

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARSENIO FERRERA Y BAUTISTA, ACCUSED-APPELLANT.

G.R. No. 66965. June 18, 1987

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a mandatory review of the decision[1] of the Sandiganbayan in which the above-named accused was convicted of the crime of murder, qualified by taking advantage of superior strength, and sentenced to suffer the supreme penalty of death, to indemnify the heirs of the deceased in the sum of P15,000.00 in the concept of actual damages, P39,000.00 as compensatory damages for loss of earning capacity, and moral damages in the amount of P50,000.00 and the costs.

On May 17, 1983, accused Arsenio Ferrera y Bautista, together with Rolando Aperoch, Danilo Villacillo, and Francisco Belisario were charged with murder in an information filed by the Tanodbayan, to wit -

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That on or about December 9, 1982 or on dates subsequent thereto, in Barangay Mabuhay, Municipality of Valencia, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, accused Arsenio Ferrera, being then the barangay chairman of Mabuhay, Valencia, Bukidnon, duly appointed and qualified as such, and Rolando Aperoch, Danilo Villacillo, and Francisco Belisario, all members of the Civilian Home Defense Force (CHDF) in Valencia, Bukidnon, taking advantage of their respective official positions, conspiring and confederating with each other, and mutually helping one another, at night time purposely sought to better accomplish their criminal ends with impunity, and taking advantage of their superior strength, did then and there wilfully, unlawfully and feloniously with deliberate intent to kill and with treachery, attack, assault and use personal violence upon one PASCUAL PATIAG, by then and there shooting him with high-powered guns, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death, after which said accused cut off the ears of the deceased and mutilated the other parts of the body, thus committing the aforesaid offense with ignominy, and which crime was committed by said accused in relation to their respective offices or duties.

CONTRARY TO LAW.[2]

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The operative facts and circumstances surrounding the commission of the crime as gleaned from the evidence on record follow.

On December 12, 1982, the partly burned cadaver of Pascual Patiag was discovered in a sugarcane field in Barangay Mabuhay, Valencia, Bukidnon.[3] The corpse was found lying on its back, neck slashed, stomach cut open, and the liver missing.[4] Deep wounds indicative of attempts to tear portions of the flesh from the body were also noted on the victim's thighs.[5] The sight, indeed, was gruesome, especially perhaps, to the victim's son, who was one of those who found[6] the corpse and who previously witnessed[7] the despicable, inhuman act that

was the murder of his father.

December 9, 1982 appeared to be just another day for the victim, Pascual Patiag as he boarded his "motorela", "a vehicle, the prime mover of which is a motorcycle, with side cars, it has four wheels, and the driver is at the head"; it can accommodate eight to nine passengers, "the ninth passenger to ride in tandem with the driver." Unaware that a grisly, grotesque end was awaiting him, he drove to the Valencia Public Market to buy fertilizer for his farm and to get passengers.[8] Four men, Venancio Ferrera, Jr., Nolin Fernandez, Rogelio Corpuz, and Oscar Cerdeñola (the latter carrying two sacks of fertilizer) hired the "motorela." [9] The trip of the men aboard the victim's "motorela" was as uneventful as it was smooth until they reached the Civilian Home Defense Force (CHDF) headquarters of Barangay Mabuhay. Arsenio Ferrera, Barangay Captain and CHDF head (Commander), together with some CHDF men, stopped the "motorela" [10] and ordered the driver, Pascual Patiag, to alight even as one of the CHDF men accused the said driver of being a member and/or sympathizer of the New People's Army (NPA). [11] The men then led the victim to the CHDF headquarters [12] where, acting as prosecutor, judge, and executioner, they took turns in hitting him with their fists. [13] Arsenio Ferrera, perhaps unsatisfied with merely using his bare hands on the poor man, brought out his knife and stabbed the man once in the stomach. [14]

Holding desperately to dear life, the victim, by then profusely bleeding, staggered to his house which was about 200 meters away. [15] Arsenio Ferrera, evidently lusting for more, and with his men tailing him, relentlessly pursued [16] the fleeing victim and in cold blood shot him twice with a carbine. [17] Pascual Patiag finally lay lifeless on the road. Yet his ordeal was far from over. The killers apparently wanted to partake of the dead man's body. They, thus sliced [18] slabs of flesh from his thighs as though it were edible meat, mutilated his ears [19] and extracted his liver. [20] Finally, and in an effort to conceal the crime, the men attempted to burn what remained of the victim, then left it by the sugarcane field where it was discovered.

The crime, however, did not pass unnoticed. There were at least three eyewitnesses.

