

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CIPRIANO BARBA Y DORIA, DEFENDANT-APPELLANT.

G.R. No. 50433. November 13, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

On 3 March 1977, an information was filed in the Criminal Circuit Court of Manila charging Cipriano Barba y Doria, alias "Perry Barba", with the crime of murder committed as follows:

x x x

"That on or about February 10, 1977, at nighttime purposely sought to better accomplish his criminal design, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one MAGDALENA JULIANO Y SULTAN ALIAS MAGGIE, by then and there stabbing her with a bladed instrument on the different parts of her body, thereby inflicting upon the said MAGDALENA JULIANO Y SULTAN ALIAS MAGGIE mortal wounds which were the direct and immediate cause of her death thereafter.

CONTRARY TO LAW.”[1]

Upon arraignment on 7 March 1977, the accused, then assisted by counsel de officio, entered a plea of not guilty.

After trial on the merits, with the accused represented by his counsel de parte, the trial court promulgated on 21 March 1979 a decision,[2] the dispositive portion of which reads:

"WHEREFORE, the Court hereby finds the accused, Cipriano Barba y Doria, alias PERRY BARBA, guilty beyond reasonable doubt of the crime of MURDER qualified by treachery and evident premeditation, and crediting him with the mitigating circumstance of voluntary surrender which offsets the aggravating circumstance of nighttime, hereby sentences him to suffer the penalty of reclusion perpetua; to indemnify the heirs of Magdalena Sullano (sic) y Sultan in the sum of P12,000.00; to suffer all the accessory penalties; and to pay the costs.

SO ORDERED."

Unable to accept the decision, accused, hereinafter referred to as Appellant, interposed the instant appeal. In his Brief, he assigns the following errors:[3]

"I

THE COURT A QUO ERRED IN HOLDING THAT THE EVIDENCE PRESENTED BY THE PROSECUTION IS SUFFICIENT TO SUPPORT THE CONVICTION OF APPELLANT ‘OF THE CRIME OF MURDER, QUALIFIED BY TREACHERY AND EVIDENT PREMEDITATION COMMITTED DURING THE NIGHTTIME WHICH HE PURPOSELY SOUGHT THE BETTER TO ACCOMPLISH HIS CRIMINAL INTENT’.

II

THE COURT A QUO ERRED IN FINDING APPELLANT GUILTY OF THE CRIME CHARGED AND IN CONVICTING THE APPELLANT."

The operative facts and circumstances surrounding the commission of the crime charged are summarized by the trial court as follows:

"EVIDENCE FOR THE PROSECUTION

The evidence in chief for the prosecution is articulated through eight (8) witnesses, namely: Rosalie Zafra, Nenita Tolentino, Dr. Angelo Singian, Alexander Roman, Antonio Villegas, Renato Abaya, Eduardo Sison and Pfc. Florencio Munar. Shorn of its unnecessary details, the said evidence tends to prove the following facts:

The Victim. – The deceased, Magdalena Juliano y Sultan who was nicknamed Maggie, 30 years old and single, was employed as a service attendant at the Coffee Shop of the Philippine Plaza Hotel. She has been working there since the said hotel opened on September 27, 1976. She had for her closest friends among her co-workers, Rosalie Zafra who was the receptionist in the coffee shop, and Nenita Tolentino, another service attendant with whom she boarded in an apartment located at 1827 Tiago Street in Sta. Cruz, Manila. Her friendship with these two, Rosalie Zafra and Nenita Tolentino, was such that she has confided to them her past; that she once lived with the accused, Cipriano Barba, nicknamed Perry, without the benefit of marriage, but that she has separated from him because she has found out that Perry was a married man and with children, and because whenever Perry who was a heavy drinker, got drunk, he would maltreat her. She further confided that she was avoiding Perry who was then insisting that they resume their living together.

The death of Maggie. - On the night of February 9, 1977, the two boardmates, Magdalena Juliano and Nenita Tolentino, went home together after their tour of duty ended at about 11:30 o'clock. They actually left the premises of the Philippine Plaza Hotel at about 12:00 o'clock, midnight, in an owner-type jeep with one, Exequiel Yuzon, a suitor to Magdalena and another named Caloy who was driving the jeep. Upon reaching the corner of Isagani and Tiago streets, the two girls alighted and walked home. Exequiel and Caloy then drove away.

The two girls arrived at their apartment at about 12:55 o'clock a.m.. Five minutes later, while still on the ground floor thereof, they heard successive knocks on their door, accompanied by a man's voice who (sic) introduced himself as 'JIM'. Nenita and Magdalena refused to open the door as house rules forbade them to accept visitors at that late hour and when they told the caller that they did not know anyone by that name, the insistent caller continued to knock on the door and announced that he was 'PERRY', x x x (The caller peeped through the glass jalousie window, moved the curtain aside through the jalousie and was thus recognized by Nenita to be Perry Barba who was then wearing a white polo.) x x x The knocking continued but the girls ignored the same. Nenita then told Magdalena to go upstairs, which the latter did, while she went to the comfort room (at the ground floor). While there Nenita sensed that somebody went downstairs and opened the door which slammed with a loud noise when it closed. (Even while in the comfort room, Nenita could hear Magdalena and Perry quarreling outside.) Getting out of the comfort room, Nenita went upstairs and saw Magdalena's ring, wrist watch and college ring on the latter's empty bed. Through the open window she heard Perry and Maggie talking in loud voices and a little later, she heard shouts from Maggie asking for help like 'Aray! Aray! Tulungan ninyo ako!' and other words to that effect. Looking out of the window facing the street, she saw Perry and Maggie on the sidewalk just outside the gate leading to the apartment, with Perry (apparently) slapping both sides of Maggie's face with the latter shouting 'Aray! Aray!' until her view of them became obstructed by the gate. Then she heard people shouting to the effect that Maggie was stabbed, so she and her other roommates who were awakened by the shouts, ran downstairs and to the street where they saw Maggie sprawled and bloodied just outside the gate. The dying Maggie was brought to the Chinese General Hospital in a jeep where she was pronounced dead on arrival.

