PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIO OCUMEN Y SALUDARES, ACCUSED-APPELLANT.

G.R. Nos. 120493-94 & 117692. December 02, 1999

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

After a heated altercation with Alex Espanto and Juanito Bibat, Julio Ocumen y Saludares allegedly pulled out a knife and went berserk during a wedding celebration in the evening of October 28, 1989. In the ensuing uproar, he plunged the knife into the back of one Mary Jane Bueno who was then fourteen (14) years old and fatally stabbed one Jesus Ilasin in the stomach.

For plunging the knife at Mary Jane Bueno's back, Julio Ocumen y Saludares was indicted for Frustrated Murder in Criminal Case No. 1774 in an Information[1] alleging -

> "That on or about 9:00 o'clock in the evening of October 28, 1989, at Brgy. Aggub, Municipality of Solano, Nueva Vizcaya, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and by means of treachery and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and stab the back of Mary Jane Bueno with a knife which would have caused the death of the latter, thus performing all the acts of execution which would produce Murder as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the perpetrator, that is the timely medical attendance extended to the victim which prevented her death, but nevertheless resulted to her damage and prejudice."

while for the fatal stabbing of Jesus Ilasin, he was charged with Murder in Criminal Case No. 1778 in an Information[2] which avers –

> "That on or about 9:00 o'clock in the evening of October 28, 1989, at Brgy. Aggub, Municipality of Solano, Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and by means of treachery and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and stab Jesus Ilasin with a bladed knife causing his instantaneous death, to the prejudice of his heirs."

Upon arraignment, accused pleaded not guilty to both charges.[3] The two cases were thereafter consolidated and tried on the merits.[4]

After trial, the court a quo rendered judgment,[5] the dispositive portion of which reads:

> "WHEREFORE, finding accused Julio Ocumen y Saludares GUILTY beyond reasonable doubt of the offense of Frustrated Murder and Murder, respectively, the said accused is hereby sentenced as follows: In Criminal Case No. 1774, accused Ocumen is hereby sentenced to suffer the penalty of 13 years and one (1) day to 16 years of reclusion temporal, to pay the victim the sum of P25,000.00 as actual damages, P15,000.00 as moral damages, P10,000.00 as exemplary damages and to pay the costs of the suit. In Criminal Case No. 1778, Julio Ocumen y Saludares is hereby sentenced to suffer the penalty of reclusion perpetua, to pay the heirs of Jesus

> Ilasin the sum of P45,000.00 as actual damages, P50,000.00 as civil indemnity, P20,000.00 as moral damages and P15,000.00 as exemplary damages and to pay the costs of the suit.
>
> SO ORDERED."[6]

Dissatisfied, accused-appellant interposed this appeal ascribing a lone assignment of error which insists that –

> THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR MURDER AND SENTENCING HIM TO RECLUSION PERPETUA INSPITE OF THE ABSENCE OF THAT QUANTUM OF PROOF NECESSARY TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.[7]

The prosecution's version of the incident is summed thus by the Solicitor General in the People's brief:

> "In the evening of October 28, 1989, [at] about 9:00 p.m., Camila Bueno, the prosecution's main witness, was entertaining guests attending her daughter's wedding celebration inside a saloon, fronting their house, at Aggub, Solano, Nueva Vizcaya. While busying herself during the affair, she was abruptly informed by her niece, Adelaida Bueno, of a commotion taking place nearby. Camila saw appellant Julio Ocumen argue heatedly with Alex Espanto and Juanito Bibat. Knowing appellant to be related to her new son-in-law, Camila approached them to pacify them. But before she could intervene, appellant charged wildly at Espanto and Bibat, who both ran away. At this point, appellant pulled out a knife and went after the duo.[8]
>
> Mary Jane Bueno, Camila's daughter, then 14 years of age, unaware of the commotion, was at the time walking towards the dancing saloon when she was suddenly stabbed from behind by appellant. Mary Jane screamed and was immediately embraced by her mother, Camila, who from a distance of about four (4) meters, because of the surprising turn of events, helplessly watched as appellant stabbed her daughter. Mary Jane had a glimpse of appellant who was running towards the mini-park outside their house.[9]
>
> Appellant went berserk and, chancing upon another victim, Jesus Ilasin, at the mini-park, stabbed him in the stomach near the navel.[10]
>
> Camilla immediately carried her wounded daughter to a tricycle and had her brought to a nearby clinic. At the clinic, they were advised to proceed to the Provincial Hospital as it did not possess adequate facilities to treat the wounds sustained by Mary Jane. Timely medical assistance in the Nueva Vizcaya Provincial Hospital saved Mary Jane's life.[11]
>
> Ilasin, the other victim, was also rushed to the Provincial Hospital but was pronounced dead on arrival.[12]
>
> The Post-Mortem Report, issued by Dr. Antonio R. Labasan, reveals the following:
> Stab Wound, Penetrating, 1 inch length, midclavicular line,
>
> Subcostal margin, lacerating the body of the stomach with mesenteric blood vessel severed.
>
> Immediate Cause of Death: Internal Hemorrhage, 2 stab wounds.

