

## **PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CONRADO DE LEON, ANDRING DE LEON, JOHN DOE (AT LARGE), ACCUSED.**

*G.R. No. 144052. March 06, 2002*

Ponente: PANGANIBAN, J.

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### **PANGANIBAN, J.:**

Minor inconsistencies between sworn statements and testimonies do not affect the credibility of witnesses. The assessment of these inconsistencies is best left to the discretion of the trial judge who had the unique opportunity to observe their demeanor and conduct while they were testifying.

#### **The Case**

Before this Court is an appeal from the June 5, 2000 Decision[1] of the Regional Trial Court (RTC) of Malabon (Branch 170) in Criminal Case No. 16265-MN, convicting Conrado de Leon of murder and sentencing him to reclusion perpetua.

The decretal portion of the RTC Decision reads as follows:

“WHEREFORE, premises considered, the Court finds accused CONRADO DE LEON guilty beyond reasonable doubt of the crime of MURDER qualified by treachery and hereby imposes upon him the penalty of reclusion perpetua. Likewise, accused is hereby ordered to indemnify heirs of Crispin dela Peña in the amount of P50,000.00 by way of civil indemnity for the death of said victim, P30,000.00 by way of moral damages, P30,000.00 by way of exemplary damages and cost of the suit.

“In the meantime, send the record of this case to the archives until and after the arrest of the other two (2) accused.”[2]

The Information[3] dated October 19, 1995, charged appellant and his co-accused Andring de Leon and one John Doe, as follows:

“That on or about the 23[rd] day of June 1995, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, conspiring [and] confederating [with] and mutually helping x x x one another, with intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said weapon one CRISPIN DELA PEÑA y AGUILAR, hitting the victim on the different parts of his body, thereby inflicting upon the victim stab wounds, which caused his immediate death.”[4]

On October 30, 1995, the trial court issued a warrant of arrest[5] against the accused. Appellant was arrested on April 21, 1997[6] but his co-accused, Andring de Leon and one John Doe, remained at large. When arraigned on July 3, 1997, appellant pleaded[7] not guilty after the Information had been read and interpreted to him in a language that he fully understood.[8] 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 directly with this Court, the Notice of Appeal dated July 7, 2000.[9]

## The Facts

### Version of the Prosecution

In its Brief,[10] the Office of the Solicitor General adopts the version of the facts “synthesized by the trial court,” as follows:

“Simeona de la Peña narrated that around 3:00 o’clock in the early morning of June 23, 1995, the bloodied body of her son, Crispin de la Peña was brought to their house at Emergency Relocation Center in Tangos, Navotas, Metro Manila. She immediately embarked Crispin on a tricycle before transferring him into a jeepney to bring him to the nearest hospital. Passing along Bacog Street, Crispin related to her that he was ganged up and stabbed by three persons at the corner of M. Naval Street, Tangos near a videoke joint. He was at that time urinating and in fact his zipper was still open when apparently somebody tapped his shoulder. It turned out, however, that it was a stab thrust. When Crispin backslided, he was again stabbed on the stomach while his hands were being held as the battering continued. Crispin identified accused Conrado de Leon, along with the other accused, as among the persons who stabbed and ganged up [on] him. From the time Crispin was brought to her and on board the tricycle, he was repeatedly mentioning the names of the persons who assaulted him without any apparent reason. Crispin told her that he did not quarrel with anyone of the three (3) accused who ganged up on him. While traversing Bacog Street, Crispin was already having difficulty in saying a word because he was speaking very softly and in fact ha[d] to move his mouth near her ears in order to communicate. His eyes were drooping close unlike earlier [when] the same were wide open when he was brought home.

“Sometime in the month of May prior to the incident, Crispin went home crying because he was slapped by accused Rudy R. Manlapaz alias Talakitok who was asking fish out of their catch entrusted to Crispin by their manager. Nonetheless, the victim told accused Manlapaz that he [would] give them fish some other time. Accused Manlapaz got mad and slapped Crispin before threatening to kill him.

