

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CRISTITO SIBONGA, JUAN VERANIO, ANTONIO SIBONGA, CRISTITOTO MARIÑAS, EUFRECINO SIBONGA, MACARIO CASIPONG, MANUEL SIBONGA, CENON BULAGAO,...

G.R. No. 95901. June 16, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Dumaguete City, Branch 37, convicting the appellants of murder, sentencing them to reclusion perpetua and directing them to pay jointly and severally the heirs of the victim, Gaudioso Kostanilla, the amount of P30,000 as civil indemnity ex delicto.

The Charge

The appellants Antonio B. Sibonga and Cenon S. Bulagao and their co-accused Cristito Sibonga, Juan Veranio, Antonio Sibonga, Cristitoto Mariñas, Eufrecino Sibonga, Macario Casipong, Manuel Sibongan, Cenon Bulagao and Bodwin Veranio, were charged with murder in an Information filed on January 30, 1990 which reads:

That at about 12:00 o'clock midnight of December 10, 1989, at Barangay Casala-an, Siaton, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another, with intent to kill, evident premeditation, treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, stab, hack and shoot victim, GAUDIOSO KOSTANILLA with the use of bladed weapons and a gun with which the accused were armed and provided, thereby inflicting upon the body of the victim the hereunder enumerated injuries, to wit:

1. Stab wound measuring approximately 2½ inches in length penetrating the abdominal cavity, ½ inch above the umbilicus, right abdominal area.
2. Stab wound measuring approximately 3 inches in length penetrating the abdominal cavity, 1 inch below the umbilicus, left abdominal area.
3. Stab wound measuring approximately 3 inches in length penetrating thoracic cavity, below the armpit at the level of the nipple.
4. Hack wound measuring approximately 4 inches in length, ½ inch in depth, right knee.
5. Hack wound measuring approximately 4 inches in length, ½ inch in depth, left knee.
6. Hack wound measuring approximately 6 inches in length, anterior neck.
7. Gunshot wound through and through wound of entrance (sic) at the right eyeball, wound of exit right occipital region of the head measuring approximately 0.8 cm. in diameter.
8. Hack wound measuring approximately 3 inches in length, ½ cm. in depth, upper middle part of the head.
9. Hack wound measuring approximately 9 inches in length, 1½ inches in depth, left lateral aspect of the back.

10. Hack wound measuring approximately 4 inches in length, 1 inch in depth, distal 3rd of the posterior forearm.

which injuries caused the instantaneous death of victim, Gaudioso Kostanilla.[2]

The appellants and their co-accused were arraigned on March 8, 1990 with the assistance of counsel de oficio and entered their respective pleas of not guilty to the charge.[3]

The Evidence of the Prosecution[4]

On December 10, 1989, at about 5:00 p.m., Vicente Ello left his house at Sitio Mangodcod, Barangay Casala-an, Siaton, Negros Oriental, and went to the Mangodcod River to fish. He left his wife, Teodora and their daughter, Julia, in the house. When Vicente arrived home at about 10:00 p.m., his wife and daughter were nowhere to be found. Perplexed, he proceeded to the house of his nearest neighbor, Pantaleon Palispis, thinking that perhaps, his wife and daughter were there. Sure enough, when Vicente arrived at Pantaleon's house, he found his wife and daughter. But Vicente was incensed when Julia told him that his son-in-law, Gaudioso Kostanilla,[5] the husband of his other daughter Virgilia, went to their house earlier, quite drunk and uncontrollable. Gaudioso boxed and kicked Julia. Afraid for their lives, Julia and Teodora fled to the house of Pantaleon for sanctuary. Gaudioso went back home and slept.

Vicente was in a quandary. If he and his family went back home, Gaudioso might return and create trouble anew. Pantaleon suggested to Vicente to refer the matter to accused Juan Veranio, a resident of Sitio Balastro, Barangay Candugay, Siaton, Negros Oriental, about two or three kilometers away from Mangodcod. Juan Veranio was the leader of the "Greenan," an aggrupation of civilians, armed with bolos and hunting knives, who tasked themselves to preserve peace and order in the community. Vicente agreed. However, they decided to first see Gaudioso Isugan,[6] a friend and neighbor of Juan Veranio, and ask him to accompany Vicente to the house of said accused. Vicente, accompanied by Henry Barrera, Pantaleon's son-in-law, then proceeded to the house of Isugan, arriving thereat shortly before midnight. When Vicente apprised him of the purpose of their visit, Isugan agreed to accompany him to Juan Veranio's place. Isugan knew Gaudioso because he had been hiring the latter to plow his farmland.

