

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BAYANI ROMA, APPELLANT.

G.R. NO. 147996. September 30, 2005

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing the decision[1] of the Court of Appeals in CA–G.R. CR No. 22947, which affirmed with modifications the decision[2] of the Regional Trial Court of Cebu City, Branch XX, finding appellant, Bayani Roma, guilty of murder.

On May 20, 1991, an information for murder was filed against Bayani Roma, Edwin Galeon, "Bating" and "Bitoy," as follows:

That on or about the 13[th] day of April, 1991, about 11:30 o'clock in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with handguns, conniving, confederating and mutually helping with one another, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there suddenly and unexpectedly fire shots at one Garland Egos, hitting him on the vital parts of his body, thereby inflicting upon him the following physical injuries:

"GUNSHOT WOUNDS, MULTIPLE, HEAD, FACE AND RIGHT LOWER EXTREMITY"

as a consequence of which, said Garland Egos died almost instantaneously.

CONTRARY TO LAW.[3]

On October 12, 1994, appellant pleaded not guilty to the crime charged. Since his co-accused were at large, they were not arraigned.[4]

Trial proceeded in due course. The prosecution presented four witnesses, namely, Dr. Jesus P. Cerna, Antonio Montilla, Stephen Egos and Nicasio Egos. Their testimonies were for the purpose of showing that appellant was one of the assailants who shot and killed the victim, Garland Egos.

Dr. Jesus P. Cerna testified that he performed a post-mortem examination on the body of Garland Egos. His examination revealed that the victim had abrasions on several parts of his body and sustained four gunshot wounds, as follows: gunshot wound number one was located on the right temporal region, above the right part of the head, in front of the forehead; gunshot wound number two was located at the right part of the face known as the zygomatic area; gunshot wound number three was found on the right thigh; and gunshot wound number four was located above the right knee. He recovered three slugs from the body of Garland Egos. He identified the post-mortem examination report in open court. The report stated that the cause of death was shock secondary to multiple gunshot wounds.[5]

Antonio Montilla testified that he knew both the victim and appellant, since they were neighbors. At about 11:30

p.m. of April 13, 1991, he was standing outside the San Antonio de Padua Chapel in Lorega, San Miguel, Cebu City, right beside a fenced in area where a benefit dance was going on. He heard someone shout, "Watch out." At that exact moment, just two meters away from him, he saw Edwin Galeon shoot Garland Egos twice, which caused the latter to fall to the ground. Immediately after that, Bitoy and appellant fired one shot each at the victim successively as he was lying on the ground. He could positively identify Bitoy and appellant since the place was well lit and his view was unobstructed because most of the people had run away after the first two shots were fired by Galeon.[6]

The third witness for the prosecution was Stephen Egos. He is the younger brother of the victim. He testified that on April 13, 1991 at past 11 p.m. he was at a dance hall in Lorega, San Miguel with his friends. His testimony corroborated that of Antonio Montilla. He added that after Galeon fired the second shot, Bating pointed a gun at him and said, "If you are going to help, I will break your head." This prevented him from helping his brother. After that, with the victim already lying on the ground, Bitoy and appellant fired one shot each at the victim successively. Then, appellant shouted, "No one should come near; if you come, you will die." [7]

The last witness for the prosecution was Nicasio Egos, who is the father of the victim. He testified that the vigil, which lasted 14 days, and the burial cost him a total of P61,000. He also claimed for moral damages for the death of his son in the amount of P100,000.[8]

The defense presented three witnesses, namely, appellant Bayani Roma, Celedonio Gucor and Maria Sentillas. Their testimonies were for the purpose of proving that appellant was not involved in the killing of Garland Egos because he was not at the scene of the crime at the time the shooting took place.

