

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO COLLADO, CRISANTO LARA, FELIX COLLADO @ “ELEX COLLADO,” ROMEO GLORIANI, ACCUSED, CRISANTO LARA, ACCUSED-APPELLANT.

G.R. No. 88631. April 30, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused, Fernando Collado, Crisanto Lara, Felix Collado (alias Elex Collado) and Romeo Gloriani, were charged with the crime of robbery with homicide in Criminal Case No. SC-3180 before the Regional Trial Court, 4th Judicial Region, Branch 26, Santa Cruz, Laguna. The information filed in said case reads (p. 23, Rollo):

"That on or about January 20, 1985 at Barangay Mojon, Municipality of Pila, Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, with intent to gain, (with) violence against or intimidation of person, in an uninhabited place and while conveniently armed with a piece of wood and knife did, then and there, wilfully, unlawfully and feloniously take, steal and carry away FIVE THOUSAND FIVE HUNDRED SEVENTY PESOS (P5,570.00) in cash and one Seiko Wrist watch worth P500.00 with the total value of P6,070.00 against the will and consent of the owner thereof, Mrs. Maria Regay, and by reason and on occasion of such robbery, said accused with treachery, abuse of superior strength and in disregard of the respect due the offended party on account of her age and sex being an old woman, with intent to kill and without justifiable cause did then and there wilfully, unlawfully and feloniously attack, assault, hit and stab with said piece of wood and knife Maria Regay who as a result thereof sustained multiple injuries in the different vital parts of her body which directly caused her death to the damage and prejudice of the heirs of said Maria Regay.

"CONTRARY TO LAW."

Upon being arraigned on April 15, 1986, Fernando Collado and Crisanto Lara pleaded not guilty to the crime charged and the case against them was set for trial while Felix Collado and Romeo Gloriani remained at large. On September 8, 1986, Fernando Collado withdrew his former plea of not guilty and pleaded guilty as an accomplice. The judgment with respect to him was promulgated on September 9, 1986. Thereafter, trial on the merits proceeded against Crisanto Lara. On May 4, 1989, the trial court rendered its decision, the dispositive portion of which, reads (p. 43, Rollo):

"WHEREFORE, finding the accused, CRISANTO LARA, guilty beyond reasonable doubt as principal in the crime of Robbery with Homicide, he is hereby sentenced to suffer the penalty of reclusion perpetua and the accessory penalties imposed by law, to indemnify the heirs of the victim in the amount of P30,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"SO ORDERED."

Hence, the present appeal by Crisanto Lara.

The antecedent facts, as stated in the plaintiff-appellee's brief are, as follows (pp. 4-18, Appellee's Brief; p. 97, Rollo):

"On January 18, 1985, appellant Crisanto Lara went to the house of Honorio delos Santos in Pila, Laguna and proposed to the latter that they hold-up Maria Regay. The following day, January 19[th], at around 6:00 o'clock P.M., appellant returned to his (delos Santos) house to follow up the proposal. On both occasions, however, delos Santos told appellant that he did not want to go as he did not like that kind of work (pp. 10-11, 16, TSN, April 21, 1987).

"On January 20, 1985 at around 7:00 o'clock A.M., Josefina Buenaflor, a resident of Mojon, Pila, Laguna, and a daughter of the victim Maria Regay saw Crisanto Lara on the road walking to and fro between his house and her house while conversing with the neighbors. Afterwards, Nanding Collado came out from his house and went over to Crisanto (p. 6, TSN, October 14, 1986).

"At about 9:30 to 10:00 A.M. of the same day, January 21, (sic) 1985, Mario Marasigan, son-in-law of the victim, was at the coconut plantation he was tending which was about 100 meters from the barrio road. He was cutting trees which he would use as posts for his house. He climbed up a tall madre de cacao tree and after he had cut a branch, he saw Felix Collado and Fernando Collado standing on either end of the pathway leading to Barangay Pansol and Concepcion as if waiting for somebody. He also saw Crisanto Lara and Romeo Gloriani at the middle of this pathway about 40 meters away from him. Crisanto Lara was holding a piece of wood and Romeo Gloriani was hiding behind a coconut tree (TSN, September 15, 1986, pp. 5-6, 8; TSN, September 30, 1988, p. 11).

