

JOSE INGAL y SANTOS, Petitioner, vs. PEOPLE OF THE PHILIPPINES, Respondent.

G.R. No. 173282. March 04, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Assailed before Us is the Decision[1] of the Court of Appeals in CA- G.R. CR.-H.C. No. 01056, dated 31 August 2005, which affirmed in toto the decision[2] of the Regional Trial Court (RTC) of Manila, Branch 2, convicting petitioner Jose S. Ingal of the crime of murder.

For the death of one Rolando N. Domingo a.k.a. Toto, petitioner was charged with murder in an information which reads:

That on or about March 2, 1987, in the City of Manila, Philippines, the said accused, conspiring and confederating together with one RICARDO LIDOT who has already been convicted of the said offense under Crim. Case No. 87-53676 with RTC of Manila, Branch V, and with others whose true names, identities and present whereabouts are still unknown and helping one another, taking advantage of their superior strength, did then and there willfully, unlawful and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon the person of one ROLANDO DOMINGO y NALANGAN @ TOTO by then and there stabbing the latter on different parts of his body with a deadly weapon, thereby inflicting upon him mortal stab wounds which were the direct and immediate cause of his death thereafter.[3]

When arraigned on 27 September 1994, petitioner, with the assistance of counsel de oficio, pleaded not guilty to the crime charged.[4]

The prosecution presented the following witnesses, namely: (1) Myrna Nalangan Domingo;[5] (2) Aida Bona;[6] (3) Rosalinda Tan;[7] (4) Dr. Marcial G. Ceñido;[8] (5) SPO2 Leon Salac, Jr.;[9] and (6) PFC Benjamin C. Boco.[10]

Myrna Nalangan Domingo, the mother of the victim, testified that her son was a nineteen-year-old student when he died on 2 March 1987. She said she was at home when she learned that her son was stabbed and was brought to the Mary Johnston Hospital. Upon learning of the news, she immediately went to the hospital to see her son. She said her son was still alive when she arrived in the hospital, but he eventually passed away that same day. She said she incurred hospital and funeral expenses. The death of her son caused her anguish and pain.

The next witness for the prosecution was Aida Bona, a resident of Perla Street, Tondo, Manila, and the owner of the carinderia where the stabbing took place. She narrated that at around 9:00 p.m. of 2 March 1987, she was in front of her carinderia and the victim, Rolando Domingo, nicknamed Toto, was eating thereat. While Toto was eating, petitioner Jose Ingal approached him, pulled his hair and repeatedly stabbed him. She was around an arm's length away from Toto when he was stabbed. After petitioner stabbed Toto, he just walked away as if nothing happened. She shouted for help but nobody came to help. She said she was certain the assailant was the

petitioner because of the right mole on his eyelid. She added she did not see anyone helping the petitioner when he stabbed the victim. Aside from the victim, only she, Rosalinda Tan, and the girlfriend of the victim were in the carinderia.

Mrs. Bona explained she gave her first written statement about the incident on 26 August 1994. On the night of the incident, she told the police about the appearance of the suspect. What she revealed was reduced into writing but she did not sign it and told the police she would sign the same only if the suspect would be apprehended. She said she first saw the petitioner on 2 March 1987 and saw him the second time when he was arrested on 26 August 1994.

Rosalinda Tan, a helper at the carinderia of Mrs. Bona, testified that at around 9:00 p.m. of 2 March 1987, she was attending to the needs of the customers in the carinderia. A person, later identified as the petitioner, came to the carinderia and stabbed Rolando Domingo. She disclosed she was in front of the victim, about two meters away, when petitioner placed a towel on the neck of the victim and stabbed him thrice. Petitioner thereafter removed the towel and walked away towards the end of Perla Street. Like Mrs. Bona, she executed a sworn statement when petitioner was arrested. She explained that only one person stabbed the victim.[11]

Former Medico-Legal Officer of the Western Police District (WPD) Dr. Marcial G. Ceñido testified that on 3 March 1987, he conducted the autopsy on Rolando Domingo's body which was identified[12] by the latter's sister, Nympha Mationg. He said the victim suffered four stab wounds, two of which were penetrating and fatal. The first wound was non-penetrating and located at the right upper thorax, right chest. The second one was penetrating and located at the left cheek on the left side. The third one penetrated the left anterior while the fourth was non-penetrating at the back. He said the bladed weapon used was a tres cantos. The primary cause of death was a penetrating stab wound on the chest. He issued Autopsy Report No. W-87-167[13] and the victim's Certificate of Death.[14]

The testimony of Solomon Batallar, member of the WPD, was dispensed with when the parties stipulated that his testimony would show that he accompanied the mother of the victim to the residence of the petitioner, and that the petitioner was brought to the police station.