The cadaver was autopsied by Dr. Angelo S. Singian, Chief, Medico-Legal Officer of the Western Police district, who reported the following Postmortem Findings as contained in Exhibit "H".

EXTERNAL FINDINGS:

1) Stab wound of the face piercing the right ala nasi as the point of entry going obliquely backwards, upwards and laterally to the left zygomatic area traversing a path of 5 cm. in length in the subcutaneous tissue.

2) a) Point of Entry measures 1.7 cm. x 0.5 cm.

b) Point of exit measures 1.7 cm. x 0.4 cm.

Stab wound of the face immediately below the left nostril and measuring 1.2 cm. x 0.3 cm. x 1 cm. piercing deep into the bone in a right angle trajectory.

3) Stab wound, neck, right anterior, level of the cricoid cartilage and measuring 3.4 cm. x 0.5 cm. x 9.5 cm. and course is slightly downwards, backwards, and medially cutting the right common carotid artery.

4) Stab wound, thru and thru, proximal 3rd of right arm, lateral as the point of entry going obliquely upwards, slightly forwards and medially, traversing a path of 6 cm. in length in the subcutaneous tissue.

a. Point of entry measures 2.5 cm. x 0.8 cm.

b. Point of exit measures 1.7 x 0.8 cm.

5) Penetrating stab wound of the chest, right level of the 4th intercostal space lateral to the right, midclavicular line and measuring 2 cm. x 0.8 cm. x 11 cm. Course is obliquely backwards and slightly downwards and medially cutting 4th rib and piercing the lower lobe of the right lung.

6) Penetrating stab wound of the chest, left, level of the 4th intercostal space, lateral to the left parasternal line and measuring 2.3 cm. x 0.8 cm. x 10 cm. Course is obliquely backwards and slightly downwards and laterally perforating the diaphragm.

7) Stab wound, left arm, distal 3rd, anterior measuring 2 cm. x 0.7 cm. x 11.5 cm. Course is obliquely upwards, slightly backwards and medially piercing the bicep muscle.

8) Stab wound, thru and thru proximal 3rd of the left forearm, anterior as the point of entry going obliquely downwards, slightly backwards and medially traversing a path of 5 cm. in length piercing through the anterior muscle of the left forearm.

9) Incise wound, right hypothenar surface and measuring 1 cm. x 0.5 cm. involving the subcutaneous tissue.

10) Stab wound, right arm, middle 3rd, lateral and measuring 2.5 cm. x 0.8 cm. x 12 cm. Course is obliquely downwards, forwards and medially.

11) Incise wound, right forearm, distal 3rd, posterior and measuring 4 cm. x 1.3 cm. involving the subcutaneous tissue.

12) Stab wound, left arm, proximal 3rd, lateral and measuring 3 cm. x 1.3 cm. x 11.5 cm. Course is obliquely downwards, forwards and slightly medial piercing the left deltoid muscle.

13) Stab wound, thru and thru middle 3rd, lateral and a little posterior as the point of entry going transversely inwards and slightly upwards, traversing a path of 6 cm. in length piercing the tricep muscle.

a. Point of entry measures 3.5 cm. x 1 cm.

b. Point of exit measures 2.4 x 0.5 cm.

14) Penetrating stab wound of the chest, left midaxillary line, 6th left intercostal space and measuring 3 cm. x 0.7 cm. x 11 cm. Course is obliquely downwards, forwards and medially perforating the left dome of the diaphragm with evisceration of the portion of the descending colon.

15) Non-penetrating stab wound of the posterior chest wall, 3 cm. left of the midline, level of the inferior angle of the left scapula and measuring 1.8 cm. x 0.5 cm. x 4 cm. Course is obliquely upwards, slightly forwards and medially piercing the muscle of the left inter scapular area.

16) Non-penetrating stab wound, of the posterior chest wall, 5 cm. x left (sic) of the midline, level of the 12th thoracic vertebra and measuring 2 cm. x 0.5 cm. x 7.5 cm. Course is obliquely upwards slightly forwards and medially and piercing the muscle superficially.

17) Non-penetrating stab wound of the posterior chest wall, right posterior axillary line, level of the inferior angle of the right scapula and measuring 3.5 cm. x 1 cm. x 9 cm. Course is obliquely forwards, upwards and medially and piercing the right scapular muscle.

18) Non-penetrating stab wound of the posterior chest wall, right posterior axillary line, level of the 10th thoracic vertebra and measuring 2 cm. x 11 cm. Course is obliquely downwards, slightly forwards and medially and piercing the muscle superficially.

INTERNAL FINDINGS:

- 1) Cut right common carotid which is completely severed.
- 2) Fractured 4th right rib at anterolateral surface.
- 3) Stabbed wound of the lower lobe of the right lung at the anterior surface.
- 4) Stabbed wound of the diaphragm at the left anterior and lateral portions.
- 5) Left hemothorax - 750 cm.
- 6) Right hemothorax - 400 cm.

CAUSE OF DEATH:

‘Shock and hemorrhage secondary to multiple (18) stab wounds of the body, face and upper extremities lacerating the right common carotid artery and right lung.’

Dr. Singian also issued a death certificate for the deceased Magdalena Juliano (See Exhibit G).