"After a few minutes (sic), he saw the victim Maria Regal (sic) walking along the pathway at a distance of more or less 40 meters from him on the way back to Mojon from the direction of Barangay Concepcion. Felix Collado who was on that end of the pathway hid himself and she continued walking to where Crisanto Lara was now positioned hiding behind a coconut tree (TSN, Sept. 30, 1986, p. 15). Then Crisanto Lara struck her on the face with a piece of wood, a guava branch with a diameter of around 2 1/2 inches, with such strong force that the old woman fell on the ground. Crisanto Lara then hid himself and Romeo Gloriani dragged the stricken victim for about 5 (sic) meters to a coconut tree where Gloriani pulled out his knife and after stabbing her once she appeared to regain consciousness and began struggling on her back and rolling on the ground as Gloriani continued stabbing her. The weapon used by Gloriani for stabbing was a double bladed dagger around 6 to 7 inches long excluding the handle (TSN, Sept. 15, 1985, pp. 7-9; TSN, Sept. 30, 1985, p. 16).

"Marasigan was taken by surprise seeing his uncle hit his mother-in-law that he was not able to shout (p. 15, *ibid*).

"When the old woman stopped struggling, Romeo Gloriani pulled up her skirt and cut a cord tied around her waist where she kept her money (p. 17, *ibid*) and at that time Crisanto Lara reappeared and came near and both Crisanto Lara and Romeo Gloriani left followed by Fernando Collado and Elex Collado who took the same route through the fence and towards the house of Fernando Collado (pp. 8-9, *ibid*).

"Marasigan then went down the tree but did not go near the victim. Neither did he tell his relatives about the incident in consideration of appellant Crisanto Lara who is his uncle. He left the place at around 10:30 A.M. and returned to his house and did his normal work there (pp. 19-20, 26, *ibid*).

"In the same morning at around 10:00 A.M. Josefina Buenaflor was told by her sister that their mother who attended a wedding feast at Mojon had not yet returned home. So they started to look for her at the coconut plantation as this was the route she usually took in going to Mojon. They failed to find her. They inquired from their neighbors who also did not know the whereabouts of their mother (pp. 9-10, TSN, October 14, 1986).

"At around 3:00 o'clock P.M., a certain Ugid Balatibat told Josefina Buenaflor that he saw the latter's mother sprawled on a coconut plantation. She and her sister ran to the place, crying. But before they reached the place,

about three coconut plantations away from the place where they eventually (sic) found their mother, Crisanto Lara stopped them telling them, not to touch the body of their mother as there were no policemen yet at that time (pp. 9, 10, 14, *ibid*).

"Finally, on January 21, 1985, Josefina Buenaflor was able to see the body of her mother at the plantation. She was then with policemen and with her barrio mates (p. 10, *ibid*).

"Her mother had a 'kacha' tied on her waistline where she kept the money she earned from the sale of the pigs and chickens that she raised. When her mother was found dead, there was no more 'katsa' wrapped around the latter's waist (pp. 12-13, *ibid*).

"Maria Regay also had a Seiko watch valued at P500.00 which she placed in her pocket. The watch, however, was not anymore in her pocket when she was found dead (pp. 13-14, *ibid*).

"The wake of Maria Regay lasted for 5 days. Crisanto Lara attended the wake and even often looked at the cadaver of Maria Regay. He even solicited contributions from tricycle drivers (pp. 10-11, 15, *ibid*).

"Dr. Rosauro Framil, a Municipal Health Officer of Pila, Laguna and a resident of Pila, Laguna conducted an autopsy on a certain Maria Regay on January 21, 1985, at the Laguna Provincial Hospital Morgue, Sta. Cruz from 9:00 P.M. to 12:00 midnight of January 21, 1985 (pp. 4-5, TSN, September 9, 1986).

"The victim had already shown sign of putrefactive changes as shown by the appearance of small worms on the eyes, nose and ear openings. The body was already emitting unfavorable odor which suggest (sic) death for more than 24 hours. In his opinion the incident took place at more or less 10:00 A.M. of January 20, 1985 (pp. 5-6, 19, *ibid*).

"There was a depressed fracture on the head region and on the left temporal with contusions. There was also a periorbital contusion on the side of the head (p. 6, *ibid*).

