

EDWEL MAANDAL, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 144113. June 28, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal by way of a petition for review on certiorari of the decision, dated April 28, 2000, and the resolution, dated June 12, 2000, of the Court of Appeals,[1] affirming in its entirety the decision of the Regional Trial Court, Branch 12, Lipa City, finding petitioner Edwel Maandal guilty of homicide and sentencing him to an indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum, and to pay the heirs of the victim Danilo Atienza P20,000.00 as actual damages, P50,000.00 as indemnity for his death, and the proportionate share of the costs of the suit.[2]

The information against petitioner and his co-accused alleged:

That on or about the 9th day of May 1993 at about 4:00 o'clock [sic] in the afternoon, in front of the house of Canuto Manguiat, at Barangay Pinagkawitan, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, while armed with an armalite, together with Noel Maandal and Elmer Maandal, who are still at large and whose whereabouts are unknown and whose case is pending preliminary investigation, with intent to kill, with treachery, did then and there wilfully, unlawfully, and feloniously attack, assault, and shoot one Danilo Atienza, thereby inflicting upon the latter multiple gunshot wounds, which directly caused his death.

Contrary to law.[3]

Upon being arraigned on September 14, 1993,[4] petitioner Edwel Maandal, assisted by counsel, pleaded not guilty to the crime charged. The other accused, Elmer and Noel Maandal, evaded arrest and have remained at large to this date. Hence, trial ensued only as to herein petitioner.

The prosecution presented the following witnesses: Marino Atienza (cousin of the victim, Danilo Atienza), Rafael Atienza (father of the victim), Dr. Elviro Africa (Acting Lipa City Health Officer), and Lorna Tria (Forensic Analyst). Their testimonies establish the following:

On May 9, 1994, at approximately 4:00 p.m., Marino was in the house of his uncle, Canuto Manguiat, at Barangay Pinagkawitan, Lipa City, looking for his cousin Rolando in order to buy the latter's fighting cock. He heard several gunshots whereupon he looked out of the window to see what was happening and saw his cousin, Danilo Atienza, sprawled on the ground. Danilo had been shot with an armalite by a person whom Marino recognized to be petitioner Edwel Maandal. Marino also saw Elmer, a brother of Edwel, standing three (3) meters from Edwel.

The brothers then boarded a waiting jeep bearing license plate no. TCK-137 parked about 200 hundred meters

away from the scene of the shooting. Noel, another brother of petitioner, drove the jeep towards the direction of Padre Garcia, Batangas.

After the assailants had left, Marino rushed to the residence of Rafael Atienza, the victim's father, to inform him of the incident. However, Rafael was not in his house so Marino instead informed the victim's mother. Upon learning that Rafael was at the quarry of Gurayab at Barangay Antipolo, Lipa City, Marino proceeded there. Marino then accompanied Rafael and Edwin, the victim's brother, to the place where the lifeless body of Danilo lay.[5]

The victim lay in state at the Atienza residence in Pinagkawitan, Lipa City. According to Atienza, the family incurred expenses amounting to P20,000.00 for the victim's funeral and interment.[6]

Two days after the shooting, on May 11, 1994, Marino gave a sworn statement(Exh. A)[7] concerning the incident to SPO3 Reynaldo Saludo. On the same day, Rafael also gave his sworn statement to the police.

Dr. Elviro Africa, Acting Lipa City Health Officer, conducted a postmortem examination of the victim's body at 8:15 p.m. on May 9, 1993. His findings (Exh. D-1) revealed that the victim sustained the following injuries:

Head:

- Gunshot wound, entrance 0.8 x 0.8 cm. right canthus, right eye.
- Gunshot wound, entrance right eye, measuring 0.8 x 0.8 cm.
- Gunshot wound, right pre-auricular area, 0.8 x 0.8 cm.
- Entrance wound, 0.8 x 0.8 cm. right maxillary area.
- Exit wound, covering the left aural and pre-auricular area 5 x 3 cm.

