

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMER RIEGO Y QUIOZON AND REYNALDO SERNA, ACCUSED, REYNALDO SERNA, ACCUSED-APPELLANT.

G.R. No. 90256. September 12, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition is an appeal from the decision of the Regional Trial Court of Pasig, Branch 164, the dispositive portion of which reads:

"ACCORDINGLY, We find the accused Reynaldo Serna y Pilantic and Domer Riego y Quiozon GUILTY beyond reasonable doubt of the present complaint of robbery with homicide and considering further the extant aggravating circumstances above alluded to, the Court hereby sentences each of them to suffer the penalty of reclusion perpetua; and in solidum, to indemnify the heirs of Crisostomo Manalili the amount of P30,000.00; to restitute as actual damages suffered, (1) Virginia Manalili the amount of P40,000.00 that she incurred for her hospitalization and treatment of her wounds sustained during the incident as well as P100,000.00 spent by her wake and funeral expenses of her deceased husband; and (2) Gilbert Gumabo the amount of P10,000.00 which the latter incurred in his hospitalization and treatment of his wound suffered likewise during the incident complained of." (Rollo, p. 74)

The amended information charging accused Domer Riego, Reynaldo Cerna (should be Serna), Jojo Torres, Roberto Dunkel and Salvador Torres reads:

"That on or about the 9th day of April, 1987, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, armed with guns with intent of gain and by means of force, intimidation and violence and with night time purposely sought, did then and there willfully, unlawfully and feloniously hold-up, take and divest one Virginia Gumabo-Manalili, who was then in a parked motor vehicle with husband Crisostomo Manalili, and brother Gilbert Gumabo, of her cash amounting to P150,000.00, to the damage and prejudice of the latter in the amount aforementioned; that on the occasion of said robbery (hold-up) and for the purpose of enabling them to take, rob and carry away the money in the amount aforesaid, all herein accused, in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously and with evident premeditation, and taking advantage of their superior strength and number, and with intent to kill, simultaneously and treacherously attack and/or fire their guns at the said occupants of the parked vehicle, Crisostomo Manalili husband of Virginia in different parts of his body, as a direct result of all of which Crisostomo Manalili was dead on arrival at the hospital; and, furthermore, also hitting Virginia G. Manalili and her brother Gilbert Gumabo on different parts of their body, thereby inflicting upon them gunshot wounds which would ordinarily cause their death, thus performing all the acts of execution which could have produced the crime of homicide as a consequence, but nevertheless did not produce it by the reason of cause independent of their will (accused), that is due to the timely and medical assistance rendered on said Virginia G. Manalili and Gilbert Gumabo which prevented their death." (Original Record, pp. 29-30)

Riego and Serna were the only ones arraigned and both pleaded not guilty. The other accused were still at large.

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt is summarized in the People's Brief as follows:

"In the evening of April 9, 1987, Armando Q. Marcelo, who had been selling peanuts in a pushcart for six (6) years, daily from 8:00 o'clock in the morning until 10:00 o'clock in the evening, was at his usual stationary place near the barangay market at Maharlika Upper Bicutan, Taguig, Metro Manila. (t.s.n. pp. 23, April 26, 1988). He noticed, seated near the store of the Muslim trader, about seven (7) meters away from him, (Id. p. 4), the same three men whom he had seen for four nights prior to April 9, 1987, hanging around the vicinity of the Muslim trader's store at Bicutan barangay market and thus he had become familiar with their faces.

Marcelo noticed on that particular night of April 7, 1987, (should be April 9, 1987) that two of the men had something bulging from their waists (t.s.n. p. 18, May 10, 1988) and he mentioned this to his wife who was with him. Moreover, while on previous nights, they just sat down near the Muslim store, this time they walked back and forth. One of them, whom Marcelo later identified as Domer Riego, even bought peanuts from him. (t.s.n. pp. 4-5 & 10, Ibid.). The place was well illuminated by a Meralco post (sic) and a Petroleum Coleman lamp hanging from Marcelo's pushcart (t.s.n. pp. 8-10, May 10, 1988).