Celedonio Gucor is the boyfriend of Edna Roma, who is the sister of appellant. Gucor testified that in the evening of April 13, 1991, the parents of Bayani Roma requested him to look for Bayani so that he could take his supper. At around 10:45 p.m., Gucor and Edna Roma went to look for appellant in the basketball court, where the benefit dance was being held, which was near the chapel. They searched for over an hour but failed to find appellant. He suddenly heard a gunshot and looked in the direction of the gunshot and saw someone he didn't know fire a shot at the victim. After that, he saw Bating and Bitoy shoot the victim, who was already on the ground.[9]

The second witness for the defense is appellant himself, who raised the defense of alibi and denied participation in the shooting of Garland Egos. To prove his defense of alibi, he testified that he and Maria Sentillas went to the dance at 9 p.m. He claimed that he had a conversation with the victim for about 10 minutes before leaving the place of the dance to bring Maria Sentillas home at around 10 p.m. After bringing Sentillas home, he proceeded to a drinking spree at a store that was near the house of Sentillas and far from the site of the shooting. He remained there until 2 a.m.[10]

The final witness for the defense was Maria Sentillas. She corroborated the testimony of appellant. She said that appellant accompanied her to her house and stayed there up to 10:30 p.m. A certain Cadie Camacho invited appellant for a drinking session at a nearby store. When she slept at around 12:15 a.m., the drinking session was still on-going.

In its decision, promulgated on December 3, 1998, the trial court found appellant guilty and decreed as follows:

WHEREFORE, in view of the foregoing considerations, the Court is constrained to convict co-accused Bayani Roma beyond reasonable doubt for the crime of Murder as charged in the Information, and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of imprisonment of from Prison Mayor in its maximum period to Reclusion Temporal or from Ten (10) Years and One (1) Day to Twenty (20) Years including the accessory penalties provided for by law.

Co-accused Bayani Roma is likewise hereby ordered to indemnify the heirs of victim Garland Egos the amount of Fifty Thousand Pesos (P50,000.00) for moral damages and Ten Thousand Pesos (P10,000.00) burial expenses.

Bayani Roma is hereby credited with the full period of his preventive imprisonment, if he had agreed in writing to abide by the rules imposed upon convicted prisoners, otherwise only 4/5 thereof.

The case versus the three accused is hereby archived and let an alias warrant issue against them.

SO ORDERED.[11]

Appellant questioned the decision of the trial court with the Court of Appeals, raising the following issues:

I

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES PARTICULARLY ANTONIO MONTILLA AND STEPHEN EGOS AND COMPLETELY DISREGARDED THE TESTIMONY OF THE DEFENSE WITNESSES THAT THE ACCUSED-APPELLANT WAS NOT INVOLVED IN THE KILLING.

II

ASSUMING ARGUENDO THAT ACCUSED-APPELLANT WAS INVOLVED IN THE KILLING THE TRIAL COURT ERRED IN FINDING THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION.

The Court of Appeals affirmed the trial court's decision, with modifications, as follows:

The trial court judiciously exercised its discretion in giving full weight and credence to the testimonies of the prosecution witnesses. The submissions of the accused-appellant do not merit consideration.

Firstly, the portion of Montilla's testimony quoted by accused-appellant in his brief seeking to establish the alleged ill-motive of the said witness to testify against him is without merit. The portion being assailed reads: FISCAL CAPACIO to witness (Antonio Montilla) on direct examination:

Q:

As Barangay Tanod did you feel it was your duty to introduce yourself to the police because you witnessed to [sic] the shooting incident?

A:

I did not execute any affidavit because I was also one of the witnesses in that case where the same accused shot another person, and that accused Bayani Roma intruded [into] our house and in fact I am now in custody of Romy Cordova.

COURT:

Q:

Who is this Romy Cordova?

A:

He is Major, your Honor.

FISCAL CAPACIO:

Q:

Why are you in custody of Major Cordova

A:

Because I requested the Mayor that I be placed under the custody of Major Cordova because these accused waylaid me.

Q:

In short, you sought police protection?