The assailant. - The death of Magdalena Juliano was reported to the Crimes and Persons Section, Investigation Division, of the Western Police District at about 1:00 o'clock a.m., February 10, 1977, by Pfc. Cesar Yanco of the Traffic Division, and Pfc. Florencio Munar was assigned as officer of the case. Through interviews with persons who brought the dying Magdalena to the Chinese General Hospital, particularly, Nenita Tolentino, who was Magdalena's roommate, Pfc. Munar came to know the name of the suspect: Cipriano D. Barba, nicknamed Perry Barba, a Meralco employee. Aside from Nenita, Munar also questioned Eduardo Sison, Alexander Roman and Romeo Liongson, who declared that while walking home along Tiago Street, they noticed a man and a woman quarreling near the gate of a house until the woman fell to the ground, with the man bending over her and moving his arm up and down as if boxing her with his fists. The three further told Munar that when they approached the man and the woman, the man ran away and when pursued by one of them, he threatened the pursuer (See Exhibit "I") with his knife, saying 'Huwag kang makialam!' Statements of Nenita Tolentino and Eduardo Sison (See Exhibits "C" and "I") were taken by Pfc. Munar later during the day. Munar also interviewed Antonio Villegas, barangay chairman, who turned over to him a ball pen with the engraved name 'PERRY. D. BARBA' which he claimed was given to him by one, Renato Abaya with the information that the latter found the same in the premises of the killing. Proceeding to the scene of the crime at

1827 Tiago St., Pfc. Munar further made inquiries and was able to interview residents in the vicinity like Renato Abaya who found the afore-described ball pen, and Antonio Villegas himself.

With the suspect having been identified as Cipriano D. Barba, the police flashed a teletype message to all police stations for his apprehension (See Exhibit "K"). On February 24, 1977, at about 7:00 o'clock, p.m., the suspect, accompanied by one, Atty. Rafael Bueno, presented himself to the offices (sic) of the Homicide Section of the Manila Police where he was identified in a police line-up by Nenita Tolentino as PERRY BARBA, the man who knocked at their apartment door on the early morning hours of February 10, 1977, and with whom the deceased Magdalena Juliano had a quarrel a few minutes later. A picture showing Nenita Tolentino pointing to Perry Barba was taken by the police on the said occasion (See Exhibit "L").

Sworn statements were taken from Rosalie Zafra (Exhibit "O"), Nenita Tolentino (Exhibit. "D"), Alexander Roman (Exhibit "M"), and Renato Abaya (Exhibit "N").

Motive for the killing. - The motive for the killing of Magdalena Juliano, nicknamed Maggie, is suggested by prosecution witnesses Rosalie Zafra and Nenita Tolentino, her closest friends and co-workers at the Philippine Plaza Hotel, the former being the receptionist in the coffee shop where they worked and the latter being her co-attendant in the same coffee shop as well as her roommate in their boarding house besides (sic). Both Rosalie and Nenita, testified among others on Maggie's love life with Perry Barba; her living with him without the benefit of marriage; her discovery that he was a married man and with children; her separation from him; how she has been avoiding him; the insistence of Perry that they resume their living together; and the fear which she entertained whenever he is known to be waiting for her to leave the Philippine Plaza Hotel after her tour of duty late in the evening.

Rosalie Zafra also testified about phone calls she received as receptionist from a caller who identified himself as Perry Barba of Meralco who wanted to talk with Maggie, his sweetheart. In several of these calls, Perry was angry because he was told that service attendants are prohibited from answering calls over the telephone. On one occasion, Perry has berated Rosalie for hiding Maggie from him in the following manner: 'Putang ina mo, bakit itinatago mo si Maggie!' (You son of a bitch, why are you hiding Maggie!). On another occasion he asked Rosalie to tell Maggie 'Bago siya mapakinabangan ng iba, papatayin ko muna siya!' which, loosely translated, means, 'Before any one else can have her, I will kill her first.'

Rosalie Zafra testified further about an occasion when, before finishing her tour of duty one night in January, 1977, one of the lady security guards in the employees' exit and entrance door called on her, saying that a drunken man was outside who wanted to talk to Maggie over the intercom. Rosalie gave permission for Maggie to talk over the intercom and when Maggie was through, she told Rosalie that she was going to sleep in the hotel because she was afraid of Perry who was waiting for her outside. On this occasion, when Rosalie went home at 11:00 o'clock, p.m., and as her bag was being inspected, the lady security guard who conducted the inspection pointed to Perry seated in a taxi cab parked in the parking lot. On her way to her taxi which was waiting for her, she passed by Perry's taxi and saw the face of the man for the first time.

On the part of Nenita, her testimony touched on the last hour of Magdalena's life: from the time they left the hotel at about 12:00 o'clock, midnight, with Exequiel Yuson and Caloy, in a jeep, up to the time the two men let them off at the corner of Tiago and Isagani Streets where they walked home to their apartment."^[4]

On the other hand, the accused relying mainly on his testimony and that of Augusto Carlos, who admitted in open court that he testified after having been requested to do so by the accused's wife, interposed the defense of alibi. Their testimonies were summed up by the trial court as follows:

"EVIDENCE FOR THE DEFENSE

x x x

On February 9, 1977, at about 5:00 o'clock, p.m., the accused and his friend, Augusto Carlos, took a taxi cab at

corner (sic) T. Alonzo and Claro M. Recto, for the LTB Terminal in Pasay City. They were bound for Nagcarlan, Laguna to visit the parents of the accused. Augusto was without any clothing except those which he had on (and an extra t-shirt). At around 6:00 o'clock, they boarded an LTB bus and arrived at San Pablo City at about 8:30 o'clock. They took a jeepney for Nagcarlan, arriving thereat at about 9:30 o'clock. They spent the night in the house of Perry's grandmother located in the poblacion and at about 8:00 o'clock the following morning, February 10, 1977, they proceeded to Barrio Kanluran Lasaan where Perry's parents lived. Said Barrio is about 7 to 8 kilometers away from the poblacion of Nagcarlan, part of which is accessible by motor vehicles and part on foot. They arrived in the barrio at about 11:00 o'clock, a.m.

Augusto stayed in barrio Kanluran Lasaan for four days during which he went to the hinterlands with friends of the accused to hunt. On the fourth day, February 13, 1977, a Sunday, he left for Manila but Perry was left behind to help his parents make copra.

