

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ORLANDO C. DULAY, DEFENDANT-APPELLANT.

G.R. No. 92600. January 18, 1993

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PER CURIAM:

This is a petition to review the conviction for KIDNAPPING WITH MULTIPLE MURDER, punishable with the penalty of RECLUSION PERPETUA, rendered by the Regional Trial Court of Quezon City[1] against the herein appellant Orlando C. Dulay in circumstances described in the following Information[2] dated March 20, 1986:

"That on or about February 6, 1986, in the Municipality of Diffun, Province of Quirino, Philippines, a place within the jurisdiction of this Honorable Court, accused ORLANDO DULAY, together with JOHN DOE, PETER DOE, RICHARD DOE and WILLIAM DOE, whose true identities and whereabouts are still unknown, and C1C FERNANDO DIONISIO, the Military man whose case is under the jurisdiction of the Court Martial pursuant to Presidential Decree No. 1850, conspiring, confederating together and mutually helping one another, did, then, and there, wilfully, unlawfully and feloniously kidnap and carry away in a motor vehicle FRANCISCO LAURELLA, FERNANDO PASTOR, SR., and FERNANDO PASTOR, JR., and thereafter bring them to Cabarruguis, Quirino where they were detained in the residence of accused Orlando Dulay, and while the said victims were in their custody for an undetermined number of days, said accused, conspiring, confederating and helping one another, with intent to kill, treachery and evident pre-meditation, did, then and there, wilfully, unlawfully and feloniously attack, assault and kill the said Francisco Laurella, Fernando Pastor, Sr., and Fernando Pastor, Jr., with the use of firearms of undetermined make and caliber, inflicting gunshot wounds on their heads which penetrated the skulls through and through thereby causing their deaths as a consequence.

CONTRARY TO LAW with the aggravating circumstances of nighttime, by a band, with the aid of armed men, superior strength and the use of motor vehicles."

The trial court agreed with the prosecution in that while Dulay did not actually shoot the three victims, he was the one who masterminded the order to kidnap and kill.

The conviction by the trial court relied chiefly on the testimony of the following witnesses:

1. Mrs. Cristeta Pastor, wife of the elder Pastor who had testified that there had been threats against the life of the victim PASTOR, SR. who was also an UNIDO campaign manager.
2. Jose Apolonio, a council member of Diffun, Quirino, who actually saw DULAY and his companions abducting the three victims at the vicinity of the post office at Diffun, Quirino.
3. Mrs. Adelaida "Edith" Valdez, who testified having seen victim LAURELLA together with companions that fateful night on their way to Diffun, Quirino.
4. Mr. Leonardo Galapon, one of the guards in the residence of Dulay, popularly called Lotus Garden, who actually saw the victims being "guarded" thereat.
5. Mr. Noble Salvador also one of the guards at the Lotus Garden.

6. Ronnie Valdez, another guard at the Lotus Garden.
7. Alvaro Mangoba, a provincial guard at the provincial capitol building.
8. Sgt. Casiano Rumbaua, a former PC soldier who was then working as the NC officer-in-charge and trainer of volunteers in the Quirino Home Defense Volunteers, prior to its disbandment.

The facts of the case are summarized in the People's Brief as follows:

"At about 10:00 o'clock in the evening of February 6, 1986, Jose Apolonio was walking along the National Road of Diffun, Quirino Province, on his way home at Barangay Rizal after having gone from the house of his friend Esmenio Tacadena (p. 24, *tsn*, April 6, 1987). He was accompanied by his nephew (p. 24, *Ibid.*). Upon reaching a place opposite the Post Office of Diffun, he saw 2 (two) vehicles, one in green color and the other in white running towards the direction of Santiago (p. 24, *Ibid.*). Suddenly, both vehicles stopped in front of the house of Camilo situated at a distance of about 50 to 60 meters from the Post Office (pp. 25, 28, *Ibid.*). From the light of the vehicles, he saw three persons, namely, Fernando Pastor, Sr., his son, Pastor, Jr. and Francisco Laurella walking in front of the house of Camilo (pp. 25, 29, *Ibid.*). Forthwith, he saw appellant alight from the vehicles with his two (2) bodyguards (p. 25, *Ibid.*). Without ado, they forced the three to get inside the white vehicle (p. 25, *Ibid.*). At this juncture, Apolonio immediately hid near the wall of the Post Office (p. 28, *Ibid.*).