Chest:

- Entrance wound, measuring 0.8 x 0.8 cm. at the left lower quadrant.
- Exit wound 9 x 3.7 cm. at the right anterior chest, mid clavicular line at the level of the 3rd intercostal space.
- Exit wound with omental tissues plug at os measuring 4 x 3 cm. at the left upper quadrant of the abdomen.
- Entrance wound midsternal line at the level of the 3rd intercostal space with powder burns 0.8 x 0.8 cm.

Back:

- Entrance wound 0.8 x 0.8 cm. at the left lower humeru-scapular joint with powder burns exit at wound number 2 of chest.
- Exit wound 9.5 x 5.5 cm. at the left posterior axillary line just below the axilla-exit of wound number 4.
- Entrance wound 0.8 x 0.8 cm. at 4 inches from the spinal column, just below the inferior angle of the scapula, left with exit at wound number 3.
- Exit wound at left buttock just below the ASIS measuring 4 x 2.8 cm., 3 inches for the portion axillary line.

Extremities:

- Entrance wound left thigh 0.8 x 0.8 cm. with exit at the middle thigh 3 x 2 cm.
- Entrance wound left deltoid area, lateral aspect measuring 4 x 3 cm. with powder burns.

Cause of Death:

- Cardio-Respiratory arrest secondary to severe hemorrhage, secondary to multiple gunshot wounds.

Dr. Africa also signed the victim's death certificate (Exh. E) which listed cardio-respiratory arrest as the immediate cause of the victim's death, multiple injury as the antecedent cause, and multiple gunshot wounds as the underlying cause.

On May 12, 1993, casts taken from petitioner Edwel Maandal was subjected to a paraffin test at the Crime Laboratory Service-Regional Unit 4 in Camp Vicente Lim, Laguna. The results of the test, as shown in the chemistry report (Exh. G) of Lorna R. Tria, Forensic Analyst, are as follows:

FINDINGS:

Quantitative examination conducted on the casts taken from both hands of the above-named person gave the following results:

- Left hand cast - POSITIVE to the test for gunpowder residue (Nitrates).
- Right hand cast - NEGATIVE to the test for gunpowder residue (nitrates).

....

CONCLUSION:

Gunpowder residue (nitrates) is present on the left-hand of the above-named person. Absence of gunpowder residue (nitrates) on the right hand of the above-named person." (Exhibit "G-2")

On the other hand, the defense presented the following witnesses: Ponciano Manguiat, Atty. Conrado Abratique, Madelyn Moreto, Patricio Lopez, Police Inspector Susan Ravanno Jalla, Police Inspector Antonio C. Yarra, SPO1 Angel P. Mendoza, Police Senior Inspector Reynaldo de Guzman, Chief Inspector Pedro Seromines, and SPO1 Elfin Rico. The defense maintained that it was not petitioner but an unidentified person who was responsible for the death of Danilo Atienza. It tried to establish the following:

On May 9, 1993, Patricio Lopez of Grace Park, Caloocan City, Metro Manila, a businessman dealing in scrap, went to the house of his friend, Jun Roxas, in Barangay Pinagkawitan, Lipa City. Patricio wanted to buy scrap from Jun and the latter's contacts, but upon inquiry, he found out that his prospective sources of scrap had already sold the same.

Around 3:30 in the afternoon, Patricio left the house of Jun. While waiting for a ride home, Patricio walked over to the other side of the street to buy cigarettes. As the first store he went to was unattended, he proceeded to another. In a little while, Patricio heard successive gunshots coming from beside the store. Instinctively, he ran towards the other side of the street to seek cover. Thereupon, he noticed the lifeless form of a man lying near the gate of a compound close to the street. Patricio saw a man, approximately four and half (4 1/2) feet in height and wearing a white pair of rubber shoes, holding a long firearm. The man was hurriedly going in the direction of Rosario, Batangas.