“Rudy dela Peña related that he was drinking inside MC Kitchenette/Snack House at Naval Street, Tangos, Navotas when his brother Crispin and Apollo Natividad arrived. The latter ordered and consumed two bottles of beer, [after which], he gave them another bottle, which they did not drink anymore. Crispin and Apollo told him that they could no longer drink more because they ha[d] each consumed one bottle of beer so he told them to go home. When Crispin and Apollo proceeded outside the MC Kitchenette, a commotion ensued which he did not bother to see because a melee [was] a natural occurrence in the place. However, the trouble reached the kitchenette. It was there when he saw a man x x x being held in both hands while accused Andring de Leon grabbed him by the chin and delivered a stab thrust on his neck. At that juncture, the man turned his head to the right. He readily recognized him to be his brother Crispin whose shirt was already tainted with blood because of the several stab wounds he had sustained. On his recognition of his brother, he immediately rushed towards him as Crispin was saying to his assailants ‘Bakit, talu-talo na ba tayo?’ He then carried his brother with his left hand and us[ed] his right hand to parry x x x several stab thrusts thrown by the assailants. He was able to destroy the wall of the comfort room despite the presence of all the accused blocking their escape. The door led them outside the MC Kitchenette. Seeing a pedicab, he immediately boarded his wounded brother therein. However, the driver was hesitant to drive them away because of the trouble that took place so he decided to look for another pedicab and brought Crispin home. His brother was still stable inside the pedicab because he managed to divulge to him the names of his assailants. He immediately noticed the blood oozing from the left side of the neck of Crispin as he was speaking. Upon reaching home, he woke up his mother and they transferred Crispin to another vehicle. Two policemen later on blocked and asked them where they were taking the victim. One of their companions instead uttered ‘Putang-ina ninyo, mamamatay na ang tao pinipigilan pa ninyo.’ He knew the assailants of his brother because he was once a fisherman like them. Accused Andring de Leon frequents the billiard hall in their place. He remembers the incidents that transpired between Crispin and accused Rudy Manlapaz alias Talakitok when his brother denied the request of the accused for some fish catch. Accused Manlapaz threatened Crispin that should they see each other again he would kill him.”[11] (Citations

omitted)

### Version of the Defense

Denial and alibi are alleged by appellant.[12] He faults the trial court for having given probative value to the supposed dying declaration of the victim. The court a quo, he adds, erred in giving too much weight and credence to the allegedly doubtful testimony of the prosecution's principal witness. Appellant presents the following version of the facts:[13]

"Accused CONRADO DE LEON testified that on June 23, 1995, he was in Montalban, Rizal with his in-laws. He was particularly with his mother-in-law, his wife and his children. He started living in Montalban since he was released from jail in July 31, 1994 up to August 1996 when he and his wife separated. After his separation from his wife, he then went home to Navotas. On April 21, 1997, he was arrested at Petron Gas station at Tangos, allegedly in connection with a stabbing incident that took place in Navotas. He [did] not know at all, the victim in this case. He came to know that he was being implicated in this case when the parole officer went to him at Montalban to inform him that he was being accused of the stabbing incident in Navotas. Thereafter, he went to see Barangay Captain Armando Roque and the latter told him that the killers of the victim at the Navotas stabbing incident were already known and he (accused) was not involved. According to Brgy. Captain Armando Roque, the killers were Alejandro de Leon, his (accused[']s) cousin and a certain Rudy Talakitok whom he [did] not know personally at all.

"ARMANDO ROQUE testified that on June 23, 1995, at around 3:00 o'clock a.m., his attention was called by the Barangay tanods regarding a stabbing incident that took place at M. Naval St., Tangos, Navotas, Metro Manila. He went to the scene of the incident. There, he conducted an investigation of the vicinity. A waitress at the KC Snack House told him that it was Andring de Leon and Talakitok who stabbed the victim Crispin dela Peña. After he conducted the investigation, he went home as it was already early morning. He was not able to prepare a report because their secretary was no longer present at that time. He disclosed that he [was] related to Andring de Leon since the wife of Andring de Leon [was] her relative. Two months after the incident, Conrado de Leon dropped by at the Barangay to inquire about his alleged involvement in the stabbing incident. He told Conrado de Leon that what he (appellant) was thinking [was] not true because he (witness) conducted his own investigation and only 2 persons were implicated namely Andring de Leon and Talakitok.

"ELENITA LIRIO y VILLACARTA testified that she knows the accused Conrado de Leon because he was her common law husband since 1986. They lived together in Montalban. On June 23, 1995, he was in Montalban together with the accused Conrado de Leon, her mother and children."[14] (Citations omitted)

### Ruling of the Trial Court

In finding appellant guilty of murder, the RTC gave full faith and credence to the testimony of the prosecution's witness, Reynaldo de la Peña, who had positively identified the former as one of the perpetrators of the crime. It likewise accepted the dying declaration of the victim regarding his death and deemed such declaration to have been made under the consciousness of his impending death. These circumstances were held to prevail over appellant's defense of denial and alibi. Finally, the lower court also ruled that the killing was attended by treachery.