Reynaldo Patiag, a son of the victim (and one of those who discovered the corpse as mentioned previously), was requested [21] by his mother to look for his father on that fateful evening of December 9. Forthwith, he proceeded to their house at Barangay Mabuhay with the intention of waiting for his father there. [22] The Patiags were then living at their house in Barangay Banlag just two kilometers away from their house at Barangay Mabuhay, in the same town of Valencia. Banlag was situated in such a way that all vehicles bound for that place had to pass Barangay Mabuhay. [23] Reynaldo testified that he "heard a shout asking for help" at around 7:00 p.m. [24] Sensing that something untoward was happening, he went down. [25] It was then that he saw a man struggling towards the house while he was being chased by five (5) men, [26] led by Arsenio Ferrera, the herein appellant. All of a sudden, Ferrera shot the fleeing man twice with a long gun. [27] The incident took place about 100 meters from where the witness was standing. [28]

Oscar Cerdeñola was another eyewitness. After buying two sacks of fertilizer, he hailed the victim's "motorela" in order to go home. [29] He testified that he witnessed the mauling, [30] the stabbing, [31] and the shooting [32] of the victim by Ferrera and his men. He did not, however, report the matter to the authorities for fear of his life as he was threatened by Ferrera with the same fate as that of the victim if he ever told the incident to anyone. [33]

Lorenzo Cerdeñola who was 17 meters [34] from where the killing took place likewise declared on the witness stand that he saw the victim being chased, [35] and shot by Ferrera and his men, [36] then carried to the CHDF Camp. [37]

For the hideous killing of Pascual Patiag, only Arsenio Ferrera was apprehended. [38] The others for quite a time eluded the agents of the law. However, on January 23, 1984, the accused Danilo Villacillo and Francisco Belisario voluntarily surrendered to the military authorities at Barangay Kabangahan, Malaybalay, Bukidnon. They are now

being tried by the Sandiganbayan.[39]

The trial conducted by the Sandiganbayan and which commenced on June 28, 1983, therefore, pertained only to Arsenio Ferrera who entered a plea of Not Guilty upon arraignment on June 1, 1983.[40]

After trial, the Sandiganbayan, on January 18, 1984 promulgated its decision convicting the accused of the crime charged.[41]

The appellant assigns the following errors:

I.

THE TRIAL COURT ERRED IN DECLARING THAT THE CORPUS DELICTI HAS BEEN ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT ERRED IN DECLARING THAT THE EYE-WITNESSES OF THE PROSECUTION HAVE ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT THAT THE APPELLANT WAS THE ONE WHO STABBED AND SHOT THE VICTIM TO DEATH.

III.

THE TRIAL COURT ERRED IN DISREGARDING THE DEFENSE OF ALIBI OF THE APPELLANT AND FOR NOT ACQUITTING HIM OF THE CRIME CHARGED.[42]

Anent the first assignment of error, the appellant argues that the three prosecution witnesses merely testified that they saw a man being pursued then killed by the appellant and his companions but failed to ascertain the identity of that man.[43] The appellant also asserts that the death certificate cannot stand as an "official document entitled to the legal presumption of regularity in the issuance thereof" because it was issued by a physician without him examining the cadaver.[44] Furthermore, the appellant contends that the knife with which the victim was stabbed and the carbine with which he was shot should have been presented in evidence as part of the corpus delicti.[45]

We do not agree. There is no doubt that the corpus delicti has been established by sufficient proof.

The three eye-witnesses described in detail how the victim was first manhandled,[46] stabbed,[47] chased[48] like an animal, then shot[49] in cold blood by the appellant with a carbine. A fourth witness, Honorato M. Domingo, a tricycle driver,[50] also provided proof of the criminal act of the appellant. The said witness disclosed that in the morning after the killing of Pascual Patiag, Ferrera and his men, who earlier hired the witness' tricycle, proceeded to the appellant's house where they took a bottle containing human ear.[51] From there, the group set forth to the PC detachment where the appellant delivered the said bottle to two soldiers wearing civilian clothes.[52] The witness distinctly heard the appellant remark that the ear inside the bottle was that of Pascual Patiag.[53]

From the statements of the four witnesses, there is no mistaking the fact that Pascual Patiag was the man who was tortured and slain by the appellant and company. There could not be any better proof of the corpus delicti than the foregoing testimonies which describe in detail[54] the perpetration of the crime and which establish beyond reasonable doubt that the person killed by the appellant and his companions was Pascual Patiag. The corpus delicti has thus been proven through the positive declarations of the state witnesses, corpus delicti being the fact of the commission of the crime – here in the present case, the death caused by a criminal act.[55]

The deficiencies in the death certificate cannot actually affect the outcome of the trial for, as pointed out above, the fact of death of the victim has been conclusively shown by the unequivocal testimonies of the victim's son,

Reynaldo Patiag, and the other eyewitnesses, Oscar and Lorenzo Cerdeñola.[56] The three positively and unqualifiedly identified on the witness stand the appellant as the assailant of Pascual Patiag.

Likewise, the presentation or non-presentation of the weapons in evidence (the knife used in stabbing and the carbine used in shooting the victim) is not vital to the cause of the prosecution. *Corpus delicti* means the fact of the crime or that a crime has actually been perpetrated.⁵⁷ It does not refer to the corpse of the victim or the weapon used to kill him. It is not therefore imperative that the weapons used in the commission of a crime be presented in court. It need not in fact be alleged that the body of the deceased was actually found.⁵⁸ In the case at bar, the people's evidence has already established that the deceased died as a result of gunshot wounds.⁵⁹ This, we rule, suffices to prove the *corpus delicti*.

