

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANGELITO BAGSIT Y BAGSIT, APPELLANT.*G.R. No. 148877. August 19, 2003*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-148877/>**PER CURIAM:**

The Decision of the Regional Trial Court of Batangas City finding accused ANGELITO BAGSIT y BAGSIT guilty beyond reasonable doubt of murder, sentencing him to death and ordering him to indemnify the heirs of the deceased P75,000.00 for moral damages, P96,950.00 for funeral and similar expenses, and to pay costs,[1] is on automatic review before the Court.

On 12 September 1999 at around twenty (20) minutes past eight o'clock in the evening, prosecution witness Richard Sison[2] and his younger sister Heidi were watching television inside their house at Bgy. Soro-soro, Ilaya, Batangas City. When Richard looked out of the window, he saw a man whom he identified as Angelito Bagsit pointing a gun at his father Pepito Sison who was then closing the front door of their house. The barrel of the gun held by Angelito protruded thru their grilled window. Not for long, Richard heard a gunshot and almost simultaneously saw his father falling to the cement floor. With the help of his mother Teodora who came from his grandfather's house next door, Richard rushed his father to the hospital where he died shortly after.

Richard Sison further testified that appellant Angelito Bagsit, a second cousin of his mother, used to frequent their house. He could not say what motivated Angelito to kill his father but as far as he knew, his father had no quarrel with the appellant before the shooting incident.

Zenaida Bagsit Aguilar, daughter-in-law of the deceased, also testified that at around twenty past eight in the evening of the killing she was inside her house which was about ten (10) meters away from that of the deceased. As she was preparing coffee in the kitchen, appellant Angelito, who was toting a gun, passed by. Moments later, she heard Angelito cock his gun. Worried that something untoward would happen, she hurried towards her father's house nearby. But before she could even talk to her father, a shot rang out. From her father's house she looked out of the window and saw Pepito, awash in his own blood, being carried by his wife. Although she did not see the actual shooting, she was certain that it was the appellant who fatally shot her father-in-law because, under the circumstances, nobody else could have done it.

When called to the witness stand, appellant Angelito Bagsit vehemently denied having anything to do with the death of Pepito Sison. He averred that in the evening of 12 September 1999 he became drunk after a drinking bout with Dante Bagsit and a certain Marcos Barte who hired him earlier that morning to take care of his piggery. He remembered having left the house of Marcos Barte at around eleven o'clock in the evening. He recounted that he failed to reach his house, a mere ten (10)-minute walk, because it was already very dark. Instead, he spent the night leaning on a fence by the house of one Felix Agdon. When he finally arrived home at around five o'clock the following morning his wife told him about the shooting of Pepito and that some police officers were looking for him.

Relying on the positive assertions of the principal witnesses for the prosecution, the trial court discarded the

denial and alibi of the appellant. Instead, it gave utmost significance to the positive identification by Richard Sison of the assailant before the investigating authorities immediately after the killing. Thus the court a quo explained -[3]

It is also to be noted that in denying the offense charged against him, the accused claimed to be having a drinking spree at the house of one Marcos Barte. If this is true, why was Marcos Barte and one Dante Bagsit, both of whom he claimed to be his drinking partners that fateful night, not come forward to corroborate his defense of alibi x x x Besides, during his early direct testimony the accused claimed he was in the house of one Marcos Barte until 11:00 o'clock in the evening of September 12, 1999 but later on declared that after failing to consume the fifth bottle of gin, he had gone home about 7:00 o'clock in the evening. Finally, the Court observed that during the cross-examination of the accused, he was able to declare the length of the distance he had walked from the house of Marcos Barte as well as the length of time that had elapsed when he slumped on the fence of Felix Agdon where he allegedly passed the night because he was drunk. The Court finds this narration somewhat strange for him to do so because if really he was that drunk his apparent recollection defeats his very claim of drunkenness.

Appellant now implores this Court for his exculpation, calling attention to the alleged errors of the trial court in finding him guilty of murder. He insists: (a) that in violation of his constitutional rights he was illegally arrested without a warrant; (b) that the trial court gravely erred in giving full faith to the unreliable, incredible and biased testimonies of the prosecution witnesses; and, (c) that he was wrongly meted the penalty of death notwithstanding the presence of reasonable doubt calling for his exoneration.[4]

First, the appellant contends that his arrest on 13 September 1999 was illegal because the police authorities, despite reasonable time, effected his arrest without first securing a warrant of arrest in violation of his constitutional rights.