A:

Yes, sir. (TSN, April 7, 1995, 9)

The contention of accused-appellant that the above-quoted portion of Montilla's testimony establishes ill-motive on his part is misleading. A closer look at the quoted testimony shows that it was made in response to the public prosecutor's question on why the witness did not volunteer information to the police investigators. The assailed portion of the witness' testimony is more to establish the facts of his failure to volunteer information to the authorities and to execute [an] affidavit and definitely not to prove the ill-motive being alleged by the accused-appellant. Clearly, his testimony was quoted out of context and as such it miserably failed to establish accused-appellant's allegation. It is a settled rule that, where there is failure on the part of the defense to prove that the prosecution witnesses were moved by an improper motive, the presumption is that the said witnesses were not so moved and that their testimonies are entitled to full faith and credit (*People v. Sancholes*, 271 SCRA 527, 540 [1997]). Moreover, the testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein (*People v. San Gabriel*, 223 SCRA 84 [1993]).

Secondly, the non-execution of affidavits by prosecution witnesses Antonio Montilla and Stephen Egos prior to their testimonies in court is not a ground to discredit their testimonies. There is no law which requires that the testimony of a prospective witness should be reduced into writing in order that his declaration in court may be believed (*People v. Embarga*, 319 SCRA 304, 316 [1999]).

Thirdly, the failure of the prosecution witnesses to volunteer information regarding the incident to official investigators is capable of rational explanation. Montilla opted not to volunteer information to the authorities because of his fear of reprisal from the assailants, one of whom is accused-appellant who had previously intruded into his house. In fact, Montilla sought the protective custody of Major Cordova out of fear for his life. As for Stephen Egos, he did not volunteer to execute an affidavit during the investigation of the incident at the Prosecutor's office in May 1991 because he wanted that the accused be arrested first. He was afraid to suffer the same fate as his older brother if he volunteers information against the accused. As held in the case of *People v. Navales* (266 SCRA 569, 590 [1997]), initial reluctance to volunteer information regarding the crime due to fear

of reprisal is common enough that it has been judicially declared as not affecting a witness' credibility.

Lastly, the relationship of Stephen Egos to the victim is not sufficient basis to discredit the testimony of the witness. A witness's relationship to a victim of a crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse thereof somebody other than the real culprit (*People v. Villanueva*, 302 SCRA 669 [1999]).

The arguments raised by accused-appellant are factual in nature and boil down to the issue of credibility of witnesses and their testimonies. Deeply embedded in our jurisprudence is the rule that when the issue of credibility of witnesses is concerned, appellate courts will generally not disturb the findings of facts of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless certain facts of substance and value have been plainly overlooked which, if considered might affect the result of the case (*People v. Quejada*, 223 SCRA 77, 86 [1993]). In giving full weight and credence to the testimonies of prosecution witnesses Antonio Montilla and Stephen Egos, the trial court observed:

The testimonies of the prosecution witnesses have inspired belief and therefore have to [be] given full faith and credence over the testimony of co-accused Bayani Roma and his witnesses. The prosecution witnesses' demeanor in court were straightforward and candid. There were [sic] no tinge of ill-will that can be ascribed to them to falsely testify against the accused. Nor did the latter and his witnesses presented [sic] a clear and convincing evidence of motive on the part of the prosecution witnesses to fabricate a charge against him. Co-accused Bayani Roma himself admitted that he the victim, Garland Egos were friends (tsn, Chavez, p. 5, hearing, March 13, 1997). Absence of motive on the part of the prosecution witnesses against the accused, [renders it] hardly credible that such person[s] would pervert the truth, testify a falsehood, and cause the damnation of one who had neither brought him harm nor injury. (*People v. Mendoza*, 121 SCRA 149).

The trial court's reliance on the demonstrated strength of the prosecution evidence and its rejection of the palpably weak defense of denial and alibi interposed by accused-appellant merit Our full affirmance.

