PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL BROMO @ “CANO”, ACCUSED-APPELLANT.

G.R. No. 97914. November 22, 1999

Ponente: GONZAGA_REYES, J.

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GONZAGA_REYES, J.:

Accused-appellant Joel Bromo appeals from the decision dated March 11, 1991 of the Regional Trial Court of Negros Oriental, Branch 34, Dumaguete City,[1] in Criminal Case No. 5842, finding him guilty beyond reasonable doubt of the crime of murder qualified by treachery, imposing the penalty of reclusion perpetua and directing him to indemnify the heirs of the victim the sum of P30,000.

In an amended information dated March 2, 1984, Joel Bromo alias "Cano" was charged by Assistant Provincial Fiscal, Jacinto S. Bautista with murder, allegedly committed as follows:[2]

> "That on or about the 19th day of March, 1983, at sitio Guindahogan, Barangay Suquib, Municipality of Tayasan, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab one ZACARIAS LINDO with a hunting knife with which the accused was then armed and provided thereby inflicting the following wounds on the victim, viz.:
>
> 1. Stab wound measuring two (2) cm in length, one (1) cm in width and nine and a half (91/2) cm in depthness located at the left side of the base of the neck about six (6) cm away from the anterior midline and one and a half (1 1/2) cm above the left clavicle. The wound was oriented horizontally with the medial extremity rounded and the lateral extremity sharp. The said wound was directed vertically downward and slightly to the right cutting partly the subclavian artery and penetrating the posterior portion of the left lung.
>
> 2. Stab wound measuring two and a half (21/2) cm in length, one (1) cm in width and ten (10) cm in depthness, located at the left side of the trunk about three (3) cm away from the mid-axillary line posteriorly and nineteen (19) cm above the left iliac crest. The wound was oriented obliquely downward and posteriorly with lower extremity sharp and the upper extremity rounded. The said wound was directed slightly upward to the right penetrating the liver substance.
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> 3. Incised wound measuring about one (1) cm in length and half (1/2) cm in width located at the left posterior aspect of the left arm along the posterior midline and nine (9) cm above the elbow joint.
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> 4. Incised wound measuring about one and a half (11/2) cm in length and one (1) cm in width located at the posterior aspect of the left arm about half (1/2) cm away from the posterior mid-line medially and eight (8) cm above the elbow joint.
>
> 5. Incised wound about three (3) cm in length located at the posterior aspect of the left shoulder, about three (3) cm away from the anterior mid-line laterally. The wound was oriented horizontally.
>
> 6. Presence of hemothorax on the left side of the pleural cavity.
>
> 7. Presence of blood about one liter on the abdominal cavity.

which caused the latter's instantaneous death."

Upon arraignment, accused, duly assisted by his counsel, entered a plea of not guilty.[3]

The prosecution presented the following witnesses:

Victorina Zuñiega was presented as an eyewitness to the stabbing incident. The victim was her brother-in-law, being married to her sister. She testified that at around eleven o'clock in the evening of March 19, 1983, she was outside the dance hall of sitio Guindahogan, Barangay Suquib, Tayasan, Negros Oriental in celebration of the town fiesta.[4] At that time, she saw Joel Bromo alias "Cano" in front of her about a half meter from where she was standing facing north; Joel Bromo who was also facing north stood at the back of Zacarias Lindo at a distance of about two feet. Zacarias at that time was also facing north. Suddenly she saw Joel Bromo stab Zacarias Lindo at the left base of the neck with a stainless hunting knife.[5] She claimed that she clearly saw the knife as it glittered as there was light coming from a petromax about three feet away and another one placed at the gate.[6] She testified further that after the first wound was inflicted, Joel Bromo pulled the knife and again thrust it at the left side of Zacarias Lindo.[7] She demonstrated this in court by raising her right hand holding a ballpen as the supposed knife, over the left shoulder of the court interpreter, who acted as the victim, then lowered and pushed it down at the base of the left side of the neck made a pulling motion as she removed the weapon knife from the base of the neck then brought it down and swayed it towards the left side of the victim. She said that after the victim was hit, the victim ran inside the dance hall and upon noticing this, she too ran and followed the victim inside the dance hall. She overtook the victim and hugged him and the latter said that he was stabbed by "Cano", referring to accused Joel Bromo.[8] She then went outside of the dance hall and looked for Joel Bromo and found him by the road being investigated by policeman Warlico Balasabas. She went near the accused and pulled his hair and so accused fell flat on the road. She then went home and informed her elder sister, Ramonita Zuniega Lindo, that her (sister's) husband had been stabbed.