Patricio testified that he was frightened and confused. ("Nataranta po ako.") He claimed that the thought of reporting the incident to the police did not occur to him immediately. His immediate concern was his safety as he tried to leave the place.

Patricio testified that he knew all three accused in this case because he had met them on several social occasions at Jun Roxas' house, the Maandals being neighbors of Jun Roxas. Patricio claimed he did not see any of the

Maandals within the vicinity at the time of the shooting. Patricio said he could not forget what he saw on May 9, 1993, that day being his birthday. He, however, admitted that it was only sometime in December 1996 that he told what he knew about the incident to Jun Roxas who, in turn, informed petitioner's father. Upon the latter's request, Patricio agreed to testify for petitioner.[8]

Another defense witness was Pedro M. Seromines[9] who was formerly Deputy Chief for Operations of the Lipa City Philippine National Police (PNP) station. He testified that on May 9, 1993, he received information regarding a shooting incident wherein herein petitioner was implicated. The following day, Seromines said, he went to Camp Bicutan "to arrest [petitioner] and to recover the firearm used by the suspect." He talked to petitioner's commanding officer, a certain Lt. Lajara, who assured him that he would surrender petitioner and "the firearm involved." Petitioner eventually surrendered himself as well as the M16 armalite rifle (Exh. A) issued to him. (Per the testimony of Police Senior Inspector Antonio C. Yarra, he had approved the issuance to petitioner of a 5.56 mm. M16 armalite rifle with Serial Number 119156 as evidenced by a memorandum receipt (Exh. 4).[10])

Seromines said he submitted the firearm together with the 16 empty shells (Exh. C) of the same caliber and one slug (Exh. B) recovered from the crime scene to the PNP Crime Laboratory of Region 4 for ballistic examination.[11] A laboratory technician of the PNP Crime Laboratory Service test fired the armalite rifle issued to petitioner. The empty shells recovered after the test firing were also subjected to ballistic examination.[12]

On March 13, 1997, Police Inspector Susan Ravanno Jalla, Firearms Examiner, submitted to the trial court the report (Exh. 3),[13] dated June 10, 1993, on the results of the ballistic examination she conducted of the shells and slug recovered from the crime scene and the shells test fired from petitioner's service firearm. The results revealed that the shells and slug recovered from the crime scene had not been fired from petitioner's service firearm. Excerpts from the report read:

SPECIMENS SUBMITTED:

- Sixteen (16) 5.56 mm. fired cartridge cases marked "PMS-1" to "PMS-16."
- One (1) 5.56 mm. fired bullet marked "PS."
- Four (4) 5.56 mm. test cartridge cases and four (4) test bullets marked "T-1-56" to "T-IV-56" respectively, fired from a 5.56 mm. M16A1 Baby Armalite rifle with serial number 119156.

PURPOSE OF LABORATORY EXAMINATION:

To determine whether or not the 5.56 mm. fired cartridge cases marked "PMS-1" to "PMS-16" and fired bullet marked "PS" were fired from the above-mentioned firearm.

FINDINGS:

Microscopic examination and comparison of the 5.56 mm. fired cartridge cases marked "PMS-1" to "PMS-16" and fired bullet marked "PS" revealed different individual characteristics from the test cartridge cases and test bullets respectively, fired from the abovementioned firearm.

CONCLUSION:

The 5.56 mm. fired cartridge cases marked "PMS-1" to "PMS-16" and fired bullet marked "PS" were not fired from the abovementioned firearm.

REMARKS:

The original of this report and the specimens submitted are retained in this Laboratory for future reference.