The testimonies of Dr. Labasan and of Dr. Reynaldo de la Cruz who issued the Certificate of Death[13]were dispensed with during the trial, as the defense admitted the death of the victim, including its underlying cause."[14]

On the other hand, accused-appellant flatly denied having anything to do with the incident claiming that he was nowhere near the locus criminis at the time of its occurrence. As culled from his testimony, he was in Manila working as a carpenter and a mason in a construction company, which had an ongoing project at Ayala-Alabang, at the time and date of incident.[15] He claimed that he started working with the construction firm on April 12, 1988 and came home to Villaverde, Nueva Vizcaya only on September 17, 1991.[16]

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Accused-appellant's story was corroborated by Roger Seridon, accused's barriomate and childhood friend, who testified that he and accused-appellant went to Metro Manila on April 12, 1988 where they were employed as construction workers.[17] They stayed there up to September 1991 boarding at the house of one Domingo Portaliza at 109 P. Burgos St., Poblacion, Muntinlupa, Metro Manila.[18] Seridon declared that accused-appellant reported for work at the construction site in Ayala-Alabang on October 27 and 28, 1989[19] and further stated that during the time of their employment as construction workers in Manila, they only went home during the Christmas holidays having done so at least four times.[20]

In support of accused-appellant's alibi, his mother, Juliana Ocumen, averred that she was in Manila on that fateful date of October 28, 1989 to deliver accused-appellant's supply of rice so that he would not buy rice anymore.[21] Like accused-appellant and Roger Seridon, she maintained that accused-appellant started working as a construction worker in Manila together with Seridon, one Tino de la Cruz and some others since April 12, 1988.[22] She additionally declared that her son stopped working as a laborer in Manila on September 17, 1991.[23]

In sum, accused-appellant assails the credibility of Camila Bueno "testifying as the lone eyewitness"[24] whose testimony dwelt mainly on her daughter's case. According to him, Camila could not have witnessed either the stabbing of Jesus Ilasin or that of Alex Espanto at the mini-park because she was "so engrossed in her daughter's condition."[25] Thus, her 'inconclusive'[26] declaration that he fatally stabbed Jesus Ilasin falls short of positive identification and is not sufficient to overthrow the constitutional presumption of innocence.

We disagree.

No rule in criminal jurisprudence is more settled than that alibi is the weakest of all defenses and should be rejected when the identity of the accused has been sufficiently and positively established by eyewitnesses to the crime.[27] In other words, alibi can not prevail over the positive identification of the accused by the prosecution eyewitnesses.[28] Assuming arguendo that Camila Bueno's testimony is indeed uncorroborated, her lone testimonial declarations does not make them any less credible. This Court has consistently stated, time and again, that the testimony of a single witness, if positive and credible, will suffice to sustain a judgment of conviction even in a charge for murder.[29] In the case of People v. Romeo Hillado[30] we ruled that –

> "...[W]ell-settled in our jurisprudence is the principle that the testimony of a single witness, if straightforward and categorical, is sufficient to convict.[31] Thus, the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner.[32] Witnesses are to be weighed, not numbered.[33] Evidence is assessed in terms of quality not quantity. Therefore, it is not uncommon to reach a conclusion of guilt on the basis of the testimony of a lone witness. For although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number and conviction can still be had on the basis of the credible and positive testimony of a single witness."[34]

Camila Bueno, whose testimony in open court was uncontradicted, positively pointed to accused-appellant as the assailant who stabbed her daughter and Jesus Ilasin on that fateful night of October 28, 1989. On direct examination, she testified as follows:

> "Q You stated Madam that you are a resident of Aggub, Solano, Nueva Vizcaya; tell the Court Madam, where you were at around 9:00 o'clock in the evening of October 28, 1989?
>
> A I was inside the dancing place, sir.

Q

And where is that dancing saloon located?

A In front of our house, sir.

Q

What were you doing there in the saloon which is located in [front of] your house on October 28, 1989, if any?

A I am entertaining my visitors, sir.

Q Was there an occasion on that night on October 28, 1989?

A I was the hostess of the wedding celebration, sir.

Q While you were in the saloon as hostess entertaining visitors, what happened?

A My niece called me and made a sign that there was a trouble (sic), sir.

Q

And what is the name of your niece?

A Adelaida Bueno, sir.

Q What did you do when your niece called your attention?

A I went to the place where the trouble was, sir.

Q When you went to the place where the trouble was, what did you find out if any?

A I went in between these three (3) persons, sir.

Q Who were these three (3) persons which (sic) you mentioned?