Testifying next for the prosecution was SPO2 Leon Salac, Jr., a member of the WPD Command assigned to the Homicide Section. He testified that on 27 August 1994, he was assigned as an investigator in the Special Team of the WPDC that handles cases pertaining to crimes against persons. He remembered handling the case involving the murder of Rolando Domingo in which the suspect was the petitioner. He said he prepared documents - Progress Report dated 27 August 1994 and the statements of witnesses - and thereafter placed the petitioner under arrest. However, he was not the one who took the statements of Aida Bona and Rosalinda Tan.

The other witness was Benjamin C. Boco, retired Police Inspector of the WPD assigned to the Homicide Section. He recounted that on 3 March 1987, he received a call from a certain Mr. Garrote, a Security Guard of Mary Johnston Hospital, informing him that a stabbing victim died. Upon receipt of said information, he proceeded to the hospital and saw the victim at the morgue. The victim was Rolando Domingo. He thereafter went to the crime scene and talked to Aida Bona, the owner of the carinderia where the stabbing happened. Mrs. Bona told him that the victim was eating in her carinderia when the suspect, Jose Ingal, suddenly arrived and stabbed the victim. Boco said he tried to get a written statement from Mrs. Boco who declined and told him that she would be willing to give her statement upon the apprehension of the suspect. Boco said he then went to a certain house where the suspect was allegedly hiding, but the suspect was not there. So, he went back to the office and prepared an Advance Report.[15]

The prosecution formally offered Exhibits "A" to "G," inclusive, with sub-markings which the trial court

admitted.[16]

For the defense, the following took the witness stand: (1) Juanito Yang;[17] (2) SPO1 Loreto A. Concepcion;[18] (3) Ricardo de Leon;[19] (4) petitioner Jose Ingal;[20] and (5) Remedios A. Ibajo.[21]

Sgt. Juanito Yang, retired police officer, testified that on 3 April 1987, he was assigned to the Command of Investigation Follow-up Unit, Homicide Section of the WPD. He was assigned a case involving the murder of Rolando Domingo in which there were four suspects, namely: Ricardo Lidot, a certain Joseph and two others. In the Progress Report[22] dated 3 April 1987 that he prepared, it is stated that Ricardo Lidot admitted to him that he (Lidot) stabbed Rolando Domingo. He likewise prepared the Booking and Information Sheet[23] of Ricardo Lidot alias Carding Daga. He revealed it was Lidot who told him there were three more suspects.

SPO1 Loreto A. Concepcion of the WPD Homicide Section declared that on 31 March 1987 he, then a Patrolman, took and prepared the statement[24] of Gina dela Cruz regarding the murder of Rolando Domingo.

Ricardo de Leon, a laborer, testified that on 2 March 1987, he was a resident of Perla Street, Tondo, Manila. At around 9:00 p.m. of said date, he was about to buy food at the carinderia of Aling Bona at Perla St. While he was approaching the carinderia, he saw Rolando Domingo a.k.a. Toto, with a lady companion eating in the carinderia. He saw the group of Joseph, Ricardo Lidot a.k.a. Carding Daga and two others arrive. Joseph and Carding Daga entered the carinderia with the latter handing a tres cantos to the former, while the other two stood as lookouts. He saw Joseph approach Toto and stab the latter three times with the tres cantos. De Leon said he was five arm's length away when Carding Daga gave the weapon to Joseph. After the stabbing of Toto, he heard the four agree that they would meet at Smokey Mountain. Thereafter, the four left.

De Leon said it is not true that Jose Ingal stabbed Rolando Domingo, because Ingal was not there in the carinderia. Joseph, De Leon insists, is not Jose Ingal. De Leon did not tell anybody that he saw the stabbing incident. This was the first time he divulged that he witnessed the crime. He broke his silence and decided to testify because his sister requested him to do so.

