

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ILARDE ITURA, DEFENDANT-APPELLANT.

G.R. No. 59217. April 30, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Court of First Instance of Aklan, 11th Judicial District, Branch III finding defendant-appellant Ilarde Itura guilty beyond reasonable doubt of the crime of MURDER, sentencing him to suffer the penalty of reclusion perpetua, and ordering him to indemnify the heirs of the deceased Felix Renacido in the sum of Twelve Thousand (P12,000.00) Pesos for the death of the victim, Twenty Thousand (P20,000.00) Pesos for moral damages, Five Thousand (P5,000.00) Pesos for exemplary damages, One Thousand Two Hundred Seventy (P1,270.00) Pesos for the coffin, and expenses for religious services as well as attorney's fees, and Three Thousand (P3,000.00) Pesos for other expenses.

The information dated September 30, 1975 charged Ilarde Itura and Crispin Naelga with having committed murder as follows:

"That on or about the 13th day of May, 1975, at Barrio Catabana, Municipality of Madalag, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with deadly weapon, consisting of fighting bolos, with intent to kill and with evident premeditation and treachery, conspiring, confederating, and mutually helping one another, did then and there wilfully, unlawfully and feloniously attack, assault, and bolo one FELIX RENACIDO on the different parts of his body, thereby inflicting physical injuries upon the victim, Felix Renacido, to wit:

"1. Stab wound - left side below the clavicle going downward (4 inches in length, 3-1/2 inches depth, 1/2 inch wide involving the heart;

"2. Stab wound - distal portion of the arm 4 inches from the left elbow going up cutting the bone;

"3. Stab wound - left starting at the level of the umbilicus along the mid clavicular line reaching the spinal column but not cutting the spinal cord traversing the transverse column and ascending column;

"4. Stab wound - left thigh 6 inches from inguinal region, 4 inches 1 length, 3 inches in depth, and 1/2 inch width cutting the femoral artery;

"5. Stab wound - 4 inches above the left knee, 6 inches in length, 2 inches in depth, and 1 inch in width;

"6. Stab wound - at the level of the nape cutting the cervical vertebrae, 6 inches in length, 3 inches depth, and 1 inch width; and

"7. Lacerated wound - distal portion of the forearm above the wrist right side 1 inch length.'

"As per Medical Certificate marked Annex 'A' and made integral part of this Information, signed by Sofronio A. Navales, Rural Sanitation Inspector of Madalag, Aklan, which injuries caused the instantaneous death of Felix

Renacido.

"That in the commission of the crime, the aggravating circumstance of evident premeditation is present;

"That as a result of the criminal acts of the accused, the heirs of Felix Renacido suffered the following damages:

"1. P12,000.00 for the death of the victim; and

"2. P20,000.00 for moral damages."

On October 27, 1975, defendant-appellants Ilarde Itura and Crispin Naelga, with the assistance of counsel Jose Salazar, waived the formal reading of the information and pleaded "not guilty" to the offense charged.

On March 30, 1976, however, Crispin Naelga withdrew his earlier plea of not guilty and pleaded guilty to the lesser offense of homicide to which Assistant Provincial Fiscal Pedro Cordova expressed no objection provided the information would not be amended. The Court explained to Crispin Naelga the consequences of his plea of guilty. Crispin Naelga reiterated his plea of guilty and declared that he killed Felix Renacido because the latter "embarrassed him."

Crispin Naelga was re-arraigned and after he pleaded guilty to the lesser offense of homicide, he was forthwith sentenced to an indeterminate prison term of SIX (6) YEARS and EIGHT (8) MONTHS of Prison Mayor as minimum to TWELVE (12) YEARS and ONE (1) DAY of Reclusion Temporal as maximum; to indemnify the heirs of Felix Renacido in the sum of P12,000.00 for the death of the victim, P20,000.00 for moral damages and to pay the costs without subsidiary imprisonment in case of insolvency. Crispin Naelga was also given full credit for his preventive imprisonment starting from May 26, 1975.