Dr. Rogelio Kho, Municipal Health Officer of Jimalalud, Negros Oriental, testified that he conducted a post mortem examination on the body of Zacarias Lindo at about 11:45 A.M. of March 20, 1983[9] and the result of his examination was reduced into writing in an autopsy report.[10] He described wound no. 1 as embodied in his autopsy report as having been inflicted on a spot between the left side of the neck and the left shoulder and could have been inflicted while the assailant was standing just a little bit to the left side of the victim while the latter was standing.[11] He opined that stab would no. 1 was fatal as it partly cut the sub-clavian artery which contained the blood coming from the heart pumping it to all parts of the body and which could cause death in one to two hours from moment of infliction;[12] As for stab wound no. 2, he intimated that it could have been inflicted in the same position as wound no. 1 was inflicted using the same weapon and that wound no. 2 was also fatal because it hit the liver substance which would also cause death in 7 to 10 hours. As to incise wounds no. 3, 4, 5, they were inflicted by the person having the same position in inflicting wounds no. 1 and 2.[13] The cause of death was severe hemorrhage and shock secondary to stab wounds which meant that the victim could have died of profuse bleeding and the patient went into shock before he died; that the weapon used by assailant on the victim was a pointed sharp single bladed instrument possibly a kitchen or hunting knife.

Ramonita Lindo, widow of the victim, testified on the civil aspect of the case. She testified that she spent P4,000.00 for the prayers and burial expenses. She further stated that they have six children and that after her husband died, she was the only one who supported her family; that she was worried upon her husband's death and if this worry and sadness would be compensated in terms of money, she asked for P20,000.00 as moral damages.[14]

Patrolman Ricardo Barrera, member of INP of Tayasan, testified that on March 19, 1983 at around 11:00 P. M.

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Zacarias Lindo was brought to their station for medical treatment and an entry was made in the police blotter that the victim was allegedly stabbed by Joel Bromo alias Cano.[15] He described the condition of the victim as almost dying and stated that the words which came out of his mouth could no longer be understood. Accused was escorted by Sgt. Fabillar and was later placed in jail.[16]

Cpl. Warlico Balasabas , also a member of INP Tayasan, testified that on March 19, 1983, there was a town fiesta in Sitio Guindahogan, Tayasan, Negros Oriental. While he was inside the dance hall, he heard a shout from a certain Zacarias Lindo saying in the vernacular "Nahibalo ko ug kinsay gabuno nako-si Cano Bromo"; the Cano Bromo referred to was Joel Bromo as he was known in the locality as Cano.[17] He arrested the accused and searched him and found in his possession a rolled carton which he believed was formed into a scabbard for a deadly weapon such as hunting knife;[18] He then asked the accused for the knife but accused did not answer.[19] Balasabas together with the other policemen present in the dance hall rode in a vehicle and brought the accused to Tayasan Municipal Building.

On cross examination, Balasabas testified that when he heard the shout of the victim that he was stabbed by Cano Bromo,[20] he looked for the accused who was leaning in front of the jeep and arrested him and conducted a search on his person but was not able to recover any bladed weapon from him and did not find any blood stain in the T-shirt of the accused. When he approached the accused, the latter smelled of liquor.[21] Accused was about 15 to 20 meters from the place where the victim shouted that the accused stabbed him.[22] He denied Zuniega's testimony that the victim was stabbed in front of him at a distance of about ½ meter.