Apropos the second assignment of error, the appellant assails the credibility of the three prosecution witnesses for the following reasons: Reynaldo Patiag's reaction on the night of the perpetration of the crime was unnatural or contrary to human experience and observation of mankind;⁶⁰ Oscar Cerdeñola gave prior inconsistent statements on material facts⁶¹; and Lorenzo Cerdeñola aside from also giving inconsistent statements, contradicted the testimony of Reynaldo Patiag in that the said witness declared that he failed to notice the slicing of a portion of the victim's thighs.⁶²

We find no merit in the appellant's contentions.

Reynaldo Patiag appears to us to be a credible witness. Despite the fact that Reynaldo declared that he merely "suspected"⁶³ that the person to reach the direction where the witness stood on the night of the perpetration of the crime was his father, yet we cannot consider the witness' suspicion as totally groundless. It must be noted that the victim was struggling to reach his own house where Reynaldo, his son, was, and which was some 200 meters from the CHDF detachment, apparently to seek sanctuary and succor. It is the plain instinct of self-preservation that impels a fatally wounded man, like the victim here, to clutch at straws, so to speak, and what safer one is there but his "castle."

Pascual Patiag failed to go home that night and the next night. It was only on the third night after the victim's disappearance that his corpse, which bore wounds and barbaric mutilations evidently indicative of the fact that he was the same person seen by the witnesses who testified in this case for the people being relentlessly pursued, then shot at, and whose thighs were fleshed out ("Rolando Apercho cut the extremities as if they were meat and got them"), was discovered. The relation between what transpired on the evening of December 9, 1982 and the subsequent discovery of the corpse is certainly clear and convincing.

The only reason why Reynaldo failed to go to the rescue of the fleeing, wounded person who, he had the gut feeling, was his own father, was fear.⁶⁴ Such failure cannot be considered unnatural or contrary to human experience as claimed by the appellant [who insists that a son would always go to the defense of his father in the event that the life of the latter is in danger no matter if it would cost his life].⁶⁵ Human nature teaches us that people may react differently to the same situation. One person's spontaneous or unthinking, or even instinctive, response to a horrid and repulsive stimulus may be aggression while another's may be cold indifference. Reynaldo's reaction on that fateful December evening was fear, awesome and paralyzing fear. Reynaldo indeed testified that he was afraid for his life, "because they had guns." However, he added, when asked by Presiding Justice Pamaran "Are you not willing to die for your father?", that "I could not think anymore at that time, Your Honor."⁶⁶ Be that as it may, he was well aware that should he have, at the very least, been spotted by the assailants, he would have suffered the same gory fate as that of his father.

But could Reynaldo have mistaken somebody else for appellant considering that he merely recognized the appellant through the latter's voice and bodily gestures?

We think not.

Reynaldo's identification of the appellant is sufficiently clear. Reynaldo has become very familiar with the appellant's voice, he having heard the appellant speak many times on different public occasions, the latter having been the barangay captain of barangay Mabuhay since 1972.⁶⁷ For the same reason is Reynaldo familiar with the appellant's bodily gestures.⁶⁸ More importantly, the scene of the crime was not immersed in darkness. The road, in fact, was illuminated by light coming from a lamp post.⁶⁹

We, likewise, do not entertain any doubt as to the veracity of Oscar Cerdénola's testimony.

It is true that Oscar Cerdénola executed a statement⁷⁰ to the effect that the appellant had nothing to do with the death of Pascual Patiag which statement varies from his testimony in court. We, however, consider the witness' explanation on this matter, plausible.

ATTY. LEYNES:

Q I am calling your attention to this portion of Exhibit "2", appearing on page 3 thereof, which I quote: "Sa iyong Sinumpaang Salaysay na ibinigay mo kay PSgt. Eutiquio Senal ng Valencia Police Station noong May 1983, sa iyong sagot na pang-apat na paragraph ay sinabi mo rito na mali or hindi totoo ang lahat ng naipahayag sa diyaryo na headline Cannibal sa Bukidnon-35 kataong pinulutan sa ilalim ng paragraph 4 na ang pangalan mo ay naroroon at sinabing nakita komo si Patiag na binaril at ang kanyang lamang-loob lalo na iyong atay niya ay ginawang pulutan ng mga CHDF sa pamumuno ni Arsenio Ferrera. Sinabi mo pa sa iyong sagot na hindi mo ito nakita at ito ay hindi totoo ang naisulat sa diyaryo at sinabi mo pa rin na ang lahat ay hindi totoo o mali. Ano naman ang masasabi mo rito?" And this is your answer to that question: "Sa isinagot ko sa aking salaysay na ibinigay kay PSgt Senal ay lahat ng ito ay hindi totoo at sinagot pa rin dito na hindi ko nakita ang pangyayari pero kaya ganito ang pagkasagot ko dahil ako ay natatakot sa mga tauhan ni Ferrera at ng ako ay iniimbestigahan noon ay nadodoon sa labas ang mga tauhan ni Ferrera, at ang totoo na dapat na isagot ko ay nakita ko ang buong pangyayari tungkol sa pagpatay kay Patiag." Was that question asked of you and did you give that answer?

A Yes, sir.

Q Now, will you now explain why earlier in your statement you said Arsenio Ferrera threatened you personally that if you would not give this statement, Exhibit "1", you would be killed; whereas in this statement there was no statement to that effect and what you only said was that the followers or companions of Arsenio Ferrera were outside?

