PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROLANDO MENDOZA Y CARPIO, APPELLANT.

G.R. No. 142654. November 16, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The reasons for the admissibility of a dying declaration as an exception to the hearsay rule are (a) necessity and (b) trustworthiness. Necessity, because death renders a declarant's taking the witness stand impossible, and it often happens that there is no other equally satisfactory proof of the crime. Hence, the declaration is allowed to prevent a failure of justice. And trustworthiness, for in the language of Lord Baron Eyre, the declaration is made in extremity, when the party is at the point of death and every hope of this world is gone, when every motive for falsehood is silenced and the mind induced by the most powerful considerations to speak the truth. A situation so solemn and awful is considered by the law as creating an obligation equal to that which is imposed by an oath administered in court.[1] The idea, more succinctly expressed, is that "truth sits on the lips of dying men."[2]

The Case

Before us is an appeal from the March 15, 2000 Decision[3] of the Regional Trial Court (RTC) of Caloocan City (Branch 127) in Criminal Case No. C-55995 (99), convicting Rolando Mendoza of murder and sentencing him to reclusion perpetua.

The decretal portion of the RTC Decision reads as follows:

> "WHEREFORE premises considered and the prosecution having established to a moral certainty the guilt of Accused ROLANDO MENDOZA of the crime of murder as defined and penalized under Art. 248 of the Revised Penal Code as amended by RA 7659, this Court hereby sentences the said accused to suffer the penalty of reclusion perpetua; to indemnify the legal heirs of the deceased the civil indemnity of P50,000.00; to compensate MELY CRUZ [for] the stipulated actual damages of P65,000.00; to pay Mrs. BEATRIZ VALDOZ moral damages of P40,000.00 and to pay the costs, without any subsidiary imprisonment in case of insolvency.
>
> "The preventive imprisonment suffered by the accused shall be credited in full in the service of his sentence in accordance with Art. 29 of the Revised Penal Code."[4]

The Information,[5] dated January 27, 1999, charged appellant, together with his co-accused Reynaldo Balverde, as follows:

> "That on or about the 11[th] day of October, 1998 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without any justi[fi]able cause, conspiring together and mutually aiding one another, with deliberate intent to kill and with treachery and evident prem[e]ditation, did then and there wil[l]fully, unlawfully and feloniously attack, assault and stab with bladed weapons on the different parts of his body one PRUDENCIO VALDOZ Y SANTOS, thereby inflicting upon the latter serious physical injuries which injuries caused the victim's death at East Avenue Medical Center after several days of

confinement."[6]

On March 15, 1999, the trial court issued warrants of arrest[7] against the two accused. Herein appellant was arrested on October 19, 1999[8] but his co-accused, Balverde, has remained at large. When arraigned on November 3, 1999, appellant pleaded[9] not guilty after the Information had been read and interpreted to him in a language that he fully understood.[10] After pretrial, trial on the merits ensued against him alone. Thereafter, the lower court promulgated its assailed Decision. The Public Attorney's Office, counsel for appellant, filed the Notice of Appeal on March 27, 2000.[11]

The Facts

Version of the Prosecution

In its Brief,[12] the Office of the Solicitor General presents the prosecution's version of the facts as follows:

"About 8:00 in the evening of October 11, 1998, Eduardo Mariquit was walking on his way home from his sister's house. While traversing Sta. Rita Street, San Vicente Ferrer, Tala, Caloocan City, he saw Prudencio Valdoz repeatedly stabbed by appellant Rolando Mendoza alias `Patsy' and Reynaldo Balverde, Jr. alias `Jingjing.' Using a kitchen knife, appellant stabbed Prudencio Valdoz on the stomach. Likewise, Reynaldo Balverde stabbed Prudencio twice with a butcher's knife, hitting the latter below the left armpit. Wounded, Prudencio Valdoz staggered and collapsed. Reynaldo Balverde alias `Jingjing' approached Eduardo Mariquit and warned him saying `wala kang nakita, wala kang narinig.' Thereafter, appellant and Reynaldo Balverde fled. Eduardo Mariquit went to help Reynaldo Valdoz. He assisted him in going to his house which was about twelve (12) meters away. Eduardo Mariquit thereafter went to see the victim's brother, Manuel Valdoz, and informed him that Prudencio was stabbed by appellant Rolando Mendoza alias `Patsy' and Reynaldo Balverde alias `Jingjing.'

"Meanwhile, Estrellita Carmelo was watching TV inside her house at 587 Barangay Sta. Rita, Tala, Caloocan City, when she noticed a commotion taking place outside. She heard people shouting that somebody was stabbed.