On the other hand the defense presented the accused Joel Bromo who testified that at around 10:00 o'clock in the evening of March 19, 1983, he, together with Perseus Pioquinto and Sedric Bayawa, were seated at the bumper of the jeep of Atty. Jesus Bromo.[23] At around 11:00 P.M., while still seated at the jeep, he saw people running in different directions, which was about 15-20 meters away from where he was seated and he heard a shout "I know I was stabbed by Cano Bromo."[24] He stood up from the place where he was seated and was approached by policeman Balasabas who searched him but was not able to recover any weapon from him but only found a rolled carton which the accused used in scratching his back.[25] When asked by policeman Balasabas whether he stabbed the victim, he denied this and said that they were just seated at the jeep when the incident took place.[26] He was brought to the patrol car and was seated in the middle of the driver and the Acting Chief of Police Fabellar and a certain Victorina Zuniega who was seated at the back pulled his hair.[27]

Defense witness Perseus Pioquinto corroborated the testimony of accused appellant that at around 11:00 P.M. of March 19, 1983, he was seated close to the accused and a certain Cedrex[28] at the bumper of the jeep of Atty. Jesus Bromo which was parked about 15 to 20 meters from the place of the incident[29] until they heard the victim's shout that he was stabbed by Cano Bromo. They just stayed at the jeep when Policeman Balasabas searched the accused and Pioquinto said that the "accused has not stabbed the victim because he just stayed here."[30]

Another defense witness Willy De Baguio testified that at about 11:00 P.M. of March 19, 1983, he was outside the dance hall of Guindahogan, Tayasan, particularly in a store drinking beer with Mario Dagunton, his first cousin.[31] He saw the victim squatting on the ground and drinking wine with his nephew Alfonso Sabanal and others whom he could not recognize.[32] He saw Sonny Boy Alejo standing behind the victim (at squatting position) holding a sharp bladed weapon with a length of about 7-8 inches, hitting the victim at the left shoulder and his left side.[33] After the stabbing, the victim ran inside the dance hall while he took the outside path of the dance hall but heard the victim shouting "I know who stabbed me. I was stabbed by Cano." He further testified that revenge was the motive of Sonny Boy Alejo in stabbing the victim because about four or five days before the stabbing incident, victim Lindo manhandled the brother of Sonny Boy;[34] He intimated that he did not report the

matter to the police or to the barangay captain because he was afraid as he had also been a victim of Sonny Boy Alejo when the latter stabbed him sometime in 1978 and as a result of which he had sustained wounds but he did not file a case against Sonny Boy. Sonny Boy is now dead as he was stabbed by a nephew of Zacarias Lindo.[35]

After weighing the evidence adduced, the trial court rendered its decision dated March 11, 1991, the dispositive portion of which reads:

> "WHEREFORE, accused Joel Bromo alias "Cano" is hereby found guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, for the killing of victim Zacarias Lindo, and the Court hereby imposes on said accused the penalty of imprisonment of RECLUSION PERPETUA.
>
> Accused is likewise directed to indemnify the heirs of the victim the sum of THIRTY THOUSAND PESOS (P30,000.00).
>
> Also, considering the fact that the accused is charged with a capital offense and taking into account his conviction today, where it can no longer be said that the evidence against him is not strong, and considering that the possibility of his jumping bail and evading arrest is not now remote, the accused is likewise hereby ordered to be immediately detained, without prejudice to his filing an appeal. The bailbond accused earlier posted is ordered cancelled.
>
> SO ORDERED."

The trial court believed the testimony of the lone eyewitness, Victorina Zuniega, who positively identified the accused as having stabbed to death the victim Zacarias Lindo, once at the left base of the neck and then at the left side of the body. It found the theory of the defense which was premised on alibi and denial to be weak specially since at the time of the incident the accused was at the vicinity of the crime scene. The trial court rejected the claim of the defense that it was a certain Sonny boy Alejo who stabbed the victim considering that there was no record showing that the accused brought this up at the time of his arrest or during the criminal investigation; the allegation was only brought up during the trial when the supposed assailant was already dead and could no longer dispute the assertions of the accused and his defense witnesses. It also found that the discrepancy in the testimony of Zuniega and Policeman Balasabas regarding their particular positions at the time of the stabbing are considered of minor significance, and will not impair the material declarations of the prosecution witnesses. It ruled that the crime committed was murder qualified by treachery since the assailant dangerously armed was at the back of the victim and suddenly inflicted fatal wounds on the victim who was not aware that he would be attacked nor was he in the position to defend himself.

