

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOANES AGRAVANTE, EDDIE CABALLERO (ACCUSED), ARNULDO BELARMINO AND ROSALITO ABREA, ACCUSED-APPELLANTS.

G.R. Nos. 105402-04. September 05, 1994

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellants seek their exculpation from this Court after they were each convicted of three counts of Murder[1] and given a total of six (6) life sentences, among other penalties, by the Regional Trial Court of Davao del Sur, 11th Judicial Region, Branch 21, Bansalan, Davao del Sur.[2]

The three Informations for Murder filed against the four accused, all of whom were members of the CAFGU (Citizens Armed Forces Geographical Unit), are similarly worded, except for the names of the victim in each case. Representative of these Informations is that filed in Criminal Case No. XXI-157(90), which reads, viz.:

"The undersigned accuses ARNULDO BELARMINO, ROSALITO ABREA, JOANES AGRAVANTE and EDDIE CABALLERO, of Murder defined and penalized under Art. 248 of the Revised Penal Code, committed as follows:

That on or about 6:40 in the evening of January 6, 1990, at the Public Market of Bansalan, Davao del Sur, Philippines, and within the jurisdiction of this Court, the above-named accused with deliberate intent to kill, employing means to weaken the defenses of the victims, with treachery, armed with firearms, acting in band, conspiring, confederating and helping one another did then and there attack and shoot DANNY DELA TORRE[3] with the use of firearms hitting him which injuries caused his instantaneous death, to his damage and prejudice.

That the attack was so sudden that the victim was not given any opportunity to defend himself.

"CONTRARY TO LAW.

"Digos, Davao del Sur, January 12, 1990."[4]

The two other victims were Pat. Edilberto "Badong" Bastida and Exuperio "James" Acaba.

Except for Eddie Caballero who remains at large, the accused were arrested and arraigned. They all pleaded not guilty.[5] The cases were tried jointly. On December 31, 1991,[6] during the course of the trial, accused Joanes Agravante escaped from detention. He has not been re-captured.

The prosecution's version of the facts was presented by two eyewitnesses: NELSON CANDIA,[7] a driver of the Cebu La Suerte Bakery; and REYNALDO DIZON,[8] an aide at the Office of the Mayor of Bansalan, Davao del Sur.

At around six-forty in the evening (6:40 p.m.) of January 6, 1990, appellants, together with Caballero and Agravante went to the Cebu La Suerte Bakery located in the Bansalan Public Market.[9] They were in fatigue

CAFGU uniforms.[10] Appellant Abrea, a carbine rifle slung on his left shoulder,[11] entered the bakery to buy bread. The three others, all armed with garand rifles, remained outside the store.[12] Witness Candia was then sitting by the bakery's refreshment counter with three co-employees.[13] Seated around the refreshment counter and drinking beer were the victims, Acaba, Bastida and Dela Torre.[14] On the other hand, witness Dizon was leaning on a parked jeep outside the bakery, eating a mango.[15]

In the bakery, appellant Abrea was attended to by a salesgirl named Mary Jo.[16] He bought bread worth five pesos (P5.00), but paid only two pesos (P2.00). When Mary Jo remonstrated, a visibly irked Abrea retorted, "It is as if you are someone here. When we ask bread from your employer, she even gives us (for free). But you, you are very strict. You are only a salesgirl here." [17]

Pat. Bastida, then in civilian clothes, called to appellant Abrea, raised a glass, and calmly offered him a drink.[18] Abrea took offense. He approached the three victims, pointed to his name cloth, and said, "Why are you confronting [19] me? Don't you know me? I am Abrea. I have a brother who is a policeman." [20] Bastida explained he was merely inviting him to drink. Dela Torre tried to pacify Abrea by saying, "Just leave that matter alone, 'bay, because we are all from Bansalan." This was echoed by Acaba who stood up and put his hand on Abrea's shoulder.[21]

It was then that accused Agravante urged his companions to start aggression. "Birahan" was what he suggested. Appellant Belarmino agreed, saying, "We will take care of each." Appellant Abrea looked at his companions. In a flash, they fired at the victims from outside the bakery.[22]