Estrellita Carmelo went out and saw Prudencio, her neighbor and co-worker, lying still and wounded. Estrellita Carmelo, accompanied by her neighbors, brought Prudencio to the Tala Hospital in a tricycle. Because the Tala Hospital lacked the necessary equipment to treat the victim, he was transferred to East Avenue Medical Center in Quezon City. Inside the operating room, Prudencio Valdoz beckoned to Estrellita Carmelo to come near him. When Estrellita moved closer and placed her ear near Prudencio's mouth, Prudencio, who was in great pain, told Estrellita x x x, `Ate, baka mamatay ako sasabihin ko sa iyo kung sino an[g] sumaksak sa akin, tandaan mo lang huwag mong kalimutan.' Prudencio told Estrellita that Rolando Mendoza alias `Patsy' and Reynaldo Balverde alias `Jingjing' stabbed him. Estrellita Carmelo stayed with the victim at the hospital till the next day.

"The following day, Manuel Valdoz called the police. PO3 Alex Barroga of the Caloocan City Police Station 6 arrived in the morning at the East Avenue Medical Center. He interviewed the victim and took his statements. In the presence of his relatives and Estrellita Carmelo, the victim, who was gasping for breath, gave his ante mortem statement. He pointed to appellant Rolando Mendoza alias `Patsy' and Reynaldo Balverde alias `Jingjing' as the persons who stabbed him. The victim affixed his signature on the ante mortem statement, with Manuel Valdoz and Merle Valdoz as witnesses.

"On October 19, 1998, the victim died.

"Police Superintendent Ma. Cristina B. Freyra, Medico-Legal Officer, PNP Crime Laboratory Services, Camp Crame, Quezon City conducted an autopsy on the cadaver of the victim. In a Medico-Legal Report No. M-1595-98, dated October 3, 1998, Dr. Freyra stated the following findings and conclusion:

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> `FINDINGS:
>
> POSTMORTEM FINDINGS:
>
> Fairly nourished, fairly developed, male cadaver in rigor mortis with postmortem lividity at the dependent portions of the body. The conjunctiva lips and nailbeds are pale. There is a surgical incision along the anterior midline of the abdomen, measuring 35 cm long with 34 stitches applied, including 6 tension sutures. Needle puncture marks noted at the distal 3[rd] of both firearms.
>
> TRUNK:
>
> 1) Stab wound, epigastric region measuring 2.6 cm long with 4 stitches applied, 13 cm left of the anterior midline, 120 cm from the heel, 6 cm deep, directed posteriorwards, upwards and medialwards, piercing the left dome of the diaphragm which was surgically repaired.
>
> 2) Stab wound, periumbilical region, measuring 1 cm long, just left of the anterior midline, 105 cm from the heel, 9 cm deep, directed posteriorwards, upwards and medialwards, piercing the head of the pancreas and the loops and mesentery of the small intestine.
>
> 3) Stab wound, left anterior lumbar region, measuring 1.5 cm long with 2 stitches applied, 19 cm from the anterior midline, 96 cm from the heel, 9 cm deep, directed posteriorwards, upwards and medialwards, piercing the loops and mesentery of the small intestine.
>
> There is thick greenish yellow exudate in the abdominal cavity.
>
> Stomach is empty.
>
> The rest of the visceral organs are grossly unremarkable.
>
> CONCLUSION:
>
> Cause of death is septic shock secondary to multiple wou[n]ds, trunk S/P Exploratory laparotomy.'

"Dr. Freyra declared that a typographical error was committed by the typist who inadvertently omitted to state Stab Wound No. 3 in the Medico-Legal Report. Dr. Freyra thus indicated in her own handwritting, Stab Wound No. 3 as follows:

> `STAB WOUND NO. 3 - ANTERIOR LUMBAR REGION, MEASURING 2 CM LONG WITH 1 STITCH APPLIED 14 CM FROM MIDLINE ANTERIOR, 107 CM FROM THE HEEL, 5 CM DEEP, DIRECTED POSTERIOR, UPWARD, AND MEDIALWARD, PIERCING THE LOOP AND MESENTERY OF SMALL INTESTINE.'

"Dr. Freyra further declared that the four (4) stab wounds sustained by the victim were all fatal."[13] (Citations omitted)

Version of the Defense

Appellant denies participation in the killing of Prudencio Valdoz.[14] He adds that the trial court gave too much weight and credence to the allegedly incredible testimony of prosecution's principal witness. Appellant reproduced the trial court's narration of the facts, as follows:[15]

> "Evidence for the Defense
>
> "As summarized by the trial court, the evidence for the defense, on the other hand, is quoted hereunder:
>
> "At past 8:00 p.m. of 11 October 1998, he (Accused MENDOZA) with co-accused REYNALDO BALVERDE, JR., @ JING-JING (accused BALVERDE for short) was walking home toward Dr. Puno Street,