Isugan, Vicente and Henry proceeded to the house of accused Juan Veranio who, when informed of Vicente's problem, agreed to arrest Gaudioso. Juan Veranio told his visitors that he did not mind arresting Gaudioso even at night because he believed that, as the head of the Greenan, he was a person in authority; and it was the duty of all members of the Greenan to arrest at any time of the day and night any person who committed abuses. Juan Veranio then woke up the other members of the Greenan living in his house, namely: Cristitoto Mariñas and Cenon Bulagao, his stepsons; Macario Casipong, the son-in-law of his common-law wife Valeriana (Balid) Sibonga; and his sons Noli and Bodwin Veranio. Juan Veranio ordered them to go with him. The daughters of Valeriana, namely, Anecita (Isid) and Virginia (Bingbing) Sibonga, went along. Cenon Bulagao, Vicente, Henry, and Isugan then passed by the house of Cristito Sibonga, also a Greenan member and the younger brother of Valeriana. They decided to join the group. The other members of the organization living with Cristito Sibonga, namely, Manuel Sibonga (Valeriana's father), Eufrecino Sibonga, Macario Casipong, and Antonio Sibonga (Valeriana's son-in-law) also went along with them. The men were armed with hunting knives and bolos. Manuel Sibonga and Macario Casipong were also armed with guns.

Vicente, Henry, Bingbing, and Isid then proceeded to the house of Pantaleon to enable Juan Veranio to "investigate" Julia. Julia narrated that her brother-in-law had been drunk and had boxed her without any cause. Isugan and Henry Barrera then proceeded to the house of Gaudioso, about one hundred meters away from Pantaleon's residence. Juan Veranio woke up Gaudioso saying: "Dioso, please come down because we have something to talk about." [7] However, Gaudioso did not respond. Virgilia shouted back at the visitors that her

husband was sleeping already. Accused Macario Casipong and appellant Antonio Sibonga said: "Let Gaudioso come down, otherwise the whole family will be killed." [8] Accused Macario Casipong and appellant Antonio Sibonga forthwith thrust their knives through the sawali walling of Gaudioso's house, to force the latter to come outside. The latter woke up, lit a kerosene lamp and went out of his house; Virgilia looked on at her husband and the newcomers from the window. As Gaudioso emerged from the house, Juan Veranio held him and tied his hands behind his back. Juan Veranio, Cristito Sibonga, Eufrecino Sibonga and Cenon Bulagao then took turns in boxing Gaudioso. Virgilia appealed to the men: "Please don't box my husband because he is drunk." [9] Isugan and Henry then herded Gaudioso to Pantaleon's house, where he was presented to Julia. Juan Veranio demanded to know from Gaudioso why he boxed Julia. Gaudioso replied that he did so because of his anger, and that he was drunk. Juan Veranio right then and there declared that Gaudioso was at fault. He told Gaudioso that he would have to be brought to the municipal building. He also told Isugan to go with the men so that if Gaudioso would sustain injuries, Isugan would declare that Gaudioso had fought back. Isugan agreed.

Gaudioso, Isugan, and Henry Barrera then left Pantaleon's house. Gaudioso walked ahead of the pack, followed by Juan Veranio, who held the other end of the rope with which the hands of Gaudioso were tied. When they were about three kilometers away, the group stopped. Cristitoto Mariñas suddenly stabbed Gaudioso on his right side. Eufrecino Sibonga, for his part, stabbed the victim at the back. The rest of the men took turns in stabbing the victim who pleaded to Isugan: "Please help me, ngay." [10] However, Isugan was afraid to help. He might also be killed if he intervened for the victim. He opted to keep silent. The victim fell to the ground, mortally wounded. Isugan then heard a gunshot. The Greenan members carried the body of the victim to a nearby precipice. When the accused and appellants returned, accused Juan Veranio told Isugan: "We dropped the dead body to the precipice because this is our law (sic) if somebody fights back." [11] The group then dispersed. Isugan arrived home at about 2:00 a.m. the next day.