A Because they told me if I would tell what I saw they would kill me.

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Q Why did you not inform him considering that you said you returned because you were no longer afraid of the threat of Ferrera?

A Because I was afraid of Ferrera, that if I would tell about the incident they would get me during the night.

Q Going back to the incident you witnessed, will you tell the Honorable Court why you ran from the scene of the killing?

A I also got afraid because I might be the next.

Q At the time you ran, Patiag was already shot?

A Yes, sir.

Q At what point of time did you entertain fear?

A After he was shot.

Q Did you not get scared when you said you saw Patiag being mauled by Ferrera and his companions?

A I was afraid.

Q Why did you not run?

A They might bring me there.

Q Why did you not run away from the scene?

A Because his companions were there. They might shoot me.

Q When you said Patiag was stabbed in his stomach by Ferrera, did you not get scared?

A I also got afraid.

Q Then why did you not run?

A They might shoot me.

Q Now, what was your position in the motorela when you witnessed the mauling of Patiag?

A I also alighted from the motorela.

Q Do you mean to say, you went down from the motorela and peeped inside the detachment room and watched the mauling of Patiag?

A I could see from where I was because the door was open.⁷¹

Moreover, witness Mayor Absalon Catarata, before whom Oscar Cerdeñola swore his alleged prior inconsistent statement, testified that at the time Cerdeñola was in his office, there were many people present, the office being an open place and thus accessible to anyone.⁷² The mayor admitted that he was not aware whether Oscar Cerdeñola was alone or not.⁷³ The above testimony gives us no reason to dis-believe Oscar Cerdeñola's assertion that he was, indeed, picked up by the appellant and his companions at 8:00 A.M. of May 6, 1983, then brought to the police camp where he was made to sign a statement absolving the appellant of the killing of Pascual Patiag,⁷⁴ thereafter finally made to swear before Mayor Catarata of the truth of his statement. Indeed, the presence of the appellant and his companions at the time witness Oscar Cerdeñola executed his alleged prior inconsistent statement could not but engender fear in the mind of the said witness considering that he actually saw the killing of Pascual Patiag. This is apart from the fact that he was "visited" by the appellant and his companions on December 10, 1982, or the day after the commission of the crime, and warned not to mention the incident to anyone lest the same fate befall him.⁷⁵

We also find Lorenzo Cerdeñola's testimony worthy of credence. The fact that he admitted not seeing the slicing of a portion of flesh from the victim's thighs (as testified to by Reynaldo) should enhance, not impair (as claimed by appellant), the credibility of the witness. This is so because said witness merely testified on what he saw without concocting lies. Besides, Lorenzo declared that he went into hiding and refused to look at the bloody sight before him minutes after he witnessed the shooting of the victim by the appellant. When Lorenzo found the courage to look again, he saw the assailants carry the corpse in the direction of the CHDF detachment.

On direct testimony, Oscar Cerdeñola declared:

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Q And at the first time that you saw him, did you see also this CHDF?

A I have seen a person who was running after him but I was not able yet to recognize them.

Q How far was the man running from the CHDF pursuing him, the first time that you saw those persons?

WITNESS

A That was around 20 meters, more or less.

PJ PAMARAN

Q But the first time you saw that man running and being chased by the CHDF, did you know him already?

A Not yet.

FISCAL GUERRERO

Q Now, were you able to recognize that man running?

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WITNESS

A Not yet. Not until the CHDF were able to carry him.⁷⁶

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On cross-examination, the same witness said:

Q Who shot him if you saw him shot at?

A Mr. Ferrera and his men.

Q Who actually shot that man?

A Mr. Arsenio Ferrera.

Q How did you know that Ferrera was the one who shot that man?

A Because that was what I saw. He was the one who shot.

Q What happened to the man who was fired upon?

A He fell down.

Q And what was the relative position of the man shot and Ferrera, the one who shot?

A The man who was shot was running ahead of the man who shot him.

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Q My question is, aside from shooting that man whom you saw fell down, what else did the accused do with him?

A They carried him towards their camp.

Q. That camp which you mentioned, how far was that from the place where that man fell down?

A More or less 50 meters.⁷⁷

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To further impeach the credibility of the said witness, the appellant points to the alleged inconsistent statements made by witness, to wit:

a). In his testimony during the trial of this case, he clearly declared that in the evening of December 9, 1982, he actually saw the appellant fired at the man (Patiag) he was chasing. However, in the statement which he gave to the CIS, PC, in answer to question No. 14 thereof, he did not mention the name of the appellant as the person whom he saw fire his gun at Patiag. His only explanation for this is the convenient excuse that he forgot to say that in Exhibit G. In fact, nowhere in Exhibit G did he identify the person or persons, who shot Patiag.

In his testimony before the trial court he clearly stated that he recognized on that particular evening Pascual Patiag as the person being chased by the appellant. He contradicted this, however, in his earlier written statement (Exhibit G) given to the CIS, PC, where he said very clearly that it was on the following day when he learned from his son Lory that it was Pascual Patiag who was shot the night before. We quote that portion:

"Kinabukasan ay nalaman naman sa aking anak na si Lory na ang napatay doon ay si Pascual Patiag".