> Barrio Sta. Rita North, Tala, this City coming from Sta. Rita South. Upon reaching the closed store of the BALVERDE, they saw Victim standing thereat with both hands tucked in his pockets. Thereupon Accused BALVERDE asked Victim how come he was still there at that time and the latter, who was apparently drunk, retorted: `BAKIT, ANONG PAKIALAM MO.' Thence Accused BALVERDE instructed Victim to go home but instead of acceding thereto Victim cursed him. At this juncture Accused MENDOZA intervened and after pacifying [the] victim, prevailed upon him to go home. As the latter was walking toward his house, Accused BALVERDE asked if they would still watch VHS tape but he failed to receive any answer, hence, Accused MENDOZA decided to go home. After negotiating a distance of about ten (10) meters accused MENDOZA looked back and saw Accused BALVERDE hurriedly walking uphill toward the direction of Victim, prompting accused Mendoza to follow him. While about 8 to 9 meters away from Accused BALVERDE, Accused MENDOZA called his name and in the process Victim whose attention was also alerted thereby, turned around and the next thing Accused MENDOZA saw was Accused BALVERDE and the victim engaging themselves in a fist-fight. Upon approaching the duo, Accused MENDOZA held with his left hand the right hand of Accused BALVERDE which was in Victim's waist and at the same time holding with his right hand Victim's arm, and then he pushed the protagonists, telling them: `ANO BA KAYO PARANG HINDI TAYO MAGKAKILALA.' Considering that the source of illumination at the scene was an electric post which was quite far, accused MENDOZA was unable to see clearly what actually transpired between the duo, except that he noticed when Victim raised his left arm and simultaneously uttering: `Hah' before walking ahead and at about a distance of 4 to 5 meters away he fell to the ground on his bended knees. Thinking that this was only brought about by victim's state of drunkenness, accused MENDOZA approached the Victim to take him home. At that instance, accused MENDOZA's brother-in-law JOSELITO GUTIERREZ (JOSELITO for short) and a certain teenager arrived and helped him (Accused MENDOZA) in lifting the Victim who when exposed to the light, they saw his T-shirt to be soaking with blood. At that instance, accused MENDOZA spotted accused BALVERDE running away uphill, thus, he tried to follow the latter to hold him answerable to whatever he did to victim. However, he lost track of accused BALVERDE when the latter entered an alley, hence, accused MENDOZA returned to where he came from and seeing victim already on board a tricycle with some companions including JOSELITO who was in another tricycle he decided to go home; that he never went to the police to identify the real assailant of victim; that he worked as a painter in Antipolo but used to go home every weekend and it was on 19 October 1999 when the police arrested him in connection with this case. Accused MENDOZA further stated that prosecution witness EDUARDO MARIQUIT must have entertained a grudge against him for reason that three weeks prior to the incident he drove him away without giving him anything to eat since their food at the table were just enough for the family especially his children and that before this, MARIQUIT used to drop-by their house on Sundays to beg for some food."[16]

Ruling of the Trial Court

In finding appellant guilty of murder, the court a quo gave full faith and credence to the testimony of the prosecution's principal witness, Eduardo Mariquit, who had positively identified appellant as the perpetrator of the crime. It likewise accepted the antemortem statement of the victim regarding his death and deemed such statement to have been made under the consciousness of impending death. These circumstances were held to prevail over appellant's defense of denial. Finally, the lower court also ruled that the killing was attended by treachery.

Hence, this appeal.[17]

The Issues

In his appeal before us, appellant assigns the following alleged errors for our consideration:

> "I
>
> The trial court erred in giving too much weight and credence to the incredible testimony of the prosecution's principal witness anent the subject incident and in totally disregarding the testimony of the accused-appellant

to the effect that it was his co-accused who stabbed the victim.

"II

The trial court erred in giving probative value to the alleged ante-mortem statement of the victim.

"III

The trial court erred in convicting the accused-appellant of the crime charged despite want of moral certainty.

"IV

On the assumption however that the accused-appellant is guilty, the trial court erred in convicting him of murder since the qualifying circumstance of treachery was not present relative to the incident in question."[18]

For a more systematic presentation, we shall reclassify the above alleged errors into three: (1) credibility of the witnesses, (2) evaluation of the antemortem statement, and (3) presence of treachery.

The Court's Ruling

The appeal is partly meritorious.

First Issue:
Credibility of the Witnesses

As in most criminal cases, the crux of the controversy lies in the evaluation of the credibility of the prosecution witnesses vis-à-vis the denial presented by the defense.

Appellant rejects the testimony of Mariquit and submits that "contrary to the x x x finding of the trial court, [his] testimony x x x anent the subject incident leaves much to be desired."[19] Appellant alleges that said testimony was "replete with material inconsistencies, if not contradictions on equally substantial points."[20]

We disagree. Categorical, candid and convincing was Mariquit's testimony, which positively pointed to appellant and his co-accused, Balverde, as the culprits. As in most criminal cases, the linchpin in the resolution of the instant case is the credibility of the witnesses.