"He further testified that on the chest and back, there were multiple stab wounds, about 9:2 stab wounds on the left and right area below the clavicle, one on the right breast, a stab wound on the left breast, a stab wound on the right side of the chest just above and medial to right arch, a stab wound on the mid portion, on the left side of the chest just above the left subcostal arch, and another stab wound on the left side of the chest along mid auxiliary line about the level of the 7th intercostal space. Length of the stab wound on both sides of the scapular area on the back and abdominal region, there was no external injury seen on the area. On the extremities, the right forearm had a fracture closed and complete at its 3rd radio/ulna bones. The left upper arm was almost macerated which could be the result of some animal bites probably a stray dog. These were the external findings (p. 6, *ibid*).

"As to internal findings, there was extradural hemorrhage on the left temporal area; on the chest intrapleural hemorrhage bilateral due to the wound inflicted on both lungs, right middle lobe has been hit. Left lung — middle and lower lobe have both stab wounds which produced more hemorrhage than that of the left. The heart was not hit (p. 7, *ibid*).

"The affected internal organs of the body of the victim were: fracture on the head region, so there was involvement of the brain, the extradural hemorrhage of the left temporal area is the result of the depressed fracture on the head. On the body, the internal organs severed were the lungs, right and left and in the abdominal region, there were none and also the bones which were evidenced by the fracture on the right forearm and the right upper arm (p. 8, *ibid*).

"On opening the skull, there was extradural hemorrhage on the left temporal area. It is located on the side. Extradural means that the brain is covered by meningeal matter and outside of that is the place where the hemorrhage sets in (p. 11, *ibid*).

"By the nature of the total injuries, the instruments used by the assailant could be that considering the fracture

on the head, it could be due to some hard object like a piece of wood or metal which most probably could give rise to the depressed fracture. With respect to the stab wounds, probably a double bladed knife could have been used because (sic) of the nature of the stab wounds itself (p. 8, *ibid*).

"The cause of death was pulmonary failure secondary to lung damage. Severe hemorrhage intrapleural secondary to lung damage brought about by the penetrating stab wounds on the chest, most probably, the weapon used was a knife. Since the hemorrhage on the brain is not as much as that to the hemorrhage on the lungs, he presumed that the cause of death was more due to the damage on the lungs. Assuming, however, that there were no other wounds and that the only wound was on the skull which caused hemorrhage, the hemorrhage on the skull would be sufficient to cause death (p. 11, *ibid*).

"He could not tell the relative position of the victim and the assailant but as to the wound on the head, however, his honest guess was that when the victim was hit, the latter was not facing the assailant (p. 13, *ibid*).

"On February 5, 1985, Mario Marasigan finally reported to Pfc. Villanueva that he witnessed the killing and robbery committed against Maria Regay. He said that he reported the matter which he kept to himself for 15 days because he was bothered by his conscience behind the death of his mother-in-law (pp. 22-23, 24-25, TSN, September 30, 1986).

"In April of 1985, Fernando Collado was apprehended at the Pacita Complex, San Pedro, Laguna. Raymundo T. Matiola, a policeman and a resident of Pila, Laguna took the sworn statement (Exhibit C) of Fernando Collado on April 8, 1985 that there were four who were responsible for the slaying and robbing of Maria Regay, namely: one alias Elee, Fernando Collado Crisanto Lara and Loriana, whose first name he did not remember (pp. 3-4, TSN, December 12, 1986).

"The defense of appellant Crisanto Lara is one of alibi. He testified that he was a resident of Balat-atis, San Antonio, Quezon. On January 20, 1985 at around 9:00 A.M. to 11:00 A.M., he was at the Laguna Provincial Hospital in Sta. Cruz. He visited his nephew, Romeo Marasigan as the latter's body become (sic) swollen. He stayed in the hospital up to more or less 2:00 o'clock P.M. (pp. 3-4, 9, TSN, March 11, 1987).

"When he left the hospital, he went to Barangay Pansol, Pila, Laguna and arrived there at 3:00 P.M. He went to the house of the father of his nephew. After that he rested and then he cooked food. After cooking, he again rested for more or less one (1) hour and then he ate (pp. 5-6, *ibid*).

"He spent the night of January 20, 1985 in the house of the father of his nephew. He went to sleep at more or less 6 (sic) or 6:30 P.M. He woke up at 5:00 A.M. of January 21 (p. 6, *ibid*).