At about 9:25 o'clock of that same evening, Marcelo saw Crisostomo Manalili come out from his store, the CRN Merchandizing located across the street from where Marcelo was vending. Crisostomo walked to his service jeep parked in front of the store. At the front seat of the jeep were Crisostomo's brother-in-law Gilbert Gumabo, who was on (sic) the steering wheel, Crisostomo's 10 year old daughter and Crisostomo's wife Virginia, who carried on her lap her 3 year-old son. Crisostomo Manalili was about to board the front seat of the jeep next to the children - his hand was already grasping the bar located at the side of the window (t.s.n. pp. 7-9, April 26, 1988; t.s.n. pp. 4-6, August 22, 1988; t.s.n. p. 3, October 5, 1988) when suddenly, three men rushed towards the jeep, walking fast passing Marcelo's side about four (4) meters away from him. Appellant Serna was holding a .45 caliber gun while the other whom Marcelo identified as Jojo Torres had a .38 caliber gun (t.s.n. pp. 9-11, April 26, 1988). Domer stayed behind. (t.s.n. p. 9, April 26, 1988). As soon as appellant Serna and Jojo Torres reached the right side of the jeep they tried three times to grab the black clutch bag from Crisostomo Manalili but the latter resisted and held tightly to his bag (t.s.n. pp. 9 & 11, April 26, 1988). Suddenly, Marcelo heard three (3) successive gunshots ring out from the gun held by appellant Serna. As Manalili fell down, Serna grabbed the black clutch bag and then pointed the gun and continued firing at the occupants of the jeepney. Virginia was hit first. And she slumped on Gilbert's shoulder. Appellant then fired at Gilbert. And when he was hit, he slumped on the steering wheel and played dead as the gun was still pointed at him. As he slumped on the steering wheel, his sister slid behind his back. (t.s.n. p. 6, October 5, 1988) Marcelo saw appellant grabbed (sic) the red plastic bag inside the jeepney. Torres also fired his gun when he was already near the pushcart when there was already somebody chasing them. Marcelo instinctively ducked behind his pushcart while looking at the shooting but he could not move from the place as he was holding his wife who had fainted after she heard the gunshots. (t.s.n. pp. 13-14, April 26, 1988). The robbers then fled, with appellant Serna holding the two (2) bags he had forcibly grabbed from his victims containing P150,000.00 (t.s.n. p. 14, August 22, 1988). After the trio fled, Gilbert stepped on the gas of the jeepney and sped off from the crime scene taking with them Crisostomo Manalili (Ibid).

When Marcelo surveyed his surroundings, he then realized that the other accused Domer Riego was no longer standing in front of the Muslim store (t.s.n. p. 14, April 26, 1988). After the lapse of a few minutes, a mestizo-looking man together with a stocky man approached Marcelo and inquired whether he (Marcelo) saw the shooting. Terribly afraid that he might be harmed by those men, Marcelo merely answered that he did not see anything but only heard shots because a person nearby informed him that those men making inquiries were CIS agents and that mestizo-looking man gave him the creeps when he asked Marcelo the same question thrice and they also found a .38 caliber gun tossed near the gutter. And that mestizo who repeatedly inquired from Marcelo about the incident was one of the accused still at large named Roberto Dunkel (t.s.n., pp. 14-16, April

26, 1988).

Immediately after the incident, Marcelo was informed by his wife that a man on a motor vehicle threw a letter (Exhibits "C" and "C-1", p. 245., Records; t.s.n. pp. 3-7, May 10, 1988) after passing their pushcart at the market. Said letter contained words threatening his life, with a drawing of a hand and five (5) dots appearing therein which drawings matched the markings on the hands of the other accused Domer Riego, who prior to the incident in question bought peanuts from said Marcelo. Apprehensive of his own life and those of members of his family, on May 31, 1987, Marcelo moved to another residence. (Ibid.).

Upon the written request of the Eastern Police District stationed at Taguig, Metro Manila, Dr. Desiderio A. Moraleda of the Medico-legal branch of the PC Crime Laboratory, PC/INP conducted an autopsy examination on the cadaver of the late Crisostomo Manalili on April 10, 1987. (Exhibit "H", t.s.n. pp. 3-4, November 24, 1988). Upon receipt of the request and the body of the deceased, the nearest kin was required to identify the body and to sign a written consent for autopsy. It was Rudy Manalili who sent a written consent for the autopsy (Exhibit "I", p. 255, Records; t.s.n., p. 4, November 24, 1988). The cause of death of the deceased was 'cardio-respiratory arrest due to shock and hemorrhage as a result of gunshot wounds of the trunk. (Exhibits 'L', 'M', & 'M-1', pp. 258-259, Records; t.s.n. pp. 10-11, Ibid.).