Not satisfied with the judgment, appellant has lodged this appeal.[15]

### The Issues

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

"I

The trial court erred in giving probative value to the supposed dying declaration of the victim despite the fact

that the same was not made under the consciousness of an impending death.

“II

The trial court erred in giving credence to the testimony of prosecution eyewitness Reynaldo Dela Peña.

“III

The trial court erred in not giving any probative value to the defense of alibi interposed by accused-appellant.

“IV

The trial court erred when it directly participated in the active cross-examination of defense witness Armando Roque.

“V

Assuming in arguendo that the accused-appellant is guilty, the trial court erred in convicting him as a principal instead of just [as] an accomplice, in view of the fact that there is no evidence which shows that he acted in conspiracy with his co-accused.

“VI

The trial court committed reversible error when it ruled that treachery attended the commission of the crime.”[16]

We shall discuss the assigned errors in the following sequence: (1) credibility of prosecution witnesses, appellant’s defenses and the alleged wrongful participation of the trial judge; (2) validity of the antemortem statement; (3) proof of conspiracy; and (4) presence of treachery.

#### The Court’s Ruling

The appeal is partly meritorious. Appellant is guilty of homicide only, not murder.

#### First Issue:

##### Credibility of the Witness

As in most criminal cases, the ultimate resolution of this case depends upon the evaluation of the credibility of the prosecution witnesses vis-à-vis the denial presented by the defense.[17]

Appellant casts doubts on the testimony of Prosecution Witness Reynaldo de la Peña, arguing that since the latter was in a state of excitement due to the incident in question, “he could have been disillusioned as to what he observed, thus, the failure to see clearly what transpired and discern the respective participation of each of the accused.”[18]

We disagree. The testimony of De la Peña was categorical, convincing and unequivocal. He positively pointed to appellant and the latter’s co-accused as the culprits. This witness declared thus:

PROS. NEPTHALI ALIPOSA:

“Pros. (witness)

Q

What happened when your brother Crispin arrived?

A

They ordered x x x two bottles of beer and when they consumed the same I gave them another two bottles which they did not drink anymore, sir.

Q

What happened next?

A

They told me they will not drink the two bottles because they consumed one each already and I told them to go home, sir.

Q

Did your brother ac[c]ede when you told him to go home?

A

Yes, sir.

Q

What happened when he was going home?

A

After the two went outside the MC Kitchenet[t]e [a] commotion took place and I did not bother to see what was it considering that trouble [was] just natural in that kind of place but the trouble reached inside MC Kitchenet[t]e, sir.

Q

What happened when the commotion reached you?

A

I saw a man being held by Conrado x x x alias Talakitok and I saw A[n]dring de Leon holding a small balisong, sir.

Q

What did Andring do with that balisong in his possession?

A

While the man was being held in both hands and A[n]dring de Leon was in front of the person (the victim

herein) And[r]ing held the chin of the victim and stabbed him on the neck and at that juncture the victim turned his head to the right and that was the time I recognized that the victim was my brother. The victim had already [a] red t-shirt that was the reason I did not [recognize] him because my brother was wearing [a] white t-shirt, sir.

Q

You said that your brother was already wearing [red] t-shirt why did you say that?

A

Because of [the] blood, he already had several stab wounds, sir.

Q

When you recognized it was your brother what did you do next?

A

I took my brother and my brother told them ‘bakit, talo-talo na ba tayo,’ sir.

Q

What did you do to protect your brother?

A

While I was holding my brother with my left hand I used my right hand in taking a chair to par[r]y some more [thrusts] and I destroyed the wall of the comfort room because the assailants were at the front door blocking it and in order to escape I destroyed a door which [was] proceeding to the comfort room which was also proceeding outside the MC Kitchenet[t]e.

Q

Were you a[b]le to evade the further pursuit of the assailants?

A

Yes, sir.”[19]

x x x x x x x x

“Q

The three assailants if they are inside the courtroom can you point to them?

A

Only one is inside the courtroom, sir.

Q

Will you point to the person who is inside the courtroom?

(Witness pointing to a person answering to the name of Conrado de Leon)

Q

The other assailants – Andring and Talakitok if you see them again will you be able to identify them?

A

Yes, sir.

Q

Why do you know these persons especially the one whom you identified?