Petitioner Jose Ingal testified for his defense. He narrated that on 2 March 1987, at around 9:00 p.m., he was in his place of work in Navotas. His work was to deliver fish to Divisoria every night. He reported for work before 8:00 p.m. and at around midnight, he, together with five others, delivered fish at Elcano St., Divisoria. He finished his delivery at around 7:00 a.m. of 3 March 1987. During the time he reported for work up to the time he finished his job, he said he did not go anywhere.

Ingal said that he knew Rolando Domingo to be a loafer, and that he only learned what happened to Domingo a day after the latter was stabbed to death. He came to know that a certain Joseph stabbed the victim. Ingal disclosed that his only nickname is Joe. He explained that upon learning of the death of Domingo, he still stayed in his house at Coral St., Tondo, for two months before transferring to Dagupan, Tondo. From the time Domingo was stabbed until petitioner was arrested in 1994, the latter worked as a delivery man of fish and never lived outside of Tondo.

Ingal testified he did not know Ricardo Lidot alias Carding Daga. He likewise disputed the declarations of Mmes. Aida Bona and Rosalinda Tan that he was the one who stabbed Rolando Domingo. He first saw Mrs. Bona when she testified in court, while it was at the police headquarters that he first saw Mrs. Tan. He did not know any reason why these two women testified against him.

Ingal disclosed that it took him twenty minutes by jeepney to travel from his residence to his place of work in the Navotas Fish Port, and that Elcano St. where he delivered fish on 2 March 1987 was only one ride away from his house. After finishing delivery at 7:00 a.m. of 3 March 1987, he went home and slept. He learned of the stabbing

incident three days after from his neighbor. He denied he was called Bobot or Joseph.

Remedios Ibajo testified that on 2 March 1987, she was a resident of 85 Quezon St., Tondo, Manila. She said she had known petitioner Ingal for a long time prior to 2 March 1987. She narrated that on said date, at around 9:00 p.m., she was in the carinderia of Aling Bona which was located in Perla St., Tondo, Manila. While looking at the food being sold there, she noticed a man (whom she later learned was named Toto) and a woman eating in the carinderia. She then saw two persons, who arrived together, approach Toto. One of them tapped the shoulder of Toto and told him “Sumama ka sa amin.” Toto did not answer. The one who tapped the shoulder of Toto asked his companion - whom she knew to be Carding Daga - for a weapon. This Carding Daga drew a tres cantos from his waist and handed it to another person. Upon receiving the weapon, the person who tapped the shoulder of Toto stabbed the latter three times. Mrs. Ibajo said she was two to three feet away from the victim who was on her left. She saw that Carding Daga and the person who stabbed the victim had two more companions who waited at the corner. The two who approached the victim went toward the two persons in the corner and told them, “Let us go and see each other at Smokey Mountain.” Then they walked away as if nothing happened. Toto was picked up by his lady companion, was placed in a pedicab, and was taken to the hospital.

Mrs. Ibajo explained that she knew the petitioner because she knew his relatives. She bared that this was the first time she revealed what she knew about the stabbing incident. She did not see Jose Ingal at the carinderia before or after 9:00 p.m. She added that her residence in March 1987 was only a block away from the crime scene.

After formally offering Exhibits “1” to “5,” inclusive, with sub-markings, and with the admission thereof by the trial court, the defense rested its case.[25]

As rebuttal witnesses, the prosecution presented (1) Rosalinda Tan[26] and (2) Elizabeth R. De Paz.[27]

Rosalinda Tan took the witness stand anew as rebuttal witness. She said she did not know any person by the name of Remedios Ibajo. She had known Aida Bona long before the stabbing incident, the latter was fondly called Aida, and there was no instance when the former was called Aling Bona.

Elizabeth R. De Paz, Punong Barangay and resident of 94 Quezon Street, Tondo, Manila, testified she had been residing in Quezon St. since 1962. As Punong Barangay in said place, she issued a Certification[28] stating that Remedios Ibajo had not been a resident of 85 Quezon St., Tondo, Manila. Said address was only four houses away from her residence. She did not know anybody by that name, the owner of the house told her that the place had never been rented or leased, and no Remedios Ibajo lived there. She added that she knew the residents in their place, because they had a census in their barangay.