Crisostomo Manalili sustained two (2) fatal gunshot wounds fired at the middle right side at the back, the bullets travelling obliquely towards the front left side lacerating the liver and diaphragm that caused his death. The appearance of the wounds was compatible with a .45 caliber slug. A slug was recovered from his body (t.s.n. pp. 6-7, November 24, 1988). Virginia sustained five (5) gunshot wounds on different parts of her body which, according to Dr. Ernesto Brion of St. Luke's Hospital, in the absence of any immediate attention Virginia Manalili could have caused her death; and that there is only an 80% probability of regaining her normal functions in relation to the five (5) gunshot wounds she sustained if fully healed. The two (2) slugs recovered from her body were compatible with a .45 cal. bullet based on the size of the wounds, the construction of the wounds and particularly the shadow of the slug as reflected in the x-ray plate (t.s.n. pp. 3, 10, 11, August 22, 1988). The ten year old girl of the Manalilis suffered burns on her left forearm, as she was then seated at the right side of Virginia Manalili (t.s.n. p. 11, August 22, 1988). Gilbert Gumabo was hit on the right cheek, (t.s.n. p. 8, October 5, 1988), sustained a .05 cm. in diameter wound on the right side of his face. The doctors treated him by dressing his wound and subsequently recommended a skull x-ray (Exhibit "O", p. 262, Records; t.s.n. pp. 3-4, February 20, 1989).

Crisostomo Manalili left five children, ranging from four to eighteen years old, the oldest of whom stopped schooling as Virginia, his widow, could no longer support them and she needed the older son to help her in their business.

After he mustered enough courage and with the assurance of adequate police protection, Marcelo, accompanied by policemen to whom he narrated for the second time what he witnessed that evening of April 9, 1987, went to the police headquarters at Taguig municipal building and voluntarily executed a sworn statement dated April 28, 1987 (Exhibits "A" & "A-1", pp. 240-241, Records; t.s.n. pp. 16-17, April 26, 1988; t.s.n. pp. 4-10, May 12, 1988).

On May 6, 1987, at around 7:00 o'clock in the evening, Pat. Jesus Chan attached to the Intelligence and Special Operations Unit (t.s.n. p. 14; May 18, 1989) was on surveillance with Santiago Villa and P/Cpl. Edgardo Mendoza, an Assistant Chief in the Intelligence Unit of Taguig National Police Force. They were on surveillance of the various activities of the holduppers in the Upper Bicutan Public Market at Taguig. At around 7:15 in the evening, he apprehended Domer Riego for Illegal Possession of a knife. (t.s.n. pp. 4-5 m May 16, 1989) When the other accused Domer Riego was arrested, Marcelo executed another statement on May 10, 1987 positively identifying Domer Riego as one of those who robbed and fired at Crisostomo Manalili as said Domer was then armed with a .38 cal. firearm (Exhibit "B", p. 243, Records, t.s.n. pp. 17-18, April 26, 1988). When Marcelo was fetched from his house by Pat. Jesus Chan to the municipal building, said Domer

was seated on a sofa with some other persons present therein and when he (Marcelo) was ushered inside the room, he immediately recognized Domer and accordingly informed the police. Marcelo pointed out Domer to the police from among the other persons seated with Domer. No members of the family of the late Crisostomo Manalili were present during the identification Marcelo made of Domer at the police station. Neither was Marcelo present when Domer was investigated by the police officers (t.s.n. pp. 10-12, May 12, 1988).