It was already 2:00 o'clock in the morning of February 7, 1986, when two (2) vehicles, a green Nissan Patrol car and a white Hi-Ace Van arrived at the Provincial Capitol (pp. 5-6, 45-46, *tsn*, Dec. 9, 1987). From among the occupants of the vehicles, only appellant alighted (p. 46, *Ibid.*). Alvaro Mangoba, a provincial guard of the Province of Quirino met appellant who was then an Assemblyman (p. 5, *Ibid.*). Appellant's three (3) companions were inside the Nissan Patrol (p. 5, *Ibid.*). He recognized only Fernando Pastor, Sr. with blood oozing from his lips and contusion marks on the face, while the latter's two (2) companions looked pitiful (pp. 6-7, *Ibid.*). When appellant asked if he knew the elder Pastor who was trying to make signals to him, Alvaro Mangoba replied in the negative, although in truth he knew Pastor, Sr. as the President of the Fishpond Operators Association of Quirino (p. 9, *Ibid.*). At that point, Alvaro Mangoba suddenly recalled that in a provincial meeting of the fishpond operators of Cabbaroguis held sometime in January, 1986 at Diffun, Quirino, he heard one Faustino Taktak, then the Provincial Warden, tell the elder Pastor: "Pare, better stop campaigning for Cory, mainit na ang ulo ng amo natin" referring to appellant, to which Pastor, Sr., replied: "Don't worry, we have many companions" (p. 9-11, *Ibid.*).

At about 7:00 o'clock in the morning also of the same day, Sgt. Casiano Rumbaua, Assistant Training Officer of Quirino Home Defense Volunteers (QHDV) went to Lotus Garden, the residential house of appellant in Banuar, Cabbaroguis, Quirino, to pick up his service jeep (pp. 5-6, *tsn*, Nov. 19, 1987). Upon arrival, he saw Fernando Pastor, Sr., the latter's son Pastor, Jr. and Francisco Laurella inside a Hi-Ace van parked in the garage (p. 6-7, *Ibid.*). He approached them when Laurella called up: "Ading Romy" (p. 7, *Ibid.*). When asked why he was there, Laurella replied that they were picked up by appellant and his men at Bonifacio, Diffun, Quirino (p. 8, *Ibid.*). Rumbaua left them and proceeded to report first to appellant who was in his office situated near the garage (p. 9, *Ibid.*). At once, he inquired from appellant about the presence of the three persons inside the Hi-Ace van parked in the garage (p. 9, *Ibid.*). Instead of replying, he was told to get their names (p. 9, *Ibid.*). Forthwith, Rumbaua returned to the garage and after getting hold of the residence certificates of Laurella and the elder Pastor, he returned to appellant who, when asked what were the faults of the three, Rumbaua was told by appellant to just keep quiet (p. 9-10, *Ibid.*). After a while, Rumbaua left and proceeded to the QHDV barracks situated about half a kilometer from the provincial capitol (p. 10, *Ibid.*). After an hour, a certain Cardenas followed him with a note from appellant instructing Rumbaua to get two (2) selected QHDV volunteers to guard appellant's ranch beside Lotus Garden and another two more to relieve the guards keeping watch at Lotus Garden (pp. 10-11, *Ibid.*). At

once Rumbaua called Punzalan and Astrero and brought them to the residence of appellant (p. 11, Ibid.). Afterwards, he left (p. 12, Ibid.).

In the morning of the next day, or on February 8, 1986, he took Leonardo Galapon and Ronnie Valdez to Lotus Garden (p. 12, Ibid.). Upon arrival, Rumbaua saw that the three persons he saw on February 7, 1986 were still there (p. 12, Ibid.). He then left Leonardo Galapon and Ronnie Valdez to relieve Punzalan and Astrero (p. 12, Ibid.).

Before taking over as guards on that date, one Sgt. Gaa, a bodyguard of appellant, instructed Galapon and Valdez to guard the three (3) persons and should they attempt to escape from the van, they have to shoot them (p. 12, tsn, Oct. 6, 1987). At the time they were performing their duties as guards, they saw appellant roaming around the premises (p. 19, Ibid.).

In the afternoon of the same day, appellant gave Galapon a letter for and to be handed to Fernando Pastor, Sr. (p. 21, Ibid.). Pastor, Sr. replied to the letter (p. 22, Ibid.). Afterwards, appellant gave another note to Pastor, Sr. through his bodyguard/driver (p. 23, Ibid.). Galapon noticed that the three could not speak anymore after reading the last note (p. 24, Ibid.).