The result was a carnage. Dela Torre slumped to the floor, face down, after he was shot in the breast by appellant Belarmino.[23] Bastida was gunned down by Belarmino and accused Agravante before he could pull out his gun from the back waistband of his jeans. He fell face down on the floor near appellant Abrea's feet. There, he was again shot by accused Caballero.[24] Acaba, who ran towards the bakery's kitchen, was shot by Abrea using Bastida's pistol. He collapsed by the bakery's washing stand.[25]

After the three victims were shot, appellant Abrea told his companions, "Let's go, 'bay." [26] The four accused fled, leaving the three victims dead.

DR. ANNABELLE YUMANG,[27] Bansalan municipal health officer, conducted postmortem examinations on the victims, and found that they died of cardiovascular arrest secondary to gunshot wound/s. Her postmortem reports read:

"Name: Danilo dela Torre Age: 31 y.o.

Address: Mabuhay, Bansalan, Davao del Sur

POI: Public Market

TOI: 6:45 p.m.

DOI: Jan. 6, 1990

Time & Date of Autopsy: Jan. 6, 1990, 7:10 a.m.

Findings:

1) gunshot wounds:

a) point of entry - R parasternal line, 6th ICS -- 1 cm diameter

point of exit - L subscapular area -? 7 x 4 cm.

b) point of entry - L posterior axillary line, 4th ICS -- 3.5 x 2.5 cm.

(Exh. "AA", Exhibits Folder, Original Records)

"Name: Edilberto Bastida Age: 32 y.o.

Address: Magsaysay St., Bansalan, Davao del Sur

POI: Public Market

TOI: 6:45 p.m.

DOI: Jan. 6, 1990

Time & Date of Autopsy: 7:30 am - Jan. 7, 1990

Findings:

1) gunshot wound - over:

a) point of entry = R parasternal line, 5th ICS -- 1 cm diameter

b) point of exit = R midclavicular line, 3rd ICS - 8.5 cm x 6.5 cm.

2) gunshot wound over:

a) point of entry = L anterior neck - 0.5 cm diameter

b) point of exit = L scapular area - 1.5 cm diameter"

(Exh. "CC", Exhibits Folder, Original Records)

"Name: Exuperio Vicente Acaba Age: 30 y.o.

Address: Poblacion, Bansalan, Davao del Sur

POI: Public Market

TOI: 6:45 p.m.

DOI: Jan. 6, 1990

Time & Date of Autopsy: Jan. 7, 1990, 7:40 a.m.

Findings:

1) gunshot wound over:

a) point of entry = R 7th ICS anterior axillary line -- 0.5 cm.

b) point of exit = L 8th ICS midclavicular line -- slug was removed during autopsy"

(Exh. "EE", Exhibits Folder, Original Records)

PFC FULGENCIO MORENO,[28] member of the Bansalan INP investigated the shooting incident. He testified that he went to the Cebu La Suerte Bakery at past seven in the evening (7:00 p.m.) on January 6, 1990. The bodies of the victims had been taken away,[29] but he examined the scene of the crime. He found the bakery to be well-lighted by fluorescent lamps which allowed easy identification of persons.[30] On different places on the floor of the bakery, he recovered the following: two (2) deformed slugs (Exhs. "L" and "M"); three (3) pieces of live garand rifle ammunition (Exhs. "N" to "P"); and six (6) empty garand rifle shells (Exhs. "Q" to "V").[31]

Pfc. Moreno also identified Entries No. 4048 (Exh. "I"), 4051 (Exh. "J") and 4052 (Exh. "K") of the Bansalan Police Station Record Book.[32] These read as follows:

"Entry No. 4048 - 06 Jan '90 - 1900H - INDORSEMENT - M/Sgt. Tulawan, 46IB, PA, In charge of the CAFGU Base in Bansalan, Davao del Sur, indorsed to this office the persons of CAA Belarmino, Arnuldo; Abrea, Rosalito and Abragante (sic), Joanes who are CAFGU members assigned at Magsaysay, Davao del Sur and he also turned-over one Garand Rifle, Cal. .30 with Serial No. 2460490 with two live ammos. At large Eddie Caballero.