"After that, he went to the house of his niece at Barangay Mojon, Pila, Laguna and arrived there at more or less 10:00 A.M. While there, he heard that a certain Maria was missing (p. 7, *ibid*).

"He admitted seeing Josefina Buenaflor on January 21, 1981 (sic) while she was on her way to see her mother and told her that it would be better to call first the police (p. 7, *ibid*) but denied the testimony of Mario Marasigan that he was one of those who participated in the slaying and robbing of Maria Regay and the one who allegedly struck Maria with a branch of guava tree because he cannot hold a branch as it is heavy and his left hand is amputated and his other hand is 'pasmado.' For the record, appellant's right hand was shown — the forefinger is severed and there is a scar at the back of his palm, and the middle finger is also damaged as well as the ring finger. The other fingers are deformed (p. 8, *ibid*).

"His left hand was amputated and right hand damaged on March 13, 1981 when he caused palay to be milled that day and he was waylaid while going to the ricemill. Since then and prior to February 20, 1984 (sic) that was the condition of his left and right arm (p. 2, TSN, March 17, 1987) but he continued to have a job of 'buying banana fruits' (p. 7, *ibid*).

"But while he claimed that his right hand could not hold a knife, when asked to handle a stamp pad in open

court, he was able to grasp the same (pp. 7-8, *ibid*).

"During the wake, he solicited from the tricycle drivers because he was told to do so by Honorio, a member of the barangay council and an 'alalay' of the barangay captain. The one who gave his collection to the family of Maria Regay was Honorio (pp. 4-5, TSN, April 2, 1987).

"Fernando Collado who pleaded guilty as an accomplice in this case claimed that he knows appellant Crisanto Lara only by face; that it was only at the provincial jail that they came to know each other (pp. 2-3, TSN, January 14, 1987).

"On January 20, 1985 at around 9:00 A.M. to 10:30 A.M., he remembered being in the land of a certain Jun at Mojon, Pila, Laguna whose full name he did not know and while there, his uncle, Romeo Gloriani, called him and told him that he was waiting for the old woman, Maria. At that time, aside from he (*sic*) and his uncle, there were no other persons around (pp. 3-4, *ibid*).

"When Matandang Maria showed up, his uncle pointed a balisong knife at her. After that his uncle got her money and gave the money to him. After he received the money, he ran away. He did not anymore see what his uncle did to Matandang Maria (p. 5, *ibid*).

"He proceeded to the irrigation site of Mojon, Pila, Laguna where his uncle followed him and he gave him the money who in turn gave him P200.00 (pp. 5-6, *ibid*).

"After that, his uncle left. Before the latter left, however, he told him that if the event would be discovered, witness should tell that it was Crisanto Lara and Felix Collado who did it (pp. 6-7, *ibid*).

"After that, he stayed in the town proper of Pila for 2 weeks and he proceeded to San Pedro at the Pacita Complex where he worked at a construction company. After 2 months of working there, however, he was apprehended by the Pila Police in connection with the slaying and robbing of Maria Regay. He was brought to the municipal building of Pila (pp. 7-8, *ibid*).

"He alleged that during his investigation, he was given blows, kicks, and bullets placed in between his fingers and electric treatment by the police authorities of Pila, because he told them that it was his uncle who was the culprit. After that he was asked to sign a confession (Exhibit C) prepared by police authorities (pp. 8-10, *ibid*).

"While detained at the Provincial Jail, he wrote a letter (Exhibit 1) addressed to Fiscal Regaza, a portion of which, marked as Exhibit 1-a, states as follows:

'x x x x x x x x

'x x x aaminin ko na po ang aking pagkakasala sa harap ng hukuman, subalit kung bibigyan po ninyo ako ng mababang sintensiya, labis na po akong naawa sa isang tao na napasangkot o isinangkot ng aking complainant dahil sa katotohanang siya po ay wala sa lugar na pinangyarihan ng krimen.

'Ang tao pong ito ay si Ginoong Crisanto Lara, tatumpu at apat na taong gulang ng Barangay Balat-atis, San Antonio, Quezon.'