After supper, appellant went near the Hi-Ace van and sat on a rocking chair nearby (p. 24, tsn, Oct. 6, 1987). He rested for about an hour (p. 24, Ibid.). Afterwards, appellant ordered Sgt. Gaa to bring out from the van the elder Pastor (pp. 25-27, Ibid.). Thereafter, appellant talked with the elder Pastor while the latter was in a kneeling position (Ibid.). At this point, the elder Pastor pleaded to appellant: "Sir huwag mo kaming pataying alang-alang sa aming pamilya" (p. 28, Ibid.). Appellant made no reply but merely laughed (p. 29, Ibid.). Then, he brought the elder Pastor to the Nissan Patrol which was parked near the gate (p. 30, Ibid.). Before the vehicle driven by Norby left, appellant told the elder Pastor, who was on board in the company of Sgt. Gaa "this is your last night" (pp. 29-31, Ibid.).

The Nissan Patrol driven by Norby went out of the gate and entered the other gate which was about forty (40) meters away (p. 31, Ibid.). After the lapse of ten (10) minutes, the Nissan Patrol driven by Norby with Sgt. Gaa as the lone passenger returned to pick up both Pastor, Jr. and Francisco Laurella who were brought to the place where Pastor, Sr. was earlier brought (pp. 34-35, Ibid.).

After Pastor, Jr. and Laurella had left, Leonardo Galapon was told by appellant's bodyguard to proceed to the kitchen where he drank beer with Froilan Guillermo and Noel Sabado (p. 35, tsn, Ibid.). In the course of the drinking session, Norby arrived with a sack (p. 36, Ibid.). When Galapon looked inside the sack, he saw the jacket of the elder Pastor and all other personal belongings of the three victims (p. 36, Ibid.). Noel Sabado got the sack, and after pouring gasoline, lighted it and simultaneously uttering: "Hindi lang iyan ang pinagpapatay dito" (p. 37, Oct. 6, 1987). Galapon and his companions were still engaged in drinking session when the Nissan Patrol arrived at about 12:00 o'clock midnight (pp. 37-38, Ibid.). Sgt. Gaa, Jerry Mendoza and one Frank alighted from the vehicle (pp. 37-38, Ibid.). Immediately, Frankie said to them: "Wala na, patay na" simultaneously demonstrating a slashing motion on his throat (p. 38, Ibid.).

The group continued drinking up to 3:00 o'clock in the morning (p. 38, Ibid.). After a while, they slept and woke up at about 8:00 o'clock (p. 39, Ibid.). Upon waking up, appellant gave P200.00 to Sgt. Gaa who in turn gave it to Galapon (p. 39, Ibid.). Galapon and his companion were thereafter brought back to the barracks at the Provincial Capitol by Noel Sabado (p. 40, Ibid.).

Mrs. Belen Laurella, who was the Chairman of the Board of Election Inspectors at the precinct in Diffun, Quirino Province, where her husband Francisco was supposed to vote on the February 7, 1986 Presidential Snap Elections,

waited for her husband till the late afternoon that day to enable the latter to cast his vote (pp. 5-6, tsn, Jan. 6, 1988). Francisco never came (pp. 5-6, tsn, Ibid.). She recalled that before he left in the morning of February 5, 1986, her husband Francisco being then a UNIDO leader told her that he was going to Madela, Quirino, with the Pastors to perform some UNIDO work (p. 4, tsn, Jan. 6, 1988).

At around 10:30 in the morning on February 10, 1986, Captain Efren Sta. Ines, Station Commander of Diadi, Nueva Viscaya, sent his two (2) police officers, namely, Pfc. Francisco Purigay and Pat. Benny Bocalbos and several policemen to Bgy. Balete to verify verbal reports of the sighting of two dead persons there (pp. 5-6, 21, 26-27, tsn, Oct. 29, 1987). Thereat, the police officers saw two (2) dead men half-way down the concrete culvert of a deep ravine at the edge of the national highway in Barangay Balete (pp. 21, 27, 36, tsn, Oct. 29, 1987). The two (2) bodies appeared like they were thrown there and could have rolled down the ground below were it not for the ipil-ipil trees (pp. 28-30, 36, Ibid.). They found no signs of struggle or bloodstains in the vicinity but did see contusions and injuries on the different parts of the bodies of the two (2) dead persons who were in their briefs only, and bare gunshot wounds on their heads (pp. 28-29, 31, 32). The cadavers were brought to Funeraria Carbonel in Cordon, Isabela, for autopsy (p. 20, Ibid.).