A

Because I used to see these fellows when I was a fisherman and A[n]dring frequents the billiard hall in our place, sir.”[20]

Appellant spiritedly argues that “[i]t is in moments of excitement and hurry, when our observation is distracted, that we are most subject to fallacious illusions of memory.”[21]

However, such “excitement and hurry” cannot be imputed to De la Peña. Being in the middle of the scene when the stabbing incident occurred, he was in a natural situation in which to look at the persons involved in the brawl. Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, witnesses can remember with a high degree of reliability the identity of criminals at any given time.[22]

More telling is the fact that the victim was the witness’ very own brother. De la Peña could not just have sat there and remained indifferent to the whole incident. In fact, he said in his testimony that he had come to his brother’s aid. With a chair, he tried to parry the further thrusts of the assailants.[23] Because he was directly involved in the face-to-face assault, it would have been highly improbable for him not to have observed their faces.

This Court has noted in many crimes of violence that the most natural reaction of persons involved in an attack is to strive to see the faces and the appearances of the assailants,[24] to observe the manner in which the crime was committed, and to approximate what might be the latter’s next move, either as an instinctive reaction or as a measure to fend off any further attack.[25]

Time and time again, this Court has declared that when the issue is one of credibility of witnesses and their testimonies, appellate courts will generally not disturb the findings of the trial court. That is, unless it plainly overlooked certain facts or circumstances of substance and value which, if considered, might well affect the result of the case.[26] This doctrine is premised on the undisputed fact that, since the trial court had the best opportunity to observe the demeanor of the witnesses while on the stand, it was in a position to discern whether or not they

were telling the truth.[27] 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.[28] Appellant has not given the Court sufficient reason to deviate from this doctrine.

#### Discrepancy Between the Sworn Statement and the Court Testimony

Appellant also faults De la Peña for having made an assertion in his Sworn Statement that was inconsistent with his court testimony. In his Affidavit, the question “Bakit talo-talo na ba tayo?” supposedly came from him; in his testimony, he said that these words were uttered by his brother, the victim.

This inconsistency is minor and does not shatter the credibility of the witness and his testimony. We have repeatedly held that minor disparities 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, particularly[29] when, as in this case, there is consistency in the narration of the principal occurrence and in the positive identification of the accused.[30]

Neither does the alleged conflict between the Sworn Statement and the testimony of De la Peña in open court vitiate his credibility. It has been held that affiants are not necessarily discredited by discrepancies between their testimonies on the witness stand and their generally incomplete ex parte statements.[31] Basic is the rule that affidavits taken ex parte are 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.[32] 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 the incidents that have transpired.[33] Moreover, testimonial evidence carries more weight than an affidavit.[34]

What is clear is that the responsibility of appellant for the victim’s death was indubitably established by both his Sworn Statement and his testimony.

#### Denial and Alibi

Appellant vigorously denies any participation in the death of Crispin de la Peña, maintaining that he was at the house of his mother-in-law in Montalban, Rizal when the stabbing incident occurred.

In the light of the positive identification of appellant as the perpetrator of the crime, his denial and alibi cannot be sustained.[35] Well-settled is the rule that the positive identification of the accused, when categorical and consistent and without any ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial.[36] Unless substantiated by clear and convincing proof, such defenses are negative, self-serving, and undeserving of any weight in law.[37]

In any event, alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove. For it to prosper, proof that the defendant was somewhere else when the crime was committed is insufficient; he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time.[38] We quote with approval the findings of the trial court on this matter:

“In his defense, accused Conrado de Leon denied any involvement in the incident at issue. He insinuated that he could not have committed the act complained of on June 23, 1995 because he was staying at the house of his mother-in-law in Montalban, Rizal from the time he was released from jail on July 31, 1994 and it was only in August 1996 when he returned to Navotas. It is by now a stale and trite principle that for alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed. It must likewise

be demonstrated that he was also so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. Aside from the fact that the evidence for the defense is bereft of any showing that it is highly improbable for accused Conrado de Leon to be at M. Naval St., Tangos, Navotas at the time of the commission of the crime charged[,] considering [that] the distance of the two places can be negotiated [in] just a matter of hours, nothing was established to prove that the accused could not in any way have participated in the killing of the victim. The defense suffers infirmity because it was only corroborated by the former live-in partner of the accused whose previous relationship with him would not erase the motive of helping her common-law-husband even to the extent of testifying falsely. Similarly, the declaration of Bgy. Tanod Armando Roque should likewise be rejected not only on account of being hearsay but likewise his relation to the wife of one of the accused is sufficient enough to cast doubt on his credibility.”[39]