Shortly thereafter, Isugan proceeded to see Vicente Ello and told the latter that Gaudioso had been killed by the Greenan. Isugan and Vicente Ello rushed to the house of Gaudioso and informed Virgilia that her husband had been killed by the Greenan; Virgilia in turn rushed to Barrio Malasbalas, Bayawan, Negros Oriental, and informed her parents-in-law that their son had been kidnapped by Juan Veranio. Virgilia Kostanilla stayed for two days at her parents-in-law's house. In the morning of December 14, 1989, she proceeded to the police station and reported to Pfc. Michael Gadiane that her husband had been kidnapped by the Greenan, headed by accused Juan Veranio.

On December 14, 1989 at 3:00 p.m., six CAGU agents belonging to the group of Lt. Oscar Lumanog went to Candugay, Casala-an, Siaton, Negros Oriental, where they picked up Juan Veranio, Bodwin Veranio and Cenon Bulagao. The men were brought to the Siaton Police Station where they were turned over to Pfc. Dexter Quinquito for investigation. The incident was thereafter recorded in the police blotter. [12]

In the course of the investigation, Juan Veranio admitted that he, along with the rest of the accused, killed Gaudioso because the latter fought them, and that they threw his body into the Mangodcod Creek.

On December 16, 1989 at around 10:00 a.m., Pfc. Michael Gadiane and Pat. Ricardo Jamosmos, were accompanied by the victim's brother and sister, Federico and Salvacion Kostanilla, to Mangodcod Creek to look for the body. The creek was a precipice, about one hundred fifty meters high, located at Sitio Candugay. [13] Dr. Mitylene Tan, [14] the Municipal Health Officer of Siaton, was not able to go with them because she was in Dumaguete City at the time. The policemen found a cadaver in an advanced state of decomposition at the bottom of the creek, lying on a pile of boulders. Its hands were still tied behind its back. Federico and Salvacion Kostanilla positively identified the body to be that of their brother, Gaudioso. Pfc. Gadiane noted that the right eyeball of the victim had been blasted off its socket. He saw that the victim sustained six hack wounds and three stab wounds, and measured the same with a stick. He recorded the measurements and other particulars of the

wounds sustained by the victim. He also prepared a diagram of the place where the cadaver was found. The policemen took pictures of the body.[15] Because the cadaver was so odorous, the policemen buried the victim right there in the creek. Pfc. Gadiane then submitted a set of his notes and diagram to Dr. Tan and kept the other set for his files. On January 4, 1990, Dr. Tan prepared a certification based on the notes and diagram of Pfc. Gadiane which reads:

1. Stab wound measuring approximately 2½ inches in length penetrating the abdominal cavity, ½ inch above the umbilicus, right abdominal area.
2. Stab wound measuring approximately 3 inches in length penetrating the abdominal cavity, 1 inch below the umbilicus, left abdominal area.
3. Stab wound measuring approximately 3 inches in length penetrating thoracic cavity, below the armpit at the level of the nipple.
4. Hack wound measuring approximately 4 inches in length, ½ inch in depth, right knee.
5. Hack wound measuring approximately 4 inches in length, ½ inch in depth, left knee.
6. Hack wound measuring approximately 6 inches in length, anterior neck.
7. Gunshot wound through and through wound of entrance (sic) at the right eyeball, wound of exit right occipital region of the head measuring approximately 0.8 cm. in diameter.
8. Hack wound measuring approximately 3 inches in length, ½ cm. in depth, upper middle part of the head.
9. Hack wound measuring approximately 9 inches in length, 1½ inches in depth, left lateral aspect of the back.
10. Hack wound measuring approximately 4 inches in length, 1 inch in depth, distal 3rd of the posterior forearm.[16]

Dr. Tan also signed the certification of death of the victim.[17] In the meantime, Pfc. Michael Gadiane lost the copy of his notes and the sketch he made. Unfortunately, Dr. Tan also lost her copy of the same.