Dr. Nicolas Gappi, Municipal Health Officer of Bayabag and Diadi, Nueva Viscaya, performed the autopsy on the two (2) cadavers in the late evening of February 10, 1986 (p. 50, tsn, Ibid.). He found through and through gunshot wounds on their heads and the bodies were already in a state of rigor mortis (p. 51, Ibid.). The two (2) bodies were identified by relatives to be those of Francisco Laurella and the younger Fernando Pastor (pp. 9, 51, 57, Ibid.).

On February 15, 1986, the Diadi police station received another report of the sighting again of a dead body in Sitio Oriwong, Bgy. Nagsabaran Diadi, Nueva Vizcaya (pp. 11-12, Ibid.). Lt. Efren Sta. Ines personally led the group to the place to see who the victim was (p. 12, Ibid.). They found the nude body of a male person already in a state of decomposition in a deep ravine in Sitio Oriwong about one and a half kilometer away from where the bodies of Francisco Laurella and the younger Fernando Pastor were found (pp. 13-14, Ibid.). Like the other two, Lt. Sta. Ines saw black marks on the body (p. 15, Ibid.). Further investigation showed the cadaver found in Sitio Oriwong belonged to Fernando Pastor, Sr. (p. 16, Ibid.).

Dr. Nicolas Gappi was again fetched by Mario Carbonel to perform another autopsy in Bayombong, Nueva Vizcaya (p. 57, Ibid.). He found that the body had a gunshot wound and was already in an advanced state of decomposition (p. 58, Ibid.). After the examination, he prepared a death certificate (p. 58, Ibid.).

PC Officer Nelson T. Cauan of the 2nd CIS District, Camp Adduro, Tuguegarao, Cagayan, proceeded on March 20, 1986, to Diffun, Quirino Province, upon instruction of Gen. Hermogenes Peralta, Commanding General of the CIS, to conduct an investigation on the alleged kidnapping and death of the three (3) victims, namely, Fernando Pastor, Sr., his son, Pastor, Jr. and Francisco Laurella (pp. 4-5, 10-11, tsn, Nov. 11, 1987). After having taken down the statements of several witnesses who were sworn to before a judge, the result of the investigation pointed to appellant as one of those responsible for the offense charged (pp. 7-10, tsn, Ibid.).

After a preliminary investigation conducted by the Provincial Fiscal's Office of Quirino and by then Senior State Prosecutor Tirso D.C. Velasco, an Information for Kidnapping with Multiple Murder was filed in the Regional Trial Court of Cabbaroguis, Quirino, against then Quirino Assemblyman Orlando C. Dulay and several John Does as principals responsible for the death of Francisco Pastor, Sr., his son Francisco, Jr., and Francisco Laurella."[3]

The lower court after trial rendered judgment convicting the appellant as follows:

"ACCORDINGLY, judgment is hereby rendered finding the accused ORLANDO C. DULAY, former provincial governor and assemblyman, GUILTY beyond reasonable doubt as principal of the crime of

KIDNAPPING WITH MULTIPLE MURDER. Said accused is hereby sentenced to suffer in prison the penalty of RECLUSION PERPETUA.

On the civil aspect, the accused ORLANDO C. DULAY is hereby ordered to pay the surviving heirs of each of the herein deceased victims Fernando Pastor, Sr., Fernando Pastor, Jr. and Francisco Laurella, respectively, the following:

1. Actual damages of P30,000.00;
2. Moral damages of P500,000.00; and
3. Exemplary damages of P500,000.00.

The Provincial Prosecutor's Office of Quirino, much better, with the assistance of the Office of the Chief State Prosecutor, is hereby ordered to conduct forthwith a preliminary investigation of the other persons involved in this gruesome crime as disclosed in the evidence submitted in this case.

So ordered. No cost."[4]

From this judgment the appellant appealed to this Court. The records of the case were then elevated. On April 4, 1990, appellant filed a petition for bail which the Court denied in its Resolution dated May 16, 1990. On June 13, 1990, appellant was instructed to file his brief. On August 24, 1990, the appellant filed an Omnibus Motion, praying that this Court order the reconstitution of the case records which were burned in the June 11, 1988 fire that razed the Quezon City Hall from its 7th floor to the top. He likewise prayed that this Court suspend the period for filing the appellant's brief and grant a period of fifteen (15) days from completion of records within which to file his brief.