The Supreme Court has consistently held that the defense of alibi is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily (*People v. Batidor*, 303 SCRA 335, 350 [1999]). Time and again, it has been ruled that alibi is the weakest of all defenses and cannot prevail over the positive identification of the accused by an eyewitness who had no untoward motive to falsely testify against him (*People v. Morales*, 241 SCRA 267 [1995]; *People v. Mamalayan*, 280 SCRA 748 [1997]). In the case at bench, prosecution witnesses Antonio Montilla and Stephen Egos have positively identified accused appellant as one of the assailants in the shooting of Garland Egos on April 13, 1991 at about 11:30 in the evening in Lorega, San Miguel, Cebu City. Against these witnesses, no improper motive to falsely testify against accused-appellant has been shown.

Furthermore, for the defense of alibi to prosper, the requirements of time and place must be strictly met (*People v. Antonio*, 303 SCRA 414 [1999]). It is not enough to prove that the accused was somewhere else when the offense was committed. It must likewise be shown that he was so far away that it was not possible for him to be physically present at the place of the crime or its immediate vicinity at the time of its commission (*People v. Verde*, 302 SCRA 690 [1997]). No such showing was made in this case. The requirements of time and place have not been met.

The trial court properly appreciated the presence of the qualifying circumstance of treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in their execution, without risk to himself arising from the defenses which the offended party might make (*People v. Mallari*, 310 SCRA 621, 634 [1999]). Also, treachery may be appreciated even when the victim was initially

assaulted frontally, but was attacked again after being rendered helpless and had no means to defend himself or to retaliate (*People v. Molina*, 292 SCRA 743 [1998]). In this case, as testified by the eyewitnesses, the wounded victim was already lying helpless on the ground when he was unmercifully shot by the accused-appellant. Indeed, there is treachery where the victim soaked in his own blood, defenseless, and calling for help, weakened and dying, was still attacked, thus employing means to insure or afford impunity (*People v. Padoa*, 267 SCRA 64, 78 [1997]).

On the other hand, the contention of accused-appellant that evident premeditation was not sufficiently proven appears tenable. For this circumstance to be appreciated, it is necessary that the prosecution prove the following elements: (1) the time when the accused decided to commit the crime; (2) an overt act showing that the accused had clung to their determination to commit the crime; and (3) the lapse of a sufficient period of time between the decision and the execution of the crime, to allow the accused to reflect upon the consequences of the act (*People v. Layno*, 264 SCRA 558, 577 [1996]). There is nothing in the records to show that the accused-appellant and his co-accused planned the killing of the victim in advance. Neither was there evidence presented indicating that the crime was committed in accordance with a pre-conceived plan. As held in *People vs. Platilla* (304 SCRA 339, 354 [1999]), evident premeditation cannot be appreciated in the absence of direct evidence showing the planning and preparation in killing the victim. Thus, We hold that the trial court erred in appreciating the aggravating circumstance of evident premeditation.

The penalty imposed and the amount of indemnity awarded by the trial court should be modified. The trial court held:

As the offense charged was committed on April 13, 1991, when the imposition of the death penalty was prohibited by the 1987 Constitution and considering further that the reimposition of the death penalty (R.A. 7659) was made effective only in 1994, the imposable penalty hence, is reclusion temporal in its maximum period to reclusion perpetua.

...

WHEREFORE, in view of the foregoing considerations, the Court is constrained to convict co-accused Bayani Roma beyond reasonable doubt for the crime of Murder as charged in the Information, and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of imprisonment of from Prison Mayor in its maximum period to Reclusion Temporal or from Ten (10) Years and One (1) Day to Twenty (20) years including the accessory penalties provided for by law. . . .