The Evidence of the Accused

Antonio Sibonga and Cenon Bulagao did not testify but Juan Veranio, Cristitoto Mariñas, Macario Casipong, Eufrecino Sibonga, and Cristito Sibonga took the witness stand. Mariñas admitted having stabbed the victim to death with his 15-inch long hunting knife. However, he averred that he alone stabbed the victim, with the concurrence of Greenan leader Juan Veranio, on the prodding of Vicente Ello and the latter's assurances that he would be responsible for the death of the victim. The accused denied having met Pantaleon Palispis or his son-in-law Henry Barrera. Evidence was adduced to prove that when Vicente Ello and Isugan asked Juan Veranio to arrest the victim for having maltreated Vicente's daughter Julia, Juan Veranio refused, reasoning that his area of responsibility was confined solely to Sitio Candugay and did not include Sitio Mangodcod. However, in view of Vicente and Isugan's persistent pleas, Juan Veranio relented.

Vicente and Isugan left the house of Juan Veranio after lunch on December 10, 1989, a Sunday. At about 2:00 p.m., they arrived at the victim's house. Vicente and Isugan then summoned the victim, ordering him to come out. When the victim emerged, Vicente and Isugan tied his hands behind his back; the other accused merely acted as bystanders. With the victim in tow, the Greenan members proceeded towards the municipal building in Siaton to deliver him to the authorities. By 2:30 p.m., they were already at the crossing of Sitio Balastro and Casala-an. Juan Veranio ordered the other accused, except Mariñas, to go back home because they still had to finish their chores at the farmland owned by one Leopoldo Lego. The men took their leave, while Juan Veranio, Mariñas, Vicente, Isugan, and the victim were left behind. Shortly thereafter, Vicente ordered Mariñas to kill the victim.

Vicente said that if the victim would be turned over to the police authorities, he would be released anyway, only to resume his evil ways. Vicente assured Mariñas that being the father-in-law of the victim, he would answer for the consequences of the latter's death. Isugan made the same assurance. At first, Mariñas refused, but upon the persistent pleas of Vicente and Isugan, he relented. Before killing the victim, Mariñas asked Juan Veranio if he concurred with the pleas of Vicente and Isugan. Juan Veranio replied that he agreed with the idea of killing Gaudioso. Mariñas forthwith held the shoulder of the victim with his left hand, and then stabbed him once on the right side of his body. The victim fell to the ground, pleading forgiveness to Vicente and Isugan. The victim's pleas fell on deaf ears. Vicente pulled the rope with which the victim's hands were tied, while Isugan held the victim by his feet. Vicente and Isugan then carried the victim and threw him into a precipice, about three meters away from where he was stabbed. At the time, the victim was still alive. When Juan Veranio arrived home, he informed the men that Mariñas had killed the victim because of the assurances made by Vicente and Isugan. The men were surprised. Eufrecino Sibonga suggested that Juan Veranio report the incident to the police authorities, but the latter refused, saying that he was assured by Vicente and Isugan that they would be responsible for the death of the victim.

On December 31, 1989, Juan Veranio, Bodwin Veranio, Cristituto Mariñas, Macario Casipong, Cristito Sibonga, Eufrecino Sibonga, Cenon Bulagao and Antonio Sibonga executed their counter-affidavits.

After due proceedings, the trial court rendered judgment on October 12, 1990 finding the accused and appellants guilty beyond reasonable doubt of murder qualified by treachery with the aggravating circumstance of cruelty, and sentenced them to suffer the penalty of reclusion perpetua. The decretal portion of the decision reads:

WHEREFORE, the Court finds all the accused, namely, Juan Veranio, Cristituto (sic) Mariñas, Bodwin (Ebudwin) Veranio, Manuel Sibonga, Antonio Sibonga, Eufrecino Sibonga, Cristito Sibonga, Macario Casipong and Cenon Bulagao, guilty beyond reasonable doubt of the crime of Murder, and considering the aggravating circumstance of cruelty without any mitigating circumstance to offset the same, hereby sentences each of them to suffer the penalty of reclusion perpetua; to jointly and severally pay indemnity to the heirs of Gaudioso Kostanilla in the amount of P30,000.00 and to pay their proportionate shares of the costs.