On September 10, 1990, appellant filed a Motion to Annul Judgment on the ground that the assailed decision was allegedly rendered without basis on any existing court record. This motion was denied by this Court in a Resolution dated February 18, 1991, thus:

"The motion must FAIL. Based on the pleadings submitted, appellant does not contest the fact that all prosecution exhibits have been offered in evidence, although it appears that some of them were later on destroyed by fire. In fact, it is clear from his motion that he admits their prior existence. According to the RTC Branch 103 Clerk of Court, in his letter to the Clerk of Court of the Supreme Court dated February 9, 1990, "All exhibits offered by the prosecution for its evidence in chief as well as all minutes of the proceedings prior to the Quezon City fire on June 11, 1988 were all totally burned in said fire." The trial court considered in rendering its decision all exhibits, transcript of stenographic notes and other documents taken after June 11, 1988 as well as those offered in evidence by the prosecution prior to June 11, 1988. To serve as basis for a valid judgment, Rule 132 Section 35 only requires that evidence should be formally offered before it can be considered by the Court. Since all prosecution exhibits were formally offered, they properly served as basis for the judgment of conviction. The fact that some of the exhibits were already destroyed at the time of promulgation is immaterial.

PREMISES CONSIDERED, the Court RESOLVED to DENY the aforesaid Motion to Annul Judgment."[5]

On April 17, 1991, however, this Court ordered the remand of the records of this case to the court of origin and directed the former to carry out the reconstitution of the records of the case, including burnt transcript of stenographic notes.

On September 20, 1991, private prosecutor Ernesto Salun-at filed an Urgent Manifestation stating that there had already been a judicial reconstitution of the records of this case even before trial resumed in 1987, and prayed that the court of origin be directed to return the records of this case to this Court and that the appellant be required to submit his brief immediately. In a certification dated September 19, 1991, the RTC Branch 103 Clerk of Court

attested to the same fact.

On December 13, 1991, the said Branch Clerk of Court re-elevated the entire records of the case intact with same annexes as contained in the previous transmittal letter, and in the same package as returned by this Court.

The appellant, in his brief, chose not to raise the issue on the reconstitution of the judicial records and instead made the following assignment of errors:

FIRST ASSIGNED ERROR

THE TRIAL COURT ERRED IN GIVING CREDIT TO THE PROSECUTION WITNESSES NOTWITHSTANDING THE IMPROBABILITIES AND GROSS INCONSISTENCIES IN THEIR RESPECTIVE TESTIMONIES.

SECOND ASSIGNED ERROR

THE TRIAL COURT ERRED IN NOT CONCLUDING THAT THE MEDICO-LEGAL FINDINGS BELIE THE CONCERTED TESTIMONIES OF THE PROSECUTION'S WITNESSES.

THIRD ASSIGNED ERROR

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT ON REASONABLE DOUBT.

The first and third assignments of errors involve questions of fact relating to the credibility of witnesses and have bearing on whether or not the trial court erred in finding the appellant guilty beyond reasonable doubt. These two alleged errors will be discussed jointly.

The appellant charged the prosecution witness Leonardo Galapon for being inconsistent in his declaration of the means of transportation he took from Quirino Province to Quezon City. We find this matter too insignificant to have any effect on the credibility of the witness. Discrepancies and inconsistencies in the testimony of witnesses referring to minor details, and not upon the basic aspects of the crime, do not impair their credibility.[6]

The appellant next contends that it is highly improbable that he could have hired guards, Ronnie Valdez for instance whom he does not know personally. The trial court did not agree with his view and neither do We, because it is not at all uncommon for powerful politicians, like the appellant, to have a handful of men to whom they entrust considerable amount of responsibilities such that it would not be unusual for these so-called trusted men of theirs to hire or employ people who are total strangers to these politicians. In the case at bar, the appellant tasked Sgt. Rumbaua, one of his trusted men, to get guards from his trainees at the Quirino Home Defense Volunteers (QHDTV). It would be more in keeping with human experience that in such a situation where We find the appellant, said hired personnel would not be personally known to appellant as the latter would have no opportunity to screen them. His hectic schedule of activities before the 1986 snap election would definitely not have permitted it. Thus, under the circumstances, it is not improbable that he did not personally know Ronnie Valdez and the other guards.