This finding of the trial court is based on the well-entrenched rule that when the alibi of the accused can be confirmed only by relatives and friends who may not be impartial witnesses, a denial merits scant consideration, especially in the face of an eyewitness’ affirmative testimony on the presence of the accused in the crime scene.[40]

#### Participation of the Trial Judge

Neither can appellant find solace in his attack against the trial judge who, allegedly “itching to convict the accused-appellant[,] started cross-examining the witness even before the public prosecutor could ask his first question, thereby taking over from the prosecution the task of impeaching Armando Roque’s credibility.”[41]

As this Court has held, the participation of judges in the conduct of trials cannot be condemned outrightly.[42] They cannot be expected to remain always passive and stoic during the proceedings.[43] After all, they are not prohibited from asking questions when proper and necessary. In fact, this Court has repeatedly ruled that judges “must be accorded a reasonable leeway in asking [witnesses] questions x x x as may be essential to elicit relevant facts and to bring out the truth.”[44]

This means that “questions designed to clarify points and to elicit additional relevant evidence are not improper. Also, the judge, being the arbiter, may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time.”[45]

Trial judges may examine some of the witnesses for the defense for the purpose of ferreting out the truth and getting to the bottom of the facts. That they do so would not justify the charge that they assist the prosecution with the evident desire to secure a conviction, or that they intimidate the witnesses.[46]

Verily, they are judges of both the law and the facts.[47] They would be negligent in the performance of their duties if they permit a miscarriage of justice through their failure to propound questions that have some material bearing upon the outcome.[48] In the exercise of sound discretion, they may cross-examine these witnesses[49] or ask them such questions as will enable the former to formulate sound opinions on the ability of the latter to tell the truth, and to draw out relevant and material testimonies that may support or rebut the position taken by one or the other party.[50] Even if the clarificatory questions they propound happen to reveal certain truths that tend to destroy the theory of one of the parties, bias is not necessarily implied.[51]

In the present case, the only purpose of the trial judge was to arrive at the truth and do justice to both parties. An accusation of unfairness cannot be supported when his intention was merely to elicit the truth.[52] As this Court has already ruled, judges may ask questions that would elicit the facts of the issues involved, clarify ambiguous remarks by witnesses, and address the points that may have been overlooked by counsel.[53]

#### Second Issue:

## Antemortem Statement

Equally important is the fact that the evidence for the prosecution is corroborated not only by De la Peña's positive identification of appellant, but also by an antemortem statement of the victim given to the latter's mother, Simeona de la Peña. The victim identified appellant and his co-accused as the perpetrators of the crime.

Antemortem statements are governed by Section 37 of Rule 130 of the Revised Rules of Court, which we quote below:

“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 one that refers to the cause and surrounding circumstances of the declarant's death and is made under the consciousness of impending death.[54] Because of its necessity and trustworthiness, it is admissible in evidence as an exception to the hearsay rule. Necessity, because the declarant's death makes it impossible for him to take the witness stand;[55] and trustworthiness, for when a person is at the point of death, every motive for falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth.[56]

An antemortem statement is admissible, provided the following requisites are present: (1) death is imminent and the declarant is conscious of that fact; (2) the declaration refers to the cause and surrounding circumstances of such death; (3) the declaration relates to a fact that 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.[57]

Appellant disputes the victim's antemortem statement for not having been made under the consciousness of impending death. This issue is a matter of evidence.[58] It must be shown that the declaration was made under a realization that one's demise or at least its imminence, not so much its rapid occurrence, was at hand.[59] This may be proven by the statement of the victim or inferred from the nature and the extent of the victim's wounds or other relevant circumstances.[60]

The attendant circumstances in this case point to no other conclusion than that the victim must have realized the seriousness of his condition and was therefore under an impression of impending death. This was borne out by his physical condition, especially the nature and the extent of his wounds. This much was found by the RTC which ruled:

“x x x. While the prosecution did not establish in so many words that the victim, when he spoke of the incident, was conscious of his impending death, this Court believes that the exception of dying declaration has been substantially complied with, it appearing that on the said occasion the victim was in a serious condition, was speaking very softly, his eyes were already drooping and could hardly communicate unless [he] moved closer to the ears of his mother. Furthermore, judged by the nature of the stab wounds inflicted, the victim could not ignore the seriousness of his condition. It may be deduced with certainty that although the victim's mind seemed clear, yet [he] did not express that he felt he was dying and that he lost all hope of surviving the stabbing incident, still he was [in] that condition. In fact, minutes after the victim made the statements, he expired.”[61]

This finding is supported by the testimony of the mother[62] to whom the declaration was communicated.