Prior to the enactment of R.A. 7659 (Law on Death Penalty), the penalty for the crime of murder as stated in Article 248 of the Revised Penal Code (RPC) ranges from reclusion temporal in its maximum period to death. Since the said penalty contains three (3) periods, the applicable provision is Article 64 of the same Code. Applying Article 64, paragraph 1 of the RPC, the proper penalty imposable on accused-appellant is reclusion perpetua there being no aggravating circumstance nor mitigating circumstance present. We, therefor, disagree with the reasoning of the trial court that the penalty of death provided in Article 248 of the RPC should not be considered in determining the applicable penalty in view of the provision of the 1987 Constitution prohibiting its imposition (Article III, Section 19 [1]). Such ruling implies that the range of the penalty in Article 248 was reduced from three (3) periods to two (2) periods only upon the effectivity of the 1987 Constitution. Such is not the case. As held in *People v. Muñoz* (170 SCRA 107, 124 [1989]), ". . . Article III Section 19 (1) does not change the periods of the penalty prescribed by Article 248 of the Revised Penal Code except only in so far as it prohibits the imposition of the death penalty and reduces it to reclusion perpetua. The range of the medium and minimum penalties remains unchanged." Furthermore, the Indeterminate Sentence Law (ISL) cannot be applied to the accused-appellant who was meted with the penalty of reclusion perpetua. In the case of *People v. Bahuyan*

(238 SCRA 330, 348 [1994]), the Court held that the benefits of ISL are not applicable to persons convicted of offenses punishable with reclusion perpetua which is an indivisible penalty (Ibid.).

Lastly, pursuant to prevailing jurisprudence, an additional amount of fifty thousand pesos (P50,000.00) as death indemnity to the heirs of the victim is hereby awarded (People v. Mahinay, 304 SCRA 769, 779 [1999]).

WHEREFORE, IN VIEW OF THE FOREGOING, except for the modifications with respect to the imposable penalty and the death indemnity as above discussed, the appealed decision is AFFIRMED in all other respects. Costs against accused-appellant.

Let the entire records of this case be elevated to the Supreme Court for review pursuant to the second paragraph of Section 13, Rule 124 of the Rules of Court, as amended, which provides:

. . .

Section 13. Quorum of the court. -- . . .

Whenever the Court of Appeals should be of the opinion that the penalty of reclusion perpetua or higher should be imposed in a case, the Court after discussion of the evidence and the law involved, shall render judgment imposing the penalty of reclusion perpetua or higher as the circumstance warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

SO ORDERED.[12]

The case was elevated to this Court for review and in the brief filed by appellant the following issues were raised:

I

THE LOWER COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT THE CREDIBILITY OF PROSECUTION WITNESSES ANTONIO MONTILLA AND STEPHEN EGOS [WAS] IMPAIRED BY THEIR FAILURE TO EXPLAIN SATISFACTORILY WHY THEY DID NOT PRESENT THEMSELVES AS EYEWITNESSES TO THE POLICE AND TO THE OFFICE OF THE CITY PROSECUTOR OF CEBU WHEN THIS CASE WAS STILL BEING INVESTIGATED PRIOR TO ITS FILING IN COURT.

II

THE LOWER COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT THE ACCUSED-APPELLANT'S DEFENSE OF ALIBI WAS STRENGTHENED BY THE LACK OF CREDIBILITY OF PROSECUTION WITNESSES, ANTONIO MONTILLA AND STEPHEN EGOS.

III

THE LOWER COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT THERE IS NO CLEAR EVIDENCE THAT THE ACCUSED'S DEPARTURE FROM LOREGA, SAN MIGUEL WAS A FLIGHT FROM THE SCENE OF THE CRIME, AND [IN} IGNORING THE FACT THAT THE ACCUSED RETURNED TO LOREGA, SAN MIGUEL IN 1993, WHERE HE WAS ARRESTED IN 1994.

IV

THE HONORABLE COURT OF APPEALS ERRED IN NOT ALLOWING THE ACCUSED TO WITHDRAW HIS APPEAL.