Perry came back to Manila on February 23, 1977 x x x only to be informed by his wife that police authorities were looking for him. Spending the night with his family, he called up his uncle, Atty. Rafael Bueno, on the next day, February 24, 1977, and asked him to verify why he was wanted by the police. When he came to know the cause, he gave himself up at the headquarters of the homicide section of the Manila Police, accompanied by his uncle, Atty. Bueno.

Cipriano D. Barba, nicknamed Perry, further declared that he came to know the deceased, Magdalena Julianio, way back in 1972 who was introduced to him by a co-employee of his at the Meralco offices. Since then, he saw Magdalena going to the Meralco offices every now and then and in the course of time, he came to know that Magdalena was married to a Muslim. In January, 1977, he also came to know that Magdalena was employed in a hotel but did not know the name of the hotel. One day during the same month, as he stepped out of his office at Claro M. Recto Street opposite the Arranque Market, he saw Magdalena and Nenita Tolentino waiting for him. This was the first time that he was meeting Nenita and on that occasion, he talked with them for about 30 minutes at a restaurant where he invited them. This was also the occasion when he last saw Magdalena Julianio.

Admitting ownership of the ballpen, Exhibit "B", wherein his name 'PERRY D. BARBA' was engraved, he explained that the same was borrowed from him by Magdalena Julianio on one occasion when the latter went to his office to pay her electric bills. After a week, Magdalena asked for the ballpen and as a man, he agreed."^[5]

On rebuttal, the prosecution presented three (3) witnesses, namely, Nenita Tolentino, Pfc. Florencio Munar and Servando Malabute, whose testimonies are summarized by the trial court, thus:

x x x

"On the claim of the accused that he never went to the Philippine Plaza Hotel where she and the deceased worked, Nenita declared the same to be untrue as in fact, the accused even fetched her and the deceased from the same hotel once, and brought them in a taxi to the corner of Tiago and Isagani Streets which was near their apartment.

On the claim of the accused that on February 9, 1977, he left for Nagcarlan, Laguna, with the knowledge and permission of his wife and came back to Manila only on February 23, 1977, Pfc. Munar declared the same to be untrue for the reason that when he interviewed his wife, Dr. Neriza Barba, x x x on February 10, 1977, that is, the following morning after the killing, Dr. Barba gave the information that her husband, Cipriano Barba, has not gone home for quite some time and at the time of the interview, she did not know the whereabouts of her husband.

Servando Malabute, a member of the team which investigated the killing of Magdalena Julianio, also debunked the claim of the accused that his trip to Nagcarlan, Laguna was known to his wife for the reason that when said wife, a dentist at the Tondo Puericulture Center, was interviewed at her office, she gave the information that

she did not know the whereabouts of her husband and even gave a written authority (See Exhibit "Q") for the police officers to enter her home located at 1207 Castañas Street. On the strength of said authority, the investigation team went to 1207 Castañas Street and the maid gave them the information that Mr. Barba does not sleep in the house as he is not frequenting the place.

On the claim by the accused that his absence from work at the Meralco Offices during the period from February 10 to February 23, 1977, was covered by a leave of absence, Servando Malabute declared that he interviewed the Meralco Manager of Tondo Branch Offices, and he was informed that the accused had not been reporting for work."^[6]

In convicting the appellant of the crime charged, the trial court, after discussing the defense of alibi, concluded:

"Furthermore, the cause or reason that moved and induced him to commit the crime has been clearly and sufficiently shown by the evidence adduced by the prosecution. The refusal of the deceased to resume living with him; her acts which tended to avoid him whenever he wanted to see her; the fact that another suitor is after her and who even brought her home immediately before he killed her -- all these became the moving power, the impelling and insuperable force which drove him into committing the dastardly act imputed to him in the instant information.

Under all the foregoing circumstances, the Court is satisfied that the evidence presented by the prosecution is sufficient to produce that degree of moral certainty to support a conviction of the accused, Cipriano Barba y Doria of the crime of murder, qualified by treachery and evident premeditation committed during the nighttime which he purposely sought the better to accomplish his criminal intent. The prosecution has conclusively proven that the accused has threatened to kill the victim 'before any one else can have her' and that, in a sudden, concerned and unprovoked act, armed with a deadly weapon, stabbed the victim who was defenseless and unsuspecting."^[7]

It, however, credited the appellant with the mitigating circumstance of voluntary surrender.

In not giving weight to the defense of alibi, the trial court took into account: (a) the clear and positive identification of the accused by Nenita Tolentino who had seen him at least three (3) times before 9 February 1977 and (b) the lack of sufficient corroboration by persons who could be in a position to convince the court as to its truth and veracity. More concretely, the trial court held that:

"It will be readily seen that the thrust of the defense is anchored on alibi, considered as one of the weakest defenses for it is easy of fabrication (sic) (People v. Raagas, 44 SCRA 152; People v. Mori, 55 SCRA 382; People v. Derejo, 56 SCRA 554; and People v. Sapatero, 58 SCRA 450), and which must be looked upon with suspicion (People v. Bondoc, 85 Phil 545). It cannot be sustained in the face of a clear and positive identification of the accused (People v. Mabuyo, 63 SCRA 532; People v. Caili, 65 SCRA 24; People v. Bautista, 65 SCRA 460; People .v. Moises, 66 SCRA 151; and People v. Tizon, 66 SCRA 372), as in this case, where the accused, Cipriano Barba y Doria was positively identified by Nenita Tolentino who has seen him at least three times before that fateful night of February 9, 1977, twice at close range: when Magdalena introduced her to him at the premises of the Meralco and invited them to eat in a restaurant, a fact which the accused himself admitted, and when he fetched her and Magdalena from the Philippine Plaza Hotel and conveyed them in a taxi to the corner of Tiago and Isagani Streets.