Contesting the decision of the trial court, accused-appellant interposed the instant appeal with the following errors assigned in his brief:

> FIRST ASSIGNMENT OF ERROR
>
> THE TRIAL COURT ERRED IN NOT FINDING THAT THE TESTIMONY OF THE SUPPOSED EYEWITNESS FOR THE PROSECUTION AS TO THE IDENTITY OF THE ASSAILANT IS FLAWED AND UNWORTHY OF BELIEF
>
> SECOND ASSIGNMENT OF ERROR
>
> THE TRIAL COURT COMMITTED A GRAVE AND SERIOUS ERROR IN NOT FINDING THAT ONE SONNY BOY ALEJO WAS THE ASSAILANT OF THE VICTIM ZACARIAS LINDO.
>
> THIRD ASSIGNMENT OF ERROR
>
> THE TRIAL COURT FURTHER COMMITTED A GRAVE AND SERIOUS ERROR IN NOT

ACQUITTING THE ACCUSED.

The contentions are without merit.

The sole issue to be resolved is whether or not the accused is guilty of the crime charged on the basis of the evidence presented, particularly the testimonies of the witnesses.

In assailing the decision of the trial court accused-appellant attacks the credibility of the lone eyewitness, Victorina Zuniega, sister-in-law of the victim, alleging that Zuniega's version was scripted as it was unnatural that an assault like the one at bar which happened so fast and in the dark could be described with precise details as witness Zuniega did. Appellant also tries to discredit the witness by claiming that Zuniega admitted on cross-examination that the first time she came to know that the victim was stabbed by the accused was when she heard the victim shout that he was stabbed by Cano Bromo; thus she was not an eyewitness to the stabbing.

We are not persuaded.

Prosecution witness Victorina Zuniega positively identified accused-appellant as the assailant of the victim and we find no reason to disturb the trial court's evaluation of her testimony as worthy of belief. She testified on direct examination as follows:

"ATTY. ELECCION:

My question is, where she was at the dancing hall?

COURT:

There was already declaration by this witness that she was at the dancing hall. Witness may answer.

WITNESS:

A:

I was outside of the dance place.

ATTY. ELECCION:

Q:

And how far were you from Joel Bromo at that time?

A:

At that time Joel Bromo stabbed Zacarias Lindo, I was about half (1/2) meter.

Q:

At that time you were facing towards what direction?

A:

I was facing north.

Q:

Joel Bromo was facing towards what direction?

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A:

He was also facing north.

Q:

When Joel Bromo was facing north, you were also facing north, where was you situated from Joel Bromo?

A:

(The witness pointed to her front, indicating the place where Joel Bromo was, with her at the back.)

Q:

About Zacarias Lindo, towards what direction was Zacarias Lindo facing, the moment when Joel Bromo stabbed him?

A:

He was facing north.

Q:

The moment Joel Bromo stabbed Zacarias Lindo, how far was Zacarias Lindo to Joel Bromo?

A:

Just near.

Q:

When you said near, can you indicate with your two (2) hands, the distance?

A:

(The witness, with the use of her hands, set apart indicating the distance of two (2) feet, as agreed by the parties.)

Q:

Do you know if Joel Bromo used anything in stabbing Zacarias Lindo?

A:

Yes, sir.

Q:

What did Joel Bromo, the accused here, use in stabbing Zacarias Lindo?

A:

It was a stainless hunting knife.

Q:

Why do you know that it was hunting knife?

A:

It glittered.

Q:

How were you able to know that it was a kitchen stainless knife that was used, since it was already 11:00 o'clock in the evening?

A:

It was bright.

Q:

Why, was it bright, when it was nighttime?

A:

There was a bright coming from a petromax.

Q:

How far was the petromax?

A:

About three (3) feet.

Q:

Can you tell the Court, how many petromax were there at the dancing hall during that evening?

A:

There was three (3).