We respectfully submit that this witness Lorenzo Cerdenola's identification of the appellant as the one who shot Patiag should not be accepted due to his above contradictory statements on a material fact, x x x.⁷⁸

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The variance, we believe, is too minor to actually destroy the testimony of the witness, or, for that matter, to affect the outcome of the case. It is possible that the witness may have actually forgotten to mention that the appellant was the assailant of Patiag. At any rate, there is no indication that the witness ever denied seeing the appellant actually shoot the victim.

His statement,⁷⁹ executed before the CIS to the effect that he learned of Pascual Patiag's death only through his son, vis-a-vis his testimony in court, whereby he asserted that he actually recognized the victim while the crime was being committed, was explained by the witness, thus:

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Q Did you recognize him?

A Yes, sir.

Q Who was he?

A Pascual Patiag.

Q Again, I am again referring to your question No. 14 and your answer thereto, in Exhibit G. Why did you not again identify that the person who was shot was Pascual Patiag? In fact, in this affidavit or statement, you even admitted here that it was on the following day that you came to know the identity of the person who was shot. Will you explain that?

A Because he was near. I saw him.

ATTY. LEYNES

Q Which one is now correct, your statement before this Court or this statement marked Exhibit G where you said it was on the following day that you came to know the identity of Pascual Patiag as the one who was shot?

A Because he was just near me, about 17 meters more or less

Q Please answer the question. Which one is correct?

A My answer now.⁸⁰

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It is not difficult to believe that Lorenzo Cerdeñola actually recognized Patiag on the night the crime was perpetrated because he was only 17 meters away.⁸¹ It is not important that he stated otherwise in his statement to the CIS. As he said, he was overcome by fear arising from the accused's considerable influence in the community that he chose to remain mum about the killing. But this does not impair his credibility. He declared on the witness stand:

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ATTY. LEYNES

Q Did you not inform the Commanding Officer of that battalion what you saw which you just narrated before this Honorable Court?

A No, sir. We were afraid to complain there.

Q Why would you be afraid when the entire place of Mabuhay has been placed under the control of the battalion of the Philippine Army?

A Because we were afraid of Mr. Ferrera and his men, and besides, we evacuated to Valencia since December 17, so I do not know anything about them anymore.⁸²

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We are convinced that witness Lorenzo was indeed overcome by his fear of the appellant. Verily, a witness' failure to reveal what he knows due to fear of reprisal cannot weaken his credibility.⁸³

The appellant further argues that there is no evidence of motive. On this score, suffice it to reiterate our ruling in a great number of cases. Motive is essential to conviction in murder cases only when there is doubt as to the identity of the culprit, not when the accused has been positively identified as the assailant.⁸⁴

There is truth to the appellant's claim that the narrations of events given by the witnesses were not in complete accord with each other. We say, however, that the variances can be attributed to the fact that different persons have diverse impressions and perceptions of a startling event. On the other hand, the testimonies of two or more witnesses would be under a serious cloud if their declarations tallied in their minutest details, for then, that would not be natural. That would indicate that the testimonies were rehearsed.

In fine, we hold that the discrepancies in the testimonies of the aforementioned witnesses as pointed to by the appellant are not substantial and do not detract from the veracity of the essential fact testified to by them, i.e., that they saw the appellant and his companions kill the victim, Pascual Patiag. Their credibility remains solid, unimpaired by insignificant inconsistencies that are patently attributable only to the frailty of memory and not to a willful desire to commit falsehood.

On the defense of alibi, we find no justifiable reason for reversing the findings of the trial court on this matter.

The appellant claims that he was at Catumbalon, a barangay 8 kilometers away from Mabuhay or 5 kilometers away by short cut, from December 7 to December 12, 1982, in response to a directive issued by one Lt. Emiliano Jasmin for him to augment the CHDF force of that barangay as there was rumor of an impending NPA attack.⁸⁵ The appellant maintains that he never left said barangay for seven days.⁸⁶ Manolo Gener, Barangay Captain of Catumbalon declared in court that he and the appellant conversed with each other up to about 11:00 on the night of December 9, 1982.⁸⁷ We cannot fault the Sandiganbayan's ruling denying this defense of alibi:

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Accused Arsenio B. Ferrera having been positively identified by no less than three (3) eyewitnesses whose credibility and truthfulness there is no ground to belittle and impugn, the defense of alibi is unavailing. Moreover, the defense version that he (Arsenio Ferrera) went to the adjacent barangay of Catumbalon on December 7 and stayed thereat until December 12, 1982 is as implausible as it is repugnant to reason and human experience. For instance, assuming that Lt. Jasmin issued a directive (Exhibit 3) calling for an augmentation team from Mabuhay CHDF to go on red alert in barangay Catumbalon for a possible NPA attack in said place, Ferrera could have just sent the required number of men without himself joining such group so as not to abandon his own barangay for a considerable length of time. It was decidedly unwise and imprudent for a barangay captain to leave his barangay for several days at a time when the security of his own community was equally threatened by subversive elements. Besides, the short distance of five to eight kilo-meters between barangays Mabuhay and Catumbalon did not make it physically impossible for accused Arsenio Ferrera to have gone to the scene of the crime at the approximate time of its commission. By foot it would only take less than an hour and by any ride a much shorter time to commute between barangays Mabuhay and Catumbalon.