On 29 January 1999, the trial court convicted petitioner of murder in a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused Jose Ingal y Santos guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from EIGHTEEN (18) YEARS, TWO (2) MONTHS and TWENTY-ONE (21) DAYS as minimum to TWENTY (20) YEARS of reclusion temporal in its maximum period as maximum.

Since accused Jose Ingal is detained, in the service of his sentence, he shall be credited the full period of his temporary detention.

It is likewise ordered that the accused be transmitted to the National Bureau of Prison thru the Philippine National Police (PNP) pursuant to the Supreme Court Resolution En Banc laid down in the case of People vs. Ricardo C. Carlos (GR-92860, October 15, 1991) cited in the case of People vs. Crescencia C. Reyes, En Banc,

GR-101127-31, August 7, 1992.[29]

The trial court gave credence to the testimonies of the prosecution witnesses Aida Bona and Rosalinda Tan vis-à-vis petitioner's defenses of denial and alibi. Mrs. Bona, the owner of the carinderia where the stabbing happened, informed the authorities that petitioner was the one who stabbed Rolando Domingo and said that she would not give a written statement until and unless the suspect had been apprehended. Seven years later, after the arrest of the petitioner, Mmes. Bona and Tan finally gave their sworn statements pointing to petitioner as the assailant. The court a quo said that the weapon used (tres cantos) and the manner in which the victim was stabbed (four times with two penetrating stab wounds on the chest) clearly indicated the intention of petitioner to kill the victim. The victim was unarmed and was suddenly stabbed several times by the petitioner.

On 11 February 1999, the prosecution filed a Motion for Reconsideration asking that the penalty imposed on petitioner be modified to reclusion perpetua as prescribed by law.[30] On 12 February 1999, petitioner filed a Notice of Appeal.[31] In an Order[32] dated 9 March 1999, the trial court, finding the motion to be meritorious, modified its decision and sentenced petitioner to suffer the penalty of reclusion perpetua. Consequently, it forwarded the records of the case to this Court. Pursuant, however, to our ruling in *People v. Mateo*,[33] the case was remanded to the Court of Appeals for appropriate action and disposition.

On 31 August 2005, the Court of Appeals rendered a decision affirming in toto the decision of the trial court, the decretal portion reading:

WHEREFORE, premises considered, the assailed December 9, 1998 Decision of the Regional Trial Court is AFFIRMED in toto. This case is hereby transmitted to the Honorable Supreme Court for final disposition.[34]

In our Resolution[35] dated 19 June 2006, the parties were required to simultaneously file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. The Office of the Solicitor General manifested that it was not submitting a Supplemental Brief, considering that the arguments raised by petitioner had been discussed and refuted in its appellee's brief dated 8 November 2000. On the part of the petitioner, he manifested that it was likewise unnecessary to file a supplemental brief since the allegations contained in his appellant's brief would be the same arguments he would submit to the Court.

Petitioner assails his conviction, arguing there was error:

I

IN GIVING CREDENCE TO THE CLAIMS OF THE TWO (2) ALLEGED EYEWITNESSES THAT THERE IS ONLY ONE (1) SUSPECT IN THE KILLING OF VICTIM ROLANDO DOMINGO, THAT IS, THE ACCUSED-APPELLANT HEREIN, CONTRARY TO THE INFORMATION GATHERED BY THE POLICE INVESTIGATOR, PFC. JUANITO B. YANG, POLICE INVESTIGATOR OF THE WESTERN POLICE DISTRICT WHO CONDUCTED FOLLOW-UP INVESTIGATION ON APRIL 3, 1987 TO THE EFFECT THAT THERE WERE, IN FACT, FOUR (4) SUSPECTS, ONE OF WHOM IS RICARDO LIDOT WHO WAS ALREADY CHARGED AND CONVICTED FOR THE DEATH OF THE VICTIM.

II

IN CONVICTING THE ACCUSED-APPELLANT ON THE BASIS OF THE TESTIMONIES OF TWO (2) ALLEGED EYEWITNESSES WHOSE STATEMENTS WERE GIVEN TO THE POLICE MORE THAN SEVEN (7) YEARS AFTER THE COMMISSION OF THE CRIME ON MARCH 2, 1987.

III

IN HOLDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED, IN THE ABSENCE OF SUFFICIENT PROOF TO JUSTIFY HIS CONVICTION.

