

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO PEREZ Y LANA, DEFENDANT-APPELLANT.***G.R. No. 50044. July 31, 1981*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-50044/>**PER CURIAM:**

Charged with murder for the slaying of a 16 year old girl, Wilma Cagurangan, and found guilty thereof with the aggravating circumstance of recidivism, Alejandro Perez was sentenced to death by the Court of First Instance of Cagayan, and ordered to indemnify the heirs of the deceased in the sum of P12,000 and to pay the costs. The judgment of conviction was appealed to this Court.

Appellant's conviction was based mainly on the eyewitness account of the killing given during the trial by Jose Cafugauan whose testimony as stated in the People's brief from which We quote, is as follows:

"At the trial, Cafugauan testified that at about 8:00 o'clock that morning, he was at the vicinity of the creek in barrio Dassun digging for beetle larva when he saw the accused about to hold Wilma's waist; she pushed the accused and ran away; the accused gave chase and overtook her, stabbing her on the back; Wilma fell to the ground and thereupon the accused straddled over her and stabbed her several times with a knife locally known as "immuco" after which he fled in the direction of Iguig (pp. 34, 35, 36, 41, 82, tsn., March 25, 1975). Because the scene of the gruesome slaying was of lower elevation than the place where he was hidden among the young "talahib" grass at a distance or about 30 meters east of the creek, Cafugauan could clearly see the occurrence (pp. 36, 37, 48, 49, 50, 51, 53, 64, tsn., March 25, 1975; p. 6 tsn., Sept. 2, 1976). Cafugauan also testified that from October 8th to the 22nd he kept the incident to himself because he was afraid of the accused, who, being an ex-convict, might kill him (pp. 43, 76, 77, tsn., March 25, 1975). But he could not sleep and his conscience kept bothering him that he decided to report what he had witnessed (pp. 76, 77, tsn., id.)."

Significant corroboration was given by prosecution witness Raymundo Barrientos who testified having seen appellant passed by when he was plowing a field in the vicinity of the creek between 8 and 9 o'clock in the morning of the day of the slaying of the hapless victim. Likewise, ferryman Luis Cuntapay declared that he ferried appellant to the other side of the river known as Iguig from 9 to 11 o'clock that same morning and that appellant was panting as he approached the banca, and washed his muddy feet and the hem of his pants.[1]

In the main, appellant's twelve assignment of errors, except one referring to the appreciation of recidivism against him, bear solely on the credibility of the prosecution witnesses.

In the case of eye-witness Cafugauan, his reporting the incident to the authorities only after fifteen (15) days thereafter, without having revealed what he saw even to his parents, is pointed to as militating against his credibility. Appellant then claims that Cafugauan was merely a paid witness, after trying also to show that with how he was preoccupied with what he was doing at the time, digging beetle larva, and the distance from where he was, some 30 meters to the scene, and with "talahib" growth along the bank of the creek obscuring his view, said state witness could not have seen the fatal stabbing incident.

Digging beetle larva as what witness Cafugauan was doing did not have to glue his eyes continuously to one point or direction. It takes only a bare instant to espy the appellant, and seeing him with a girl in a rather secluded spot

would be enough to arouse his curiosity and keep his eyes on the pair, specially when what he saw was startling as what he narrated in horrible detail in court.

The delay of Cafugauan in reporting the blood-curdling incident to the authorities was satisfactorily explained. The appellant is an ex-convict who, by the gruesome slaying of a young girl seen with his very eyes, could not but have instilled fear in the witness' heart that if he reported the killing, he then would have to testify against appellant who might thereby kill him too. This feeling of fear could have easily crept into this witness' heart considering that what appellant had just served sentence and released on parole only eight (8) months prior to the incident, is for homicide.

As to appellant's claim that Cafugauan is a paid witness, he admitted he had no personal knowledge of the alleged fact, his testimony being that he was only so informed by his inmate in the provincial jail one Rudy Pimentel, supposedly a cousin of Cafugauan. Evidently, appellant was merely indulging in a conjecture which did not call for any proof to the contrary.

It appears that the trial court conducted an ocular inspection of the scene of the stabbing and vicinity thereof in the presence of the parties. The purpose was to test the truth of the assertion of the prosecution witnesses. The result of the ocular inspection must have so convinced the court that Cafugauan could see, as he so testified, the gruesome incident from where he was digging beetle larva, contrary to appellant's claim that from the witness' distance, and with some obstruction along the line of vision, to the crime scene, said witness was lying in giving a supposedly eye-witness account of the incident. For in the language of the trial court:

"From the records, it can be seen that the Court had conducted a thorough and searching questions on the witness Jose Cafugauan about the incident and his motives in testifying against the accused in order to elicit the truth and test his credibility. The Court is convinced that the witness is credible and truthful. His demeanor while on the witness stand bespeaks of his veracity and demonstrates his sincerity. There is no plausible reason why the Court may distrust his testimony and doubt his sincerity."