In the service of their sentence the accused shall be credited with the full time of their preventive imprisonment in accordance with Article 29 of the Revised Penal Code as amended by Republic Act No. 6127 if the conditions prescribed therein have been complied with.

SO ORDERED.[18]

The accused appealed the decision of the trial court to this Court. While the case was pending, the accused (except appellants Cenon Bulagao and Antonio Sibonga) filed motions to withdraw their appeals.[19] On June 9, 1999, the Court resolved to grant the motions of the said accused.[20] The resolution of the Court became final and executory and entry of judgment was duly recorded. Hence, the decision of this Court pertains only to the appeals of appellants Antonio Sibonga and Cenon Bulagao.

The only issues to be resolved by the Court are: whether or not the appellants are criminally liable for the death of the victim, and if so, whether the penalty imposed on them by the trial court is proper.

On the first issue, the appellants aver that the victim sustained only one stab wound which was inflicted by Mariñas alone. The body of the victim thereafter rolled from the top of the precipice to the bottom. Hence, the other wounds could have been caused by the sharp and hard objects on the walls of the precipice, as well as the big stones at the bottom. It is also pointed out that after throwing the cadaver over the precipice, Vicente and Isugan returned and stabbed the body several times; thus, the other wounds could have been caused by them. The collective testimonies of Pfc. Michael Gadiane and Dr. Tan concerning the number and nature of the wounds

sustained by the victim are unreliable. The prosecution failed to adduce in evidence the diagram/sketch and notes of Pfc. Michael Gadiane to prove the sizes and other particulars of the wounds sustained by the victim. The certification of Dr. Tan is hearsay and barren of probative weight as it was based solely on the sketch and the notes of the policeman which the prosecution failed to adduce in evidence.

The Court finds the contention of the appellants to be without merit. By asserting that Mariñas alone stabbed the victim once, the appellants thereby assail the credibility of Isugan and the probative weight of his testimony. When he testified, Isugan stated that all the accused and appellants took turns in stabbing the hapless victim with their hunting knives and bolos, and threw the victim into the precipice:

Q From sitio Mangudkod (sic) in going to poblacion Siaton, where did you pass?

A At Casala-an.

Q What did you take (sic)? Did you ride or did you walk only?

A We were walking.

Q While you were walking was Gaudioso Kostanilla untied or he was (sic) still tied with his hands at the back?

A He was still tied.

Q When you proceeded towards the poblacion of Siaton from the house of Pantaleon Palispis at Mangudkod, who was ahead?

A It was Gaudioso Kostanilla who was ahead followed by Juan Veranio who was holding the rope and others were at the side and I was also following.

Q

While you were walking, was there any unusual incident that happened?

A It was at that time that they killed Gaudioso Kostanilla by stabbing him.

Q How far was the place of the incident from the house of Pantaleon Palispis before the incident happened?

A About three (3) kilometers.

Q What did you actually first saw (sic) of the unusual incident?

A Toting Mariñas was the first one to stab Gaudioso Kostanilla by holding him.

Q When Gaudioso Kostanilla was stabbed first by Toting Mariñas, what was the position or what was

Gaudioso Kostanilla doing?

A He was standing.

Q Will you please demonstrate to the honorable Court how did Toting Mariñas stab Gaudioso Kostanilla?

A He held the shoulder and stab him.

Q

With the permission of the honorable Court, will you please stand up and demonstrate to the honorable Court how did Toting Mariñas stab first the late Gaudioso Kostanilla?

(witness going down from the witness stand)

Q In order to have a real picture, supposing the Interpreter would be Gaudioso Kostanilla and you are Toting Mariñas; will you please demonstrate how ... the position of Gaudioso Kostanilla as well as the position of Toting Mariñas when he first stabbed Gaudioso Kostanilla?

(the witness, acting as Toting Mariñas while Mr. Rolando Tablatin, Court Legal Researcher, acting as Gaudioso Kostanilla, stood near each other with Toting Mariñas about one foot behind Gaudioso Kostanilla. Then Toting Mariñas approached (sic) Gaudioso Kostanilla, placed his left hand over the left shoulder of Gaudioso Kostanilla and stepped towards the right side and with his right hand holding, supposedly holding the knife thrusting it to the right side of Gaudioso Kostanilla with a right to left motion towards the right side)

ATTY. FLORES:

Q Now, after that, what transpired next?