## Third Issue:

### Proof of Conspiracy

Appellant argues that there is no showing that he had any previous agreement or understanding with his

co-accused to kill the victim. Appellant then submits that, assuming he is guilty, his participation in the crime is limited to holding the hands of the victim while the latter was being stabbed by the co-accused. Thus, appellant argues that he can be held only as an accomplice.

We are not persuaded. There is no doubt that appellant and his co-accused acted in conspiracy because of their concerted actions in attacking and stabbing the victim. Direct proof is not essential to establish conspiracy; it may be inferred from the acts of the assailants before, during, and after the commission of the crime.[63] In a conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim; what is important is that all participants performed specific acts with such closeness and coordination as to indicate an unmistakably common purpose or design to bring about the death of the victim.[64] Thus, the act of one becomes the act of all, and each of the accused will thereby be deemed equally guilty of the crime committed.[65]

To be sure, there must be a showing that each co-accused cooperated in the commission of the offense, either morally -- through advice, encouragement or agreement -- or materially through external acts indicating a manifest intent to efficaciously supply aid in the perpetration of the crime.[66]

Appellant held the hands of the victim and rendered the latter helpless while being stabbed by Andring de Leon. These acts showed that appellant had knowledge of his companions' criminal design, and that he had indispensable participation therein.[67] It is immaterial that he merely held the hands of the victim while the latter was being stabbed by the co-accused. In view of the presence of conspiracy, all the perpetrators of the crime bear equal responsibility.[68]

Fourth Issue:

Presence of Treachery

However, we do not agree with the finding of the trial court that treachery attended the killing. Well-settled is the rule that treachery must be proved by clear and convincing evidence as conclusively as the killing itself.[69] The same degree of proof to dispel any reasonable doubt is required before treachery may be considered as an aggravating or a qualifying circumstance.[70] Any doubt as to its existence must be resolved in favor of the accused.[71]

There is treachery when the offender commits any of the crimes against the person while employing means, methods, or forms in the execution thereof, tending directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[72] 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.[73]

Inevitably, where treachery is alleged, the manner of attack must be proven.[74] 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.[75] It is not sufficient that the victim was unarmed and that the means employed by the malefactor brought about 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.[76]

In the case at bar, the prosecution's principal witness testified that he had actually witnessed the stabbing, but not the commencement of the attack. In fact, he himself declared that the commotion had begun outside the establishment he was in.[77]

Where, as in this case, there is no proof of the circumstances surrounding the manner in which the aggression commenced, appellant should be given the benefit of the doubt and treachery cannot be considered. Because there

was no showing of the particulars on the manner in which the aggression was commenced or how the act that resulted in the death of the victim began and developed, we cannot hold that treachery has been established.[78]

Neither can the commencement of the aggression be established conclusively by the victim's antemortem statement. Although, taken together with the witness' testimony, it indubitably established the fact that the accused and his co-defendants were the victim's assailants, it did not state how the attack began.

True, the essence of treachery is the swiftness and the unexpectedness of an attack upon an unsuspecting and unarmed victim who has not given the slightest provocation.[79] However, the suddenness of the attack does not, by itself, suffice to support a finding of alevosia even if the purpose is to kill, so long as the decision is sudden and the victim's helpless position is accidental.[80] In order to appreciate treachery as a modifying circumstance in a continuous aggression, as in the present case, it must be shown to have been present at the inception of the attack.[81]

Since the presence of treachery at the commencement of the aggression was not conclusively established by the prosecution, this circumstance cannot be applied.[82] Thus, appellant can be convicted only of homicide,[83] for which the penalty that may be imposed under the Revised Penal Code is reclusion temporal.[84] There being no mitigating or aggravating circumstance that can properly be appreciated, the penalty shall be imposed in its medium period,[85] after the application of the Indeterminate Sentence Law.

As regards appellant's pecuniary liabilities, we affirm the award of P50,000 as civil indemnity ex delicto, consistent with current jurisprudence,[86] and P30,000 as moral damages. However, the award of exemplary damages is deleted because of the absence of any aggravating circumstance.[87]

WHEREFORE, the appeal is PARTLY GRANTED. Appellant Conrado de Leon is found guilty beyond reasonable doubt of HOMICIDE, not murder, and is sentenced to an indeterminate penalty of nine (9) years of prison mayor as minimum to fifteen (15) years of reclusion temporal as maximum. He is likewise ordered to pay P50,000 as indemnity ex delicto and P30,000 as moral damages. Costs against appellant.