Ponciano[14] L. Manguiat was presented by the defense to belie the testimony by prosecution eyewitness Marino Atienza. Ponciano claimed that he was Marino Atienza's childhood friend, grade school classmate, and barangay neighbor. He testified that he saw Marino at the cockpit in Barangay Balintawak of Lipa City the whole afternoon of May 9, 1993. Ponciano said that as he was about to leave at about 5:00 in the afternoon, he even asked Marino Atienza whether the latter had won in the cockpit.[15]

For his part, Atty. Conrado Abratique testified that in the afternoon of May 9, 1993, he saw petitioner, whom he knew as he had represented the latter in a case before the National Police Commission (NAPOLCOM), in a Family Life Apostolate meeting in the house of the Archbishop of Lipa City.[16]

On February 17, 1998, the trial court promulgated its decision, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused, EDWEL MAANDAL, guilty beyond reasonable doubt, as principal by direct participation of the crime of Homicide, as defined and penalized under Article 249 of the Revised Penal Code and after considering in his favor the mitigating circumstance of voluntary surrender and applying the mandatory provisions of the Indeterminate Sentence Law, sentences him to suffer the indeterminate penalty of imprisonment ranging from SIX (6) YEARS and ONE (1) DAY of Prison Mayor as MINIMUM to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of Reclusion Temporal as MAXIMUM, to pay the heirs of Danilo Atienza the sum of P20,000.00, as actual damages, the sum of P50,000.00, as indemnity for his death, and to pay his proportionate share of the costs of this suit.

The period during which the accused is under preventive imprisonment shall be deducted from his sentence.

Finally, pursuant to Supreme Court Circular No. 12-94, the City Jail Warden of Lipa City is hereby ordered to immediately transfer the accused to the National Bureau of Prisons at Muntinlupa City, Metro Manila.

IT IS SO ORDERED.[17]

Petitioner appealed to the Court of Appeals which in its resolution, dated September 15, 1998, directed the Director of the Bureau of Prisons, Muntinlupa City to release petitioner from custody after approving the latter's cash bail bond of P100,000.00.[18]

On April 28, 2000, the Court of Appeals rendered its decision, the dispositive portion of which reads:

WHEREFORE, finding no basis in fact and in law to deviate from the findings of the Regional Trial Court of Lipa City, Branch 12, in Criminal Case No. 494-93, the decision appealed from convicting accused-appellant EDWEL MAANDAL for the crime of Homicide is hereby AFFIRMED in its entirety.

In the service of his sentence, accused-appellant EDWEL MAANDAL who was detained from November 12, 1993 to September 15, 1998 shall be credited in full with the period of his preventive imprisonment, subject to the provisions of Article 29 of the Revised Penal Code, as amended.

Costs against accused-appellant.[19]

Hence this petition wherein petitioner makes the following assignment of errors:

- THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER BY GIVING FULL CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS MARINO ATIENZA
- THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE FINDING OF THE TRIAL COURT THAT THE GUILT OF THE PETITIONER WAS PROVEN BEYOND REASONABLE DOUBT BASED ON THE TESTIMONY OF PROSECUTION WITNESS MARINO ATIENZA
- THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE TESTIMONY OF

MARINO ATIENZA WAS STRAIGHTFORWARD AND CATEGORICAL WHEN THE SAME IS CONTRARY TO ORDINARY HUMAN EXPERIENCE, NATUR[E,] AND [THE] ORDINARY COURSE OF THINGS AND INSTINCT OF SELF-PRESERVATION

- THE HONORABLE COURT OF APPEALS ERRED IN NOT RESOLVING THE ERROR COMMITTED BY THE TRIAL COURT GIVING MUCH WEIGHT TO THE PHYSICAL EVIDENCE ADDUCED BY THE PROSECUTION, PARTICULARLY THE GUNSHOT WOUNDS SUSTAINED BY THE VICTIM, AND BASING ITS JUDGMENT OF CONVICTION THEREON.

- THE HONORABLE COURT OF APPEALS ERRED IN NOT RESOLVING THE ERROR COMMITTED BY THE TRIAL COURT FINDING PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE LACK OF EVIDENCE SHOWING HE IS THE PERPETRATOR OF THE CRIME.