A Opring Sibunga (sic) also stabbed.

Q

Will you please demonstrate to the honorable Court how did accused Opring Sibunga stab Gaudioso Kostanilla?

A When he went near Gaudioso Kostanilla, he also stabbed him behind, at his back.

Q And what transpired next?

A After that, Juan Veranio, Ebud Veranio, Cenon Bulagao, Cario Casipong, Tito Sibunga (sic), and Maning Sibunga (sic) also stabbed Gaudioso Kostanilla.

Q What happened to Gaudioso Kostanilla?

A He fell to the ground.

Q Did he utter any word before he fell to the ground?

A "Please help me, `Ngay," because we have the same name so he called me "`Ngay."

Q Now, when Gaudioso Kostanilla was being stabbed by these nine persons, how far were you from them?

A About three (3) fathoms.

Q

Since Gaudioso Kostanilla asked your help by saying, "Please help me, `Ngay," what did you do?

A I just kept silent. I did not utter any word.

Q Why?

A Because I was afraid that they are going to kill me also.nona

Q While you were there standing around three fathoms away from Gaudioso Kostanilla, were there any other persons near you?

ATTY. UYPITCHING:

Leading, your Honor. Objection, your Honor, leading. It is suggestive.

COURT:

Reform.

ATTY. FLORES:

Q While these nine persons were stabbing Gaudioso Kostanilla, where were the four other persons namely, the three women and Nolly?

WITNESS:

A The four persons, three girls and one man were surrounding me.

Q After Gaudioso Kostanilla fell to the ground, what transpired next?

A There was a gunshot.

Q Did you see who fired the gun?

A No, I did not see who fired the gun but I saw there were two persons who were carrying guns.

Q Who were these persons carrying guns?

A Maning Sibunga and Cario Casipong.

Q Aside from these guns carried by these two persons did they have any other arm or weapon?

A They were bringing "hunting" and long bolos.

Q

You mean all the 14 Greenans?

A There were 13 Greenans.

Q Now, after you heard the gunfire, what transpired next?

A They brought together the dead body of Gaudioso Kostanilla and brought it to the precipice.

Q Who were those nine persons who brought the dead body to the precipice? Please name them again?

A Juan Veranio, Cristuto Mariñas, Opring Sibunga, Ebud Veranio, Cario Casipong, Cenon Bulagao, Tito Sibunga, Antonio Sibunga and Maning Sibunga.

Q How did these nine accused you mentioned carry the dead body of Gaudioso Kostanilla to the precipice?

A They held together the dead body.

Q

Then after that?

A They held the dead body and according to them they dropped it to the precipice.

Q How did you know that they dropped the dead body of Gaudioso Kostanilla to the precipice?

A Because when Juan Veranio came back to where we stood, he told us that "We dropped the dead body to the precipice because this is our law if somebody fights us back."

Q And after that, what transpired next?

A That's the time we went home.

Q Who went home?

A The 13 Greenans and I and when we reached our place ... we went to our respective homes.[21]

The trial court gave credence and full probative weight on the testimony of Isugan, thus:

With respect to the other accused, namely, Bodwin Veranio, Manuel Sibonga, Antonio Sibonga, Eufrecino Sibonga, Cristito Sibonga, Macario Casipong and Cenon Bulagao, the Court finds their denial and alibi unconvincing and undeserving of belief. In the first place eyewitness Gaudioso Isogan (sic) positively and clearly declared that he saw said accused participate in stabbing Gaudioso Kostanilla and throwing the latter's body to the precipice. That Gaudioso Isogan was present and an eyewitness when Gaudioso Kostanilla was killed is not disputed. ...[22]

Case law has it that the findings of facts of the trial court, its calibration of the collective testimonies of the witnesses, its assessment of the probative weight of the evidence of the parties as well as its conclusions anchored on said findings are accorded by the appellate court high respect, if not conclusive effect, because of the unique advantage of the trial court of observing at close range the conduct, demeanor and deportment of the witnesses as they regale the trial court with their testimonies unless the trial court ignored, misunderstood or misinterpreted cogent facts and circumstances of substance which if considered would alter the outcome of the case.[23] The Court has reviewed the records of this case and finds no basis for overruling the trial court's finding that the accused and the appellants stabbed the victim, and its conclusion that the accused and the appellants were criminally liable for the death of the victim as principals by direct participation.