The prosecution relies primarily on the testimonies of Aida Bona and Rosalinda Tan, who allegedly witnessed the

stabbing of Rolando Domingo in the carinderia they operate. On the other hand, petitioner raises the defense of denial and alibi. He claims he was in his place of work when the stabbing happened. Ricardo de Leon and Remedios Ibajo, both of whom allegedly witnessed the stabbing, testified that petitioner was not the one who stabbed the victim because he was not there.

Petitioner contends that the trial court should not have given credence to the allegations of Mmes. Bona and Tan that they saw petitioner, who was alone, stab the victim, because their testimonies contradicted the testimony of defense witness Sgt. Juanito Yang, who testified that in the course of his follow-up investigation, he came to know that there were four (4) suspects in the killing of the victim and one of them – Ricardo Lidot alias Carding Daga – who was arrested, admitted to him that it was he who stabbed the victim for which he was convicted and jailed.

We find his contention untenable.

Sgt. Juanito Yang testified that Ricardo Lidot alias Carding Daga admitted to him that he was the one who stabbed the victim,[36] which declaration was contained in the Progress Report[37] dated 3 April 1987 and the Booking and Information Sheet[38] that he prepared. However, after going over these two documents, we find therein that Ricardo Lidot alias Carding Daga never admitted that he stabbed Rodolfo Domingo. What he admitted was that “it was he who handed the death weapon to alias Joseph who stabbed the deceased.” This is further supported by Progress Report II[39] dated 27 August 1994 prepared by SPO2 Leon Salac, which stated that “Lidot was established and found to have handed the assailant the bladed weapon used in stabbing aforementioned victim.” From these, it is clear that Sgt. Yang’s testimony in court was not in accord with the statements contained in the documents he prepared.

The defense tries to destroy the credibility of Mmes. Bona and Tan by arguing that their testimonies that petitioner was alone at the time when he stabbed the victim was not consistent with the testimony of Sgt. Yang that there were four suspects in the killing of the victim. There being statements that there were allegedly four witnesses to the stabbing of victim does not diminish the credibility of the two eyewitnesses. The two prosecution witnesses were one in saying it was petitioner whom they saw stab the victim. This was very clear. The fact that they did not see the other alleged accomplices in the execution of the crime does not detract from the veracity of their testimony that petitioner stabbed the victim. Their failure to mention the three other malefactors simply means that they did not see them when the assault was made. We agree with the Office of the Solicitor General when it said that:

Said witnesses merely testified that they did not see anybody else helping appellant in stabbing the victim. Their testimonies did not rule out the presence of other assailants as subsequently established by the progress report naming one Ricardo Lidot alias Carding Daga, Joseph alias Bebot and Jose Ingal, and two (2) unidentified persons as the suspects. Indeed, defense witness Ricardo de Leon testified that it was Lidot who handed the “tres cantos” to Joseph who in turn stabbed the victim thrice. Certainly, there is no inconsistency between the progress report and the testimonies of the prosecution eyewitnesses.[40]

On the second assigned error, petitioner faults Mrs. Bona for having waited for the apprehension of the assailant after more than seven years to divulge to the policemen what had transpired on the night of 2 March 1987. If she truly were able to witness the crime, the fact that she revealed what she saw only after seven years was contrary to ordinary human experience and conduct, thereby rendering her testimony unworthy of credence.

We find the testimony of Mrs. Bona to be worthy of belief. The statement of the defense that Mrs. Bona waited for seven years after divulging what she knew about the stabbing incident is awry. After the incident, Mrs. Bona immediately gave her statement to the police that petitioner was the one who stabbed the victim. This is evidenced

by the Advance Report[41] dated 3 March 1987 prepared by PFC Benjamin Boco. It is not true that she waited for seven years before revealing what she knew. What she did not immediately give to the police was her written statement under oath, because she was fearful that something bad might happen to her because the suspect was still at large. She explained she would only give her written statement when the suspect was apprehended, because the crime was a grave offense.[42] This was what she did once petitioner was arrested and jailed.