"Entry No. 4051 - 06 Jan '90 - 1920H -TURN-OVER - PFC Dador PR Jr., turn-over one .38 Caliber revolver to the Station Guard, with three live ammos. Said FAS was fired inside the jail.

"Entry No. 4052 - 06 Jan '90 - 1945H -TURN-OVER - PFC Moreno, INP member of Bansalan Police Station, turned-over to this Station two (2) deformed slug and one (1) empty shell of Garand Rifle cal .30 recovered at the crime scene and informed this office that the victim (sic) were Pat. Edilberto A. Bastida, INP member of this station, Alias Danilo dela Torre and James Exuperio Acaba. Both are residents of Poblacion, Bansalan, Davao del Sur. Subject on shooting incident in connection with re--entry No. 4047 06 Jan '90 1840H."

(Exhibits Folder, Original Records)

Another Bansalan INP member, PFC PAULINO DADOR, JR., testified that on January 6, 1990, accused Agravante fired a gun (Exh. "W") inside the Bansalan Police Station allegedly to stop the mauling of appellant Belarmino by the town mayor. Agravante thereafter threw the weapon towards the station's lobby, where it was recovered by the witness. The firearm, later identified as that issued to Pat. Bastida, was turned over to the station guard.[33] Upon inspection, the gun was found to contain three (3) live bullets and one (1) empty shell.[34]

The defense witnesses, on the other hand, espoused a different version of the facts of the case.

Appellants ROSALITO ABREA[35] and ARNULDO BELARMINO[36] testified that on the afternoon of January 6, 1990, they attended a CAFGU formation at Barayong, Magsaysay, Davao del Sur, and afterwards received their monthly allowance of five hundred forty pesos (P540.00).[37] Armed[38] and dressed in full CAFGU uniforms, appellants and their co-accused went to the Bansalan Public Market where they bought some provisions.[39] Afterwards, while waiting for a ride home, they decided to buy bread.[40]

The four went to the Cebu La Suerte Bakery, but only appellant Abrea entered it. The others remained outside its doors.[41] Abrea saw Bastida waving for him to come near. The victims were drinking beer.[42]

Appellant Abrea approached the victims. He got to about one-and-a-half (1.5) meters from them.[43] Without uttering a word and without provocation, Bastida suddenly stood up, drew a gun from the back waistband of his pants, and aimed it at Abrea. Bastida's index finger was on the gun's trigger. Bastida's unarmed companions remained seated.[44] Abrea froze and made no attempt to use the rifle slung on his left shoulder.[45]

Appellant Belarmino saw the incident and thought that Bastida was a member of the NPA out to kill appellant Abrea.[46] Without conferring with his two companions, and with Abrea's safety in mind, Belarmino immediately took hold of his cocked garand rifle and shot Bastida twice.[47] Abrea briskly walked out of the bakery.[48]

After Bastida fell to the ground, appellant Belarmino took cover behind a nearby post.[49] He did not shoot at either of Bastida's companions since they were unarmed.[50] He saw accused Agravante and Caballero fire shots into the bakery, but did not see if they hit anyone.[51] When the shooting ended and with the three victims slumped on the ground, Belarmino and Agravante proceeded to CAFGU headquarters. They reported the incident to their superior, Sgt. Tulawan, who disarmed and brought them to the municipal hall.[52]

Meanwhile, appellant Abrea left the bakery without talking to his companions. He went directly to the "amateuran" which is about 30 meters from the bakery, and stayed put until he was called to the municipal hall by Sgt. Tulawan who disarmed and put him in jail.[53]

Neither appellant saw accused Agravante take the gun from the body of Bastida. It was only after Agravante fired it into the air in the Bansalan police station that appellants discovered he had taken it.[54]

The defense presented two corroborating witnesses, BAYAWAN DAMALI,[55] and BALDOMERO ALO,[56] both friends of appellants' parents. Damali claimed he was inside the Cebu La Suerte Bakery at the time of the shooting, and Alo testified that he was with the four accused from the time they were waiting for a ride at the terminal, until the shooting occurred.