- THE HONORABLE COURT OF APPEALS ERRED IN NOT RESOLVING THE ISSUE THAT THE TRIAL COURT ERRED WHEN IT FAILED TO CONSIDER THAT THE EMPTY SHELLS AND SLUG RECOVERED FROM THE SCENE OF THE INCIDENT WERE NOT FIRED FROM [AN] M-16 ARMALITE RIFLE.

- THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN ADMITTING AS EVIDENCE AGAINST PETITIONER THE PARAFFIN TEST WHICH ALLEGEDLY YIELDED GUN POWDER RESIDUE (NITRATES) ON THE LEFT HAND CAST OF PETITIONER AND LIKEWISE BASING ITS JUDGMENT OF CONVICTION AGAINST PETITIONER.

- THE HONORABLE COURT OF APPEALS ERRED IN NOT ACQUITTING THE PETITIONER AND DECLARING HIM INNOCENT OF THE CHARGE AGAINST HIM.

- THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REFUSING TO GIVE CREDENCE TO THE TESTIMONY OF [PO]NCIANO L. MANGUIAT WHO DECLARES THAT HE SAW PROSECUTION WITNESS MARINO ATIENZA THE WHOLE AFTERNOON OF MAY 9, 1993 INSIDE THE COCKPIT OF BRGY. BALINTAWAK, LIPA CITY.

- THE HONORABLE COURT OF APPEALS ERRED AND FAILED TO CONSIDER THE DEFENSE OF PETITIONER THAT IT WAS ANOTHER PERSON WHO SHOT/KILLED THE VICTIM DANILO ATIENZA.[20]

The assigned errors concern (1) the credibility of prosecution eyewitness Marino Atienza and (2) the significance of the ballistic examination showing that the 16 empty shells and the solitary slug recovered from the scene of the crime were not fired from petitioner's service firearm.

First. The defense contends that the following place in doubt prosecution witness Marino Atienza's identification of petitioner as the assailant: (1) Marino Atienza's testimony that he looked out of the window upon hearing the sound of gunfire is contrary to common human experience; (2) his failure to notice what his companions inside the house, Rudy and Elena Cuna, did after they heard gunfire; (3) his claim that he saw Danilo Atienza sprawled on the ground without mentioning petitioner's presence shows that he did not see petitioner actually shoot the victim; (4) the inconsistency between his testimony and his sworn statement in which he categorically stated that he saw petitioner shoot the victim; (5) the prosecution's failure to establish that the wounds sustained by the victim were inflicted by an armalite rifle; and (6) Ponciano Manguiat's testimony, on the one hand, that on May 9, 1993, he saw Marino Atienza the whole afternoon at the cockpit at another barangay and Patricio Lopez's testimony, on the other, that he saw another man, about four and a half feet (4[1]/2) in height, carrying a long firearm, who left the vicinity shortly after Patricio had heard the shooting and seen the victim sprawled on the

ground.

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, who of the witnesses to disbelieve or whose testimonies to accept.[21]

When there is a conflict in the testimony of witnesses in a criminal action, i.e., those of the defense giving evidence directly contradicting that given by those of the prosecution, the appellate court will not disturb the conclusions of the trial court concerning the credibility of such witnesses in view of the fact that the trial court observed their manner and demeanor as witnesses, unless it is shown that the trial court overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance sufficient to induce the belief that, if the error had not been committed, the decision in question would probably have been different.[22]

Indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court." [23]

Subject to the foregoing observations, we now consider the evidence of the parties. Contrary to petitioner's contention that Marino Atienza failed to establish the presence of the accused-appellant at the scene of the crime, the following portion of his testimony clearly establishes the presence of petitioner and his brothers Elmer and Noel at the time of the commission of the crime:

Q:

While you were at the house of Canuto Manguiat on the date and time in question, do you remember whether there was [an] unusual incident that took place in that vicinity?