Moreover, the defense of alibi set up by the accused is not sufficiently corroborated by persons who could be in a position to convince this court as to its truth and veracity. For instance, his grandmother, his parents, his friends who supposedly invited Augusto Carlos to hunt in the hinterlands of Nagcarlan, or his wife. The fact is, his wife, Dr. Neriza Barba, gave the information to the police investigators Munar and Servando Malabute on the day following the killing that she did not know the whereabouts of her husband as he has not gone home for quite sometime.

x x x

The corroborative testimony of Augusto Carlos to the effect that he accompanied the accused to Nagcarlan, Laguna is of no moment. For a city resident to go on a trip to a far away place in the province without any other clothing than those which are being worn is simply ridiculous and unbelievable. And while it may be true that said accused fled to his hometown in Nagcarlan, Laguna, it must have been after he killed Magdalena Juliano. Such flight gravely militates against him for it is an indication of guilt (*People v. Uleta*, 103 Phil 730; *People v. Amiscua*, 37 SCRA 813; *People v. Comelio*, 39 SCRA 435; *People v. Jamonte*, 64 SCRA 319)."[8]

In support of the assigned errors, appellant submits the following arguments:

- 1) The evidence of the prosecution does not establish beyond reasonable doubt that appellant was the assailant. On the one hand, the two eyewitnesses, Alexander Roman and Eduardo Sison, who saw the assailant at a close distance and with a full and unobstructed view when they passed by the assailant, could not assert that the appellant was the assailant. Furthermore, while it is true that Nenita Tolentino pointed to appellant as the assailant, her testimony is unreliable as it contains inconsistencies and betrays contradictions, improbabilities and a lack of persuasiveness.
- 2) The court should not have considered the testimonies of Rosalie Zafra and Nenita Tolentino as to the alleged past relations of the appellant and the deceased from which an alleged motive for killing was deduced as such are patently hearsay testimonies.
- 3) The court should not have disregarded the corroborative testimony of Augusto Carlos as there is nothing unusual or ridiculous for one to bring along only one spare T-shirt on a trip to a nearby province for only a few days.
- 4) The crime proved is homicide and not murder because the evidence does not show the presence of any qualifying circumstance. There is no basis for the finding that the stabbing was "sudden, concerned and unprovoked" as it was established by the prosecution witnesses themselves that a heated quarrel between the assailant and the deceased preceded the stabbing. Moreover, the fact that the place where the stabbing occurred was outside the gate and the deceased was even able to shout for help for several minutes, thereby enabling several passers-by to come to her succor and chase the assailant, negates the attendance of treachery.
- 5) There is no sufficient basis for the court's finding of evident premeditation. The court relied solely on the alleged telephone conversation of the appellant with Rosalie Zafra where the former supposedly said "Instead of others taking her, I will just kill her." It must be pointed out that this utterance, even if true, was made only once.
- 6) Nighttime cannot be considered as a generic aggravating circumstance in the case at bar because the evidence shows that the assailant did not take advantage thereof for purpose of impunity. The assailant first knocked at the door of the boarding house. If the assailant had intended to take advantage of nighttime to facilitate the commission of the crime or to escape, there would have been no reason for him to first knock at the door and later on engage the deceased in a heated argument, thereby attracting the attention of passers-by and other people in the neighborhood.

The People, in its Brief[9] filed by the Solicitor General on 28 December 1979, disagrees with the accused-appellant and maintains that the prosecution was able to establish beyond reasonable doubt the identity of the accused, his guilt, motive and the aggravating circumstances of treachery, evident premeditation and nighttime. It argues that even assuming that the testimonies of Rosalie Zafra and Nenita Tolentino on the motive of the accused are hearsay, which is not so, and the same are not to be considered, the accused could nevertheless be convicted of the offense charged as his identity and participation were definitely established by the testimony of Nenita Tolentino. To the appellant's submission that Nenita Tolentino's testimony pointing to the accused be disregarded because of inconsistencies therein, it asserts that the inconsistencies do not detract from but rather

enhance the credibility of the witness.

As regards the qualifying circumstance of treachery, the People submits that the trial court correctly ruled that the same was sufficiently established as Maggie was unsuspecting and unarmed at that time of the stabbing. Furthermore, the fact that appellant inflicted 18 wounds on Maggie and that some of those wounds were caused even after she was already lying on her back with the former on top of her, proves that the killing was treacherous. It likewise maintains that evident premeditation was sufficiently established as the records show that barely a week after appellant's threat to kill Maggie, he was seen in the vicinity of the employees' exit of the Philippine Plaza waiting for her. It further argues that there is no question that nighttime facilitated the commission of the crime. Appellant knew that in the early morning, the tenants of the boarding house of Maggie would be sleeping already and that the chances of passers-by witnessing the intended crime would be very slim; he thus took advantage of the darkness to successfully consummate his plan.

On 17 March 1980, the appellant filed his Reply Brief wherein he categorically admits that "upon the state of evidence on record:

- "1. The crime proved is homicide and not murder because the evidence do (sic) not establish either qualifying circumstance of treachery or evident premeditation;
2. Nighttime cannot be considered a generic aggravating circumstance because evidence show (sic) that assailant did not take advantage thereof; and
3. The evidence do (sic) not establish beyond reasonable doubt that appellant was the assailant."[10]

Except as to the issue of treachery, We find no merit in this appeal.

We agree with the trial court's holding that appellant's identity as well as his participation in the killing of Magdalena Juliano was sufficiently proven by the prosecution. While it may be true that prosecution witnesses Alexander Roman and Eduardo Sison failed to point to the appellant as the culprit, the latter was positively identified by Nenita Tolentino. Thus, on direct examination, Nenita declared:

"Q What did you do after you sensed that the door was opened and slammed close?

A I went out of the comfort room and saw that Maggie was not there, sir.

Q What did you do?

A I heard somebody talking outside, so, I went upstairs, sir.

Q What did you do upstairs?

A I saw Maggie's things on the bed like her ring, wristwatch and college ring, sir.

Q What else happened?