The trial court, on February 4, 1992, disposed of the case, thus:

"WHEREFORE, in view of the foregoing premises, this Court finds accused Arnuldo Belarmino, Rosalito Abrea, and Joanes Agravante, guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. XXI-157(90) as defined and penalized under Article 248 of the Revised Penal Code and hereby sentences each of them to Reclusion Perpetua with all the accessories provided for by law and to indemnify jointly and severally the heirs of Exuperio Acaba the sum of P50,000.00. The Court also finds accused Arnuldo Belarmino, Rosalito Abrea and Joanes Agravante guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. XXI-158(90) as defined and penalized under Article 248 of the Revised Penal Code and hereby sentences each of them to Reclusion Perpetua with all the accessories provided for by law, to indemnify the heirs of Edilberto Bastida jointly and severally the sum of P50,000.00. The Court likewise finds accused Arnuldo Belarmino, Rosalito Abrea and Joanes Agravante guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. XXI-159(90) as defined and penalized under Article 248 of the Revised Penal Code and hereby sentences each of them to Reclusion Perpetua with all the accessories of the law and to indemnify the heirs of Danny dela Torre jointly and severally the sum of P50,000.00.

"All the accused are fully credited with the preventive imprisonment they had undergone considering that no evidence was presented to show that they have not abide (sic) with the rules and regulations imposed upon inmates by the prison authorities of the Davao del Sur Provincial Jail."[57]

Appellants now come to this Court, arguing that the trial court erred in:

"I.

xxx NOT FINDING THAT THE DEFENSE OF STRANGER PLEA OF ACCUSED ARNULDO BELARMINO WAS SUFFICIENTLY AND CONVINCINGLY ESTABLISHED.

"II.

xxx NOT FINDING THAT ACCUSED-APPELLANT ROSALITO ABREA TOOK NO PART IN THE SHOOTING INCIDENT.

"III.

xxx GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES WHICH ARE REplete WITH MATERIAL INCONSISTENCIES AND INCREDIBILITIES.

“IV.

xxx NOT ACQUITTING THE ACCUSED?APPELLANTS WHEN THE EVIDENCE ADDUCED BY THE PROSECUTION FAILED TO OVERCOME, WITH MORAL CERTAINTY, THE PRESUMPTION OF INNOCENCE MANDATED BY THE CONSTITUTION BY CLEAR AND CONVINCING EVIDENCE OF GUILT BEYOND REASONABLE DOUBT.”[58]

We affirm the conviction of appellants.

We accord great respect to the trial court's findings as to the credibility of the prosecution's eyewitnesses. Their testimonies were consistent in their material sense and essence, and coincide for the most part.

The trial court was correct in giving credence to Nelson Candia's testimony. First, it does not detract from his credibility that he did not testify on what happened to his three co-employees during the shooting. It was but normal for him to have focused his attention on the victims and the assailants during the incident. Besides, the records show that he was not asked -- even by defense counsel -- about the three bakery employees.

Second, that Acaba was not the first to be hit does not make the testimony that he was then standing next to and with his hand on appellant Abrea's shoulder incredible. As correctly stated by the Office of the Solicitor General in the Appellee's Brief:

"xxx The answer as to why Acaba was not the first to be hit was because Belarmino and Agravante purposely fired at de la Torre and Bastida who were positioned in such a way that Abrea was not in the line of fire. After that Acaba would be a sitting duck.”[59]

Third, it is misleading for appellants to allege that Bastida did not react to appellant Belarmino's and accused Agravante's statements immediately prior to the attack. Candia testified that Bastida tried to pull out his revolver. Unfortunately, he was shot before he could do so.

Fourth, it is clear from Candia's testimony, as well as from the sketch he made of the crime scene (Exh. "A") that before the shooting began, he was not exactly seated at the refreshment counter, but by it. He also testified that when the first shot rang out, he was already behind a four-foot wall. Thus, it is not inconsistent for him to say that although he did not run away during the shooting, he was positioned behind a wall during the incident.