A:

Yes, sir.

Q:

What was that incident?

A:

I heard gun shots, sir.

Q:

Upon hearing gun shots, what did you do?

A:

I peeped [out of] the window.

Q:

In relation to the place where you were and the place where you heard gunshots, will you tell us more or less the distance between th[ese] two points?

A:

About ten (10) armstretches.

Q:

You said you looked out of the window what did you see?

A:

My cousin Danilo who ha[d] already fallen on the ground.

Atty. [Reynaldo] Marquez [Private prosecutor]

May we request that the answer in vernacular `nakatumba na po' be placed on record.

Court

Place it on record.

A:

"Nakatumba na po."

Q:

Do you know why Danilo Atienza, your cousin, as you said, [was] in that position?

A:

Yes, sir.

Q:

Why?

A:

He was shot by a gun.

Atty. [Monchito] Rosales [Defense counsel]

I would request that the vernacular word `Pinaputukan po ng baril' be place[d] on record.

Court

Place it.

A:

Pinaputukan po ng baril.

Q:

Did you recognize the person who shot your cousin?

A:

Yes, sir.

Q:

Who was he?

A:

Edwel Maandal, sir.

Q:

If this Edwel Maandal is now present in Court, will you be able to identify him?

A:

Yes, sir.

Q:

Will you please stand up and point to him if he is inside the courtroom?

Atty. Marquez

May I request that the person pointed to stand up and please identify himself?

Interpreter

Witness pointed to a person who when asked, identified himself as Edwel Maandal.

Q:

You recognize the person of Edwel Maandal as the person who shot your cousin Danilo Atienza, did you recognize the weapon used in shooting Danilo Atienza?

A:

Yes, sir.

Q:

What was the weapon used?

A:

Armalite, sir.

Q:

How many times did you hear gunshots?

A:

Several times, sir.

Q:

What was the position of Danilo Atienza when you saw him? He was lying face down or face up?

A:

He was lying on his back.[24]

(Emphasis added)

As the Court of Appeals said in its decision:

Verily, there can be no question that [petitioner] was DANILO's attacker! Marino was exact and definite and he remained unyielding that it was Edwel who had shot Danilo with an armalite which caused the latter to fall on the ground peppered with bullet wounds. Even without physical evidence, such testimony of a witness who was not shown to have been ill-motivated to falsely testify is enough to convince us of accused-appellant's culpability of the crime charged. Neither does the relationship of Marino Atienza to the victim DANILO give rise to suspicion of said witness' testimony. The consistent rule is that relationship of the prosecution witness to the victim in a criminal offense does not necessarily render biased the testimony given.[25]

Petitioner wonders why Marino Atienza looked out of the window instead of seeking cover when he heard the sound of gunfire. Such behavior, he says, is contrary to human experience and the instinct for self-preservation. We do not think so. As has been held, different people react differently to an unusual event. There is no typical response to a startling, strange, or frightful experience.[26] In one case,[27] this Court did not find it unusual for eyewitnesses to remain seated on their benches and not seek cover like the other people in the political rally in which a crime was committed. For the same reason, the Court also does not think it unnatural for Marino Atienza to be oblivious of what his companions inside the house, Elena and Rudy Cuna, did after they heard gunfire.