On May 13, 1987, one of the suspects in the killing of Crisostomo Manalili was endorsed to the station investigation division for investigation. The suspect identified himself to Pfc. Felixberto Maog as Domer Riego. Pfc. Maog apprised Domer of his constitutional rights; his right to remain silent, right to counsel of his own choice and the consequences of whatever statement he may execute. Domer said that he will give his sworn statement voluntarily even without the presence of a counsel. But Pfc. Maog gave Domer a counsel, in the person of Atty. Luis de Guzman, Municipal Attorney of Taguig. (t.s.n. p. 405, & 12-14, February, 8, 1989) Per the statement of Domer Riego, on April 9, 1987, the group of one Roberto Dunkel, a PC Capcom soldier, Salvador Torres, Jojo Torres and appellant Reynaldo Serna approached him in front of Upper Bicutan market and told him that he will be utilized as a look-out for the group who had decided to rob Crisostomo 'Cris' Manalili. Domer also informed Pfc. Maog that he saw appellant shoot Crisostomo Manalili, his wife and the brother of Mrs. Manalili. (Exhibits 'N', 'N-1' to 'N-9', p. 61, Records; t.s.n. pp. 5-10, Ibid). Appellant was also arrested because Domer implicated him (t.s.n. pp. 10-11, *ibid.*)." (Appellee's Brief, pp. 5-14)

Of the two accused who were found guilty, only Serna appealed the decision of the lower court. The Public Attorney's Office (PAO) which represented the other accused, Riego, stated in their manifestation that after the judgment of conviction by the lower court, a relative of Riego said that a counsel de parte would be hired for purposes of an appeal. In said manifestation, the PAO asked this Court for sufficient time to ascertain whether Riego still needed their service since Riego had never communicated with them after the promulgation of judgment of conviction. This Court granted a period of thirty (30) days. Said period has already lapsed.

The lone appellant, Serna, raises the following assignment of errors in his appeal, to wit:

I

"THE TRIAL COURT ERRED IN FINDING ACCUSED REYNALDO SERNA GUILTY OF ROBBERY WITH HOMICIDE

II

THE TRIAL COURT ERRED IN CONSIDERING THE REPUDIATED CONFESSION AND/OR ADMISSION OF ACCUSED DOMER RIEGO, AS ADMISSIBLE IN EVIDENCE

III

THE TRIAL COURT ERRED IN DISREGARDING THE DEFENSE OF ACCUSED-APPELLANT REYNALDO SERNA." (Rollo, p. 85)

In the first assignment of error, the appellant assails the credibility of the prosecution witnesses, specifically that of Armando Marcelo, Virginia Manalili and Gilbert Gumabo.

The appellant contends that it would have been rather difficult for Marcelo to recognize the persons conversing under the awning of the store as it was already nighttime and the light of a Meralco post which was above that awning could not have provided enough illumination. In addition, it would have been hard for Marcelo to recognize the appellant as he did not know the appellant prior to the nights he claimed to have seen him.

This contention must fail.

The illumination coming from the lighted Meralco post, which was six (6) meters away from where the appellant and the other accused were conversing and thirteen (13) to fifteen (15) meters away from Marcelo's pushcart, (TSN, May 10, 1988, p. 10) and the lighted Coleman petromax which was situated over Marcelo's head (TSN, May 10, 1988, p. 9) was adequate enough for Marcelo to recognize the appellant. Marcelo was just seven (7) meters away from where the appellant was (TSN, May 10, 1988, p. 13) and the appellant was even facing him. (TSN., May 10, 1988, p. 11) Moreover, Marcelo is quite familiar with the appellant already as he had been observing him and his co-accused for the past three days. It was unusual for people to be hanging around the place and he was extra wary of strangers as there was a previous killing in the area. (TSN, May 10, 1988, p. 14)

The appellant states that Marcelo could not have witnessed the shooting as when it started, his wife fainted and he hid behind his pushcart.

The fact that Marcelo ducked behind his pushcart does not mean that he could not have seen the event unfolding before him. The wooden pushcart was only three and a half (3 1/2) feet high (TSN, May 11, 1988, p. 13) and a slight tilt of his head would make him witness the incident without any obstruction.