Fifth, that Candia testified he heard only five shots when the physical evidence in the case indicated more, does not lessen the evidentiary weight of his testimony. Even appellant Belarmino testified that the shooting spanned only a very short time, and that all the shots were fired in speedy succession, almost simultaneously. Under these conditions, and given the natural frailties of the human senses to absorb all details of an event, Candia cannot be reasonably expected to remember the exact number of shots actually made. Imperfect senses cannot be the source of perfect testimonies.

Sixth, that Candia did not run away during the shooting is understandable. It is not "xxx an affront to common sense.”[60] It is meet to note that he was not in any great danger of being hit during the shooting. A four-foot wall was standing between him and the characters involved in the shooting, and he was not in the direct line of fire. Indeed, he could have been shot if he dashed out of his cover.

The trial court was also correct in believing witness Reynaldo Dizon. First, appellants should not doubt how Dizon could have seen what transpired inside the bakery when he was standing outside its premises. There was no impossibility, for even appellant Belarmino and defense witness Alo testified about what they saw inside the bakery while they were admittedly outside its premises too. Second, like Candia, the witness cannot reasonably be expected to remember the exact number of shots fired during the incident, nor exactly where each victim was hit.

Third, Candia was not asked where the witness was during the shooting, nor if he was there at all. On this basis, it is illogical to conclude that the witness was not in the area at that time. Fourth, and most importantly, the tardiness of the witness in reporting to the authorities what he saw is not fatal to his credibility. He candidly admitted he was afraid of "catching the ire of certain persons" since he and his grandmother live in Bansalan. His fear is rooted on reason for the criminals were all members of the powerful CAFGU.

A thorough reading of the records of the case induces us to give the badge of belief and approval to the testimonies of Candia and Dizon. In checkered contrast, we find the defense version incongruous with reality. The defense would want us to believe the following: that for no reason, Pat. Bastida aimed his revolver at appellant Abrea who was in full CAFGU uniform and had a cocked carbine rifle slung on his shoulder; that despite his military training, Abrea froze and failed to defend himself; that when the shooting started, Abrea simply walked away oblivious of the fate of his companions and the person who aimed a gun at him; that, after the bloody incident, he did not go home or head for CAFGU headquarters, but remained at the amateuran; and, that by some miracle, accused Agravante was able to get Pat. Bastida's gun without appellant Belarmino seeing him.

The defense's story is an out and out fabrication to shield appellant Abrea from liability by attempting to show that the victims were killed by his companions, acting independently of one another. It is also designed to provide appellant Belarmino the justifying circumstance of defense of stranger.

Appellant Belarmino cannot claim the justification sought. Under prevailing law and jurisprudence, the presence of unlawful aggression is a condition sine qua non for the justifying circumstance of defense, be it of self, relative, or stranger. There can be no defense, complete or incomplete, unless the victim committed an unlawful aggression against the person defending.[61] For the right of defense to exist, it is necessary that the stranger be assaulted or at least be threatened with an attack in an immediate and imminent manner.[62] If there is no unlawful aggression, there is nothing to prevent or repel, and the second requisite of defense will have no basis.[63] In the case at bench, eyewitnesses Candia and Dizon clearly and unequivocally negated the commission of aggression against appellant Abrea. Belarmino had no reason to "defend" Abrea.

Appellants support their claim that Abrea did not participate in the shooting by what Wigmore[64] calls traces, or retrospectant evidence. Such evidence requires inference to look backward from the evidentiary fact to the alleged act. That is, taking a stand at the fact offered, the inference is made that at some previous time, the act was or was not done.[65] In the case at bench, appellants stress that when Bastida's gun (Exh. "W") was recovered from accused Agravante, it was found to contain only one (1) empty shell, which corresponds to the shot made inside the detention cell. From this fact, they deduce the negative inference that, contrary to the testimonies of Candia and Dizon, the gun was "never used in the shooting incident." [66]

Traces are inherently weak because the opponent may always explain away the indication by showing other reasonable hypotheses for the same.[67] In the present case, the absence of the empty shell corresponding to the shot fired at Acaba may well be accounted for by its intervening destruction. In short, that the gun was not fired inside the bakery is not the only natural inferential consequence of the presence of only one empty shell in Bastida's gun. The conclusion from the retrospectant evidence of appellants is not compelling and cannot prevail over the positive testimonies of Candia and Dizon that appellant Abrea shot Acaba using Bastida's gun.