Q:

And these petromax lamps were situated where, at the dancing hall?

A:

At the gate of the dance place.

Q:

The three (3) of these lamps?

A:

One was situated at the door or at the gate and the other one was situated opposite the first lamp.

Q:

You said that it was stainless hunting knife, before that incident, did you ever see such kind of a hunting knife?

A:

Yes, sir.

Q:

Where?

A:

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I often see it because I am a cook.

Q:

Where did you see it, if you are a cook?

A:

In the kitchen.

Q:

Did you ever handle any kitchen knife?

A:

Yes, sir.

Q:

Will you please illustrate to the Court, how long was the knife?

A:

It's more than the distance between the tip of the thumb and the tip of the middle finger.

Q:

When you are asked to demonstrate as you as Joel Bromo stabbed Zacarias Lindo at the back of the latter, would you be able to do it?

A:

Yes sir, I can do it.

Q:

With the kind permission from the Honorable Court, if you come down from the witness stand, as Mr. Lindo, will you please raise yourself and Mr. Enot, in such a manner, the approximated distance Joel Bromo was located at the moment of stabbing.

ATTY. BAYAWA:

Your Honor, the witness testified that she was at the back of Joel Bromo, facing the north, while Joel Bromo was also facing the north, we have to go with that testimony, your Honor.

ATTY. ELECCION:

That is why, I am asking her to demonstrate.

Q:

You make Mr. Enot as Mr. Zacarias Lindo facing north and you place yourself behind Joel Bromo and you faced north?

A:

Yes.

ATTY. ELECCION:

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Q:

You made your manifestation that Mr. Enot acting as Zacarias Lindo, you, as witness standing as Joel Bromo at the left at a distance about one (1) foot.

ATTY. BAYAWA:

We take exception to that manifestation, your Honor, because the interpretation is the job of the interpreter to translate the position of both and not counsel, your Honor.

COURT:

To avoid any misunderstanding at this point, we just allow the interpreter to make the necessary description of what transpired.

INTERPRETER:

The witness coming down from the witness stand and acting as Joel Bromo, the interpreter acting as the victim, Zacarias Lindo, with the witness herself placing at the back of the interpreter, shouted (sic) at the left back side of the interpreter acting as Zacarias Lindo at a distance of one (1) foot.

ATTY. ELECCION:

Q:

Alright, supposing that this ballpen is the stainless knife, the portion of this ballpen which has a cover, we supposed that this is the handle of the stainless knife and the other cover which is the blade, would you demonstrate to the Court how the stainless knife was held by Joel Bromo?

A:

Witness held the handle of the ballpen representing the handle of the knife, gripping the knife and the blade towards her arm with the index finger and with the blade of the knife protruding from the index finger.

Q:

Alright, with that position now that you are holding the knife, you are Joel Bromo with the interpreter facing north as Zacarias Lindo, can you demonstrate, how Joel Bromo used that knife in stabbing Zacarias Lindo?

A:

Witness raising her right hand and holding the knife and raise it over the left shoulder of Zacarias Lindo and pushed down the blade of the knife at the base of the left neck.

Q:

And thereafter that, was Zacarias Lindo hit?

A:

Yes, he was hit.

Q:

And, when Joel Bromo was able to hit Zacarias Lindo, the manner demonstrated, at the base of the left neck, what did Joel Bromo do next to the knife?

A:

He pulled off the knife from the base of the neck and thrust it at the left side.

(The witness indicating a motion pulling off the knife from the base of the neck and bringing it down and swaying it toward the left side of Zacarias Lindo.)

Q:

How many times, did Joel Bromo stabbed Zacarias Lindo with the use of bringing the knife down and raising the knife?

A:

Twice.

(Witness indicating by demonstrating that accused pulled the knife from the base of the neck of Zacarias Lindo, brought it down and made a splashing motion to the right, hitting the left side of the victim.)

Q:

So, actually, Joel Bromo stabbed downward at the shoulder only ones, (sic) is that correct?

A:

Only one.(sic)

Q:

And the second thrust was sidewise?

A:

Yes, sir.

Q:

And then after that, what happened?