Even though Marino Atienza is the lone eyewitness to the crime, his testimony is sufficient to convict petitioner. As the trial court, which had had the opportunity to observe him on the witness stand, said, his testimony is "clear, straightforward, spontaneous, and candid. . . without any sign of artificiality." [28]

Indeed, it is noteworthy that Marino Atienza gave his sworn statement pointing to petitioner as the assailant just two days after the shooting in contrast to defense witness Patricio Lopez who took more than three years before telling his friend Jun Roxas what he knew about the incident ³/₄ that it was another person whom he saw leaving the scene of the crime carrying a firearm. Such unexplained delay casts grave doubts on the credibility of his testimony.[29]

Absent any evidence of any improper motive for Marino Atienza to testify falsely, the logical conclusion is that no such improper motive exists, and his testimony is thus worthy of full faith and credence.[30] Indeed, as a relative of the victim, Marino Atienza's purpose would be to ensure that the real culprit is punished rather than put the blame on someone who is innocent of the crime.[31]

In view of Marino Atienza's positive identification of petitioner as the assailant of Danilo Atienza, the testimony of defense witness Atty. Conrado Abratique crumbles.[32] In any event, the alibi is not much of one since by his own admission, Atty. Abratique left the gathering at the house of the Archbishop of Lipa City at 3:30 p.m. so that he would not know whether petitioner left after that time to perpetrate the killing half an hour later.[33]

Petitioner contends that the prosecution failed to establish that the victim's wounds were inflicted by an armalite rifle as testified to by Marino Atienza. In making this contention, petitioner cited the testimony of Dr. Elviro Africa that he could not tell from his postmortem examination what kind of bullet hit the victim's head.[34] Apparently, this was because of Dr. Africa's admitted lack of ballistic training.[35] In all probability, however, the victim's wounds were caused by an armalite rifle. To be sure, the 16 empty shells and one slug recovered from the crime scene were, per the testimony of Police Superintendent Pedro Seromines, of the same caliber as petitioner's 5.56 mm. M16 armalite rifle.[36] This is corroborated by the ballistic examination report (Exh. 3) which

described the submitted specimens as:

- Sixteen (16) 5.56 mm. fired cartridge cases marked "PMS-1" to "PMS-16."
- One (1) 5.56 mm. fired bullet marked "PS."
- Four (4) 5.56 mm. test cartridge cases and four (4) test bullets marked "T-1-56" to "T-IV-56" respectively, fired from a 5.56 mm. M16A1 Baby Armalite rifle with serial number 119156.[37]

Second. Petitioner makes capital of the results of the ballistic examination showing that the 16 empty shells and one slug recovered from the scene of the crime were not fired from his service firearm.

Petitioner's service firearm was not necessarily the one he used to shoot the victim. The fact that the ballistic examination revealed that the empty shells and slug were fired from another armalite rifle does not disprove petitioner's guilt. As a member of the PNP, petitioner could have easily used a different armalite rifle. It was also possible that he surrendered to the police a firearm different from the one he actually used to kill the victim.

The paraffin test which showed petitioner's left hand to be positive for nitrates constitutes only corroborative evidence of his guilt. Even without it, there is sufficient identification of petitioner as the one who shot the victim.[38] Thus there is no need, as petitioner claims, for the prosecution to prove that he used his left hand when he gunned down the victim.

Third. Turning now to the denomination of the crime, both the trial and appellate courts correctly held the crime to be homicide. The qualifying circumstance of treachery, though alleged in the information, cannot qualify the killing to murder since no details were shown regarding the manner in which the aggression was made or how the act which resulted in the death of the victim began and developed. There is no evidence showing that the attack on the victim came without warning and that he had absolutely no opportunity to defend himself or to escape.[39] Petitioner's attack was already well under way when Marino Atienza looked out of the window of his uncle's house.

Anent the mitigating circumstances of voluntary surrender, both the trial and appellate courts correctly appreciated the same considering that petitioner surrendered prior to his arrest.[40] The trial court correctly sentenced petitioner to an indeterminate prison term of six (6) years and one (1) day of prison mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum.