Finally, appellants were correctly convicted for the crime of murder. The killings were characterized by treachery. The victims were unarmed, and they were killed by surprise. They were attacked by appellants using means and methods which tended directly and especially to insure the success of the assault, without risk to themselves. Conspiracy was also proved by the prosecution. The evidence shows accused Agravante egged his companions to attack the victims, and appellant Belarmino agreed by saying they "will take care of each." Appellant Abrea

looked at his companions outside the bakery, who commenced shooting. They shot Dela Torre and Bastida. Then, Abrea took the revolver of the fallen Bastida and shot the fleeing Acaba with it. After gunning down the victims, the four left the scene of the crime. The concerted acts of appellants and accused were aimed at a common and joint purpose or design, which is to kill the victims.

IN VIEW WHEREOF, the conviction of appellants ARNULDO BELARMINO and ROSALITO ABREA is AFFIRMED. The Decision, dated February 4, 1992, of the RTC of Bansalan, Davao del Sur, Branch 21 in Criminal Cases No. XXI--157(90) to XXI-159(90) is AFFIRMED IN TOTO. Costs against appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Mendoza, JJ., concur.

[1] Docketed as Criminal Cases No. XXI-157(90), XXI--158(90), and XXI-159(90).

[2] Presided over by Judge Rodolfo A. Escovilla.

[3] The full name of the deceased is Danilo Dela Torre.

[4] Rollo, pp. 5-6.

[5] Original Records, p. 35.

[6] Report of the Davao del Sur Provincial Warden (Alejandro B. Armamento) to the Governor of the Davao del Sur, dated January 10, 1991; Ibid., p. 94.

[7] He testified on May 14, 1990. At the time of his testimony, he was seventeen (17) years old and a resident of Tubod, Bansalan, Davao del Sur.

[8] He testified on May 16, 1990, when he was twenty-seven (27) years old and a resident of Poblacion, Bansalan, Davao del Sur.

[9] TSN of May 14, 1990, p. 8; TSN of May 16, 1990, p. 10.

[10] TSN of May 14, 1990, pp. 83-84.

[11] Ibid., at p. 12; TSN of May 16, 1990, p. 13.

[12] Ibid., at p. 75; TSN of May 14, 1990, pp. 13-14, 49.

[13] Ibid., at p. 7; TSN of May 16, 1990, p. 39.

[14] Ibid., at p. 42; TSN of May 14, 1990, p. 8.

[15] TSN of May 16, 1990, pp. 10-12, 37-38.

[16] Ibid., at p. 13; TSN of May 14, 1990, p. 14.

[17] Ibid., at pp. 15, 46; TSN of May 16, 1990, pp. 13-14, 53-54.

[18] Ibid., at pp. 16, 56-57; TSN of May 14, 1990, p. 15.

[19] Abrea used the word "sita" in reacting to the invitation to drink. During the testimony of witness Candia, the court translated Abrea's statement to Bastida thus: "Why are you calling my attention?" (TSN of May 14, 1990, p. 15) However, during the testimony of Dizon, the court stated that the word "sita" connotes some kind of challenge

(TSN of May 16, 1990, p. 16). We believe "sita" means to reproach.

[20] TSN of May 14, 1990, pp. 14, 50, 83-84; TSN of May 16, 1990, pp. 18, 56.

[21] Ibid., at p. 17; TSN of May 14, 1990, pp. 16--17.

[22] Ibid.; TSN of May 16, 1990, p. 18.

[23] Ibid., at p. 19; TSN of May 14, 1990, p. 18.