A I heard them talking outside, sir.

Q Who they?

A Perry and Maggie, sir.

Q What did you do after you heard still Maggie and Perry talking outside?

A I remained upstairs. A few minutes thereafter I heard Maggie shout, sir.

Q How did Maggie shout?

A 'Aray! Aray! Tulungan ninyo ako,' sir.

Q And where was the voice of Maggie coming from at the time she was uttering these words?

A Outside the gate of the boarding house, sir.

Q What did you do after you heard Maggie shouting for help?

A I peeped through the window, sir.

Q What floor is this window?

A Second floor, sir.

Q What did you see after you peeped at the window?

A I saw her being hurt by Perry, sir.

Q In what manner did you see Perry, hurting Maggie?

A He was moving his hands backwards and forwards. I saw Perry striking by his right hand from right to left direction several times, sir.

Q And what was Maggie doing in the meantime that Perry was hitting her in this manner?

A She was still shouting, sir.

Q What was she shouting?

A 'Aray! Aray!,' sir.

Q And what happened -- what transpired next?

A Both disappeared from my eyesight, sir.”[11]

The law does not require that an identification by one witness be corroborated to obtain a conviction. Moreover, the fact that appellant's ballpen with his name engraved thereon was found at the scene of the crime a few minutes after the stabbing is mute yet devastating proof of his presence at the scene of the crime. His explanation as to how it happened to be there is not only unsatisfactory, it places as well a heavy burden on one's credulity. Appellant claims that the victim borrowed it from him in August 1976 but that a week later, when she returned to his office, she asked she can have it, to which he agreed.[12] We are unable to find any explanation why, if indeed this version of the appellant is correct, the victim should bring the ballpen outside when, as testified to by Nenita Tolentino, the victim first went up to her room and left her things, such as her ring, wrist watch and college ring,[13] on her bed.

The attempt to diminish the impact of Nenita's identification of the appellant by a showing of her conflicting testimony as to the number of times she saw appellant before the date of the incident is of no moment. It is true that on cross-examination, she testified that she saw the appellant on two (2) separate occasions, a month before said date, the first of which was when she was introduced to him by Maggie and the second when appellant fetched Maggie from her place of work and she, Nenita, joined them in the taxi.[14]

On rebuttal, Nenita Tolentino, however, confirmed the testimony of the appellant that she met the latter only once, thus:

"Q Miss Tolentino, in the testimony of the accused, he, testifying in his own behalf, stated that he knows you but that he only met you once and that was sometime in January 1977, is that true or not?

A That is true.”[15]

Nevertheless, also on rebuttal, clarifying this, she categorically declared:

"Q Now, he said that he only saw you once and that was in January, 1977, is that true or not?

ATTY. LEE:

Answered already. She said that is true.

A He met me.

Q Once, and that was only January?

A Yes, sir.

Q How about you, how many times have you seen him?

A Twice.

Q Besides January 1977?

A Yes, sir.

Q And where were these two occasions that you saw him after meeting him in January 1977?

A That was when he went to the Philippine Plaza and fetched my friend.

x x x

Q Who is that friend?

A The deceased.

Q The victim herein?

A The victim.”[16]

The foregoing minor inconsistencies neither destroy the witness’ credibility nor cast doubt on her definite and positive identification of the appellant. There is, therefore, no reason to disregard her testimony.

It is a well-settled and oft-repeated rule in criminal cases that minor inconsistencies in the testimony of witnesses do not affect their credibility, as they are but natural and even enhance their credibility as these discrepancies indicate that the responses were honest and unrehearsed.[17]

In *People vs. Manzanares*,[18] We ruled:

"x x x Far from being badges of fraud and fabrication, the inconsistencies in their testimonies may in fact be justifiably be considered as manifestations of the truthfulness on material points of the prosecution witnesses. These little deviations also confirm that the witnesses had not been rehearsed. The most candid witnesses may make mistakes sometimes but such honest lapses do not necessarily impair their intrinsic credibility (*People v Cabato*, No. L-37400, April 15, 1988). In the case at bar what is important is that the witnesses positively identified the appellant as one of the assailants. Rather than discredit the testimonies of prosecution witnesses, discrepancies on minor details must be viewed as adding credence and veracity to such spontaneous testimonies. x x x"

In *People vs. Noguerras*,[19] We said:

“As held by this Court, discrepancies in minor details are to be expected from an uncoached witness (*People v*

Arbois, 138 SCRA 31). Such minor variations would rather show the sincerity of the witnesses and the absence of connivance between them to make their testimonies tally in every respect (People v Pielago, 140 SCRA 419, 423) Truth to tell, such trivial differences constituted fail-safe reliability (People v Dollantes, 15 SCRA 592, 603)."

Having been positively identified, appellant's defense of alibi merits no further consideration. Such a defense, being inherently weak and easily fabricated,[20] looked upon with suspicion and always to be received with caution,[21] cannot prevail over the positive identification of an accused.[22]

Having settled the matter of appellant's participation in the killing of Maggie Juliano. We now address the issue of whether or not the killing was attended by the qualifying circumstances of treachery and evident premeditation and the generic aggravating circumstance of nighttime.

To begin with, it must be stressed that qualifying circumstances must not only be alleged in the information but established by direct and positive evidence as well. Mere presumption or inferences are not sufficient no matter how logical or probable they may be.[23]

Paragraph 16, Article 14 of the Revised Penal Code provides:

"There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."

In the instant case, the trial court anchors its finding of treachery on the alleged suddenness of the attack on the unarmed Maggie Juliano. The People submits as additional proof thereof the number of wounds -- eighteen (18) in all -- some of which appellant inflicted on the victim as he continued his attack even as she was already lying on her back.