### **SO ORDERED.**

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

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[1] Penned by Judge Benjamin T. Antonio.

[2] Assailed Decision, p. 6; rollo, p. 15; records, p. 155.

[3] Signed by Asst. City Prosecutor Consorcio D. Giolagon; rollo, p. 4; records, p. 1.

[4] Rollo, p. 4; records, p. 1.

[5] Records, p. 13.

[6] Records, p. 14.

[7] Assisted by his counsel de oficio, Atty. L. Sotto.

[8] See the RTC's Order dated July 3, 1997; records, p. 29.

[9] Rollo, p. 16; records, p. 157.

[10] Signed by Asst. Sol. Gen. Carlos N. Ortega, Asst. Sol. Gen. Rodolfo G. Urbiztondo and Asso. Sol. Alberto R. Tuazon.

[11] Appellee's Brief, pp. 4-7; rollo, pp. 83-86.

[12] Appellant's Brief was signed by Public Attorney IV Bartolome P. Reus, Public Attorney II Ramon E. A. Gatchalian, and Public Attorney II Howard B. Areza of the Public Attorney's Office.

[13] Appellant's Brief, pp. 7-9; rollo, pp. 45-47.

[14] Ibid.

[15] This case was considered submitted for decision upon this Court's receipt of Appellee's Brief on July 19, 2001. Appellant's Brief was filed on March 19, 2001. The filing of a Reply Brief was deemed waived, as none had been submitted within the reglementary period.

[16] Appellant's Brief, pp. 1-2; rollo, pp. 39-40; original in upper case.

[17] *People v. Menegdeg*, 316 SCRA 689, October 13, 1999; *People v. Sabal*, 247 SCRA 263, August 14, 1995.

[18] Appellant's Brief, p. 13; rollo, p. 51.

[19] TSN, June 9, 1998, pp. 2-3; records, pp. 127-128.

[20] Ibid., p. 4; records, p. 129.

[21] Appellant's Brief, p. 13; rollo, p. 51.

[22] *People v. Sumallo*, 307 SCRA 521, May 24, 1999; *People v. Verzosa*, 294 SCRA 466, August 20, 1998.

[23] TSN, June 9, 1998, p. 3; records, p. 128.

[24] *People v. Teehankee Jr.*, 249 SCRA 54, October 6, 1995; *People v. Salazar*, 248 SCRA 460, September 20, 1995.

[25] *People v. Avillano*, 269 SCRA 553, March 13, 1997.

[26] *People v. Jose*, 307 SCRA 571, May 24, 1999; *People v. Laceste*, 293 SCRA 397, July 30, 1998.

[27] *People v. Baltazar*, GR No. 129933, February 26, 2001; *People v. Barrameda*, 342 SCRA 568, October 11, 2000.

[28] *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.

[29] *People v. Khor*, 307 SCRA 295, May 19, 1999; *People v. Ebrada*, 296 SCRA 353, September 25, 1998.

[30] *Sumalpong v. CA*, 268 SCRA 764, February 26, 1997.

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

[32] *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.

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

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

[35] *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.