Trial proceeded against the defendant-appellant Ilarde Itura only.

On June 29, 1976, Porferio Mirano, prosecution eyewitness, implicated Rafael Sailog, another prosecution witness, as one of the killers of Felix Renacido. Thereafter, Fiscal Tesorero verbally petitioned the Court for a suspension of the hearing of the case, and asked that the office of the provincial fiscal be given time to re-investigate the case against Rafael Sailog, assess the evidence of the state, and determine whether it is enough to sustain a conviction.

On June 30, 1976, the court suspended the hearings and gave the provincial fiscal time within which to conduct a re-investigation.

After the re-investigation by the fiscal, an amended information dated April 19, 1977 was filed. The amended information now included Rafael Sailog as one of the accused.

The facts established by the prosecution and accepted by the trial court as basis for its decision are summarized as follows:

"The evidence of the prosecution tends to establish the following: At around 1:30 o'clock in the afternoon of May 13, 1975 the herein accused killed Felix Renacido at Barrio Catabana, Madalag, Aklan, which is around twenty (20) meters to the house of spouses Carmelita Naelga and Rafael Sailog. With the use of a fighting bolo (Exh. 'A'), accused Ilardo Itura was the first one to bolo the victim, Felix Renacido. Then accused Crispin Naelga – who had previously pleaded guilty to the offense of homicide – next bologed the deceased while accused Rafael Sailog used an ax (Exh. '4' of the accused Rafael Sailog and Exh. 'E' of the prosecution).

"The deceased, Felix Renacido suffered seven (7) wounds, as shown in the medical certificate (Exh. B), which are as follows:

"Wound No. 1 is a stab wound, just at the left side below the clavicle going downward (4 inches in length,

3-1/2 inches depth, 1/2 inch wide) involving the heart.

"Wound No. 2 is a stab wound - distal portion of the arm 4 inches from the left elbow going up cutting the bone.

"Wound No. 3 is another stab wound - left starting at the level of the umbilicus along the mid clavicle line reaching the spinal column but not cutting the spinal cord traversing the transverse column and ascending column.

"Wound No. 4 is another stab wound - left thigh 6 inches from inguinal region, 4 inches length, 3 inches in depth and 1/2 inch width cutting the femoral artery.

"Wound No. 5 is another stab wound - 4 inches above the left knee, 6 inches in length, 2 inches in depth and 1 inch in width.

"Wound No. 6 is another stab wound - at the left of the nape cutting the cervical vertebrae, 6 inches in length, 3 inches in depth and 1 inch width.

"The seventh wound is a lacerated wound - distal portion of the forearm above the wrist right side 1 inch length.

"Cause of death appears to be hemorrhage due to multiple wounds (Exhs. "B" and "B-1").

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"Prosecution witness, Porferio Mirano who was at the time he testified on June 29, 1976, 38 years old, married, farmer and a resident of Bulabud, Malinao, Aklan, and who was then testifying under the original information above-referred to in which the accused were then only Ilarde Itura and Crispin Naelga, declared among other, as follows: He has known accused Ilarde Itura some five to ten years. He has also known the deceased Felix Renacido for quite a time. He has also known the other accused Crispin Naelga for two years before 1975. In the course of his testimony he identified accused Ilarde Itura in open court. He went further to state that in the afternoon of May 13, 1975 at around 1:00 he was in the ricefield at Catabana, Madalag, Aklan. At around 1:30 o'clock that afternoon he was then resting in a shade just near the land he was farming. He was just then around twenty to thirty meters to the house of Carmelita Naelga and Rafael Sailog. While thus resting, he saw Carmelita Naelga, wife of Rafael Sailog, Felix Renacido and another one who came later and who was the wife of Felix Renacido. They were then coming from the house of Felix Renacido, walking and following a trail on the rice dike into the lower portion towards the house of the said spouses Rafael Sailog and Carmelita Naelga. Crispin Naelga was ahead, followed by Felix Renacido and later on the latter's wife came.