The testimony of Isugan, an eyewitness, coupled with the fact of the victim's death are sufficient proof of the guilt of the appellants beyond cavil of doubt for murder.[24] Especially so in this case, where the appellants failed to show any ill or improper motive on the part of Isugan to impute on the accused and appellants the quasi-heinous offense of murder for which the accused and appellants could be sentenced to reclusion perpetua.[25] This Court has consistently ruled that the testimony of a single prosecution witness, as long as it is positive, clear and credible is sufficient on which to anchor a judgment of conviction. Corroborative or cumulative evidence is not a prerequisite to the conviction of the accused.[26] Truth is established not by the number of witnesses but by the quality of their testimonies.[27]

The bare denial by the appellants of the criminal charge is a self-serving negative evidence which cannot prevail over the clear, positive and categorical testimony of the eyewitness pinpointing the appellants as the culprits.[28]

In this case, the prosecution presented Pfc. Michael Gadiane and Dr. Tan, merely and solely to corroborate the testimony of the eyewitness Isugan. Hence, the case for the People would not thereby be enfeebled even if the testimony of Pfc. Gadiane on the number and nature of the wounds sustained by the victim, and the certification of Dr. Tan, based on the notes and sketch of the policeman were disregarded by the trial court.

The appellants' submission that Vicente Ello and Isugan could have returned to the situs where the victim landed after it was thrown from the precipice, and stabbed the victim seven or eight more times should be rejected outright. As this Court held in *People v. Calma*,[29] surmises and conjectures have no place in a judicial inquiry and are especially anathema in a criminal prosecution. The appellants cannot rely on mere surmises, conjectures and possibilities to impeach the testimony of the eyewitness, but only by evidence or lack of evidence or any other legitimate source.

Proper Penalty on the Appellants

The Court agrees with the appellants' contention that the trial court erred in ruling that cruelty attended the commission of the crime when the victim was thrown into the precipice. The trial court premised its ruling on its finding that when the appellants and their co-accused threw the victim into the precipice, he was still alive.

Paragraph 21, Article 14 of the Revised Penal Code provides that there is cruelty in the commission of a felony when the wrong done in the commission of the crime is deliberately augmented by causing other wrong not necessary for its commission. There is no cruelty when the other wrong is done after the victim is already dead.[30] The test in appreciating cruelty as an aggravating circumstance is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission, or inhumanly increased the victim's suffering or outraged or scoffed at his person or corpse.[31] In this case, the evidence of the prosecution as gleaned from the testimony of Gaudioso Isugan quoting accused Juan Veranio is that when the accused and appellants threw the victim into the precipice, the latter was already dead:

Q Now, after you heard the gunfire, what transpired next?

A They brought together the dead body of Gaudioso Kostanilla and brought it to the precipice.

Q Who were those nine persons who brought the dead body to the precipice? Please name them again?

A Juan Veranio, Cristuto Mariñas, Opring Sibunga, Ebud Veranio, Cario Casipong, Cenon Bulagao, Tito Sibunga, Antonio Sibunga and Maning Sibunga.

Q How did these nine accused you mentioned carry the dead body of Gaudioso Kostanilla to the precipice?

A They held together the dead body.

Q Then after that?

A They held the dead body and according to them they dropped it to the precipice.

Q

How did you know that they dropped the dead body of Gaudioso Kostanilla to the precipice?

A Because when Juan Veranio came back to where we stood, he told us that "We dropped the dead body to the precipice because this is our law if somebody fights us back."

Q And after that, what transpired next?

A That's the time we went home.

Q Who went home?

A The 13 Greenans and I and when we reached our place ... we went to our respective homes.[32]

The Court agrees with the trial court that the accused and appellants are guilty of murder qualified by treachery.