- [36] *People v. Lovedorial*, GR No. 139340, January 17, 2001; *People v. Enriquez*, 292 SCRA 656, July 20, 1998.
- [37] *People v. Jose*, 324 SCRA 196, January 31, 2000, citing *People v. Villablanca*, 316 SCRA 13, October 1, 1999.
- [38] *People v. Hofileña*, 334 SCRA 214, June 22, 2000; *People v. Legaspi et al.*, 331 SCRA 95, April 27, 2000; *People v. Llanes*, 324 SCRA 727, February 4, 2000; *People v. Rendoque*, 322 SCRA 622, January 20, 2000.
- [39] Assailed Decision, pp. 5-6; rollo, pp. 14-15.
- [40] *People v. Macaliag*, 337 SCRA 502, August 9, 2000.
- [41] Appellant's Brief, p. 16; rollo, p. 54.
- [42] *People v. Basquez*, GR No. 144035, September 27, 2001.
- [43] *Ibid.*
- [44] *Barbers v. Laguio*, AM No. RTJ-00-1568, February 15, 2001, per De Leon Jr., J.
- [45] *Cosep v. People*, 290 SCRA 378, May 21, 1998, per Romero, J.
- [46] *People v. Zheng Bai Hui*, 338 SCRA 420, August 22, 2000, citing *United States v. Lim Tiu*, 31 Phil. 504, September 27, 1915.
- [47] *People v. Adora*, 275 SCRA 441, July 14, 1997.
- [48] *United States v. Hudieres*, 27 Phil 45, March 7, 1914.
- [49] *People v. Manalo*, 148 SCRA 98, February 27, 1987.
- [50] *Ibid.*
- [51] *People v. Ibasan Sr.*, 129 SCRA 695, June 22, 1984.
- [52] *People v. Basquez*, *supra*.
- [53] *People v. Herida*, GR No. 127158, March 5, 2001.
- [54] *People v. Enad*, GR No. 122934, January 5, 2001.
- [55] *People v. Bautista*, 278 SCRA 613, September 5, 1997; *People v. Sion*, 277 SCRA 127, August 11, 1997.
- [56] *People v. Amaca*, 277 SCRA 215, August 12, 1997.
- [57] Regalado, Remedial Law Compendium, Vol. II, (1995 ed.), p. 605.
- [58] *People v. Santos*, 270 SCRA 650, April 4, 1997.
- [59] *Ibid.*
- [60] *Id.*; *People v. Macalino*, 177 SCRA 185, August 31, 1989.
- [61] Assailed Decision, pp. 4-5; rollo, pp. 13-14.
- [62] TSN, June 1, 1998, pp. 5-7; records, pp. 120-122.
- [63] *People v. Templa*, GR No. 121897, August 16, 2001; *People v. Magallano*, 266 SCRA 305, January 16, 1997.

- [64] *People v. Azugue*, 268 SCRA 711, February 26, 1997.
- [65] *People v. Visaya*, GR No. 136967, February 26, 2001; *People v. Quinao*, 269 SCRA 495, March 13, 1997.
- [66] *People v. Custodio*, 47 SCRA 289, October 30, 1972.
- [67] *People v. Obello*, 284 SCRA 79, January 14, 1998; *People v. Montealegre*, 161 SCRA 700, May 31, 1988.
- [68] *People v. Nang*, 289 SCRA 16, April 15, 1998; *People v. Piandiong*, 268 SCRA 555, February 19, 1997.
- [69] *People v. Orio*, 330 SCRA 576, April 12, 2000; *People v. Silva*, 321 SCRA 647, December 29, 1999; *People v. Silvestre*, 307 SCRA 68, May 12, 1999; *People v. Eribal*, 305 SCRA 341, March 25, 1999.
- [70] *People v. Silva*, *supra*.
- [71] *People v. Santos*, 332 SCRA 394, May 31, 2000.
- [72] Par. 16, Article 14, Revised Penal Code.
- [73] *People v. Casingal*, 337 SCRA 100, August 1, 2000; *People v. Aquino*, 322 SCRA 769, January 20, 2000.
- [74] *People v. Rios*, 333 SCRA 823, June 19, 2000.
- [75] *People v. Nalangan*, 270 SCRA 234, March 20, 1997.
- [76] *People v. Maldo*, *supra*; *People v. Molina*, 292 SCRA 742, July 22, 1998; *People v. Sumalpong*, 284 SCRA 464, January 20, 1998.
- [77] TSN, June 9, 1998, p. 2; records, p. 127.
- [78] *People v. Basao*, 310 SCRA 743, July 20, 1999; *People v. Real*, 308 SCRA 244, June 14, 1999.
- [79] *People v. Ubaldo*, 342 SCRA 338, October 9, 2000, citing *People v. Rebamontan*, 305 SCRA 609, April 13, 1999.
- [80] *People v. Templo*, 346 SCRA 626, December 1, 2000.
- [81] *People v. Porras*, 255 SCRA 514, March 29, 1996.
- [82] *People v. Amamangpang*, 291 SCRA 638, July 2, 1998, citing *People v. Salvador*, 224 SCRA 819, July 30, 1993 and *People v. Cordero*, 217 SCRA 1, January 5, 1993.
- [83] *People v. Hilot*, 342 SCRA 128, October 5, 2000.
- [84] Art. 249, Revised Penal Code.
- [85] Art. 64 (1), Revised Penal Code.
- [86] *People v. Ramirez*, GR No. 138261, April 17, 2001; *People v. Baltazar*, GR No. 129933, February 26, 2001.
- [87] Art. 2230, Civil Code. See also *People v. Nanas*, GR No. 137299, August 21, 2001; *People v. Toledo Sr.*, GR No. 139961, May 9, 2001.

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