"Upon reaching near the house of said spouses Rafael Sailog and Carmelita Naelga he saw accused Ilarde Itura who first boloed Felix Renacido with the use of a fighting bolo. Accused, Crispin Naelga boloed also Felix Renacido with the use also of a fighting bolo, then Rafael Sailog struck Felix Renacido with the use of an ax. Accused, Ilarde Itura boloed Felix Renacido twice, hitting Felix Renacido first at the back of his neck while the second blow landed on the left thigh of the victim, Felix Renacido. And accused, Crispin Naelga, the second person who assaulted Felix Renacido struck the deceased on his belly, then on his upper left arm and then on his right breast. The deceased fell down. After he fell down, accused Crispin Naelga had again boloed Felix Renacido. The third one to assault Felix Renacido with an ax was Rafael Sailog, then a prosecution witness in the original information in this case.

"After he had boloed Felix Renacido, accused Ilarde Itura was talking in a loud voice, 'What are you waiting for, you kill him.' Then accused, Crispin Naelga, assaulted the victim, Felix Renacido. This killing of Felix Renacido was just 10 to 15 meters to the house of the prosecution witness, Rafael Sailog and Carmelita Naelga.

The body of the deceased Felix Renacido was examined on May 14, 1975 by Sofronio Navales a Rural Sanitation Inspector of Madalag, Aklan who issued the Medical Certificate with findings found in the information and sustained by the trial court.

The records show that the court took adequate steps to confirm the capability of Sofronio N. Navales, a Rural Sanitation Inspector since 1951 to perform autopsies in the absence of a Rural Health Physician. The records further show that on May 13, 1975, Dr. Henry Taay, the Rural Health Physician of the town was on leave while Dr. Bueno of Libacao, Aklan, who was supposed to be detailed to the Municipality of Madalag did not report for duty and was not available.

Defendant-appellant Ilarde Itura denied any participation in the commission of the crime. He admitted having witnessed the crime as a mere bystander but pointed to Crispin Naelga as the only person responsible for the killing of Felix Renacido. His defense states:

"On May 13, 1975 after having had his lunch, defendant-appellant Ilarde Itura went out of his house to look for laborers to work in his rice field. But as almost everybody was busy that afternoon, he was not able to find any. As he was passing along the downstream side of Barangay Catabana still looking for laborers and before almost reaching the river, he met his nephew Crispin Naelga who claimed to be looking for the victim Felix Renacido. The defendant-appellant was told that Crispin Naelga would like to have himself treated of his stomachache by the victim. They went together for a while but as they neared the house of Rafael Sailog, they met Felix Renacido. Thereupon Crispin Naelga boloed several times the victim Felix Renacido on the different parts of his body and although the defendant-appellant admonished to stop the attack, Crispin Naelga continued until the victim lay prostrate on the ground.

"As he was afraid, he hurriedly left the place (Tsn. Hearing of June 6, 1979, pp. 10-15) Crispin Naelga was later brought by his brother-in-law Rafael Sailog to the Barangay Captain and together, they surrendered to the police authorities. After investigation, the Chief of Police filed against Crispin Naelga and defendant-appellant Ilarde Itura a complaint for murder before the Municipal Court of Madalag, Aklan. After due investigation, the Assistant Provincial Fiscal filed the information against defendant-appellant and Crispin Naelga which was subsequently amended to include Rafael Sailog.

"Crispin Naelga later claimed at the trial of the case, moments before he pleaded guilty to the lesser offense of homicide, that the deceased Felix Renacido had embarrassed him and hurt him and that was the reason why he killed him. (Tsn, Hearing of March 30, 1916, p. 4)"

In its decision dated October 20, 1981, the trial court found the qualifying circumstance of treachery to be present and convicted defendant-appellant Ilarde Itura of the crime of MURDER. Rafael Sailog was acquitted on grounds of reasonable doubt. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds accused Ilarde Itura GUILTY beyond reasonable doubt of Murder as charged in the information. There being no aggravating nor any mitigating circumstance, the Court hereby sentences him therefore to suffer the penalty of RECLUSION PERPETUA. With costs against the accused. He is hereby however given full credit of his preventive imprisonment starting from May 26, 1975 to November 3, 1977, on which latter date accused Ilarde Itura was released upon posting a bail bond.