"While he initially denied being (*sic*) written Exhibit 1 claiming that it was written by Jojo Acosta from San Pedro (p. 19, TSN, January 23, 1987), on subsequent questioning by the defense counsel, however, he stated that the whole of Exhibit 1-a are his (p. 14, *ibid*)."

In this appeal, the accused-appellant raises the following assignment of errors (pp. 51-52, Rollo):

"I

"The trial court erred in giving credence to the testimony of Mario Marasigan.

"II

"The trial court erred in finding that accused Crisanto Lara struck the victim with a piece of wood and that the prosecutor was able to demonstrate that the accused can still hold and grip a stamp pad.

"III

"The trial court erred in giving credence to the testimony of rebuttal witness Honorio Delos Santos.

"IV

"The trial court erred in not giving credence to the entire testimony of accused Fernando Collado."

I

The accused-appellant tries to destroy the credibility of Mario Marasigan by asseverating that: 1) if he really searched the coconut plantation in looking for a suitable post, he would have seen the four accused during that time considering that the tree where he got the post is about 50 meters away from the scene of the incident, unless the four accused and the victim fell down from the sky; 2) the sound produced by cutting the branches of a tree would not have escaped the sense of hearing of the four accused; 3) he testified that the first time he saw the accused-appellant again since January 20, 1985 was when the accused-appellant was apprehended by the police but according to the daughter of the victim, the accused-appellant attended the wake and even solicited contributions; 4) his failure to help the victim and report the incident immediately but instead proceeded to do his normal work is inconsistent with human nature; and 5) his cross-examination is full of material inconsistencies as to the length of time he stayed atop the tree and the place where the accused-appellant was positioned.

Mario Marasigan's failure to see the four accused at the time he was looking for posts could be due to the fact that the coconut plantation was vast (p. 4, tsn, September 30, 1986). There were ten (10) coconut trees, seven (7) lanzones trees, two (2) sampaloc trees and bamboo grass between the place where he and the four accused were situated (p. 9, *ibid*). It was only when he was already on the top of a tree (p. 7, *ibid*), about four (4) meters from the ground (p. 8, *ibid*), facing the direction where the four accused were positioned (p. 10, *ibid*), that he saw them. His view while on the top of a tree was not in any way obstructed by these trees because they were tall and far from one another (pp. 9-10, *ibid*).

Mario Marasigan has cut just one branch of the tree when he saw the four accused (p. 11, tsn, September 30, 1986). He used a bolo in cutting this branch (p. 7, *ibid*). The distance between him and the four accused was about fifty (50) meters (p. 8, *ibid*). Taking into account these circumstances, the four accused could not have heard the sound produced when Mario Marasigan cut a branch of the tree. Besides, their attention was focused on the arrival of the victim (p. 5, tsn, September 15, 1986). Thus, the four accused could not have noticed the presence of Mario Marasigan.

It is probable that Mario Marasigan and the accused-appellant attended the wake on different dates and time that is why the former saw the latter for the second time since the incident only when he was apprehended by the police.

Mario Marasigan's failure to help the victim, his mother-in-law, and report the incident immediately but instead proceeded to do his normal work, *per se*, is inconsistent with human nature. However, such failure was satisfactorily explained by him. He failed to help the victim while the latter was being attacked because he was taken by surprise when he saw his uncle, the accused-appellant, hit her (p. 15, p. 18, tsn, September 30, 1986). He also failed to report the incident at once to the authorities because one of the perpetrators of the crime is his uncle and he pities him (p. 12, tsn, September 15, 1986; p. 26, tsn, September 30, 1986). He reported the incident on

February 5, 1985 or after 15 days, when he was disturbed by his conscience (p. 22, tsn, September 30, 1986).

The inconsistencies referred to are de minimus which are not sufficient to blur or cast doubt on Mario Marasigan's straightforward attestations (see *People v. Orita*, G.R. No. 88724, April 3, 1990, 184 SCRA 105, citing *People v. Cabato*, G.R. No. L-37400, April 15, 1988, 160 SCRA 98). Rather than discredit his testimony, discrepancies on minor details must be viewed as adding credence and veracity to such spontaneous testimonies (*Aportadera, et al. v. Court of Appeals, et al.*, G. R. No. L-41358, March 16, 1988, 158 SCRA 695). Whether Mario Marasigan stayed on top of the tree for ten (10) minutes or for twenty (20) to twenty five (25) minutes and whether the accused-appellant was at the middle of the road or behind a coconut tree is beside the point.