It is true that Maggie was unarmed. There is, however, no positive and direct evidence to show that the attack was unexpected and sudden. The evidence on record discloses that no one actually saw how the attack was commenced. Per Nenita's testimony, as earlier quoted, appellant and Maggie were talking outside the first time she saw them; a few minutes later, she heard Maggie shouting "Aray! Aray!." When she peeped at the window, she saw Perry just "moving his hands backwards and forwards" striking by his right hand from right to left. As testified to by prosecution witness Alexander Roman, when he saw Maggie and the man for the first time at the scene of the incident, they were only talking, and "seemed to be quarreling"; then, as he continued walking, he heard "shoutings" and so he returned to where the shouts came from and he saw the man "seemed to be slapping the woman" who was lying down along the sidewalk; he went nearer, but the man ran away.[24]

Also, in the light of the revelation of prosecution witness Rosalie Zafra, We are inclined to believe that the deceased could no longer take in her confidence herein appellant. At the very least, she was aware of what he could do to her once he met her. Rosalie had informed Maggie of what the appellant told her (Rosalie) over the phone sometime in January 1977, to wit: "Bago siya mapakinabangan ng iba, papatayin ko na muna siya" (Instead of others taking her, I will just kill her). Although Maggie just laughed it off, she seemed to be afraid whenever the appellant's name was mentioned. At one time, when Maggie learned that appellant was waiting in a taxicab at the parking lot of the hotel, she decided not to go home but instead sleep in the hotel because she was afraid.[25] Between the last week of January 1977 and 10 February 1977, Maggie told Rosalie that she was very Afraid of the appellant because the latter kept on waiting for her outside.[26]

It was likewise established that minutes before Maggie was killed, appellant kept on knocking successively and loudly at the door of the apartment where she resided.[27]

Thus, there is indeed a paucity of evidence to show how the aggression was commenced or how the act which resulted in the death of Maggie began and developed. In *U.S. vs. Perdon*[28] and *U.S. vs. Pangilion*,[29] this Court held that where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the victim began and developed, it can in no way be established from mere suppositions that the killing was perpetrated with treachery. Accordingly, treachery cannot be considered where the lone witness did not see the commencement of the assault.[30] It cannot be said to exist if the prosecution failed to present any eyewitness to testify as to the manner the victim was attacked.[31] In short, treachery cannot be presumed; it must be proved by clear and convincing evidence.[32]

That the victim sustained eighteen (18) wounds does not by itself prove treachery. They could have been inflicted after an expected frontal attack preceded by what seemed to be, according to witness Roman, a quarrel, by a man who was moved by hate after having been rebuffed in his bid to revive an illicit affair.

We agree, however, with the trial court and the People that the qualifying circumstance of evident premeditation was convincingly established by the prosecution.

In *U.S. vs. Gil*,[33] this Court ruled that to justify the inference of deliberate premeditation, there must be a period sufficient in a judicial sense to afford full opportunity for meditation and reflection and sufficient time to allow the conscience of the actor to overcome the resolution of his will if he desires to hearken to its warning.[34]

Three (3) requisites must, therefore, be duly proved before evident premeditation may be appreciated as a qualifying circumstance, to wit: (a) the time when the accused determined to commit the crime, (b) an act manifestly indicating that the accused has clung to his determination, and (c) a sufficient lapse of time between such a determination and execution to allow him to reflect upon the consequences of his act.[35]

These requisites must be established with proof as clear as the crime itself.[36]

In the instant case, it was clearly and convincingly shown by the testimony of Rosalie Zafra that sometime in January 1977, appellant told her over the phone that: "Instead of others taking her, I will just kill her." As testified to by Rosalie, which appellant did not care to seriously object to or categorically deny, appellant was Maggie's former live-in sweetheart; she, however, separated from him because he is a married man with children.[37] Appellant wanted to live again with Maggie; however, the latter refused as the appellant is a heavy drinker and would beat her whenever he is drunk.[38]

As also correctly summarized by the People in its Brief:

"x x x Barely a week after he made his threat, appellant was in the vicinity of the Philippine Plaza Hotel particularly at the employee's exit (p. 30, t.s.n., April. 25, 1977). Appellant knew exactly where to wait for his victim. He had cased the joint and it was but fortunate that Maggie was forewarned of his presence. Maggie elected to sleep in the hotel that night because Barba was waiting for her outside."[39]

Indisputably then, from the time he made known to Rosalie that he would kill Maggie, until the time he actually killed her, sufficient time had elapsed to allow him to reflect upon the consequences of his act and to arrive at a clear judgment. That he had clung to his plan to do away with Maggie was positively demonstrated by his subsequent external manifestations, such as waiting for Maggie outside her working place and carrying a bladed instrument which, according to Dr. Singian, may be categorized as a knife,[40] when he went to her apartment. There is no doubt that appellant had murder in his heart when he decided to see Maggie that night of 10 February 1977.

The killing is thus qualified to murder by evident premeditation.

We likewise agree with the trial court and the People that nighttime should be appreciated as a generic aggravating circumstance. Appellant deliberately sought it either to prevent him from being recognized or to ensure his unmolested escape.[41] He chose a very unholy hour after midnight believing that everybody would be asleep and, therefore, none could witness his deed and that the darkness of night would facilitate his escape and prevent his identification.

The penalty for murder under Article 248 of the Revised Penal Code is reclusion temporal in its maximum period to death. The 1987 Constitution has, however, abolished the death penalty, and mandates that any death penalty already imposed shall be reduced to reclusion perpetua.[42] Nevertheless, in *People vs. Munoz*,[43] We ruled that this Constitutional provision does not change or alter the periods for the penalty for murder. It only reduces the penalty of death to reclusion perpetua. Accordingly, the three (3) periods for the penalty remain to be:

1. minimum - reclusion temporal in its maximum period
2. medium - reclusion perpetua
3. maximum - death, but automatically reduced to reclusion perpetua

The appellant shall be credited with the mitigating circumstance of voluntary surrender. He surrendered on 25 February 1977,[44] before the filing of the information in this case. This offsets the generic aggravating circumstance of nighttime.[45]

Thus, the penalty which may be imposed upon the appellant should be the medium of that prescribed as above-stated, which is reclusion perpetua.