"Accused Ilarde Itura is hereby ordered to indemnify the heirs of Felix Renacido in the sum of P12,000.00 for the death of the victim, P20,000.00 for moral damages and P5,000.00 for exemplary damages. He is hereby further ordered to pay the heirs of the victim the sum of P1,270.00 for the coffin and expenses for religious service as well as attorney's fees and for other expenses amounting to P3,000.00.

"Accused Rafael Sailog is hereby declared ACQUITTED. His immediate release is hereby ordered."

The defendant-appellant raised a lone assignment of error in his appeal -

THE TRIAL COURT ERRED IN FINDING THAT THE DEFENDANT-APPELLANT, ILARDE ITURA, PARTICIPATED IN THE KILLING OF THE DECEASED FELIX RENACIDO AND THEREFORE FINDING HIM GUILTY OF THE CRIME OF MURDER AS CHARGED AND SENTENCING HIM TO SUFFER THE PENALTY OF RECLUSION PERPETUA

Defendant-appellant himself admits that appellate courts will generally not disturb the factual findings of the trial court unless the latter has plainly overlooked certain facts of substance and value that if considered might affect the result of the case.

A perusal of the records shows that the defendant-appellant has failed to satisfy this Court why his case should be an exception to the above-stated general rule on the respect to be given to factual findings of the trial court.

The defendant-appellant contends that he was convicted not on the basis of the testimonies of the original prosecution witnesses but on the basis of the testimonies of Porferio Mirano, Azucena Tornino, and Roseno Zausa who were presented to establish the guilt of the accused Rafael Sailog, not his guilt.

We find no merit in this contention. The records show that defendant-appellant Ilarde Itura was convicted on the basis of evidence given before and after the amendment of the information. The trial court relied on the eyewitness account of Porferio Mirano which was corroborated by the affidavits of Rafael Sailog and his wife. The trial court ruled:

"From the testimony of prosecution witness Porferio Mirano on June 29, 1976 who then testified on the original information, in which the accused were only Ilarde Itura and Crispin Naelga, the Court finds that the prosecution has been able to establish the guilt of herein accused Ilarda Itura by proof beyond reasonable doubt. His testimony has been corroborated by the sworn statement of prosecution witness Racal Sailog and by the sworn statement of his wife (Exhs. 'F' and 'H', respectively)."

Porferio Mirano testifying under the original information, positively identified defendant-appellant Ilarde Itura as the person who first boloed Felix Renacido twice with the use of a fighting bole hitting Felix first at the back of his neck and then on the left thigh of the victim. He testified:

"Q While you were resting, did you notice any person within your vicinity, within your eyesight?

"A Yes, sir.

"Q Who were the persons you saw at that time?

"A Carmelita Sailog, wife of Rafael Sailog, Felix Renacido and another one who came later was the wife of Felix Renacido, Azucena Tornino."

(TSN., Gilda Esmeralda, June 29, 1976, p. 29)

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"Q When you saw these three people, in what part or what place were they when you saw them?

"A They were in the place just across the land I was farming on their way to their homes.

"Q Whose house are you referring to?

"A The house of Rafael Sailog and Carmelita Naelga."

(TSN., Gilda Esmeralda, June 29, 1976, p. 30)

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"Q Were these three persons you saw, namely Carmelita Naelga, Felix Renacido and Azucena Tornino able to reach the premises of the house of Carmelita Naelga?

"A No, sir.

"Q Why, what happened?

"A While the three were near the house of Carmelita Naelga, Felix Renacido was boloed.

"Q By whom?