[24] Ibid., at pp. 18-21; TSN of May 16, 1990, pp. 19-20.

[25] Ibid., at pp. 20-21; TSN of May 14, 1990, pp. 20-22, 65.

[26] Ibid., at p. 24; TSN of May 16, 1990, p. 28.

[27] She testified on June 19, 1990.

[28] He testified on June 18, 1990.

[29] TSN of June 18, 1990, pp. 13, 15.

[30] Ibid., at pp. 14-15.

[31] Id., at pp. 16, 18. Pfc. Moreno found the two deformed slugs and an empty shell on January 6, 1990. The rest of the shells and live ammunition were found by him on January 7, 1990.

[32] Id., at pp. 11-12.

[33] Id., at pp. 27, 32-33.

[34] Id., at pp. 29-30.

[35] On March 18, 1991 when he testified, appellant was 28 years old, married, and detained at the Provincial Rehabilitation Center at Matti, Digos, Davao del Sur.

[36] When he testified on March 19, 1991, appellant was 25 years old, married, and detained at the Provincial Rehabilitation Center at Matti, Digos, Davao del Sur.

[37] TSN of March 18, 1991, pp. 8-9, 24; TSN of March 19, 1991, pp. 8-10.

[38] Both Abrea and Belarmino testified that Abrea was carrying an M-1 carbine rifle while Agravante and Belarmino had garand rifles with them. With respect to Caballero, however, their testimonies differ. According to Abrea, Caballero was unarmed; Belarmino, on the other hand, stated that Caballero was carrying a pistol.

[39] Ibid., at pp. 11, 39; TSN of March 18, 1991, pp. 10, 25-26.

[40] TSN of March 18, 1991, pp. 11; TSN of March 19, 1991, pp. 13-14.

[41] Ibid., at pp. 14, 41; TSN of March 18, 1991, pp. 27, 40. It must be noted, however, that at one point, appellant Abrea testified that when he was on his way to the bakery's bread counter, his three companions were inside the bakery (TSN of March 18, 1991, p. 13.).

[42] Ibid., at pp. 12, 14, 30; TSN of March 19, 1991, p. 14.

[43] TSN of March 18, 1991, p. 35.

[44] Ibid., at pp. 12-13, 15, 31; TSN of March 19, 1991, pp. 16, 18, 45.

[45] Id..

[46] TSN of March 19, 1991, pp. 17, 41, 46.

[47] Id., at pp. 20, 22, 47.

[48] Id., at pp. 47-48; TSN of March 18, 1991, pp. 16, 37-39.

[49] TSN of March 19, 1991, p. 47.

[50] Ibid., at p. 22.

[51] Id., at pp. 47-48.

[52] Id., at pp. 22-23.

[53] TSN of March 18, 1991, p. 45.

[54] TSN of March 19, 1991, p. 27; TSN of June 18, 1990, pp. 26-27.

[55] Widower, farmer, resident of Marber, Bansalan, Davao del Sur. He testified on April 25, 1991.

[56] Married and a resident of Digos, Davao del Sur. He testified on April 26, 1991.

[57] Rollo, p. 29.

[58] Appellants' Brief, p. 1; Rollo, p. 67.

[59] Rollo, p. 141.

[60] Appellants' Brief, p. 17; Rollo, p. 83.

[61] 1 LUIS B. REYES, *The Revised Penal Code* (1993), p. 145, citing, *People vs. Sazon*, 189 SCRA 700 (1990); *People vs. Bayocot*, 174 SCRA 291 (1989); *Ortega vs. Sandiganbayan*, 170 SCRA 38 (1989); and *Andres vs. CA*, 151 SCRA 268 (1987).

[62] Ibid., at p. 146, citing 1 VIADA, 5 edicion, 173, p. 3275.

[63] Id..

[64] *A Treatise on the Anglo-American System of Evidence in Trials at Common Law*, Vol. 1 (1940).

[65] Ibid., at p. 149.

[66] Appellants' Brief, p. 21; Rollo, p. 87.

[67] WIGMORE, *op. cit.*, at p. 149.

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