Time and time again, this Court has declared that the findings of the trial court on this matter should not be disturbed on appeal, unless the latter has overlooked some facts or circumstances of substance and value which, if considered, might well affect the result of the case. This doctrine is premised on the undisputed fact that, since the trial court has the best opportunity to observe the demeanor of witnesses while on the stand, it can discern whether or not they are telling the truth.[21] The unbending jurisprudence is that its findings on the matter of credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal.[22] Appellant herein has not given the Court sufficient reason to deviate from this doctrine.

He contends that the court a quo erred in giving credence to Mariquit's testimony, which supposedly suffered from inconsistencies and contradictions on material points. He also points out several contradictions between the sworn statement and the court testimony of the said witness on what transpired before, during and after the stabbing of Valdoz.

First, while Mariquit testified that he had witnessed the stabbing incident, he also stated during the cross-examination that it was only when he was on his way home that he met the victim holding the latter's bloodied stomach. According to appellant, this inconsistency becomes more apparent in the sworn statement of this witness. Second, the latter intimated therein that the other accused, Balverde, was holding a butcher's knife

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while choking and trying to stab the former. The same witness testified in open court, however, that Balverde had merely approached and told him, "Wala kang nakita, wala kang narinig."[23]

Third, the witness was allegedly inconsistent on the events that transpired after the stabbing incident. While he testified earlier that he had gone home thereafter, he told the court later on that he had actually helped and even brought the victim to the latter's house. Fourth, appellant assails the witness' testimony on the number of stab wounds sustained by the victim, because this figure was belied by the medical findings. Fifth, appellant argues that while Mariquit insisted that he witnessed the incident, such assertion was contradicted by the latter's testimony during trial. The said witness admitted therein that he met appellant only after the former had relayed the occurrence to the victim's brother.

Refutation of Alleged Discrepancies

We begin by stating that Mariquit testified in a categorical, straightforward, consistent and spontaneous manner on how appellant and Balverde had stabbed and killed Valdoz, as follows:

"PROS. SISON/WITNESS:

Q

Will you please tell the Honorable Court where were you on October 11, 1998 at about 8:00 in the evening?

A

I was on my way home, sir.

Q

From where did you come from at that time?

A

In the house of my sister, sir.

COURT: (butts in)/WITNESS:

Q

Wait, where is the house of your sister located?

A

Same place, Your Honor.

Q

What same place?

A

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Sta. Rita, San Vicente Ferrer, Tala, Caloocan City, Your Honor.

PROS. SISON/TO WITNESS:

Q

While walking to your residence, what happened if there was any?

A

I saw Jing-jing and Patsy on my way home, sir.

Q

When you saw them what happened?

A

When I saw them they were stabbing Boy Valdoz, sir.

Q

And what happened next?

A

Jing-jing approached me and told me `WALA KANG NAKITA, WALA KANG NARINIG.'"[24]

x x x x x x x x x

"Q

If you can see this Patsy again will you be able to identify him?

A

Yes, sir.

Q

Will you look around the courtroom and point at him if he is here right now?

A

(Witness pointing to accused Rolando Mendoza.)

Q

Of course, if you can see Jing-jing again you will be able to identify him also just like accused Rolando Mendoza?

A

Yes, sir.

Q

Now, you said that it was accused Rolando Mendoza and a certain Jing-jing who stabbed Prudencio Valdoz?

A

Yes, sir.

Q

How did you know that Rolando Mendoza and Jing-jing were the ones who stabbed Boy Valdoz?

A

`Nakita ko po.'"[25]

x x x x x x x x x

"Q

You said a while ago that Prudencio Valdoz was stabbed by Jing-jing and Patsy, was Prudencio Valdoz hit?

A

Yes, sir.

Q

Why did you say that he was hit by those stab thrust[s]?

A

`Nakita ko po.'

Q

Why, what happened to him after the stabbing?

A

He was able to take a few steps before he fell, sir.

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Q

Now, will you tell us what kind of bladed weapon that was used in stabbing Prudencio Valdoz?

A

`Kutsilyo and a butcher's knife, sir.'

Q

Who was then holding that butcher's knife?

A

Jing-jing, sir.

Q

Describe that butcher's knife which you said held by Jing-jing?

A

About a foot long, sir.

COURT:(butts in)/WITNESS:

Q

Including the handle?

A

More than a foot long including the handle and about and inch thick, Your Honor.

PROS. SISON:/WITNESS:

Q

How about that kutsilyo held by Patsy?

A

Six (6) to seven (7) inches including the handle, sir.

COURT:(butts in)/WITNESS:

Q

How about the blade, how thick?

A

About an inch thick, Your Honor."[26]

x x x x x x x x x

"Q

You said, you actually saw the stabbing, you tell this Court how it was done. Let us go first to Jing-jing, how did he stab the victim?

A

(The witness demonstrated how Jing-jing stabbed the victim by his right hand.)

Q

How many thrust[s]?

A

Isa lang po ang nakita ko.

Q

Fronting to each other?

A

Yes, Your Honor.

Q

How about Patsy how did he stab the victim?