We are not convinced. It is long settled that where the accused, by his voluntary submission to the jurisdiction of the court, as shown by the counsel-assisted plea he entered during the arraignment and his active participation in the trial thereafter, voluntarily waives his constitutional protection against illegal arrests and searches. We have consistently ruled that any objection concerning the issuance or service of a warrant of arrest or a procedure in the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea, otherwise the objection is deemed waived.[5]

Second, the appellant argues that the testimonies of the prosecution witnesses are tainted with suspicion and bias. Specifically, he points out that while witness Zenaida Aguilar claimed that she saw him pass by the side of her house carrying a gun and heard him cock it while she was at the kitchen, she nonetheless clarified that she did not see the actual shooting. Moreover, according to the appellant, it is surprising that a vital witness such as Zenaida Aguilar failed to execute any sworn statement before the police authorities and, worse, even took nine (9) months to give her testimony.

Appellant also belittles the alleged eyewitness account of Richard Sison by explaining that under the circumstances described by Richard, it is improbable, if not outright impossible, for him to have had a clear view of the assailant. He explained that the light from within the house and the beam from the television caused a partial, if not a total impairment, of the witness' vision; the natural consequence being that the suspect's distinct features would not be recognizable from inside the well-lighted room.

Appellant's contentions are too insipid and hollow to deserve serious attention. While it is true that Zenaida's testimony is by itself insufficient to establish appellant's authorship of the crime, the same being merely circumstantial in nature, we cannot discount its corroborative value because it establishes the fact that at the time Pepito was felled by an assassin's bullet, the appellant was at or near the locus criminis. We have to mention that

the house of Zenaida was but a stone's throw away from the house of the victim. Thus, if her testimony is taken in conjunction with Richard's eyewitness account, which also placed him at the scene of the crime, the appellant's defense of alibi that he was nowhere near the crime scene would necessarily collapse. For alibi to prosper, it is not enough for the accused to prove that he was elsewhere when the crime was committed, but he must also demonstrate that it would be physically impossible for him to be at the scene of the crime at the time of its commission. Further, it must be supported by the most convincing evidence since it is an inherently weak defense which can be easily fabricated.[6]

Neither can we accommodate the appellant's specious assertion that Zenaida's delay in narrating her part of the gruesome story completely destroyed her credibility as a witness. It is axiomatic that delay in reporting a crime cannot always be construed as false accusation. This is founded on the truism that an ordinary person is naturally reluctant to be embroiled in a violent incident if only to avoid unwanted anxieties and exposure to possible reprisals on himself and his family.

Appellant literally clutches at straws in insisting that the lighting inside the house made it entirely impossible for Richard to identify him as the culprit.

First, we must bear in mind that appellant Angelito and Richard were no strangers to each other. They came from the same locality and were in fact neighbors since childhood.[7] Second, it has not been shown to our satisfaction that the supposed glare of the light inside the house was such that it virtually made the identification of the assailant impossible. On the contrary, what cannot be disputed is that: (a) when Richard looked out of the window, there was no obstruction which might have prevented him from seeing the appellant who was only several meters away from where he stood. In fact, the appellant was very close to the grilled window when he shot the victim that the light inside the house would have sufficiently illumined his face which all the more enabled Richard to recognize him; (b) the witness averred during his cross-examination that the appellant shouted after he fired his gun.[8] It is not strange then that Richard, being a neighbor of the appellant since childhood, was familiar with the latter's voice. Surely, it is not fanciful to stress that even under less favorable circumstances a familiar face and a familiar voice would considerably reduce any error in identifying the assailant.

It is dogmatic that the positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[9] Richard Sison would not have imputed a crime as serious as murder if he were not truly convinced that in the hands of that person dripped the blood of his father.

Treachery qualified the killing to murder. The appellant, who closely positioned himself surreptitiously behind the window of the house of his unsuspecting victim while the latter had his back turned, and fired his gun execution style, eliminated any risk from any defense that the victim might put up.

As alleged in the amended Information,[10] the killing was perpetrated with the use of an illegally possessed firearm. With the passage of RA 8294 on 6 June 1997, the use of unlicensed firearm in murder or homicide is not a separate crime but merely a special aggravating circumstance.[11] After having been sufficiently proved by way of a certification[12] dated 25 August 2000[13] that the appellant was not a licensed gun holder, an aggravating circumstance shall be appreciated against him pursuant to the above-mentioned law, which provides in part that "if homicide or murder is committed with the use of unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance."