Regarding the fourth issue, appellant claims that the Court of Appeals erred in not allowing the accused to withdraw his appeal. Section 3 of Rule 50 of the Rules of Court states that: "An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court." In this case, the appellee's brief was filed on March 16, 2000, while the motion to

withdraw was filed on May 30, 2000. In an attempt to prove that a motion to withdraw was filed prior to the filing of the appellee's brief, counsel for appellant alleged in the motion to withdraw that appellant wrote a personal letter as early as November 1999 expressing his intention to withdraw his appeal, but failed to indicate the docket number of the case.[13] Other than by mere assertion, appellant's counsel failed to prove that the alleged personal letter was indeed written and actually sent to the Court of Appeals and received by it. Thus, the only motion to withdraw that can be considered is the one filed on May 30, 2000, which was filed after the filing of the appellee's brief. Therefore, the motion to withdraw is subject to the discretion on the part of the court. Furthermore, the Court of Appeals can be said to have exercised its discretion properly in denying the motion to withdraw. Before exercising its discretion, it first asked appellee to comment on the motion to withdraw. In the Comment, appellee opposed the motion to withdraw, pointing out, that "the penalty and civil indemnity imposed by the trial court are not in accordance with law and jurisprudence and therefore needs to be corrected." [14] In fact, the penalty and civil indemnity indeed required modification and was actually modified by the Court of Appeals. Such modification was not even questioned by appellant in this appeal.

In the first issue raised by appellant, he claims that "the credibility of prosecution witnesses Antonio Montilla and Stephen Egos [was] impaired by their failure to explain satisfactorily why they did not present themselves as eyewitnesses to the police and to the Office of the City Prosecutor of Cebu when this case was still being investigated prior to its filing in court." As a rule, the appellate court gives full weight and respect to the determination by the trial court of the credibility of witnesses since the trial court judge has the opportunity to observe the demeanor of the witness.[15] The trial court in its decision made the following determination:

The testimonies of the prosecution witnesses have inspired belief and therefore have to be given full faith and credence over the testimony of co-accused Bayani Roma and his witnesses. The prosecution witnesses' demeanor in court [was] straightforward and candid, there [was] no tinge of ill will that can be ascribed to them to falsely testify against the accused.

Accordingly, this Court will not disturb the determination made by the trial court regarding the credibility of the witnesses.

Furthermore, delay in presenting oneself as a witness does not affect credibility if the delay is satisfactorily explained.[16] Appellant claims that the delay of Antonio Montilla and Stephen Egos in presenting themselves as eyewitnesses was not satisfactorily explained. The following excerpts from the transcript of stenographic notes (TSN) of this case show that there was in fact a good reason for the delay in presenting themselves as witnesses:

Direct examination of Antonio Montilla:

FISCAL CAPACIO

Q-

As a Barangay Tanod did you feel it was your duty to introduce yourself to the police because you witnessed to (sic) the shooting incident?

A-

I did not execute any affidavit because I was also one of the witnesses in that case where the same accused shot another person, and that accused Bayani Roma intruded [into] ou[r] house and in fact I am now in custody of Romy Cordova.

COURT

Q-

Who is this Romy Cordova?

A-

He is a Major, Your Honor.

FISCAL CAPACIO

Q-

Why are you in custody of Major Cordova?

A-

Because I requested the Mayor that I be placed under the custody of Major Cordova because these accused used to waylaid [sic] me.

Q-

In short you sought police protection?

A-

Yes, sir.[17]

Cross-examination of Antonio Montilla:

Q-

You did not report the matter to the Police?

A-

I did not report, sir.

Q-

You were a Barangay Tanod, a peace officer, why did you not make a report to the police?

A-

Because policemen arrived after twenty (20) minutes.

Q-

You were a witness to the shooting, why did you not volunteer as a witness being a peace officer?

A-

I was afraid and the police were already there.[18]

Cross examination of Stephen Egos:

Q

This case was investigated by the City Prosecutor's Office in May, 1991, did you volunteer to execute an affidavit in order to attest to the fact that these accused shoot [sic] your elder brother?