A

`Patagilid po.' Hitting the victim below the left armpit, Your Honor.

Q

How many thrust[s] did Patsy deliver?

A

Two (2) Your Honor.

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Q

And [did] those thrust[s] hit the victim?

A

Yes, Your Honor.

Q

What part of the body?

A

(The witness pointing at the side of the body, below the left armpit.)

Q

Are you sure?

A

`Sigurado po.'"[27]

The trial court even noted that "despite the efforts, albeit futile, exerted by the defense counsel to get from the mouth of Mariquit what he wanted the latter to say, the fact remains that said witness was steadfast and consistent in his answer [that he had] seen the actual stabbing of the victim by [the] accused [and] the court is inclined to believe [it,] being replete with details which only a person who truly witnessed the event could relate."[28]

Regarding the fact that Mariquit testified that he met the victim only after the incident, this does not in any way negate the former's testimony on having actually witnessed the stabbing. This much can be gleaned from his testimony in court:

"Q

Why did you say in your Sinumpaang Salaysay which was shown to you by the Defense Counsel in paragraph 2, you said `nasalubong ko si Prudencio Valdoz na duguan sapo ang kanyang tiyan,' why did you say that?

A

`Nakita ko po at, tinulungan ko siya.'

PROS. SISON:

There is no inconsistency because the stabbing comes first than the meeting of the victim.

COURT:

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It[']s very clear in the Sworn statement that he was walking then he met Prudencio bloodied holding his stomach.

COURT:/WITNESS:

Q

Which is true now?

A

`Nakita ko po ang pangyayari.'

Q

Why did you not tell that in your Sworn Statement?

A

`Hindi ko po alam ang gumawa niyan, yung Pulis ang gumawa niyan.'

Q

But you said, it was read to you by the Police?

A

Yes, Your Honor.

Q

Why did you not invite the attention of the Police?

A

`Wala na po.'

Q

What do you mean by wala na po?

A

`Wala na po akong magagawa kasi napirmahan na.'"[29]

The stabbing incident indeed came before Mariquit could meet the victim. The witness never testified that he had arrived only after the stabbing incident and met the victim afterwards. His categorical and positive statement was that he witnessed the stabbing and met the victim afterwards. In fact, even during his cross-examination, he

reiterated the fact that he had witnessed the stabbing and seen the victim and the assailants including appellant.

As to the events that transpired after the incident, appellant suggests that Mariquit gave inconsistent statements on whether the latter had just gone home afterwards or indeed helped the victim reach home. We see no material inconsistency in the statements of the said witness either in his affidavit or in his testimony in court.

Appellant attempts to muddle the events by alleging that the statements of Mariquit contained inconsistencies. Those inconsistencies, however, appear to touch merely on the order of the events as they transpired. These are of minor import and do not shatter altogether the credibility or the testimony of this witness. The fact that he met appellant and his co-accused after the stabbing did not mean that he could not have witnessed the stabbing. One event necessarily comes after the next.

Granting there were inconsistencies, these do not detract from the fact that appellant was positively identified by Mariquit as one of the assailants. This conclusion is supported by both the affidavit of the latter and his testimony in court. The same is true of his statement as to what Balverde did or said to him after the incident. Judging from his consistent assertions, Mariquit was clearly threatened by Balverde.

Finally, as to the alleged error in the statement of Mariquit on the number of stab wounds inflicted on the victim, it would be unfair to expect the former to ascertain an exact figure in a startling event like a killing. A fair estimate is enough. The important thing is that the stabbing took place, the victim died, and the witness identified the culprits.[30]

Recall of All Details Not Required

Considering the lapse of time and the treachery of human memory, truth-telling witnesses are not always expected to give error-free testimonies.[31] They are not expected to remember every single detail of an incident with perfect or total recall.[32] This Court has stated time and time again that minor inconsistencies in the narration of witnesses do not detract from their essential credibility as long as their testimonies are coherent and intrinsically believable on the whole.[33] Inaccuracies may in fact suggest that they are truthful and unrehearsed.

Likewise, the alleged conflict between the sworn statement and the testimony of Mariquit does not vitiate his credibility as a witness. It has been held that affiants are not necessarily discredited by discrepancies between their testimonies on the witness stand and their ex parte statements, which are generally incomplete.[34] Basic is the rule that affidavits taken ex parte are judicially considered to be incomplete and often inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which witnesses may be unable to recall the connected circumstances necessary for their accurate recollection.[35] Affidavits are generally subordinated in importance to open court declarations, because the former are often executed when affiants' mental faculties are not in such state as to afford them a fair opportunity to narrate in full incidents that have transpired.[36] Moreover, testimonial evidence carries more weight than an affidavit.[37]

The responsibility of appellant for Valdoz's death was indubitably established by both the sworn statement and the testimony of the said witness.