The appellant further claims that no less than four witnesses had testified that at anytime during February 6, 1986 - the day before the elections - no less than one hundred people, sympathizers and participants of the party, were present at the place of the appellant such that it would be inconceivable for him to have displayed the three victims at his own residence before ordering their execution.

We do not agree with the appellant here. The site where the victims were was not the same site where he received his guests numbering more than one hundred. He could not mislead this Court, considering the clear analysis of the appellant's residence made by the trial court which We herein quote:

"x x x An examination of the sketches (Exh. 3 and Exh. 38) and two photographs (Exh. 70 and Exh. 70-A) of

the Lotus Garden compound show that the garage is located far behind to the right of the main house of Mr. Dulay. In short, said garage is not the usual garage ordinarily found as a continuous extension of the main edifice of a residential house. That garage appears to be located far behind the main house and is separated therefrom by a sizeable land space wherein several coconut plants, large trees and secondary undergrowth grow abound. It is also a grassy area.

The court's impression is that that garage, which also appears to be dilapidated and long unused for vehicular parking, is not a place where political leaders of Mr. Dulay and his other guests would meander or conglomerate and take their meals.

In turn, as Mr. Dulay had testified, he built a structure which he calls "Pavillon" wherein his guests are supposed to be received and entertained. That Pavillon is, like the so-called garage, located separately and at some distance from the main house. It is to the left of the main house somewhat to the front thereof facing the highway. Behind the Pavillon at some distance is a swimming pool. To the right of the Pavillon extending up to the wall of the main house is a sizeable fishpond. To the left of the Pavillon and the swimming pool is a large parking area for vehicles.

The thrust of the defense evidence, which tended to show that practically everybody who went to Lotus Garden was entering the east gate and, if they have vehicles, parking them on that side or thru the east gate of the compound leading to the so-called garage, rather than to the west gate leading to the Pavillon and the swimming pool, appears to be more apparent than real and defies reason. The cooks and food servers who allegedly were concentrated at that garage to the right and far behind the main house would have had to walk a very far distance with their equipage and accoutrements (sic) to be able to serve the guests who are supposed to go to and be received at the Pavillon located at the modest distance away from and to the left of the main house. Coupled with this is that there appears to be no pathwalk from the east to the west side running behind the house. With scores of people to be served, such an arrangement would have been terribly inconvenient and totally impractical. And more so if it is considered that the fishpond extends right to the front wall of the main house and to one will have to swim over there to be able to transfer from the east side to the west side of the main house. The court also observes that as a place for guests to eat their meals that so-called garage seems to be an unseemly place for that purpose. The garage itself appears dilapidated and its surrounding area is full of grass and secondary undergrowth. It is unkempt."^[7]

We fail to find anything in the testimonies of the prosecution witnesses which We consider absolutely improbable and outside human experience, not even the fact of the appellant's asking for the names of the three victims who were then at the garage inside his white Toyota Hi-Ace van. It would have been very possible that it was just his way of making Sgt. Rumbaua stop asking too many questions.

The improbabilities and inconsistencies raised by the appellant do not affect the substance of the prosecution witnesses' testimonies which in spite of these alleged improbabilities and inconsistencies, remain credible.

The appellant also contends that the prosecution witnesses' delay in reporting the crime to the authorities is a basis to discredit their testimony. To their explanation that the reason for their failure to report the crime was fear, he countered that their alleged fear does not have any objective basis for he had been very kind to them and had in fact never threatened anyone of them. We cannot sustain this contention because whether or not the witnesses feared him only the witnesses can tell. Fear arises in the subject not in the object of the fear. It is defined as an unpleasant emotional state characterized by anticipation of pain or great distress. It is a reaction to an external danger which is perceived to cause him harm. We are convinced that the person of the appellant and his status in the community could very well be the external stimuli which have engendered fear in the prosecution witnesses. We do not think that the basis of the witnesses' fear in the case at bar is only a fruit of their imagination. Thus, We find the explanation for their silence very satisfactory. It is the most logical behavior under those circumstances that it would not take extensive argument to convince Us that anybody who is put in the shoes of

these witnesses would have reacted in exactly the same manner. Time and again We have ruled that the fear of reprisal is a valid excuse for the temporary silence of a prosecution witness. This is specially true if the accused, as in this case, is an influential figure in the community.[8]

As regards the contention that the testimony of Noble Salvador must be discredited on the ground that he recanted his first affidavit with another affidavit which in turn he again disowned at the trial, We rule that this fact per se is not a basis for discrediting a witness. We have previously held that mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible.[9]

The appellant further contends that the trial court erred in giving credit to the testimony of witness Casiano Rumbaua despite doubting portions of his testimony.