"A Ilarde Itura, the first one to bolo and Crispin Naelga and Rafael Sailog.

"Q What weapon was used by Ilarde Itura when he assaulted Felix Renacido?

"A A fighting bolo."

(TSN., id. at pp. 32)

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"Q I am showing you a bolo that was surrendered to the police department which has been marked as Exhibit "A". Have you seen this bolo before during the date of the incident?

"A This is the very bolo which Ilarde Itura was carrying tied on his waist.

(TSN., id at pp. 32-33)

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"Q What was done to the bolo which you said was carried by Ilarde Itura?

"A This is the very bolo which Ilarde Itura drew from his scabbard and used in bololing Felix Renacido."

(TSN., id at p. 33)

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"Q You said that the first one who assaulted the deceased Felix Renacido was the accused Ilarde Itura. Now, and he used this bolo already marked Exhibit "A", can you tell the Court how many times this accused boloed Felix Renacido?

"A Twice.

"Q And where was Felix hit by the bolo blow of accused Ilarde Itura?

"A (Witness demonstrating on his body that Felix Renacido was hit by the bolo blow at the back of his neck.)

"Q And the second bolo blow of the same accused, where did it hit the victim?

"A Left thigh."

(TSN., id at p. 35).

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"Q And during that time while after Ilarde Itura have boloed Felix Renacido, did you hear anybody talking or shouting to anyone?

"A Yes, sir.

"Q Exactly what was that person doing, talking or doing?

"A He was talking in a loud voice.

"Q Who was talking in a loud voice?

"A Ilarde Itura.

"Q What was he saying in a loud manner?

"A 'What are you waiting for, you kill him.'

"Q At what moment did Ilarde Itura say that, was it during the time he was bololing the victim or was it after bololing him?

"A After he had boloed Felix Renacido."

(TSN., id. at pp. 36-37)

Porferio Mirano again positively implicated defendant-appellant Ilarde Itura when he testified under the amended information on October 23, 1978:

"Q While you were resting did you notice any person within the vicinity or within the reach of your eyesight?

"A Yes, sir.

"Q Who were the persons you saw?

"A Carmelita Naelga, following her was Felix Renacido and his wife Azucena Tornino."

(TSN., Silda dela Vega, October 23, 1978, p. 6)

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"Q Towards what direction were these three persons going?

"A They were going to the direction towards the house of Rafael Sailog.

"Q Did you notice where they came from?

"A Yes, sir. From the house of Felix Renacido."

(TSN., id at p. 8)

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"Q Since these three persons were going towards the direction of the house of Rafael Sailog with Carmelita Naelga ahead of the three of them, were they able to reach the vicinity of the house of the accused Rafael Sailog?

"A No, sir.

"Q Why not?

"A Because of that incident where Ilarde Itura boloed Felix Renacido.

"Q Was it only Ilarde Itura who boloed Felix Renacido?

"A No, sir, he had companions.

"Q But who was the first one to deliver the bolo blow?

"A Ilarde Itura."

(TSN., id. at pp. 10-11)

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"Q What particular weapon was used by Ilarde Itura in bololing Felix Renacido?

"A A very sharp bolo.

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"ATTY. ICAMINA:

"May I ask for the weapon used by the accused, your Honor.

"Q I am showing you a bolo that was surrendered to the police department of Madalag, Aklan, which has been marked as Exh. "A" together with the scabbard. Have you see this bolo and scabbard before?

"A Yes, sir.

"Q Where have you seen this, referring to the bolo and scabbard?

"A I saw that particular bolo in the possession of Ilarde Itura.

"ATTY. ICAMINA:

"This bolo was already marked Exh. "A" on the handle, the scabbard as Exh. "A-1" and the blade as Exh. "A-2".

"Q When you first saw this bolo in the person of Ilarde Itura, what was he doing with it?

"A Still tied around his waistline.

"Q And what relation has this bolo to the bolo used by Ilarde Itura in bololing the victim on the afternoon of May 13, 1975?

