballesteros*, 285 SCRA 438, 446 (1998); *People v. Gargar*, 300 SCRA 542, 553 (1998).

[40] *People v. Floro*, 316 SCRA 304, 314 (1999).

[41] *People v. Jerez*, 285 SCRA 393, 402 (1998); *People v. Cantere*, 304 SCRA 127, 138 (1999).

[42] *People v. Sumalpong*, 284 SCRA 464, 486 (1998); *People v. Siguin*, 299 SCRA 124, 139 (1998).

[43] RTC Decision, pp. 20-21.

[44] RTC Decision, p. 22, Rollo, p. 99.

[45] *People v. Andres Ortiz y Pebrero*, G.R. No. 133814, July 17, 2001.

[46] *People v. Galido*, 326 SCRA 187, 197 (2000).

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