All things viewed in correct perspective, We cannot sustain the defense of alibi interposed by accused Ferrera.⁸⁸

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Indeed, consistently and in a long line of decisions the Court has ruled that alibi is not a good defense where it was not physically impossible for the accused to be at the scene of the crime at the time of its commission.⁸⁹

Furthermore, prosecution witness Basilio Domingo, a school teacher, claimed that he was ridiculed by the appellant and his fellow CHDF members in the morning of December 10, 1982, or the day following the killing of the victim. At that time the appellant should have been at Barangay Catumbalon according to his own alibi.⁹⁰ The witness narrated in court how he was made to dance the "pearly shell" on top of the beds and made to crawl on the floor at the point of a carbine.⁹¹ He also averred that he saw the appellant on December 8, 1982 at the CHDF headquarters,⁹² which disputes the appellant's alibi covering allegedly the uninterrupted period from December 7 to December 12, 1982. It is clear that the appellant has not sufficiently proven his alibi. In *People v. Berdida, et al.*, we said:

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As this Court stated in *People vs. Constante*, L-14639, December 28, 1964, the defense of alibi is an issue of fact that hinges on credibility; that the credibility of an alibi depends so much on the credibility of the witnesses who seek to establish it; and that, in this respect, the relative weight which the trial judge assigns to the testimony of said witnesses must, unless patently and clearly inconsistent with the evidence on record, be accepted. For, as is well recognized, his proximate contact with those who take to the witness chair places him, compared to appellate Justices, in the more competent position to discriminate between the true and the false.

And in the present appeal, we find no warrant to depart from the lower court's finding on defendants-appellants' defense of alibi.⁹³

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We reiterate, the defense of alibi is worthless in the face of positive identification by credible prosecution witnesses, pointing to the accused as the perpetrators of the crime.⁹⁴

From the facts established, we shall now determine the crime committed by the herein appellant. The evidence on record unquestionably points to the commission of the capital offense that is murder qualified by treachery with the aggravating circumstance of taking advantage of public office.

The lower court found that the crime committed was qualified by abuse of superior strength which absorbs aid of

armed men and treachery.⁹⁵ We disagree in this regard. It is the other way around. In a long line of cases, we have held that abuse of superior strength and aid of armed men, when present with treachery, are absorbed or included in the latter.⁹⁶

There was treachery because at the time of the attack, the victim was not in a position to defend himself. After having been maltreated, then stabbed, and while in flight the victim was chased as though he was a wounded quarry and in that defenseless state was shot from behind by the appellant. The sudden and unexpected shooting of the victim with a carbine truly constitutes treachery.⁹⁷ It is also quite obvious that the offenders consciously adopted the particular form of attack and employed means which tended directly and especially to insure its execution without risk to themselves arising from the defense which the offended party might have put up.

We cannot appreciate nighttime as an aggravating circumstance because there is no showing that it was purposely sought by the appellant and his companions to insure the accomplishment of their dastardly objective. It was merely coincidental that the slaying took place when it was already dark. It was at around 7:00 in the evening when the victim passed by the CHDF headquarters where the killers were waiting to pounce on him. Nonetheless, the rule is that nocturnity is absorbed in treachery if the former cannot be perceived distinctly from the facts obtaining.⁹⁸ Thus, in this case, nighttime cannot be separately appreciated as an aggravating circumstance.⁹⁹

Neither can we appreciate ignominy for the reason that the victim was already dead when the appellant and company sliced portions of his body. The cutting of flesh from the thighs of the victim after killing him did not add ignominy to the natural effects of the act.¹⁰⁰

The circumstance of outraging or scoffing at the corpse cannot also be taken into consideration. The trial court correctly disregarded the same as a qualifying circumstance because it is not clearly alleged in the information.¹⁰¹

Finally, we agree with the trial court in its finding that the appellant, a CHDF Commander and Barangay Captain at the time of this barbarity with patent tinges of cannibalism, took advantage of his public position in committing the crime. We quote:

xxx xxx xxx

x x x the presence of the aggravating circumstance of taking advantage of a public position under par. 1 of Article 14, R.P.C. cannot be overlooked. When accused Arsenio B. Ferrera stopped the "motorela" of the victim in front of the CHDF headquarters in Mabuhay, Valencia, Bukidnon that unpleasant night of December 9, 1982, Ferrera was ostensibly illicitly asserting his authority as barangay captain concurrently CHDF head and were it not for the abused power of the latter, the victim would not have meekly obeyed the command for him to go down from the "motorela" and to enter the camp with Ferrera, et al. What is more, it is a settled doctrine that mere failure of official duty, such as the failure of accused Ferrera to maintain law and order in his barangay, suffices to aggravate criminal liability under paragraph 1 of Article 14 of the Revised Penal Code. Instead of leading his constituency in peaceful and orderly coexistence, accused Ferrera led his CHDF men to brutalize innocent civilians. Granting that the victim was a suspected NPA member or sympathizer, it was no legal justification to harm and kill him. What Ferrera could have lawfully done in the premises would have been to report the matter to the military authorities so that the suspect could be proceeded against in accordance with law.¹⁰²

xxx xxx xxx

The trial court's finding as to the amount of damages to be awarded is hereby affirmed, except as to the amount of actual damages which we increase from P15,000.00 to P30,000.00.¹⁰³ We, however, affirm the grant of P39,000 for unearned income and P50,000.00 as and for moral damages.