"A This is the very bolo which was used." (TSN., id. at pp. 12-13)

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"Q While this bololing of the victim was taking place, what were you doing?

"A I was looking at them.

"Q Did you hear anybody also talking or shouting?

"A Yes, sir, I heard.

"Q Who was talking?

"A Ilarde Itura.

"Q And what was he talking?

"A 'What are you waiting for, kill him.'

(TSN., Silda dela Vega, October 23, 1978, pp. 6-20)

Rafael Sailog's affidavit prepared and signed before the information was amended corroborated Mirano's testimony. Pertinent portions of the affidavit, with their grammatical errors, read:

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"Q - : Why are you here in this Office?

"A - : I am here to testify as witness against Ilarde Itura and Crispin Naelga.

"Q - : Why, what did Ilarde Itura and Crispin Naelga has done?

"A - : That on or about 1:30 o'clock in the afternoon of May 13, 1975, at barrio Catabana, Madalag, Aklan, whil I was taking a rest in my house I was awakened by a sudden noise coming from the voice of my wife. I woke up immediately and looked thru the window and I saw Ilarde Itura and Crispin Naelga boloed to death one Felix Renacido.

"Q - : How far is your house from the spot where the incident took place?

"A - : It is about 20 meters distance from the place where I was overlooking them.

"Q - : Are you sure that the two persons who boloed to death Felix Renacido is Ilarde Itura and Crispin Naelga?

"A - : Yes sir.

"Q - : Was your wife Carmelita Naelga also saw the incident that very moment?

"A - : I was together with my wife who personally saw Ilarde Itura and Crispin Naelga boloed Felix Renacido.

"Q - : What instrument did Ilarde Itura and Crispin Naelga use in killing Felix Renacido?

"A - : I personally saw each of them using a sharp bolo (Talibong)."

Carmelita Naelga, wife of Rafael Sailog, likewise implicated defendant-appellant Ilarde Itura in her affidavit executed before the amended information was filed:

"Q - : Why are you here in this Office?

"A - : I am here to testify as witness regarding the incident that had happened on May 13, 1975, at about 1:30 o'clock in the afternoon at barrio Catabana, Madalag, Aklan.

"Q - : What was that incident about?

"A - : It was Ilarde Itura and Crispin Naelga who boloed to death one Felix Renacido.

"Q - : How do you know that Ilarde Itura and Crispin Naelga boloed to death one Felix Renacido?

"A - : I know Ilarde Itura and Crispin Naelga who boloed to death Felix Renacido because on that very moment I was in my house where I was overlooking them.

"Q - : How far is your house from the spot where the incident took place?

"A - : It is more or less 20 meters distance.

"Q - : Are you sure that Ilarde Itura and Crispin Naelga killed Felix Renacido?

"A - : Yes sir.

"Q - : Who was your companion at your house when the incident took place?

"A - : My husband Rafael Sailog who was sleeping during that time and when I shout he was awakened.

"Q - : Was your husband also saw the incident that very moment?

"A - : I was together with my husband Rafael Sailog who personally saw Ilarde Itura and Crispin Naelga boloed to death Felix Renacido.

"Q - : Have you remembered what kind of instrument did Ilarde Itura and Crispin Naelga use in killing Felix Renacido?

"A - : I personally saw both of them used a sharp bolo (Talibong.)"

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While it is true that Rafael Sailog and Carmelita Naelga partially repudiated these affidavits when Rafael Sailog became hostile after Crispin Naelga had pleaded guilty to the lesser offense of homicide, we find no reason to disturb the trial court's conclusion that the partial repudiation by Rafael Sailog and Carmelita Naelga of their sworn statements was an afterthought, a product of premeditation, reflection, and design to exculpate defendant-appellant Ilarde Itura who is the uncle of Carmelita Naelga, considering that Crispin Naelga had already pleaded guilty to the lesser offense of homicide. The lower court stated:

"While Rafael Sailog declared, among others, that he made a mistake in his sworn statement because when he peeped to the window he only saw the deceased Felix Renacido flat on the ground while Crispin Naelga was standing, holding a bolo and Ilarde Itura was just standing by without doing anything, the court gives more weight to these two sworn statements (Exhs. "F" and "H") by Rafael Sailog and his wife than to his later denial arising from his hostile attitude because at the time these sworn statements (Exhs. "F" and "H") were made on May 19, 1975 the circumstances then existing at that time these affidavits were made render improbable that a motive to falsify them exist. These sworn statements, Exhibits "F" and "H", executed some six (6) days after the killing were evidently not made under the influence of a motive to misrepresent. The surrounding circumstances then obtaining at the time they were executed constitute a strong guarantee of truth to the statement that accused Ilarde Itura was one of those who killed Felix Renacido. While the statements in the above-mentioned sworn statements may not be part of the *res gestae*, it is certain that circumstances were such that there can be no incentive on the part of Rafael Sailog and his wife Carmelita Naelga to color the facts or deliberately make a fabrication of them."

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Furthermore, Rafael Sailog confirmed on the witness stand before the information was amended the truth of his affidavit:

"Q Do you remember having executed a sworn statement before the Municipal Judge of Madalag, Aklan on the 19th of May, 1975 in connection with this case?

"A Yes, sir.

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"FISCAL TESORERO:

"Q When you signed this Exh. "F", you sign before the Municipal Judge of Madalag, Aklan, who is Municipal Judge Jaime Tonel?

"A Yes, sir.

"Q And this affidavit was read to you in the Aklan dialect by the Municipal Judge?

"A Yes, sir.

"Q. And you affirmed the truth of the statement that you made that you alleged in your Exh. "F"?"

"A Yes, sir.

"Q And after having read in Aklan dialect by the Municipal Judge you understood what is contained in this Exh. "F"?

"A Yes, sir.

"Q And thereafter the municipal Judge asked you to sign the same and you voluntarily affixed your signature which is now marked Exh. "F-1"?

"A Yes, sir.

"Q. The name Crispin Naelga you stated as alleged in Exh. "F" is the same Crispin Naelga who pleaded guilty to the crime charged against him in this case?

"A Yes, sir.

"Q And this man appearing in Exh. "F" is Ilarde Itura is the same accused Ilarde Itura?

"ATTY. GUEVARRA: Objection, the question is leading, the witness has not yet testified about Ilarde Itura involved in this case.

"COURT: But he is confronted now with the affidavit and the question asked is the man, Ilarde Itura in this case. Let the witness answer.

"A Yes, sir."

(TSN., Nenita Fernandez, June 3, 1976, pp. 8-9)

The records show that Rafael Sailog again confirmed the truth of his affidavit when he testified on June 5, 1979 after the information was amended.

Carmelita Naelga likewise admitted on cross-examination that she voluntarily signed her affidavit in the presence of the Municipal Judge and the Chief of Police of Madalag, Aklan:

"Q With respect to this case, you have appeared before municipal judge of Madalag to give the information?

"A Yes, sir.

"Q And you were investigated by the municipal judge of Madalag by the name of Jaime R. Tonel?

"A Yes, sir.

"Q And the investigation of yours was reduced to writing?

"A Yes, sir.

"Q And if you are shown that investigation made by the municipal judge Jaime Tonel, could you identify the same?

"A Yes, sir.

"Q I am showing you this sworn statement of Carmelita Naelga before municipal judge of Madalag on May 19, 1975, already marked as Exh. "H" for the prosecution appearing on page four of the record. Will you please look over this document and tell if that is the document that you signed before the municipal judge?

"A This is the one, sir.

"Q Do you recall if you were also investigated by the police department of Madalag with respect to this

incident?

"A Yes, sir.

"Q And when this Exh. "H" was prepared by the office of the municipal judge and you affixed your signature thereof, the Chief of Police of Madalag was also present?

"A Yes, sir.