Appellant vigorously denies any participation in the death of Valdoz, maintaining that it was Balverde who actually stabbed and killed the victim. In the light of the positive identification of appellant as the perpetrator of the crime, this denial cannot be sustained.[38] Naturally, he would pass the blame to his co-accused in the belief that the latter, who has not yet been apprehended, will be in no position to contradict the former's assertions. Appellant ascribes ill motive to Mariquit. The latter allegedly testified the way he did, because the former had driven him away without giving him anything to eat. We agree with the trial court in assessing such argument as flimsy, when it ruled as follows:

> "Anent the ill-motive, supra, ascribed by the Accused against MARIQUIT for testifying the way he did against him in that 3 weeks prior to the incident, Accused has had the occasion to drive away MARIQUIT without giving him anything to eat for reason that the food they had on the table were just enough for his children and that MARIQUIT was admittedly the beneficiary of the dole outs in kind and/or cash from Victim's brother MANUEL VALDOZ, this was given scant consideration by this Court, finding the same to be flimsy nay not good enough reason for anyone to implicate to a commission of a heinous crime, an otherwise innocent acquaintance. Furthermore, this Court had observed closely the conduct and deportment of MARIQUIT on the witness stand and definitely it is not to be lightly supposed that he would be capable of callously violating his conscience by blaming the murder of Victim upon the Accused who he believed to be innocent thereof. Indeed there are authorities to the rule that the courts have always been cautious in dealing with the allegation of ill-will on the part of witnesses because of the facility by which accused can concoct the same."[39]

Second Issue:

Evaluation of the Antemortem Statement

Equally important is the fact that the evidence of the prosecution is corroborated not only by Mariquit's positive identification of appellant, but also by the victim's antemortem statement given both to the police and to Estrellita Carmelo, a co-worker. Such declaration identified appellant and Balverde as the assailants.

Antemortem statements are governed by Section 37 of Rule 130 of the Rules of Court, which is reproduced as follows:

> "Sec. 37. Dying Declaration - The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death."

A dying declaration, also known as an antemortem statement or a statement in articulo mortis, is admissible under the following requisites: (1) death is imminent and the declarant is conscious of that fact; (2) the declaration refers to the cause and the surrounding circumstances of such death; (3) the declaration relates to a fact which the victim is competent to testify to; and (4) the declaration is offered in a case wherein the declarant's death is the subject of the inquiry.[40]

Disputed in this case is the first requisite. The issue of whether a declaration was made under the consciousness of an impending death is a matter of evidence.[41] It must be shown that such declaration was made under a realization that one's demise or at least its imminence, not so much its rapid occurrence, was at hand.[42] This may be proven by the statement of the victim or inferred from the nature and extent of the victim's wounds or other relevant circumstances.[43]

Appellant specifically impugns the antemortem statement made by the victim before PO3 Alex Barroga on October 12, 1998, alleging that it was not made under a consciousness of impending death. That Valdoz was still strong, as testified to by his brother, is what appellant tries to impress upon this Court, so as to negate consciousness of imminent death.

We are not persuaded by appellant's arguments. First, the testimony of the brother of Valdoz regarding the latter's state of health relates to the days after the antemortem statement was made. As clearly testified to by the brother of the victim, the former's conversation with the latter had occurred between October 16 and 18, 1998; and the antemortem statement, on October 12, 1998. The brother testified that, at the time, the victim seemed strong enough to even move and sway his body to demonstrate how he had been stabbed. This fact, however, did not necessarily show that when the antemortem statement was taken four days earlier, the victim was not under a consciousness of death. The brother's testimony did not in any way negate the victim's consciousness of

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impending death at the time the dying declaration was made.

Statement Reflects
Consciousness of Death

Second and more important, the antemortem statement itself reflects Valdoz's consciousness of impending death in this wise:

> "03. TANONG - Sa palagay mo, ikamamatay mo ang tinamong sugat sa pagsaksak sa iyo?
>
> S - Opo."[44]

Furthermore, judging from the nature and the extent of his wounds, there can be no other conclusion than that the victim must have realized the seriousness of his condition.

Ma. Cristina Freyra, the medicolegal officer who had conducted the autopsy examination on the victim, testified as to the degree and seriousness of the stab wounds suffered by the latter, as follows:

> "x x x x x x x x x
>
> Q:
>
> [Y]ou mentioned madam witness that sta[b] wound No. 3 was not indicated here in this Report No. M-1595-98, will you please tell the honorable court the nature of that stab wound?
>
> WITNESS:
>
> A:
>
> [I]t was indicated on the left side of the abdomen and also fatal wound sir.
>
> Q:
>
> [W]hy did you say it was also fatal wound?
>
> A:
>
> [I]n fact all the wounds are fatal because they penetrated the left dome of the diaphra[g]m and the small intestines sir."[45]

Clearly, not only did the victim express in words his consciousness of his inevitable demise; the very nature of his wounds indubitably generated a consciousness that death was near.