II

Still in relation to the questioned credibility of Mario Marasigan, the accused-appellant alleges that he (Mario Marasigan) could not have positively identified the piece of wood (guava branch, about 2.5 inches in diameter) allegedly used in hitting the victim because he was fifty (50) meters away, unless he possesses the eye of an eagle. The accused-appellant is unable to hold a piece of wood with a diameter of about 2.5 inches much more swing and strike it with such force as to cause a person to fall down because his left hand is amputated, his right hand is "pasmado," with the forefinger severed, the middle and ring fingers damaged and the other two fingers deformed. Contrary to the finding of the trial court, nothing in the record shows that the accused-appellant was able to hold and grip a stamp pad. Had the proceedings taken place before the judge who penned the decision, he could have taken judicial notice that at that point in time when the fiscal put into the right hand of the accused-appellant a stamp pad, his right hand was then resting on the arm rest of the chair with his palm open.

Mario Marasigan was able to specify the kind of wood used by the accused-appellant in hitting the victim perhaps because of the fact that he is a carpenter (p. 2, tsn, September 15, 1986), resident in a rural area and tends a plantation (p. 4, *ibid*). It is, therefore, to be expected that he is familiar with different types of wood. At any rate, the specific kind of wood used by the accused-appellant is again of no moment. What is material is the testimony of Mario Marasigan that the accused-appellant struck the victim on the face with a piece of wood (p. 7, *ibid*). This was corroborated by the testimony of the physician that the fracture on the head of the victim was most probably caused by some hard object like a piece of wood or metal (p. 8, tsn, September 9, 1986).

The alleged incapacity of the accused-appellant cannot overthrow the positive testimony of Mario Marasigan that he saw him (the accused-appellant) strike the victim with a piece of wood which caused her to fall to the ground (p. 15, tsn, September 30, 1986). The accused-appellant should have proven in court his alleged incapacity. He merely testified that he is in a position to submit to a physical examination with regard to the capability of his right hand should the trial court desire (p. 8, tsn, March 11, 1987). It was his duty to substantiate his contention and not rely on the desire of the trial court. Anyway, in his cross-examination, the prosecution succeeded in eliciting from him the vital fact that he is not left-handed and even after his hands were damaged, he was still able to work, that is, buying banana fruits (p. 7, tsn, March 17, 1987). Moreover, when a stamp pad was thrown to him, he held it with his right hand (p. 8, *ibid*). The counsel of the accused-appellant objected to the manner the fiscal conducted the cross-examination because it was tantamount to making the accused-appellant the prosecution's witness (*ibid*) and not because the right hand of the accused-appellant was then resting on the arm rest of the chair with the palm open, as he now claims. The defense of incapacity which was weak from the very start, collapsed during the cross-examination.

III

The accused-appellant likewise puts in issue the credibility of Honorio delos Santos because according to him, he came to know of the plan to rob the victim on January 18 and 19, 1985 when the accused-appellant made such proposal to him. However, it took him two years, three months and three days before he revealed such proposal.

The delay by Honorio delos Santos to reveal the proposal made by the accused-appellant to him was satisfactorily explained in his testimony that it was long after the incident happened that the children of the victim needed him (p. 26, tsn, April 21, 1987). At any rate, the accused-appellant's conviction may be sustained even without Honorio delos Santos' testimony. The testimony of Mario Marasigan, being positive and credible, is sufficient to support a conviction (see *People v. Mision*, G.R. No. 63480, February 26, 1991).

IV

Finally, the accused-appellant maintains that since the judge who wrote the decision had no opportunity of observing the demeanor of Fernando Collado when he testified in court, the most logical thing for him to do was to consider his entire testimony or disregard it entirely.