WHEREFORE, the judgment appealed from is AFFIRMED in toto. The appellant is hereby declared guilty of murder qualified by treachery. The offense being attended by one aggravating circumstance (taking advantage of public office), with no mitigating circumstance to offset it, the penalty provided in Article 248 (1) of the Revised Penal Code is hereby imposed in its maximum period (death). In view, however, of the provisions of the 1987 Constitution abolish-ing the death penalty, the appellant's sentence is commuted to reclusion perpetua.¹⁰⁴ The indemnity to be paid is P30,000.00. The grant of P39,000.00 and P50,000.00 as and for further actual damages and moral damages respectively, stands.

With costs against the appellant.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, and Cortes, JJ., concur.

[1] People v. Arsenio Ferrera, Sandiganbayan, Crim. Case No. 7969, January 18, 1984; Record, 132-158; Hon. Manuel Pamaran, Presiding Justice.

[2] Record, 1.

[3] T.s.n., session of June 28, 1983, 75.

[4] Id.

[5] Id.

[6] Id.

[7] Id., 14-15, 61-64.

[8] Id., 59.

[9] Id., 14.

[10] Id., 15.

[11] Id., 17.

[12] Id., 18.

[13] Id., 19.

[14] Id., 20.

[15] Id., 23.

[16] Id., 22, 61; T.s.n., session of June 29, 1983, 25.

[17] T.s.n., session of June 28, 1983; 25, 63; T.s.n., session of June 29, 1983, 25.

[18] T.s.n., session of June 28, 1983, 64.

[19] T.s.n., session of June 29, 1983, 7-10.

[20] T.s.n., session of June 28, 1983, 75.

- [21] Id., 59.
- [22] Id., 61.
- [23] Id., 60.
- [24] Id., 61, 59.
- [25] Id.
- [26] Id., 62.
- [27] Id., 63.
- [28] Id., 61.
- [29] Id., 13.
- [30] Id., 19.
- [31] Id., 20.
- [32] Id., 25.
- [33] Id., 36.
- [34] T.s.n., June 29, 1983, 25.
- [35] Id.
- [36] Id., 27.
- [37] Id., 28.
- [38] Rollo, 16.
- [39] Id., 16, 222-223.
- [40] Id., 11.
- [41] Sandiganbayan, Criminal Case No. 7969, June 18, 1984, Rollo, 15-40.
- [42] Brief for the Appellant, 1.
- [43] Id., 9.
- [44] Id., 11.
- [45] Id., 12.
- [46] T.s.n., June 28, 1983, 19.
- [47] Id., 20.
- [48] Id., 22, 61; t.s.n., session of June 29, 1983, 25.
- [49] T.s.n., session of June 28, 1983, 25, 63, t.s.n., session of June 29, 1983, 25.
- [50] T.s.n., session of June 29, 1983, 4.
- [51] Id., 4-6.

[52] *Id.*, 7-8.

[53] *Id.*, 9.

[54] *People v. Taruc*, No. L-14010, May 30, 1962, 5 SCRA 132 (1962).

[55] *People v. Kiram*, No. L-28485, October 30, 1979, 93 SCRA 696 (1979).

[56] *People v. Comendador*, No. L-38000, September 19, 1980, 100 SCRA 155 (1980).

58 *People v. Taruc*, No. L-18308; April 30, 1966; 16 SCRA 834 (1966).

59 *People v. Atanacio*, No. L-39211, March 5, 1984, 128 SCRA 22.

60 Brief for the Appellant, 18-22.

61 *Id.*, 14-18.

62 *Id.*, 26-29.

63 T.s.n., June 28, 1983, 67.

64 *Id.*

65 Brief for the Appellant, 24.

67 *Id.*, 100 and 102.

68 *Id.*, 101.

69 *Id.*, 97.

70 *Id.*, 34 and 37; Exhibit "1".

71 *Id.*, 40-42, 45-46.

72 T.s.n., session of July 19, 1983, 37.

73 *Id.*, 38.

74 T.s.n., session of June 28, 1983, 34 and 37.

75 *Id.*, 31, 32, and 36.

76 T.s.n., session of June 29, 1983, 25-26.

77 *Id.*, 27-28.

78 Brief for the Appellant, 26.

79 Exh. "G".

80 T.s.n., session of June 29, 1983, 140.

81 *Id.*, 25.

82 *Id.*, 39.

83 *People v. Bulan & Rojas*, 108 Phil. 932 (1960).

84 *People v. Cabanit*, L-62030-31, October 4, 1985, 139 SCRA 94 (1985).