She cannot be faulted for doing what she did. Fear of reprisal and the natural reluctance of a witness to get involved in a criminal case are sufficient explanations for a witness' delay in reporting a crime to the authorities.[43] Initial reluctance to volunteer information regarding a crime due to fear of reprisal is common enough that it has been judicially declared as not affecting a witness' credibility.[44] The fact that Mrs. Bona did not right away submit a written statement to the police was natural and within the bounds of expected human behavior. Her action revealed a spontaneous and natural reaction of a person who had yet to fully comprehend a shocking and traumatic event. Besides, the workings of the human mind are unpredictable. People react differently to emotional stress. There is simply no standard form of behavioral response that can be expected from anyone when confronted with a strange, startling or frightful occurrence.[45] In her case, Mrs. Bona said she was shocked and lost her composure because that was the first time she saw someone being killed in front of her.[46]

The defense further tries to discredit Mrs. Bona by showing alleged inconsistencies in her testimony regarding the presence of petitioner while she was giving her Sinumpaang Salaysay at the WPD. The defense points out that Mrs. Bona contradicted her statement in her Sinumpaang Salaysay that she saw petitioner while she was being investigated in the WPD, but in her testimony in court she said she had not seen him in the WPD. As to Mrs. Tan, the defense claims that she did not see the petitioner while her statement was being taken by the police which is contrary to what was stated in her Sinumpaang Salaysay that she saw petitioner while she was giving her statement.

We find these inconsistencies to be too trivial to diminish the credibility of these two witnesses. From their testimonies in court, it is evident that they saw petitioner in the police station when he was arrested.[47] Whether they saw petitioner before, during or after the preparation of their statements is of no moment because they have clearly and unequivocally identified petitioner as the person who stabbed the victim. Settled is the rule that inconsistencies on minor and trivial matters only serve to strengthen rather than weaken the credibility of witnesses, for they erase the suspicion of rehearsed testimony.[48]

The testimonies of the prosecution eyewitnesses are more convincing than those of the supposed defense eyewitnesses (Ricardo de Leon and Remedios Ibajo). Both De Leon and Ibajo are friends of the petitioner. De Leon said he was requested by petitioner's sister to testify, because petitioner was asking for assistance. Ibajo revealed that she knows the relatives of petitioner. The testimonies of close relatives and friends are necessarily suspect.[49] Moreover, it has been amply demonstrated that Ibajo has never been a resident of the place where victim was stabbed.

We find the evidence of the prosecution to be more credible than that adduced by petitioner. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[50]

The Court of Appeals further affirmed the findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. We find no compelling reason to deviate from their findings.

Petitioner interposes the defenses of denial and alibi. As against the damning evidence of the prosecution, they must necessarily fail. A denial unsubstantiated by clear and convincing evidence is negative, self-serving, merits no weight in law, and cannot therefore be given greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.[51]

Further, denial cannot prevail over the positive testimonies of prosecution witnesses who were not shown to have any ill motive to testify against appellants. Absence of improper motives makes a testimony worthy of full faith and credence.[52] In this case, petitioner testified that he did not know of any reason why Mmes. Bona and Tan testified against him.[53]

Petitioner likewise interposes the defense of alibi. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected.[54] For the defense of alibi to prosper, it is imperative that the accused establish two elements: (1) he was not at the locus delicti at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.[55] Petitioner failed to do so.

In the case at bar, petitioner avers that he was working when the stabbing happened. He said that it takes him twenty minutes by jeepney to travel from his residence to his place of work in the Navotas Fish Port, and that Elcano St. where he delivered fish on 2 March 1987 was only one ride away from his house. Thus, it was not possible for him to have been at the scene of the crime when the crime was being committed. On top of this, he failed to present witnesses like his employer or any of his five companions who was allegedly with him when he went to Elcano St., Divisoria, who could testify that he was somewhere else when Rolando Domingo was attacked.

Anent the third assigned error, petitioner maintains that the prosecution failed to discharge the quantum of proof required to support a conviction because it failed to establish all the elements of the crime charged as alleged in the information. The information, he states, accuses him of the crime of murder in conspiracy with Ricardo Lidot and two others. Since the testimonies of Mmes. Bona and Tan only show that the assailant, supposedly the petitioner, was alone when he attacked the victim then conspiracy was not established as alleged in the information, and he should thus be exonerated.