The inability of Marcelo to furnish the identities of the perpetrators at the time he gave his first statement is understandable since he could not have known the names of the accused but when he saw their faces he readily identified them. (People v. Cabale, et. al., G.R. Nos. 73249-50, May 8, 1990)

The appellant also questions the inconsistency between Marcelo's second statement given to the police claiming to have seen Riego armed with a .38 revolver and his testimony of April 26, 1988 (p. 11) where he said that it was the other accused, Jojo Torres who was carrying the .38 caliber revolver. Affidavits, taken ex-parte, are generally considered to be inferior to the testimony given in open court. The Court has consistently held that an affidavit, taken ex-parte, is almost always incomplete and inaccurate, sometimes from partial suggestions, sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory and for his accurate recollection of all that belong to the subject. (People v. Loveria, G.R. No. 79138, July 2, 1990)

As to the alleged inconsistencies between Virginia's testimony and that of Marcelos, they are not on material points, therefore, do not affect the basic credibility of the evidence as a whole. (People v. Palino, et. al., G.R. No. 73044, March 26, 1990)

Gumabo's testimony is also challenged by the appellant with regards to Gumabo's statement that while he was hit in the face and slumped on the steering wheel, he still managed to witness the incident.

Even before Gumabo was shot, he already saw the actual grabbing of his brother-in-law's clutch bag and the shooting. After he was shot on the right cheek, he slumped on the steering wheel and pretended to be dead as he might then be shot at again. But this did not prevent him from witnessing the incident as he positioned himself in such a way that he could still see the assailants. (TSN, October 5, 1988, pp. 3-11) He could, therefore, identify their assailants, one of which was the appellant.

The 19 day delay of Marcelo in reporting the incident can be sufficiently explained by Marcelo's fear to reveal what he saw. Marcelo received a threatening letter from an unknown person which had the same markings as those that he saw on the hands of one of the accused, Riego. His fear was so strong that he even transferred his work site (TSN, April 26, 1988, p. 14) and his residence (TSN, April 26, 1988, p. 18). It has been held that initial reluctance of witnesses to volunteer information about a criminal case, and their unwillingness to be involved in criminal investigations, are common, and have been judicially declared not to affect credibility. (People v. Pacia, G.R. No. 69543, June 14, 1990) Marcelo was just an innocent vendor who happened to be at a place where he felt

he should not have been. He did not want to get involved in the first place but after careful deliberation, he felt that it was his duty to report the incident.

The one month delay in the execution of the sworn statements by Virginia Manalili and Gilbert Gumabo is also justified. Dr. Brion, the attending physician of Virginia Manalili, explained that the five gunshot wounds Virginia sustained could have resulted in her death were it not for the immediate and appropriate medical and surgical attendance given to her. (TSN, May 26, 1988, pp. 8-9) The doctor further stated that she has to undergo rehabilitation for a period of three months and there would be only a recovery of 80% for her insofar as assuming her normal habits was concerned. (TSN, May 26, 1988, pp. 7-8) As for Gilbert, he testified that he was unable to give his statement earlier as he was still in a state of shock due to the death of his brother-in-law. (TSN, October 5, 1988, p. 16). The fact that he saw both his brother-in-law and his sister being shot and he was shot himself proved to be too much for him. He was even the one who drove his brother-in-law to hospital to try and save him but to no avail as his brother-in-law died after their arrival at the hospital. (TSN, May 31, 1988, pp. 14-16)

The injuries sustained by Virginia and Gilbert, both physical and emotional, and the necessary period for recuperation are reasons enough to understand the delay of one month.

In the second assigned error, the appellant questions the admissibility in evidence of the extra-judicial confession of his co-accused, Riego which implicates the appellant. He claims that it is inadmissible in evidence and since his conviction was based on said confession, he must then be acquitted. Such confession was allegedly signed by Riego in violation of the latter's rights in Art. III, Sec. 12 of the 1987 Constitution which states:

"SEC. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him."

Riego repudiated his confession in the witness stand. He stated that during the time of interrogation, he was not assisted by a lawyer, was not informed of his right to have one, was not warned that any statement given by him may be used against him in any court of law and was not asked if he wanted the presence of any member of his family before taking his statement. Furthermore, upon his refusal to sign said document, his interrogators (the policemen) supposedly mauled him and threatened to "salvage" him, forcing him to sign the document, the contents of which he was not even informed of. In fact, he denied having been a graduate of the Signal Elementary School when the document contained such information. Riego also denied knowing Atty. de Guzman who according to the testimony of Pfc. Maog acted as counsel for the accused.

From the evidence on record, the Court finds that Riego was assisted by counsel and apprised of his constitutional rights.