WITNESS:

Q:

To Zacarias Lindo?

ATTY. ELECCION:

To the incident, to what were you looking. I just reform the question, your Honor.

Q:

After Zacarias Lindo was hit on his neck sidewise, what did Zacarias Lindo do?

A:

He ran away.

Q:

Do you know, what direction did he run?

A:

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Towards inside the dancing hall.

Q:

And you, when you noticed that, what did you do?

A:

I followed him.

Q:

Whom did you follow?

A:

Zacarias Lindo.

Q:

How did you follow Zacarias Lindo, by walking?

A:

I was running.

Q:

And were you able to overtake Zacarias Lindo?

A:

Yes, sir.

Q:

What part of the dancing hall were you able to overtake him?

A:

At the side portion of the dancing hall.

Q:

Outside or inside the dancing hall?

A:

Inside the dancing hall.

Q:

What was he doing when you overtook him?

A:

He said, I was stabbed by Cano.

Q:

And this Cano, you refer to who?

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A:

Joel Bromo."

(p. 6-12, TSN, September 14, 1990)."

Eyewitness Zuniega was able to describe the assault with details because she was situated at distance of only about a half meter from the accused-appellant, and considering that there was ample illumination coming from the petromax which was about 3 feet away and another one at the gate. Illumination produced by kerosene lamps or a flashlight is sufficient to allow identification of persons.[36] She personally saw the accused-appellant who was at the back of the victim, Zacarias Lindo, suddenly stab the latter with the use of a hunting knife, first on the left base of the neck, after which he pulled the knife and again thrust it at the left side of the victim's body. Her testimony coincides with the findings of the medico-legal officer who found two stab wounds on the victim's body; first on a spot between the left side of the neck and the left shoulder and another stab wound on the left side of the trunk. She clarified during the cross-examination that she knew of the stabbing incident because she was there even before the victim shouted that he was stabbed by Cano Bromo.[37]

The utterances of the deceased immediately prior to his death that it was accused-appellant who stabbed him constitute a dying declaration and is admissible as evidence. Under Rule 130, Section 37, the requisites for the admissibility of ante-morte statements are: (1) the statement concerns the crime and surrounding circumstances of the declarant's death; (2) at the time it was made, the declarant was under the consciousness of an impending death; (3) the declarant would have been competent as a witness had he survived; and (4) the declaration was offered in a criminal case for homicide, murder, or parricide in which the declarant was the victim. Dying declarations are considered an exception to the hearsay rule since they are made in extremis, when the declarant is at the point of death. For then, the motive to commit falsehood is improbable and the inclination is only to speak the truth.[38]

All four requisites for the admissibility of the victim's declaration are present in this case. When victim Zacarias Lindo was stabbed, he ran inside the dance hall shouting that "I know, I was stabbed by Cano Bromo" and when hugged by Victorina Zuniega, he also pointed to accused as the person who stabbed him. He made the statement in contemplation of an approaching death, as he knew that he sustained a fatal wound. Nor is there any question that had the victim survived, he would have been competent to testify in court, as there is no evidence to the contrary. The dying declaration was offered in a criminal prosecution in which the declarant was the victim. In fact, the statement made by the victim that he knew that it was Cano Bromo who stabbed him was heard not only by the prosecution witnesses but also by the defense witnesses including the appellant himself.

On the other hand, the only defense of accused appellant is denial and alibi. Accused appellant's bare denial cannot stand in view of the positive identification made by eyewitness Victorina Zuniega. It has been held that the positive identification by an eyewitness has greater weight than the mere denial of the accused. Denial, like alibi, is a weak defense, which becomes even weaker in the face of the positive identification of the assailant by an eyewitness.[39] There is no suggestion that Victorina Zuniega had some ill motive to testify falsely against him. To the contrary, she had all the reason to speak the truth with respect to her brother-in law's true assailant. Where there is no evidence to indicate that the principal witness for the prosecution was moved by improper motive, the presumption is that such witness was not so moved and that her testimony is entitled to full faith and credit.[40]

In a long line of cases, this Court has also held that alibi cannot prevail over the positive identification made by the prosecution witnesses.[41] For the defense of alibi or denial to prosper, it is not enough to show that the accused was somewhere else when the crime was committed; the accused must further demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of the commission thereof.[42] In

the instant case, accused testified that he was sitting at the bumper of the jeep in the vicinity of the stabbing incident when he saw people scamper in different directions and heard the victim shout "I know who stabbed me, it was Cano Bromo". Clearly, it was not impossible for him to have been at the scene of the crime; he was only 15 to 20 meters away from where he allegedly heard the victim shout.