The award of P20,000.00 as actual damages, however, should be deleted for lack of documentary evidence to substantiate Rafael Atienza's claim that his family incurred this amount for his son's wake and internment.[41] On the other hand, in addition to the award of P50,000.00 as civil indemnity, the amount of P50,000.00 as moral damages should also be awarded to the heirs of the victim in accordance with our recent rulings.[42]

WHEREFORE, the decision, dated April 28, 2000, and the resolution, dated July 13, 2000, of the Court of Appeals are **AFFIRMED**, with the **MODIFICATION** that the award of P20,000.00 as actual damages is deleted and the amount of P50,000.00 as moral damages is awarded to the heirs of the victim in addition to the award of P50,000.00 as civil indemnity made by the trial court. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Cancio Garcia and Romeo J. Callejo, Sr.

- [2] Petition, Annexes A and B; Rollo pp. 55-75 and 50.
- [3] Records, p. 1.
- [4] Id., p. 37.
- [5] TSN (Marino Atienza), pp. 3-13, Oct. 19, 1993; TSN (Rafael Atienza), pp. 4-5, Nov. 16, 1993.
- [6] TSN (Rafael Atienza), p. 8, Nov. 16, 1993.
- [7] Records, p. 3.
- [8] TSN, pp. 3-45, Feb. 4, 1997.
- [9] Also spelled as "Serumines" and "Geromines" in various parts of the Records.
- [10] Records, p. 331; TSN, pp. 34-36, March 13, 1997.
- [11] TSN, pp. 30-55, July 28, 1997.
- [12] TSN (SPO1 Elfin Rico), p. 18, Oct. 13, 1997.
- [13] Records, p. 330.
- [14] Also spelled "Potenciano" in various parts of the Records.
- [15] TSN, pp. 2-16, Sept. 25, 1995.
- [16] TSN, pp. 10-12, Nov. 11, 1996.
- [17] Per Judge Vicente F. Landicho. RTC Decision, pp. 25-26; Records, pp. 374-375.
- [18] CA Rollo, p. 59.
- [19] CA Decision, pp. 19-20; Rollo, pp. 73-74.
- [20] Petition, pp. 8-9; Rollo, pp. 16-17.
- [21] *People v. Mercado*, G.R. No. 116239, Nov. 29, 2000; *People v. Estepano*, 307 SCRA 701 (1999).
- [22] *People v. Rizal*, 103 SCRA 282 (1981).
- [23] *Calvert v. Carpenter*, 96 Ill. 63, 67; *Keyes v. Kimmel*, 186 Ill. 109, 57 N. E. 851.
- [24] TSN, pp. 4-7, Oct. 19, 1993.
- [25] CA Decision, pp. 17-18; Rollo, pp. 71-72.
- [26] *People v. Macaliag*, G.R. No. 130655, Aug. 9, 2000; *People v. Abonada*, 169 SCRA 530 (1989).
- [27] *People v. Aspiras*, G.R. No. 121203, April 12, 2000.
- [28] See *People v. Dee*, G.R. Nos. 115251-52, Oct. 5, 2000.
- [29] *People v. Samolde*, G.R. No. 128551, July 31, 2000.
- [30] *People v. Continente*, G.R. No. 100801-02, Aug. 25, 2000; *People v. Platilla*, 304 SCRA 339 (1999).
- [31] *People v. Candare*, G.R. No. 129528, June 8, 2000.
- [32] *People v. Abella*, G.R. No. 127803, Aug. 28, 2000.

[33] TSN, pp. 27-28, Nov. 11, 1996.

[34] TSN, p. 24, July 5, 1994.

[35] Id.

[36] TSN, pp. 32-33, July 28, 1997.

[37] Records, p. 330.

[38] *People v. Alolod*, 266 SCRA 154 (1997).

[39] *People v. Santos*, G.R. No. 122935, May 31, 2000; *People v. Bahenting*, 303 SCRA 558 (1999).

[40] See *People v. Amazan*, G.R. Nos. 136251, 138606, and 138607, Jan. 16, 2001.

[41] *People v. Deang*, G.R. No. 128045, Aug. 24, 2000.

[42] See, e.g., *People v. Galvez*, G.R. No. 136790, Mar. 26, 2001.

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