The information alleged that petitioner, together with Ricardo Lidot and others whose names are still unknown, conspired in killing Rolando Domingo. Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a crime and decide to commit it. It is hornbook doctrine that conspiracy must be proved by positive and convincing evidence, the same quantum of evidence as the crime itself.[56] Once conspiracy is established, all the conspirators are answerable as co-principals regardless of their degree of participation, for in the contemplation of the law, the act of one becomes the act of all, and it matters not who among the accused inflicted the fatal blow to the victim.[57]

Conspiracy is not an element of the crime of murder or homicide. Conspiracy assumes pivotal importance in the determination of the liability of the perpetrators.[58] Thus, if the evidence adduced by the prosecution fails to prove conspiracy, only those whose liability can be established can be held liable for the crime charged. In the case under consideration, the prosecution was able to prove that petitioner was the one who stabbed the victim. But since conspiracy was not shown in the instant case, the other accused cannot be convicted because their respective liabilities were not satisfactorily proved as well. Petitioner alone is liable for the death of the victim.

We now go to the nature of the crime committed. The information alleged treachery in the commission of the crime. As correctly found by the trial court, treachery attended the killing. There is treachery in a sudden and unexpected attack which renders the victim unable to defend himself by reason of the suddenness and severity of

the attack.[59] The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.[60] In the case at bar, the victim was attacked from behind while he was eating. The victim was not able to defend himself or retaliate because the attack was so sudden and unexpected. Since treachery was properly alleged in the information, the same can be used to qualify the killing to murder.

Without a doubt, the intention of petitioner was to kill the victim. This intention was very clear when he treacherously attacked the victim when the latter was eating at the carinderia. The number of times (four) petitioner stabbed the victim in the chest area supports this conclusion. The intent to kill is shown by the weapon used by the offender and the parts of the victim's body at which the weapon was aimed.[61]

The Information likewise alleged the qualifying circumstance of evident premeditation. Evident premeditation, however, may not be appreciated where there is no proof as to how and when the plan to kill was hatched or the time that elapsed before it was carried out.[62] In the case at bar, the prosecution failed to establish that evident premeditation attended the killing.

We now go to the imposition of the penalty. Petitioner is guilty of murder. The crime was committed on March 2, 1987. At that time the penalty for murder under Article 248 of the Revised Penal Code was reclusion temporal in its maximum period to death. The penalty for murder is reclusion perpetua to death. There being neither mitigating nor aggravating circumstances, the penalty for murder should be imposed in its medium period or reclusion perpetua.[63] Thus, for the murder of Rolando Domingo, there being no other mitigating or aggravating circumstance attending the same, the penalty imposed on petitioner is reclusion perpetua.

With respect to award of damages, both the trial court and the Court of Appeals did not award any. When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[64]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[65] Under prevailing jurisprudence,[66] the award of P50,000.00 to the heirs of the victim as civil indemnity is in order.[67]

As to actual damages, the heirs of the victim are not entitled thereto because said damages were not duly proved with reasonable degree of certainty.[68] It is necessary for a party seeking actual damages to produce competent proof or the best evidence obtainable, such as receipts, to justify an award therefor.[69] The hospitalization and funeral expenses were not supported by receipts. However, the award of P25,000.00 in temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[70] Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss, although the exact amount was not proved.[71]

Moral damages must also be awarded because it is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[72] The award of P50,000.00 as moral damages is in order.

The heirs of the victim are likewise entitled to exemplary damages in the amount of P25,000.00 since the qualifying circumstance of treachery was firmly established.[73]

WHEREFORE, all the foregoing considered, the decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01056, dated 31 August 2005, is **AFFIRMED WITH MODIFICATION**. Petitioner is found **GUILTY** beyond

reasonable doubt of murder as defined in Article 248 of the Revised Penal Code, qualified by treachery. There being no aggravating or mitigating circumstance in the commission of the crime, he is hereby sentenced to suffer the penalty of reclusion perpetua. He is ORDERED to pay the heirs of Rolando Domingo the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as temperate damages and P25,000.00 as exemplary damages. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Tinga,* and Reyes, JJ., concur.

* Justice Danto O. Tinga was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 12 September 2007.

[1] Penned by Associate Justice Vicente Q. Roxas with Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr., concurring; CA rollo, pp. 123-137.

[2] Records, pp. 293-302.

[3] Id. at 1.

[4] Id. at 16.

[5] TSN, 4 October 1994.

[6] TSN, 25 October 1994.

[7] TSN, 28 February 1995.

[8] TSN, 7 April 1995.

[9] TSN, 19 May 1995.

[10] TSN, 7 September 1995.

[11] TSN, 28 February 1995, pp. 31-32.