85 T.s.n., session of July 20, 1983, 6.

86 Id.

87 T.s.n., session of July 19, 1983, 8-9.

88 Rollo, 106.

89 *People v. Talay*, No. L-24852, November 28, 1980, 101 SCRA 332 (1980); *People v. Rizal*, Nos. L-43487-89, February 26, 1981, 103 SCRA 282 (1981); *People v. Jardiano*, No. L-37191, March 30, 1981, 103 SCRA 530 (1981); *People v. Araya*, No. L-24780, June 29, 1981, 105 SCRA 133 (1981); *People v. Jimenez*, Nos. L-36613-14, July 24, 1981, 105 SCRA 721 (1981); *People v. Aposaga*, No. L-32477, October 30, 1981, 108 SCRA 574 (1981); *People vs. Boston*, No. L-41302, March 15, 1982, 112 SCRA 488 (1982); *People v. Atanacio*, No. L-39211, March 5, 1984, 128 SCRA 22 (1984); *People v. Benaraba*, No. L-32865, May 18, 1984, 129 SCRA 266 (1984); *People v. Banayo*, No. L-64164, June 22, 1984, 129 SCRA 725 (1984); *People v. Pizarro*, No. L-36445, August 28, 1984, 131 SCRA 418 (1984); *People v. Moral*, No. L-31139, October 12, 1984, 132 SCRA 474 (1984); *People v. Urgel*, No. L-34851, February 25, 1985, 134 SCRA 483 (1985); *People v. Catipon*, Nos. L--49264-66, October 9, 1985, 139 SCRA 192 (1985).

90 T.s.n., session of July 20, 1983, 43.

91 Id., 44-46.

92 Id., 50.

93 L-20183; June 30, 1966; 17 SCRA 520, 528-529 (1966), citing *People v. Tansiangco*, L-19448, February 28, 1964; *People v. Rivala*, L-14077, March 31, 1964.

94 *People v. Talay*, 101 SCRA 332, L-24852, November 28, 1980; *People vs. Aguel*, 97 SCRA 795, L-36554, May 19, 1980; *People v. dela Cruz*, 97 SCRA 385, L-30912, April 30, 1980; *People v. Mercado*, 97 SCRA 232, L-39511, April 28, 1980; *People v. Lucero*, 96 SCRA 794, L-28811, March 31, 1980; *People v. Martinez*, 96 SCRA 714, L-31755, March 31, 1980; *People v. Tabion*, 93 SCRA 566, L-32629, October 23, 1979; *People v. Estante, Jr.*, 92 SCRA 122, L-30354, July 30, 1979; *People v. Cabertes*, 91 SCRA 208, L-38145-48, June 29, 1979; *People v. Artieda*, 90 SCRA 144, L-38725, May 15, 1979; *People v. Garcia*, 89 SCRA 440, L-44364, April 27, 1979; *People v. Barut*, 89 SCRA 14, L-42666; March 13, 1979; *People v. Mahinay*, 80 SCRA 273, L-31654, November 22, 1977; *People v. Roncal*, 79 SCRA 509, L-26857-58, October 21, 1977; *People v. Nabaunog*, 79 SCRA 33, L-30414-15, September 9, 1977; *People v. Villaloma*, 78 SCRA 145, L-41312, July 29, 1977; *People v. Gonzaga*, 77 SCRA 140, L-34418, May 26, 1977; *People v. Berame*, 72 SCRA 184, L-27606, July 30, 1976; *People v. Saliling*, 69 SCRA 427, L-27974, February 27, 1976; *People v. Legones*, 69 SCRA 210, L-30245, January 30, 1976.

95 Record, 153.

96 *People v. Gonzales*, L-40727, September 11, 1980, 99 SCRA 697; *People v. Niera*, L-32624, February 12, 1980, 96 SCRA 1; *People v. Aravelo*, L-39144, July 30, 1979, 92 SCRA 206; *People v. Velez*, L-30038, July 18, 1974, 88 SCRA 21; *People v. Abletes*, L-33304, July 31, 1974, 58 SCRA 241; *People v. Mori*, L-23511 and 23512, January 31, 1974, 55 SCRA 382; *People v. Layron*, L-25177, October 31, 1969, 30 SCRA 92; *People v. Lumantas*, L-28355, July 17, 1969, 28 SCRA 764; *People v. Nabual*, L-27758, July 14, 1969, 28 SCRA 747; *People v. Reyes*, L-21445, May 30, 1967, 20 SCRA 304; *People v. Agustin*, L-18368, March 31, 1966, 16 SCRA 467; *People v. Develon*, L-18866, January 31, 1966, 16 SCRA 47.

97 *People v. Turalba*, L-29118, February 28, 1974, 55 SCRA 697 (1974); *People v. Diaz*, L-24002, January 21,

1974, 55 SCRA 178 (1974); *People v. Tingson*, L-31228, October 24, 1972, 47 SCRA 243 (1972); *People v. Reloj*, L-31335, February 29, 1972, 43 SCRA 526 (1972); *People v. Ordiales*, L-30956, November 23, 1971, 42 SCRA 238 (1971).

98 *People v. Artieda*, 90 SCRA 144.

99 *People v. Dueño*, 90 SCRA 23.

100 *People v. Diego Balundo*, L-27401, October 31, 1967, 30 SCRA 155-156, 161 (1969).

101 Record, 153.

102 *Id.*, 153-154.

103 *People v. Villeza*, No. L-56113, January 31, 1984, 127 SCRA 349 (1984); *People v. Dela Fuente*, Nos. L-63251-52, December 29, 1983, 126 SCRA 518 (1983).

104 CONST., art. III, sec. 19(1).

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