The hands of the victim were tied behind his back when he was stabbed. The attack was sudden. The appellants, with their co-accused, stabbed the victim with their knives/bolos. The commission of the crime was thus aggravated by abuse of superior strength.[33] However, abuse of superior strength is absorbed in treachery.[34]

Dwelling aggravated the crime.[35] However, it cannot be appreciated against the appellants because it is not alleged in the Information as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure. Although the crime was committed before the said rule took effect, the new rule had been applied retroactively since it is more favorable to the accused.[36] No other modifying circumstances attended the commission of the crime. At the time the crime was committed, the penalty for murder was reclusion temporal in its maximum period to death. Notwithstanding the suspension of the imposition of the death penalty at the time, the medium of the prescribed penalty remained reclusion perpetua. Hence, the penalty of reclusion perpetua imposed by the trial court is correct.

Civil Liabilities of the Appellants

The trial court condemned the accused and the appellants to pay the heirs of the victim Gaudioso only the amount of P30,000 as civil indemnity ex delicto. The trial court did not award any moral damages to the said heirs. The decision of the trial court should thus be modified. The heirs of the victim are entitled to the amount of P50,000 as civil indemnity ex delicto and the amount of P50,000 as moral damages in line with current jurisprudence.[37] The said heirs are also entitled to exemplary damages of P25,000, likewise in line with current jurisprudence.[38]

IN LIGHT OF ALL THE FOREGOING, the Decision dated October 12, 1990, of the Regional Trial Court, Branch 37, Dumaguete City, in Criminal Case No. 9161 is AFFIRMED with the modification that appellants Antonio Sibonga and Cenon Bulagao are directed to pay, jointly and severally, the heirs of the victim, Gaudioso Kostanilla, the amount of P50,000 as civil indemnity ex delicto; P50,000 as moral damages; and P25,000 as exemplary damages.

Costs de officio.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Austria-Martinez, JJ., concur.

[*] Also spelled Marinias.

[1] Penned by Judge Temistocles B. Diez.

[2] Records, pp. 2-3.

[3] Id. at 44.

[4] The prosecution presented the following witnesses: Gaudioso Isugan, Pfc. Michael Gadiane, Dr. Mitylene B. Tan, Virgilia Ello, and Vicente Ello.

[5] Hereinafter referred to as Gaudioso.

[6] Hereinafter referred to as Isugan.

[7] TSN, 4 July 1990, p. 16.

[8] TSN, 27 July 1990, p. 5.

[9] TSN, 4 July 1990, p. 20.

- [10] Id. at 27.
- [11] TSN, 4 July 1990, p. 29.
- [12] TSN, 1 August 1990, pp. 17-18.
- [13] See note 10, p. 20.
- [14] Hereinafter referred to as Dr. Tan.
- [15] Exhibits "C" and "D."
- [16] Exhibits "G" & "G-1."
- [17] Exhibit "H."
- [18] Records, pp. 126-127.
- [19] Rollo, pp. 156, 159 & 169.
- [20] Id. at 181.
- [21] TSN, 4 July 1990, pp. 26-29 (Gaudioso Isugan).
- [22] Records, p. 124.
- [23] People v. Garcia, G.R. No. 145505, March 14, 2003.
- [24] People v. Lotoc, 307 SCRA 471 (1999).
- [25] People v. Antonio, 303 SCRA 414 (1999).
- [26] People v. Manzano, 370 SCRA 515 (2001).
- [27] Ibid.
- [28] People v. De Vera, 275 SCRA 87 (1997).
- [29] 295 SCRA 629 (1998).**
- [30] People v. Curiano, 9 SCRA 323 (1963); People v. Pacris, 194 SCRA 654 (1991).
- [31] People v. Ferrer, 255 SCRA 19 (1996).
- [32] TSN, 4 July 1990, pp. 28-29.
- [33] Article 14, paragraph 15 of the Revised Penal Code.
- [34] People v. Tortosa, 336 SCRA 604 (2000).
- [35] Article 14, paragraph 3, Revised Penal Code.
- [36] People v. Onabia, 306 SCRA 23 (1999).
- [37] See note 20.
- [38] People v. Catubig, 363 SCRA 621 (2001).

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