Dwelling, also alleged in the amended Information, is likewise aggravating. The triggerman showed greater perversity when, although outside the house, he attacked his victim inside the latter's own house when he could

have very well committed the crime without necessarily transgressing the sanctity of the victim's home. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere. For the circumstance of dwelling to be considered, it is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense - it is enough that the victim was attacked inside his own abode, although the assailant might have devised means to perpetrate the assault from the outside.[14]

The penalty for murder is reclusion perpetua to death pursuant to Art. 248 of The Revised Penal Code as amended by RA 7659. There being two (2) aggravating circumstances without any mitigating circumstance to offset the same, the trial court correctly imposed the penalty of death.

A final word on the damages. In addition to the P75,000.00 as moral damages, the trial court awarded P96,950.00 as actual burial and incidental expenses.

In consonance with prevailing jurisprudence, we grant the award of P50,000.00 to the heirs of the victim as civil indemnity for his death. The amount is awarded without need of proof other than the commission of the crime.[15] We also reduce the amount of moral damages to P50,000.00[16] in line with recent jurisprudence for the pain and sorrow wrought by Pepito's untimely demise as testified to by his widow Teodora Bagsit Sison.[17] The actual damages granted by the trial court should however be deleted. The barren testimony of the widow in the absence of receipts to prove that the family of the deceased incurred funeral and incidental expenses is not sufficient to support this claim. However, temperate damages may be awarded in place of actual damages.

The award of exemplary damages is warranted under Art. 2230 of the New Civil Code, in view of the presence of the generic aggravating circumstance of dwelling and the special aggravating circumstance of use of unlicensed firearm.

Three (3) members of the Court maintain their position that RA 7659, insofar as it prescribes the death penalty, is unconstitutional; however, they submit to the ruling of the Court, by majority vote, that the law is constitutional and that the death penalty should be imposed accordingly.

WHEREFORE, the Decision of the trial court finding appellant Angelito Bagsit y Bagsit guilty of murder qualified by treachery, with the special aggravating circumstance of use of unlicensed firearm and the generic aggravating circumstance of dwelling, and imposing on him the supreme penalty of DEATH, is AFFIRMED with the MODIFICATION that the amounts of P50,000.00 as civil indemnity, another P50,000.00 as moral damages, P25,000.00 as exemplary damages and, in lieu of actual damages, temperate damages of P25,000.00 shall be awarded to the heirs of the victim Pepito Sison. The award of actual damages is deleted for lack of sufficient evidence.

In accordance with Art. 83 of The Revised Penal Code, as amended by Sec. 25 of RA 7659, upon the finality of this Decision, let the records of this case be forwarded to Her Excellency, The President of the Philippines, for the possible exercise of her pardoning power. Costs against appellant.

SO ORDERED.

Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Azcuna, and Tinga, JJ., concur.

Davide, Jr., C.J., Austria-Martinez, Corona, Carpio-Morales, and Callejo, Sr., JJ., on official leave.

[1] Decision penned by Judge Conrado R. Antona, RTC-Br. 4, Pallocan, Batangas City.

[2] TSN, 14 March 2000, p. 1.

[3] Rollo, p. 19.

[4] Id., p. 42.

[5] *People v. Lopez, Jr.*, G.R. No. 104662, 16 June 1995, 245 SCRA 95; *People v. Cabiles*, G.R. No. 112035, 16 January 1998, 284 SCRA 199, 210.

[6] *People v. Makilang*, G.R. No. 139329, 23 October 2001, 368 SCRA 155.

[7] TSN, 14 March 2000, p. 2.

[8] Id., p. 7.

[9] *People v. Mantes*, G.R. No. 138914, 14 November 2001, 368 SCRA 661.

[10] Original Records, p. 8. An Information dated 16 September 1999 was filed by City Prosecutor Mario Atienza. However, an Amended Information was filed on 27 September 1999 to include the allegation that the crime of murder is attended by the aggravating circumstances of dwelling and use of illegally possessed firearm.

[11] *People v. Abriol*, G.R. No. 123137, 17 October 2001, 367 SCRA 327.

[12] Original Records, p. 111.

[13] Issued by police chief inspector Jonas Calleja of the PNP-Firearms and Explosive Division.

[14] *People v. Perreras*, G.R. No. 139622, 31 July 2001, 362 SCRA 202.

[15] *People v. Adoc*, G.R. No. 132079, 2 April 2000, 330 SCRA 626; *People v. Solis*, G.R. No. 124127, 29 June 1998, 291 SCRA 529.

[16] *People v. Pasensoy*, G.R. No. 140634, 12 September 2002 citing *People v. Silvestre*, G.R. No. 127573, 12 March 1999, 307 SCRA 68.

[17] TSN, 8 February 2000, p. 2.

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