Finally, the fact that the victim did not expire right after his declaration, but survived seven days thereafter, will not alter the probative force of his dying declaration. The occurrence of a declarant's death immediately thereafter is not indispensable.[46] The rule on dying declarations does not require that the person "should be at the time in the throes of death, or that he should die immediately, or within any specified time thereafter, in order to give the

declaration probative force. Where a person has been fatally wounded, is in sore distress therefrom, and believes that he will not recover and is soon to die, his statement made in this belief relating to the cause of his injury is admissible, if it appears that he subsequently died from the direct effects of the wound, although he may have revived after making the statements or may have lived a considerable time thereafter, and may have again begun to hope for recovery."[47]

It must also be noted that the victim made another antemortem statement to his co-worker, Estrellita Carmelo. This oral statement passes the requisites of a dying declaration as discussed earlier. That it was made under a consciousness of imminent death is without question, as shown by the witness' testimony which we quote:

"x x x x x x x x x

Q:

Upon arrival at the [e]ast [a]venue [m]edical [c]enter[,] what happened there?

A:

When I was inside the hospital Prudencio Valdoz was signalling me to come near him sir.

Q:

Where was he at the time the victim was signalling you to come near him?

A:

Inside the operating room sir.

Q:

Did you approach Prudencio Valdoz?

A:

Yes sir.

Q:

When you were already near him, what transpired?

A:

I placed my ear directly in to his mouth and he said something although he was suffering from pain.

Q:

Did you ask any question to him?

A:

Yes sir.

Q:

What was that question?

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A:

Who stabbed him sir.

Q:

And what was [the] answer?

A:

Sir Rolando Mendoza and Reynaldo Balverde. Rolando Mendoza alias Patsy and Reynaldo Balverde alias Jing-Jing.

Q:

Now what else did the victim Prudencio Valdoz tell you?

A:

Prudencio Valdoz told me, ate, baka mamatay ako sasabihin ko sa iyo kung sino ang sumaksak sa akin, tandaan mo lang huwag mong kalimutan."[48]

Third Issue:

Presence of Treachery

Be that as it may, we do not agree with the finding of the trial court that treachery attended the killing. To prove treachery, the following must be shown: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution.[49] It is also the running case law that where treachery is alleged, the manner of attack must be proven. Without any particulars as to the manner in which the aggression commenced or how the act that resulted in the victim's death unfolded, treachery cannot be appreciated.[50] It is not sufficient that the victim was unarmed and that the means employed by the malefactor brought the desired result. The prosecution must prove that appellant deliberately and consciously adopted such means, method or manner of attack as would deprive the victim of an opportunity for self-defense or retaliation.[51]

In the case at bar, although the prosecution's principal witness testified that he actually witnessed the stabbing, there was no statement to describe the circumstances surrounding the incident. Neither did the prosecution show how the attack was commenced.

We have ruled in a litany of cases that treachery cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself.[52] The same degree of proof to dispel any reasonable doubt is required before treachery may be considered as an aggravating or a qualifying circumstance.[53] Hence, where the circumstances surrounding either the manner of the attack or how the aggression was commenced has not been proven, as in this case, the appellant should be given the benefit of the doubt, and the crime should be considered only as homicide defined and penalized under Article 249 of the Revised Penal Code.

This provision prescribes the penalty of reclusion temporal for homicide. There being no mitigating or aggravating circumstance that can properly be appreciated, the penalty shall be imposed in its medium period.

As regards appellant's pecuniary liabilities, we affirm the award of P50,000 as civil indemnity ex delicto, consistent with current jurisprudence.[54] This award needs no proof other than the commission of the crime. Further, proven moral damages amounting to P40,000 are reasonable, considering the grief suffered by the victim's mother, a 75-year-old widow, at the sudden loss of her son who was her sole companion at home and the

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one supporting her. Moral damages -- which include mental anguish, serious anxiety and wounded feelings -- may be recovered in criminal offenses resulting in the victim's death.[55] Likewise, we affirm the award of P65,000 stipulated[56] actual damages.

WHEREFORE, the appeal is PARTLY GRANTED. Appellant Rolando Mendoza is found guilty beyond reasonable doubt of HOMICIDE and is sentenced to an indeterminate penalty of nine (9) years of prision mayor as minimum to fifteen (15) years of reclusion temporal as maximum. He is likewise ordered to pay the legal heirs of Prudencio Valdoz P50,000 as indemnity ex delicto; Mely Cruz, P65,000 as actual damages; and Mrs. Beatriz Valdoz, moral damages in the amount of P40,000. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Sandoval-Gutierrez, and Carpio, JJ., concur.

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[1] Francisco, The Revised Rules of Court in the Philippines, Vol. VII, 1997 ed., p. 531.

[2] People v. Hernandez, 205 SCRA 213, January 21, 1992, per Narvasa, CJ.

[3] Penned by Judge Myrna Dimaranan Vidal.