There was no error committed by the trial court when it considered only part, while it discredited the rest, of the testimony of a witness. The trial court gave credence to the part of the witness' testimony which is corroborated by other evidence. This manner of evaluating the evidence has been sustained by this Court when it laid down the doctrine that courts may believe one part of the testimony of a witness and disbelieve another part because courts are not required to accept or reject the whole testimony of a particular witness.[10]

We have gone through the records and found strong evidence against the appellant. The primary witnesses who actually saw the victims in the appellant's house testified in a positive, clear and straightforward manner, and We are constrained to give credit to their testimonies considering that they are corroborated by the physical evidence obtained in the autopsy examination, contrary to the appellant's view.

In his second assignment of error, the appellant contends that the medico-legal evidence militates against the veracity of the prosecution witnesses' testimonies as to when the three victims were killed. Based on the fact that at the time the body of Fernando Pastor, Jr. was examined, the said body was in a state of rigor mortis, according to the appellant, the victim could have died at around 7:00 p.m. (3 hours from 10:00, the time autopsy examination was conducted) of February 10, 1986, but not earlier than 10:00 a.m. (36 hours from time of autopsy examination) of February 9, 1986. These allowable parameters, according to him, pronounce the falsity of the concerted testimonies of the prosecution witnesses that the three victims were killed on February 8, 1986 at about 9:00 p.m.

This contention does not merit our approval.

Rigor mortis, which consists in the stiffening of the muscular tissues and joints of the body setting in at a greater or less interval after death, may be utilized to approximate the length of time the body has been dead. In temperate countries, it usually appears three to six hours after death but in warmer countries, it may develop earlier. In temperate countries, rigor mortis may last for two or three days but in tropical countries, the usual duration is twenty-four to forty-eight hours during cold weather and eighteen to thirty-six hours during summer. When rigor mortis sets in early it passes off quickly and vice versa.[11] (Underscoring supplied).

The body of Fernando Pastor, Jr. was examined at 10:00 p.m. of February 10, 1986, and it was then in a state of rigor mortis. If it had set in early, it would pass off quickly and the latest time of death would then be approximately minus twenty-four and three or twenty-seven hours prior to the autopsy examination, or 7:00 p.m. of February 9, 1986. If it had, however, set in late, it would pass off later so that the earliest time of death would be approximately minus forty-eight and six or fifty-four hours or as early as 4:00 p.m. of February 8, 1986. We take into account here that in early February the weather is still cold.

The testimony of the prosecution witness that the victims were killed in the evening of February 8, 1986 is in perfect harmony with, and is in fact corroborated by, the medico-legal evidence gathered from the autopsy

examinations.

To counter the straightforward and positive testimonies of the prosecution eyewitnesses, the appellant's defense is to deny the allegations of these witnesses. He attempted to discredit the prosecution's version of the facts by alleging that his having been prosecuted for this crime was nothing but a great political lie. He alleged that the private prosecutor had a personal grudge against him and said lawyer orchestrated the prosecution of the case, gathering witnesses, who, like him, had some personal bitterness to revenge. He, however, failed to show that these witnesses could have such an enormous motive commensurate to what it takes to falsely testify against him for this very serious crime.

The testimonies of the eyewitnesses, specially Leonardo Galapon, cannot be said to be tainted with ill motive and must be given full faith and credit. It is the opinion of this Court that political motives cannot be considered a motive serious enough for witnesses to impute a grievous crime against an innocent man when the person testifying cannot, by any stretch of the imagination, be politically benefitted by such false charges. The fact that the private prosecutor is a political foe of the appellant cannot be imputed upon the witnesses themselves so as to discredit them completely. His bias, if there is any, cannot be imputed upon the witnesses who have no reason to be biased.