The same thing may be said of state witness Raymundo Barrientos whose testimony, the ocular inspection aided to earn credence for, and belief in, said testimony, against the attempt of appellant to discredit it with the testimony of Emilio Callueng that the latter was the tenant of the land Barrientos alleged to be plowing when appellant passed by. Again, this is what the trial court said:

"In so far as Raymundo Barrientos, another witness for the prosecution, who testified against the accused, the Court noted that he was not impelled by any improper motive to testify but to tell the truth. The Court gives faith and credence to his testimony. His testimony in court was supported by the demonstration he made during the ocular inspection and has precluded any doubt as to his truthfulness."

From Emilio Callueng came the admission that he would not know whether Barrientos worked on the land of which he claimed to be the tenant of his sister, Regina Callueng, on the day in question because he left the same at 7:00 o'clock in the morning of that day.

From the testimony of Juanita Perez, appellant's mother, that Barrientos was only being called by Emilio Callueng's brother, it could also be deduced that Barrientos could be working on the land as a hired laborer. His presence on the land where appellant passed by, as Barrientos testified to, is therefore a fact that could not be entirely ruled out.

There is no showing that the trial court in convicting appellant, gave any reliance on the statement of Amparo Balisi, mother of the deceased, that appellant courted the victim but was spurned in his courtship. There is, there-fore, no basis for charging the trial court with error in giving credence to said statement, as appellant does in his 4th assignment of error.

Appellant insists on his alibi, and imputes another error to the trial court when it rejected it as one that has taken place after he had already committed the crime. While it appears that he had gone to the Cagayan Provincial Hospital for treatment on his lung on the day of the commission of the crime, the records of the hospital do not show the time when he was there, as to rule out the possibility that he was at the scene of the crime at the time the stabbing incident took place. Against his having been positively identified by a wholly truthful eye-witness of the actual commission of the crime, strengthened by corroborative testimony of equally unbiased and disinterested witnesses with no motive shown except to adhere to the truth, appellant's alibi is unavailing.[2]

Again appellant's claim of feeling sick with chest pains that morning of the incident which prompted him to go to the hospital cannot be believed. On his own admission, a jeep ride from his residence in barrio Dassun direct to Tuguegarao was available. That he chose to walk 2 to 3 kilometers to the Cagayan River, from where he took a banca ride to Iguig where he took another conveyance for Tuguegarao where the hospital was, belies his claim of being sick and, therefore, he could not have been the author of the crime charged.

It is significant to note that the Chief of Police in his ocular inspection of the crime scene, saw footprints proceeding northward on the sandy soil about 30 meters from the spot where the deceased was supposedly washing clothes alone in the creek.[3] This fact dovetails with the testimony of the boatman, Cuntapay, that appellant washed his muddy feet and the hem of his pants when he approached the banca tired and panting.[4]

It is the same witness who testified that he did not notice any bloodstain on appellant's shirt or pants. Appellant seizes upon this testimony to show that he could not have been the culprit, for if he was, bloodstains should have been seen on his clothes, considering the manner the killer was alleged to have attacked the victim as described by the supposed eye-witness.

In the first place, there is no evidence positively establishing the fact that appellant's shirt and pants were without any bloodstains. Secondly, the testimony of Cuntapay is in the nature of a negative evidence which is not conclusive. Cuntapay admitted his inability to distinguish bloodstains where, as shown by the records, appellant's shirt was "flaming red" and his pants were "blackish" in color as to render bloodstains thereon hardly noticeable as such.

With the foregoing discussion all bearing on the issue of credibility of witnesses, the only remaining question is one of law - whether recidivism may be appreciated as an aggravating circumstance, same not having been alleged in the information. Appellant does not dispute the fact that he had in 1971 been convicted by final judgment, for the crime of homicide as proven by the evidence.[5] It is quite settled that an aggravating circumstance proven by the evidence, although not alleged in the information, may be taken into account as such aggravating circumstance, the latest case on this matter, being *People vs. Entes*. [6]

The crime committed is murder qualified by treachery, abuse of superior strength being already absorbed thereby aggravated by recidivism with no mitigating circumstance to offset it.

WHEREFORE, the judgment, appealed from imposing the death penalty has to be, as it is hereby affirmed in toto, with cost de oficio.

SO ORDERED.

Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., no part.

[1] pp. 3, 4, 6, ts.n., April 7, 1976.

[2] *People v. Aguel, et al.*, 97 SCRA 795; *People v. Lumayag*, 13 SCRA 502.

[3] pp. 23, 24, 27, 28, 29, 46, t.s.n. Aug. 12, 1976.

[4] pp. 3, 4, 6, t.s.n. April 7, 1976.

[5] pp. 7, 16 t.s.n., Nov. 22, 1976.

[6] G.R. No. 50632, Feb. 24, 1981.

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