[4] Assailed Decision, p. 15; rollo, p. 32; records, p. 100.

[5] Signed by Asst. City Prosecutor Bagis S. Ismael; rollo, p. 5; records, p. 1.

[6] Rollo, p. 5; records, p. 1.

[7] Records, p. 13.

[8] Records, p. 18.

[9] Assisted by his counsel de oficio, Atty. Emmanuel Jimenez.

[10] See the lower court's Order dated November 3, 1999; records, p. 23.

[11] Rollo, p. 33.

[12] Signed by Asst. Sol. Gen. Carlos N. Ortega, Asst. Sol. Gen. Antonio L. Villamor and Sol. Raul J. Mandin.

[13] Appellee's Brief, pp. 3-8; rollo, pp. 114-119.

[14] Appellant's Brief was signed by Public Attorney IV Bartolome P. Reus and Public Attorney II Maximo B. Usita Jr. of the Public Attorney's Office.

[15] Appellant's Brief, pp. 5-7; rollo, pp. 53-55.

[16] Ibid.

[17] This case was considered submitted for decision upon this Court's receipt of Appellee's Brief on September 11, 2001. Appellant's Brief was filed on February 2, 2001. The filing of a Reply Brief was deemed waived, as none had been filed within the reglementary period.

[18] Appellant's Brief, pp. 1-2; rollo, pp. 49-50.

[19] Ibid., p. 7; rollo, p. 55.

[20] Ibid.

[21] People v. Baltazar, GR No. 129933, February 26, 2001; People v. Barrameda, GR No. 130177, October 11, 2000.

[22] People v. Manggasin, 306 SCRA 228, April 21, 1999; People v. Mengote, 305 SCRA 380, March 25, 1999; People v. Raptus, 198 SCRA 425, June 19, 1991.

[23] Appellant's Brief, p. 8; rollo, p. 56.

[24] TSN, December 15, 1999, p. 3.

[25] Ibid., pp. 6-7.

[26] Id., pp. 9-10.

[27] Id., pp. 22-23.

[28] Assailed Decision, p. 8; rollo, p. 72; records, p. 93.

[29] TSN, December 15, 1999, pp. 23-24.

[30] People v. Salazar, 277 SCRA 67, August 11, 1997.

[31] People v. Ebrada, 296 SCRA 353, September 25, 1998; People v. Paule, 261 SCRA 649, September 11, 1996.

[32] People v. Echegaray, 257 SCRA 561, June 25, 1996.

[33] People v. Ebrada, supra.

[34] People v. Padao, 267 SCRA 64, January 28, 1997; People v. Sarellana, 233 SCRA 31, June 8, 1994.

[35] People v. Macahia, 307 SCRA 404, May 19, 1999; People v. Maldo, 307 SCRA 424, May 19, 1999; People v. Siguin, 299 SCRA 124, November 24, 1998; People v. Barredo, 297 SCRA 246, October 7, 1998.

[36] People v. Empleo, 226 SCRA 454, September 15, 1993.

[37] People v. Matildo, 230 SCRA 635, March 2, 1994.

[38] People v. Balmoria, 287 SCRA 687, March 20, 1998; People v. Baydo, 273 SCRA 526, June 17, 1997; People v. Datun, 272 SCRA 380, May 7, 1997; People v. Apongan, 270 SCRA 713, April 4, 1997; People v. Caritativo, 256 SCRA 1, April 1, 1996.

[39] Assailed Decision, pp. 11-12; rollo, pp. 28-29; records, p. 96-97.

[40] Regalado, Remedial Law Compendium, Vol. II, 1995 ed., p. 605.

[41] People v. Santos, 270 SCRA 650, April 4, 1997.

[42] Ibid.

[43] Id.; People v. Macalino, 177 SCRA 185, August 31, 1989.

[44] Exh. "A," Antemortem Statement of the Victim.

[45] TSN, January 19, 2000, p. 5.

[46] People v. Bautista, 278 SCRA 613, September 5, 1997.

[47] Francisco, supra. at p. 534 citing People v. Cord, 157 Cal. 562, 108 P. 511, per Shaw, J.

[48] TSN, December 13, 1999, pp. 6-7.

[49] People v. Casingal, 337 SCRA 100, August 1, 2000; People v. Aquino, 322 SCRA 769, January 20, 2000.

[50] People v. Rios, 333 SCRA 823, June 19, 2000.

[51] People v. Maldo, supra., see note 28; People v. Molina, 292 SCRA 742, July 22, 1998; People v. Sumalpong, 284 SCRA 464, January 20, 1998.

[52] People v. Silva, 321 SCRA 647, December 29, 1999.

[53] Ibid.

[54] People v. Barrameda, supra, see note 19; People v. Ramirez, GR No. 138261, April 17, 2001; People v. Baltazar, supra, see note 19.

[55] Ibid.

[56] See the lower court's Order dated January 4, 2000; records, p. 54.

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