A

I did not execute an affidavit because they were not yet arrested but if they will be arrested I will execute [an] affidavit.

Q

Please tell the Court why you made that kind of decision only after the persons are arrested that you will make an affidavit?

A

Because of my traumatic experience I cannot think that is why I went to Argao because they were looking for me and on that year I was able to get married.

Q

Are you trying to impress the Court that [the] execution of that affidavit was too much for you because you were about to get married?

A

At that time I just wanted it that the accused be arrested first before I would execute an affidavit.[19]

It can be seen from the above-quoted excerpts of transcript of stenographic notes that the reason for the failure of Montilla and Egos to present themselves as witnesses earlier was because they were afraid of appellant and his co-accused, since they were still all undetained and roaming freely at that time. It has been held by this Court that:

It is understandable when a witness does not immediately report the identity of the offender after a startling occurrence, more so when he is related to the victim as this makes it all the more traumatic. It is equally understandable for a witness to fear for his safety especially when townmates are involved in the commission of a crime. An inculpatory statement can easily provoke retaliation.[20]

For the second issue, appellant claims that the lower court gravely erred in failing to consider that his defense of alibi was strengthened by the lack of credibility of the prosecution witnesses Antonio Montilla and Stephen Egos. Due to the trial court's determination that the witnesses were credible, which is upheld by this Court, this issue loses its basis. Appellant's defense of alibi cannot stand.

The third issue raised by appellant is that "the lower court gravely erred in failing to consider that there is no clear evidence that the accused's departure from Lorega, San Miguel was a flight from the scene of the crime, and [in] ignoring the fact that the accused returned to Lorega San Miguel in 1993, where he was arrested in 1994." This Court agrees with appellant. A careful perusal of the transcript of stenographic notes reveals that there is in fact no positive evidence of flight from the scene of the crime. However, since flight is neither an element of the crime of murder nor a circumstance enumerated in the Revised Penal Code, it would just have been an additional indication of guilt. The fact that there was no flight does not lessen the evidence on record that sufficiently proves appellant's guilt beyond reasonable doubt.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CR No. 22947 is hereby AFFIRMED. Costs de oficio.

SO ORDERED.

Davide, Jr. (Chairman), Quisumbing, Ynares-Santiago, and Carpio, JJ., concur.

[1] Penned by Justice Rebecca De Guia-Salvador, and concurred in by Justice Candido V. Rivera (Acting Chairman of the Special Eleventh Division) and Justice Elvi John S. Asuncion.

[2] Dated December 3, 1998.

[3] CA Rollo, pp. 5-6.

[4] Id. at 8.

[5] TSN, January 5, 1995, pp. 1-10.

[6] TSN, April 7, 1995, pp. 1-10.

[7] TSN, October 20, 1995, pp. 1-5.

[8] TSN, December 8, 1995, pp. 1-5

[9] TSN, October 25, 1996, pp. 1-13.

[10] TSN, March 13, 1997, pp. 1-12 and TSN, June 20, 1997, pp. 1-4.

[11] CA Rollo, p. 20.

[12] CA Rollo, pp. 99-105.

[13] CA Rollo, p. 82.

[14] CA Rollo, p. 89.

[15] *People v. Almendral*, G.R. No. 126025, July 6, 2004, 433 SCRA 440, 447; *People v. Garin*, G.R. No. 139069, June 17, 2004, 432 SCRA 394, 408.

[16] *People v. Castillo*, 330 Phil. 205 (1996).

[17] TSN, April 7, 1995, pp. 9 -10.

[18] TSN, May 10, 1995, p. 9.

[19] TSN, December 7, 1995, p. 4.

[20] *People v. Castillo*, 330 Phil. 205, 214 (1996), citing *People v. Villaruel*, G.R. Nos. 110803-04, 238 SCRA 408 (1994); *People v. Gamboa*, G.R. No. 91374, 194 SCRA 372 (1991).

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