As this Court has articulated, the defense of alibi is unavailing where there is affirmative evidence of the presence of the accused at the scene of the crime at the time of its commission, if not his positive identification as the perpetrator of the offense, as well as where there is an ante mortem statement of the victim received in evidence either as a dying declaration or as part of the res gestae.[43]

Appellant's argument that considering the testimony of witness Zuniega that there were several people present when the stabbing incident happened, who however, were not called upon to testify on the stand, is not tenable. The prosecutor handling the case is given a wide discretion on this matter. It is definitely not for the courts, much less for the defense, to dictate what evidence to present or who should take the witness stand at the trial of a case.[44] The testimony of a single eyewitness, if positive and credible, is sufficient to support a conviction even in a charge for murder.[45] Corroborative evidence is necessary only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate,[46] a situation that does not obtain in the instant case.

Accused-appellant also capitalizes on the inconsistencies in Zuniega's testimony. He points out that Zuniega testified that policeman Warlico Balasabas was only ½ meter from the victim facing the latter when the incident happened; however, Balasabas denied the same and testified that he came to know only of the stabbing incident when he heard the shout of the victim in the vernacular "nakahibalo ko, and gabuno nako si Cano Bromo" (I know the one who stabbed me is Cano Bromo). The alleged contradiction in the testimony of eyewitness Zuniega vis-à-vis that of Balasabas does not refer to a material matter and does not impair the former's credibility. The alleged inconsistency does not detract from the vital fact that Zuniega actually witnessed the stabbing of the victim by the accused-appellant.

Finally, accused-appellant points to one Sonny Boy Alejo as the one who stabbed the victim as testified to by defense witness Willy de Baguio. The credibility of the testimony of de Baguio suffers from serious doubt. From the time the stabbing incident happened in 1983 up to the time he took the witness stand for the defense in 1990 he had not told the police authorities about his presence in the scene of the crime. Moreover, nobody corroborated his testimony despite the fact that he testified that before the stabbing incident, he saw the victim squatting on the ground drinking wine with his nephew Alfonso Sabanal and others. It took him seven years to tell his story about the incident and only when Sonny Boy Alejo was already dead.

Time and again this Court has declared that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[47] We find no convincing reason shown by the defense to make us overturn the trial court's ruling that Victorina Zuniega's testimony was credible.

We agree with the trial court that the killing was qualified by treachery. There is treachery when one commits any of the crimes against persons, employing means, methods, or forms in the execution thereof, which tend directly and specially to ensure its execution, without risk to oneself arising from the defense which the offended party might make.[48] In the present case, the appellant's act of positioning himself at the back of the victim with a hunting knife and suddenly and deliberately inflicting fatal wounds on the victim are all indicative of the fact that

the accused employed means and methods which tended directly and specially to insure the execution of the offense affording the victim no warning at all.

We affirm the imposition of the penalty of reclusion perpetua. Under Article 64 of the Revised Penal Code, when the penalties prescribed by law contain three periods, the penalty in its medium period shall be imposed when there are neither aggravating nor mitigating circumstances present. At the time the crime was committed (in March 1983) murder was penalized under Article 248 of the Revised Penal Code by reclusion temporal in its maximum period to death, the medium period of which is reclusion perpetua.

We also find that the widow of the victim is entitled to P4,000.00 for the prayers and burial expenses. Anent moral damages, the victim's widow testified on her mental anxiety upon her husband's death; considering that they have 6 children; she asked for P20,000.00 damages. Moral damages, which include physical suffering and mental anguish, may be recovered in criminal offenses resulting in physical injuries or the victim's death, as in this case.[49] The civil indemnity is increased to P50,000.00 pursuant to prevailing jurisprudence.