The rest of the defense of the appellant consists in denials. He presented witnesses who would deny the allegations of the prosecution witnesses such as testifying that the appellant never owned a white Toyota Hi-Ace van; that the alleged driver of the appellant had never driven for the latter, the former not having been even issued a driver's license; that Abe Gaa, an alleged bodyguard of the appellant, was not in Quirino Province at that time; that the eyewitnesses Noble Salvador, Leonardo Galapon and Ronnie Valdez had never been commissioned to render security services to the appellant; that the QHDV, to which the eyewitnesses supposedly belong, had been disbanded and no longer existed at that time; etc.

The rule in evidence which this Court has always applied in similar cases is that, positive identification prevails over the simple denials of the accused,[12] or his witnesses for that matter. Denial, like alibi, is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witnesses that the appellant committed the crime.[13] As between positive and categorical testimony which has a ring of truth on the one hand, and a bare denial on the other, the former is generally held to prevail.[14]

The proof of the appellant's guilt is bolstered by the fact of his flight,[15] to which finding We totally agree with the trial court; the pertinent portion of the decision reads:

"Mr. Dulay had claimed that his "kidnapping" was done in true professional form. Coming from someone with specialized training in ranger warfare that is quite a compliment to those men. Yet, what do we find? the "kidnappers" were allegedly talking at the place where Mr. Dulay was brought that evening that their boss was coming; and yet, that very night without waiting for their "boss" to come, the "kidnappers" left leaving behind only one guard. And that guard that very same night developed instant sympathy for Mr. Dulay and allowed him to escape even telling Mr. Dulay what should be done. Thus, all the planning sessions that those professionally trained men must have spent figuring out how Mr. Dulay could be kidnapped from Camp Crame, the very seat of constabulary power, simply went for naught by no less than the act of one of them; and all this took place right at that same night of the alleged kidnapping. This simply is incredible." [16]

Notwithstanding the pendency of a petition for habeas corpus before Us and his claim that he had no knowledge of any formal charge against him, he escaped from custody, thus giving truth to the maxim: "(t)he wicked fleeth, even when no man pursueth, whereas the righteous is as brave as a lion." [17] Flight has always been considered by the courts as a circumstance tending to establish guilt.[18]

The evidence is sufficient to prove the appellant's guilt beyond reasonable doubt. He ordered the kidnapping, detention and killing of the three victims which killing was attended by evident premeditation and treachery. Abuse of superior strength is absorbed by treachery.

WHEREFORE, the appealed decision is hereby AFFIRMED with the sole exception that the actual damages which the appellant is ordered to pay the surviving heirs of each of the three victims is increased to P50,000.00, from the award of P30,000.00, in accordance with the prevailing jurisprudence on the matter. With costs against the appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, Nocon, and Campos, Jr., JJ., concur.

[1] People of the Philippines vs. Orlando C. Dulay, Criminal Case No. Q-53954, RTC (Quezon City, Branch 53), January 11, 1990 rendered by Judge Jaime N. Salazar.

[2] The Information was filed by then Senior State, Prosecutor and Concurrently Acting Provincial Fiscal Tirso D'C. Velasco, Records, Vol. I, pp. 42-43.

[3] Rollo, pp. 450-463.

[4] Records, Vol. II, pp. 331-332.

[5] Rollo, pp. 201-202.

[6] People vs. Custodio, 197 SCRA 538 (1991).

[7] Records, Vol. II, pp. 326-328. (Decision, pp. 55--57).

[8] People vs. Catao, et al., 107 Phil. 861 (1960); People vs. Santos Umali, et al., 100 Phil. 1095 (1957).

[9] People vs. De la Cerna, 21 SCRA 569 (1967).

[10] People vs. Bombesa, 162 SCRA 402 (1988), citing People vs. Montecillo, 133 SCRA 472 (1984); People vs. Li Bun Juan, et al., 17 SCRA 934 (1966);

[11] SOLIS. LEGAL MEDICINE 127(1987 ed.).

[12] People vs. Babac, 204 SCRA 968 (1991).

[13] People vs. Belibet, 199 SCRA 587 (1991).

[14] People vs. Caballes, 199 SCRA 152 (1991).

[15] To deny this fact of flight, the accused-appellant alleged that he was kidnapped at Camp Crame, where he was being detained.

[16] Records, Vol. II, p. 328.

[17] People vs. Tanchoco, 76 Phil. 463 (1946).

[18] People vs. Uлита, et al., 108 Phil. 730 (1960); People vs. Extra, 72 SCRA 199 (1976); People vs. Lorenzo, 200 SCRA 207 (1991).

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