The indemnity awarded by the trial court is only P12,000.00. Conformably with the rule laid down in *People vs. Sison*[46] and *People vs. Sazon*,[47] the same is increased to P50,000.00.

IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered affirming the decision appealed from with respect to the sentence and modifying it with respect to the indemnity. As affirmed, this Court finds the appellant, CIPRIANO BARBA y DORIA, GUILTY beyond all reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code and he is hereby SENTENCED to suffer the penalty of reclusion perpetua and all the accessory penalties, and to indemnify the heirs of the deceased Magdalena (Maggie) Juliano y Sultan in the sum of P50,000.00.

With costs against appellant.

IT IS SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Bidin, and Romero, JJ., concur.

[1] Rollo, 4.

[2] Rollo, 5-14. Per then Judge Amante Q. Alconcel.

[3] Brief for Appellant, 1-2.

[4] Rollo, 5-11.

[5] Rollo, 11-12.

[6] Rollo, 12-13.

[7] Rollo, 13-14.

[8] Rollo, 13-14.

[9] Rollo, 57, et seq.

[10] Rollo, 73, et seq.

[11] TSN - de la Cruz, 29 April 1977, 12-15.

[12] TSN - Macariola, 17 April 1978, 60.

[13] TSN - de la Cruz, 29 April 1977, 13.

[14] Id., 28, 34, 36.

[15] TSN - Macariola, 19 July 1978, 4.

[16] TSN - Macariola, 19 July 1978, 4-6.

[17] People vs. Del Socorro, 182 SCRA 359; People vs. Javier, 182 SCRA 830; People vs. Mangalino, 182 SCRA 329; People vs. Cantuba, 183 SCRA 289; People vs. Santos, 183 SCRA 25; People vs. Palino, 183 SCRA 680; People vs. Flores, 185 SCRA 366.

[18] 177 SCRA 427, 433.

[19] 181 SCRA 19.

[20] People vs. Rafallo, 86 Phil. 22; People vs. Loveria, 187 SCRA 47.

[21] People vs. Bondoc, 85 Phil. 545; People vs. Cinco, 67 Phil. 196; People vs. De Guzman, 70 Phil. 23; People vs. Loveria, *supra*.

[22] People vs. Pasco, 181 SCRA 233; People vs. Lucas, 181 SCRA 316; People vs. Obando, 182 SCRA 95; People vs. Corrales, 182 SCRA 439; People vs. Repuela, 183 SCRA 244; People vs. Tamayo, 183 SCRA 375; People vs. Cayaan, 183 SCRA 445; People vs. Dinola, 183 SCRA 493; People vs. Clores, 184 SCRA 638; People vs. Carmina, 185 SCRA 59; People vs. Demecillo, 186 SCRA 161; People vs. Acosta, 187 SCRA 39; People vs. Ampo-an, 187 SCRA 173; People vs. Marapao, 188 SCRA 243; People vs. Cagalingan, 188 SCRA 313; People vs. Felipe, 191 SCRA 176; People vs. Tasarra, 192 SCRA 266; People vs. Kyamko, 192 SCRA 374.

[23] People vs. Samonte, 64 SCRA 319; People vs. Sarmiento, 118 Phil. 266.

[24] TSN - Perez, 23 September 1977, 13-16.

[25] TSN – Macariola, 25 April 1977, 20-21; 24-25; 28-30.

[26] Id., 32.

[27] Testimony of Nenita Tolentino, TSN - de la Cruz, 29 April 1977, 9-11.

[28] 4 Phil. 141.

[29] 34 Phil. 786.

[30] People vs. Cananowa, 92 SCRA 427; People vs. Narit, G.R. No. 77087, June 1991.

[31] People vs. Bachar, 170 SCRA 700.

[32] *People vs. Gaddi*, 170 SCRA 649.

[33] 13 Phil. 530.

[34] *People vs. Torejos*, 43 SCRA 158; *People vs. Canial*, 46 SCRA 634; *People vs. Tingson*, 47 SCRA 243; *People vs. Palacpac*, 49 SCRA 440; *People vs. Renegado*, 57 SCRA 275; *People vs. Manangan*, 59 SCRA 31; *People vs. Tumulip*, 60 SCRA 303; *People vs. Francisco*, G.R. No. 69580, 15 February 1990.

[35] *U.S. vs. Bañagale*, 24 Phil. 69; *People vs. Diaz*, 35 SCRA 178; *People vs. Ardisa*, 55 SCRA 245; *People vs. Lacao*, 60 SCRA 89; *People vs. Estillore*, 141 SCRA 456; *People vs. Camilet*, 142 SCRA 402; *People vs. Obenque*, 147 SCRA 488; *People vs. Manalo*, 148 SCRA 98.

[36] *People vs. Obenque*, *supra.*; *People vs. Molato*, 170 SCRA 640; *People vs. Repe*, 175 SCRA 422; *People vs. Batas*, 176 SCRA 46.

[37] TSN – *Macariola*, 25 April 1977, 12-13.

[38] *Id.*, 24.

[39] Brief for Appellee, 11.

[40] TSN - *de la Cruz*, 11 May 1977, 16.

[41] *People vs. Baring*, 187 SCRA 629; *People vs. Matbagon*, 60 Phil. 887; *People vs. Apduhan, Jr.*, 24 SCRA 800.

[42] Section 19 (1), Article III, 1987 Constitution.

[43] 170 SCRA 107. See also *People vs. Cagalingan*, 188 SCRA 313; *People vs. Espiritu*, G.R. No. 80406, 20 November 1990.

[44] TSN - *Macariola*, 17 April 1978, 52.

[45] Article 64 (4), Revised Penal Code.

[46] 189 SCRA 643 (1990).

[47] 189 SCRA 700 (1990).

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