A close perusal of the extra-judicial statement (Exhibit "N") indicates that Riego was informed of his right to remain silent and his right to have an attorney present. Riego waived both rights in the presence of counsel which is evidenced by the signature of the late Atty. de Guzman. Because of Riego's waiver of his right to remain silent, he was also advised that anything he says may be used against him. We agree with the trial court that:

"The Court cannot help but notice that for every cautionary question (to suit the constitutional requirement) coached in simple terms and the corresponding answer, underneath on the right side of the question there appears the signature of the accused and on the opposite left hand corner there appears the signature of Atty. Luis de Guzman, then municipal attorney of Taguig. This format is consistent for the next four other successive cautionary questions such that there were no less than four signatures of the accused and that of Atty. Luis de Guzman. It must be noted that these questions were simple, in the vernacular and easily understood by the accused." (Rollo, p. 70)

Likewise, Riego's allegation of maltreatment was not substantiated. The only injuries that Riego could show during the trial was a supposed injury in the head which could be a balding spot as he had thinning hair and a scar on his back which is less than an inch in length. (TSN, March 30, 1989, pp. 14-16)

The circumstances surrounding Riego's confession are of no significance in this appeal. We find no need to resolve the issue of the weight to be given, if any, to the confession of a co-conspirator. Riego did not appeal his conviction. Insofar as the appellant is concerned, Riego's confession can be totally disregarded without altering the results.

Even without Riego's extra-judicial confession, the appellant is still not exculpated from the crime for which he was convicted. He was positively identified by three witnesses, two of whom were the victims who survived the incident, Virginia Manalili and Gilbert Gumabao and the other, a disinterested third party, Armando Marcelo. All had a good look at him at the time he was committing the offense.

In the third assigned error, the appellant puts up the defense of alibi. He claims that he was in his residence in Pototan, Muntinlupa at the time the incident happened. (TSN., March 15, 1989, p. 10)

The appellant's defense is unmeritorious.

For alibi to prosper, the requisites of time and place must be strictly met. It must be established by clear and convincing evidence that the accused was at some other place and for such a period of time as to negate his presence at the time when and the place where the crime was committed. (U. S. v. Oxiles, 29 Phil, 587, 593 [1915]; People v. Alcantara, 33 SCRA 812, 825-826 [1970])

The appellant's present residence is in Pototan, Muntinlupa (his former residence was in Upper Bicutan where he lived with his mother) which is contiguous to the municipality of Taguig, where the incident happened.

Both municipalities are in Metro Manila. As found by the trial court, there is no substantial evidence to show that it was physically impossible for the appellant to have been at the scene of the crime at the time of its commission. The appellant failed to prove that it was impossible for him to be at Upper Bicutan, Taguig. He himself admitted that it only takes an hour by passenger jeepney at that, to reach Upper Bicutan from his place. (TSN, March 15, 1989, p. 8) It would then be an even shorter trip if one were to ride a private vehicle. The appellant was also familiar with the area of Upper Bicutan thus, he would have known of the shortest route to take.

Moreover, the defense of alibi cannot prevail over the clear and positive identification by the prosecution witness of the accused as the perpetrator of the crime. (People v. Pacala, 58 SCRA 370, 381 [1974])

The appellant further states that if he was really guilty, then, he would not have requested his arresting officer to bring him to the Manalili home.

Before the arrest of the appellant, a certain Federico dela Cruz had approached Virginia A. Manalili with the appellant's photograph. At that time, Virginia Manalili pretended that she did not recognize the appellant as she did not want to warn the appellant through dela Cruz that she could identify him. (TSN, May 18, 1989, pp. 20-21) She wanted the appellant to be thrown off his guard. This apparently worked as the appellant was so sure of the

fact that he would not be identified that he even asked to be presented to Virginia Manalili. Besides, if the appellant was really sincere in proving his innocence, he would have shown up for the preliminary investigation of his case despite his alleged fear of reprisal as he could have sought police protection in this regard. The appellant just ignored the subpoena and did not even send anyone to represent him. (TSN, March 15, 1989, pp. 18-21)

WHEREFORE, the guilt of the appellant having been proved beyond reasonable doubt, the appealed decision is hereby AFFIRMED.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.

Fernan, C.J., (Chairman), on official leave.

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