WHEREFORE, the decision of the Regional Trial Court of Negros Oriental, Branch 34, Dumaguete City is AFFIRMED with the MODIFICATION that the accused-appellant shall pay the heirs of the victim the sum of P50,000.00 as indemnity for the death of Zacarias Lindo; P4,000.00 as burial expenses and P20,000.00 moral damages.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Penned by Judge Rosendo B. Bandal, Jr.

[2] Rollo, pp. 10-11.

[3] Original Records, p. 53.

[4] TSN, September 14, 1990, p. 5.

[5] Ibid, p. 7.

[6]Ibid, p. 8.

[7] Ibid, p. 11.

[8] Ibid, p. 12.

[9] TSN, January 10, 1989, p. 3.

[10] Ibid, p. 5.

[11] Ibid, p. 7

[12] Ibid, p. 7-8.

[13] Ibid, p. 18.

[14] TSN, Sept. 7, 1990, p. 22.

[15]TSN, Sept. 26, 1990, p. 7.

[16] Ibid, p. 8.

[17] TSN, Oct. 4, 1990, p.3.

[18] Ibid, p. 4.

[19] Ibid.

[20] Ibid, p. 6.

[21] Ibid, p. 7.

[22] Ibid.

[23] TSN, October 25, 1990, p. 3.

[24] Ibid, p. 4.

[25] Ibid, p. 5.

[26] Ibid.

[27] Ibid.

[28] TSN, October 17, 1990, p. 3.

[29] Ibid.

[30] TSN, October 17, 1990, p. 4.

[31] TSN, October 23, 1990, pp. 3-4.

[32] Ibid, p. 4.

[33] Ibid, p. 5.

[34] Ibid, p. 5.

[35] p. 6.

[36] People vs. Penillos, 205 SCRA 546; People vs. Loste, 210 SCRA 614 (1992).

[37] TSN, September 26, 1990, p. 3.

[38] People vs. Bahenting, G.R. No. 127659, Feb. 24, 1999; People vs. Atrejenio, G.R. No. 120160, July 13, 1999.

[39] People vs. Macuha, G.R No. 110085, July 6, 1999; People vs. Apongan, 270 SCRA 713.

[40] People vs. Cabuang, 217 SCRA 675; People vs. Belibet, 199 SCRA 587; People vs. Doctolero, 193 SCRA 632.

[41]People vs. Cabebe, 290 SCRA 543; People vs. Pili, 289 SCRA 118.

[42] People vs. Dominguez, 217 SCRA 170.

[43] People vs. Baguio, 196 SCRA 459; People vs. Estera, 207 SCRA 703.

[44] People vs. Chavez, 278 SCRA 230; People vs. Ballagan, 247 SCRA 535; People vs. Magdamit, 279 SCRA 423.

[45] People vs. Ferras, 289 SCRA 94; People vs. Bajar, 281 SCRA 262; People vs. Adora, 275 SCRA 441; People

vs. Ballabare, 264 SCRA 350.

[46] People vs. Recio, 282 SCRA 274.

[47]People vs. Lotoc, G.R. No. 132166, May 19, 1999; People v. Oliano, GR No. 119013, March 6, 1998, per Panganiban, J. See also People v. Gaurana, GR Nos. 109138-39, April 27, 1998; People v. Bersabe, GR No. 122768, April 27, 1998; People v. Tulop, GR No. 124821, April 21, 1998; People v. Castillo, GR No. 120282, April 20, 1998; People v. Siguin, GR No. 126517, November 24, 1998; People v. Sta. Ana, GR Nos. 115657-59, June 26, 1998; People v. Villamor, 284 SCRA 184, January 16, 1998; and People v. Bahatan, 285 SCRA 282, January 28, 1998.

[48] People vs. Lotoc, et al, GR. No. 132166; People vs. Dela Cruz, GR No. 109619-23, June 26, 1998; People vs. Cayabyab 274 SCRA 387.

[49] People vs. Salcedo, 273 SCRA 473.

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