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"Q When this statement of yours was taken by the municipal judge of Madalag and you affixed your signature to this statement marked Exh' "H", nobody threatened you or nobody promised you any reward in affixing your signature to Exh. "H"?

"A Nobody.

"Q You were not also forced to sign this sworn statement marked Exh. "H"?

"A No, sir.

"Q Would we take it that you signed Exh. "H" voluntarily of your own free will?

"A Yes, sir.

(TSN., Silda de la Vega, January 30, 1979, pp. 16-18; 25)

Rosendo Zausa and Azucena Tornino likewise positively identified and implicated defendant-appellant Ilarde Itura as one of the killers of the deceased Felix Renacido.

Appellant next argues that there were three (3) different persons who participated in the killing of the deceased, yet there was only one bolo presented as evidence and this was the one that was surrendered by Crispin Naelga to the police authorities.

The prosecution has clearly demonstrated the direct participation of defendant-appellant Itura in the killing of Felix Renacido. We agree with the Solicitor General that the direct testimony of eyewitnesses Porferio Mirano, Rosendo Zausa and Azucena Tornino, sufficiently corroborated by the affidavits of Rafael Sailog and Carmelita Naelga has overcome the absence of the other bolo used by the appellant (People v. Jovellano, 56 SCRA 156). The fact that only one bolo was surrendered to the authorities does not alter the fact that Felix Renacido was killed and that defendant-appellant Ilarde Itura was positively identified as one of those who inflicted the multiple wounds suffered by the victim.

The defendant-appellant further argues that the failure of the eyewitnesses to immediately report the killing to the police authorities, to make a statement of what they saw, or to confide the incident to their wives raises doubt on the veracity of their testimony. Defendant-appellant submits that their silence strongly indicates the falsity of their narrations.

The delay in reporting the killing was explained. The fact that the eyewitnesses did not immediately report the incident to the authorities does not diminish their credibility nor render their testimony biased.

The delay was sufficiently explained by Porferio Mirano when he testified:

"Q After May 13, 1975 did it not occur to you to report to the chief of police in Madalag and tell them that you have a knowledge of the occurrence?

"A We talked on that matter but the younger brother of Felix Renacido objected that we rather wait for the

children of Felix Renacido who were at that time all in Manila.

"Q So inspite of the fact that you have a knowledge of the incident you did not go to the Office of the Chief of Police of Madalag to tell then about your knowledge?

"ATTY. ICAMINA:

"Already answered, that they talked with the brother and decided to wait for the children.

"COURT:

Witness may answer.

"A No, sir, because I was waiting for the children of the deceased victim so that I could tell them the whole story."

(TSN., Gilda Esmeralda, June 30, 1976, pp. 17-18)

The other points raised by the defendant-appellant in his brief pertain to the same issue of credibility of witnesses. After carefully going over the records of the case, we find that these points are not of value and substance that could affect the result of the case.

The crime committed was murder. The qualifying circumstance of treachery was present. Defendant-appellant Ilarde Itura joined in the killing of Felix Renacido employing means, methods, or forms in the execution thereof which tended directly and specially to insure its execution, without risk to the killers arising from the defense which the offended party might make (Article 14, Par. 16, Revised Penal Code). Felix Renacido, when attacked, was entirely defenseless and defendant-appellant Itura and his companion or companions were not exposed to any risk that might come from the former since he was not in a position to retaliate. The attack was sudden and unexpected.

Conspiracy and evident premeditation were not sufficiently proven by the prosecution.

WHEREFORE, the judgment of conviction appealed from is hereby AFFIRMED. The award for damages is, however, modified such that, instead of separate indemnifications for the death of the victim, for moral damages, and for exemplary damages, a straight death indemnity for Thirty Thousand (P30,000.00) Pesos is imposed. In all other respects, the decision of the court a quo is affirmed.

SO ORDERED.

Melencio-Herrera, Plana, Relova, and De la Fuente, JJ., concur.

Teehankee, J., (Chairman), no part.

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