[12] Exh. C; Records, p. 129.

[13] Exh. D; id. at 130.

[14] Exh. E; id. at 132-133.

[15] Exh. G; id. at 136.

[16] Id. at 137.

[17] TSN, 16 February 1996.

[18] TSN, 23 February 1996.

[19] TSN, 12 July 1996, 9 August 1996.

[20] TSN, 19 September 1996, 11 December 1996.

[21] TSN, 7 March 1997.

[22] Exh. 3; Records, p. 8.

- [23] Exh. 4; id. at 225.
- [24] Exh. 5; id. at 226-227.
- [25] Id. at 234.
- [26] TSN, 7 August 1997.
- [27] TSN, 22 August 1997 (Rebuttal).
- [28] Exh. H; Records, p. 246.
- [29] Id. at 302.
- [30] Id. at 308-309.
- [31] Id. at 310.
- [32] Id. at 313.
- [33] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [34] CA rollo, p. 137.
- [35] Id. at 18.
- [36] TSN, 16 February 1996, pp. 5, 9-10.
- [37] Exh. 3; Records, p. 8
- [38] Exh. 4; id. at 225.
- [39] Exh. F; id. at 134.
- [40] CA rollo, pp. 100-101.
- [41] Exh. G; records, p. 136.
- [42] TSN, 25 October 1994, pp. 10-12.
- [43] *People v. Hernandez*, G.R. No. 139697, 15 June 2004, 432 SCRA 104, 112-113.
- [44] *People v. Roma*, G.R. No. 147996, September 30, 2005, 471 SCRA 413, 429.
- [45] *People v. Dulanas*, G.R. No. 159058, 3 May 2006, 489 SCRA 58, 74.
- [46] TSN, 25 October 1994, p. 7.
- [47] TSN, 25 October 1994, pp. 12, 16-17; 28 February 1995, pp. 27, 29 & 36.
- [48] *People v. Santiago*, 465 Phil. 151, 161 (2004).
- [49] *People v. Opeliña*, 458 Phil. 1001, 1014 (2003).
- [50] *People v. Escutor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.
- [51] *People v. Alviz*, G.R. Nos. 144551-55, 29 June 2004, 433 SCRA 164, 172.
- [52] *People v. Brecinio*, 469 Phil. 654, 665 (2004).
- [53] TSN, 19 September 1996, p. 17; 11 December 1996, p. 15.

- [54] *People v. Sanchez*, 426 Phil. 19, 31 (2002).
- [55] *People v. Flora*, 389 Phil. 601, 611 (2000).
- [56] *People v. Montenegro*, G.R. No. 157933, 10 August 2004, 436 SCRA 33, 42.
- [57] *People v. Tagana*, 468 Phil. 784, 808 (2004).
- [58] *People v. Peralta*, 134 Phil. 703, 717-718 (1968).
- [59] *People v. Tolentino*, G.R. No. L-59097, 20 September 1988, 165 SCRA 490, 496.
- [60] *People v. Botona*, G.R. No. 161291, 27 September 2004, 439 SCRA 294, 301.
- [61] *Gorospe v. People*, 466 Phil. 206, 216 (2004).
- [62] *People v. Agudez*, G.R. Nos. 138386-87, 20 May 2004, 428 SCRA 692, 709.
- [63] Arts. 64[1] and 248, Revised Penal Code; *People v. Quirol*, G.R. No. 149259, 20 October 2005, 473 SCRA 509, 518.
- [64] *People v. Beltran, Jr.*, G. R. No. 168051, 27 September 2006, 503 SCRA 715, 740.
- [65] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.
- [66] *People v. Buban*, G.R. No. 170471, 11 May 2007, 523 SCRA 118, 134.
- [67] *People v. Pascual*, G.R. No. 173309, 23 January 2007, 512 SCRA 385, 400.
- [68] *People v. Tubongbanua*, *supra* note 65.
- [69] *People v. Jamiro*, G.R. No. 117576, 18 September 1997, 279 SCRA 290, 311.
- [70] *People v. Dacillo*, G.R. No. 149368, 14 April 2004, 427 SCRA 528, 538.
- [71] *People v. Surongon*, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.
- [72] *People v. Bajar*, 460 Phil. 683, 700 (2003).
- [73] *People v. Beltran, Jr.*, *supra* note 64.

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