It is not unusual for a judge who did not try a case to decide it on the basis of the record for the trial judge might have died, resigned, retired, transferred, etc. (*People v. Escalante, et al.*, G.R. No. L-37147, August 22, 1984, 131 SCRA 237). The fact that the judge who heard the evidence is not the one who rendered the judgment and that for that reason the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case does not render the judgment erroneous (*Co Tao v. Court of Appeals*, 101 Phil. 188 and *U.S. v. Abreu*, 30 Phil 402). Actually, it was not necessary for the trial judge, who wrote the decision, to have observed the demeanor of Fernando Collado. He merely considered his admission in court that money was taken from the victim, P200.00 of which was given to him (p. 35, Rollo), and disregarded his inconsistent testimony as to the participation of the accused-appellant in the crime charged (pp. 40-41, Rollo):

"It is on record that Fernando Collado declared at the courtroom that Crisanto Lara was not with them at the time of the robbery, (TSN, January 14, 1987, p. 5) but this appears to be a mere afterthought because at the police station, he implicated the accused (Ibid, p. 7). Though this was later explained by him as being the instruction of their uncle, Romeo Gloriani, his excuse imply lacks reliability and acceptance. Why impute the crime, of all people, on a nephew, Feli(x) Collado, and a friend, Crisanto Lara? Why will his uncle involve the two? Feli(x) Collado is is (sic) his brother. Why did he blindly follow his uncle? (W)as it not more convenient to point to other persons not dear to them? This evidently goes against the realities of life, unless of course, they were really in conspiracy with one another."

We note that the judge who rendered judgment in this case took on a painstaking task of scrutinizing in great detail the records and wrote a comprehensive decision (pp. 34-41, Rollo):

"After an evaluation of the evidentiary records, the Court finds, beyond reasonable doubt, that the accused, Crisanto Lara, has committed the crime of Robbery with Homicide (sic). The prosecution has sufficiently established by strong and persuasive evidence that the accused was one of four persons who conspired to commit robbery against the victim during the perpetration of which the latter was killed. The evidence shows that the accused is a principal by direct participation. No less than his nephew, Mario Marasigan, testified that he saw him struck the victim on the face with a piece of wood which appeared to him to be a branch of a guava tree (TSN, September 15, 1986, p. 7). This was corroborated by the findings of the medico-legal officer who testified that the victim also suffered a fracture on the head due to some hard object, like a piece of wood (TSN, September 9, 1989, pp. 8 and 11).

"The overt act was the initial step of the conspirators in executing the crime charged. After the victim was

struck by the accused, she was later on dragged and stabbed several times by Romeo Gloriani (Ibid, p. 9) who thereafter raised her skirt and cut the cord of muslim cloth (katsa) around her waist (TSN, September 30, 1986, p. 17; TSN, October 14, 1986, p. 12) where she usually kept her money (TSN, September 15, 1986, p. 11). Accused Fernando Collado confirmed that money was taken from the victim, P200.00 of which was given to him (TSN, January 14, 1987, p. 5).

"x x x x x x x x.

"The bare fact is that Mario Marasigan was very positive that it was the accused who struck the victim. There could not have been a case of mistaken identity; the accused was his uncle, a brother of his father, Dionisio Marasigan, on his maternal side (TSN, September 15, 1986, p. 3; TSN, March 17, 1987, p. 6). And it has not been shown that Mario Marasigan had an ill motive against his uncle.

"x x x x x x x x.

"As the accused was positively identified, his defense that he was in a hospital at Sta. Cruz, Laguna, at the time of the incident cannot prosper. Alibi is unavailing as a defense against the positive identification of the accused by a witness (See *Aportadera v. Court of Appeals*, G.R. 31358, March 16, 1988). It is an inherently weak defense for it is easy to fabricate (Ibid). For alibi as a defense to succeed, it must be shown that not only was an accused at some other place at the same time but it was physically impossible for him to have been at scene of the crime at the time of its commission (*People vs. Almario*, G.R. 69374, March 16, 1989; *People vs. Reunir*, G.R. 73605, January 29, 1988).

"In this case, assuming his assertion that he was at the Laguna Provincial Hospital at Santa Cruz is true, such fact cannot eliminate him as a possible perpetrator. Judicial notice can be taken of the fact that Sta. Cruz is just 9 kilometers away from Pila and can be reached within 8 to 12 minutes. Brgy. Mojon is even nearer. In one case, it was held that the fact that the victim's house is accessible by jeep or tricycle via a well-paved road in a matter of 15 to 20 minutes from the place where the accused claimed to be at the time the crime was committed, sufficiently demonstrates that it was not physically impossible for the accused to be at the scene of the crime (See *People v. Temblor*, G.R. 66884, May 28, 1988). In the case of *People vs. Almario*, supra, the Supreme Court rejected the alibi of the accused who claimed that he was at Tondo, Manila, which is one and half hour drive from the scene of the crime, Lumban, Laguna.

"Anyway, his self-serving defense of alibi was lacking in corroboration. His nephew, Romeo Marasigan, whom he claimed to have visited at the hospital was never presented to confirm his version. Hospital records could have been subpoenaed and presented to show that he was really confined in the said hospital. In other words, his claim is lacking in convincing details to inspire belief.

"x x x x x x x x.

"Moreover, his claim that he was at San Antonio, Quezon, before January 20, 1985 and arrived at Pila only in the morning of said date is belied by the testimony of Honorio delos Santos whom he pointed to as the person to whom he turned over his collections from the tricycle drivers (TSN, April 2, 1987, p. 5). Honorio delos Santos bluntly stated that the accused was the mastermind because on two occasions before the incident, on the 18[th] and the 19[th] of January, 1985, the latter approached him at their house at Mojon, Pila, Laguna and proposed to him that they rob the victim (TSN, April 21, 1987, p. 3 to 10)."

We find that the quantum of proof necessary to overcome the presumption of innocence and establish the guilt of the accused-appellant beyond reasonable doubt for the crime charged is adequate.

The trial court appreciated the aggravating circumstances of disregard of age and sex, uninhabited place, taking advantage of superior strength and evident premeditation. Disregard of the respect due the offended party by reason of his rank, age or sex may be taken into account only in crimes against persons or honor, when in the

commission of the crime there is some insult or disrespect shown to rank, age or sex. It is not proper to consider this aggravating circumstance in crimes against property. Robbery with homicide is primarily a crime against property and not against persons. Homicide is a mere incident of the robbery, the latter being the main purpose and object of the criminal (People v. Pagal, et al., G.R. No. L-32040, October 25, 1977, 79 SCRA 570; People v. Capillas, et al., G.R. No. L-27177, October 23, 1981, 108 SCRA 173; People v. Pecato, et al., G.R. No. L-41008, June 18, 1987, 151 SCRA 14). Neither should evident premeditation be considered against the accused-appellant. The requisites necessary to appreciate evident premeditation have not been met in this case. Thus, the prosecution failed to prove all of the following: (a) the time when the four accused determined to commit the crime; (b) an act manifestly indicating that the four accused had clung to their determination to commit the crime; and (c) the lapse of sufficient length of time between the determination and execution to allow them to reflect upon the consequences of their act (People v. Batas, G.R. Nos. 84277-78, August 2, 1989, 176 SCRA 46; People v. Iligan, et al., G.R. No. 75369, November 26, 1990).

The aggravating circumstances of uninhabited place and taking advantage of superior strength attended the commission of the crime. Article 294 of the Revised Penal Code provides, inter alia, that any person guilty of robbery with the use of violence against or intimidation of any person shall suffer the penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed. Correlating this provision with Article 63 of the Revised Penal Code, paragraph 2, subparagraph 1 which provides that when in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied, the proper imposable penalty is death. In view, however, of Article III, Section 19(1) of the 1987 Constitution and Our ruling in People v. Millora, et al., G.R. Nos. L-38968-70, February 9, 1989, that the cited Constitutional provision did not declare the abolition of the death penalty but merely prohibits the imposition of the death penalty, the Court has since February 2, 1987 not imposed the death penalty whenever it was called for under the Revised Penal Code but instead reduced the same to reclusion perpetua (People v. Orita, supra; People v. Solis, et al., G.R. Nos. 78732-33, February 14, 1990, 182 SCRA 182). Reclusion perpetua, being a single indivisible penalty under Article 294, paragraph 1 of the Revised Penal Code, is imposed regardless of any mitigating or aggravating circumstances (in relation to Article 63, paragraph 1, Revised Penal Code; see People v. Arizala, G.R. No. 59713, March 15, 1982, 112 SCRA 615; People v. Manzano, G.R. No. L-38449, November 25, 1982, 118 SCRA 705; People v. Ramirez, G.R. No. 70744, May 31, 1985, 136 SCRA 702).

ACCORDINGLY, the decision appealed from is hereby AFFIRMED, subject to the modification that the civil indemnity is increased to P50,000.00.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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