A Julio, Alex Espanto and Juanito Bibat, sir.

COURT:

Q Who is this Julio? what is his family name?

A Ocumen, sir.

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Alright proceed.

PROS. ORDONEZ:

Q And what were these three (3) persons doing when you proceeded to the place where they were?

A They were exchanging words with each other, sir.

Q And what happened next after you saw these three (3) persons exchanging words?

A I pacified them, sir.

Q Were you able to pacify them?

A I was not able to pacify them because Julio Ocumen rust (sic) forward towards them, sir.

xxx xxx xxx

Q

How did Julio Ocumen rush towards the two?

A Julio made an act of boxing but he did not continue and the two ran, sir.

Q Tell the Court Madam whether or not Julio Ocumen when he rushed toward[s] the two (2), namely Juanito Bibat and Alex Espanto whether he was holding any?

ATTY. RUPISAN:

Leading, your Honor.

PROS. ORDONEZ:

I am asking whether or not, your Honor.

COURT:

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Yes.

xxx xxx xxx

Let him (sic) answer just to abbreviate proceedings.

A There was, sir when I glanced at him he withdrew something and I saw him holding something.

Q And what was that which he was holding if you know?

A Double bladed weapon, sir (Witness demonstrating with her 2 hands indicating a length of about 10 inches).

Q What kind of double bladed weapon is that?

A I saw that it was a knife, sir.

Q Now when you saw after Juanito Bibat and Alex Espanto ran away and you saw Julio Ocumen ran (sic) towards under the house, what happened again, if any?

A It was that time that my daughter was stabbed because he met her in the saloon, sir.

Q

How did Julio Ocumen stabbed (sic) your daughter?

A He stabbed her at her back, sir.

Q

And how far were you when you saw Julio Ocumen stabbed (sic) your daughter at the back?

A About four (4) meters, sir from here up to that post. (Witness pointing to the post of the Court room indicating a distance of 4 meters, more or less).

Q By the way, what was the condition of the night that time when you saw Julio Ocumen stabbed (sic) you daughter?

A It was dark but it was only the saloon that was lighted, sir.

Q So on that place where your daughter was allegedly stabbed, was it lighted?

A There was a light, sir but it was obstructed by a curtain (telon).

COURT:

Q What was the material of this curtain? Was it cloth or what?

A It was made of cloth, sir.

Proceed.

PROS. ORDONEZ:

Q

What did your daughter do after she was stabbed by Julio Ocumen, if any?

A She screamed for help, sir.

Q As a mother, what did you do if any?

A I embraced her, sir.

COURT:

Q What was the position of your daughter when you embraced her? Was she standing ? Was she sitting or was she lying down?

A She was still standing, sir.

Proceed.

PROS. ORDONEZ:

Q

After your daughter was stabbed by Julio Ocumen, where did Julio Ocumen go, if you know?

A Julio Ocumen ran outside going to the mini park, sir.

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COURT:

Q How many times was your daughter stabbed?

A Once only, sir.

PROS. ORDONEZ:

Q What part of the body of your daughter was hit by Julio Ocumen?

A At her back, sir. (Witness touching the right side of her back just above her waist.)

Q

What happened next when Julio Ocumen [was] already in the mini park as you stated?

A He ran berserk and stabbed Ilasin, sir.

ATTY. RUPISAN:

I object to the interpretation, your Honor. I quote the ilocano word “nagwala”.

COURT:

What translation do you want about that term Atty. Rupisan, so that we can discuss it.

ATTY. RUPISAN:

I think, we use here the words “went wild”, your Honor.

COURT:

Alright, went wild.

A

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He went wild and stabbed Ilasin, sir.

COURT:

Q What is the first name of Ilasin?

A Jesus, sir.

Proceed.

PROS. ORDONEZ:

Q How did Julio Ocumen stab Ilasin, if you know?

A He stabbed Jesus Ilasin frontally, sir. (Witness pointing to her stomach).

Q

And how many times did Julio Ocumen stab Jesus Ilasin?

A Once only, sir.

Q What part of the body of Jesus Ilasin was hit by Julio Ocumen?

A Here, sir. (Witness pointing to her stomach near her navel.)

Q Now what did Julio Ocumen do after stabbing Jesus Ilasin?

A He disappeared, sir.

Q Now do you know where is Julio Ocumen now?

A There, sir.

Q

Will you kindly point him out to the Honorable Court?

A That person dress[ed] in [a] violet t-shirt, sir (Witness pointing to the person seated at the third bench of the court room and when asked his name, he gave his name as Julio Ocumen.)"[35]

Contrary to the claims of the defense that Camila was 'inconclusive' in her testimonial declarations that it was

accused-appellant who assaulted her daughter from behind and fatally stabbed Jesus Ilasin, she, in fact, remained steadfast and unwavering on cross-examination, despite intense grilling from defense counsel, to wit:

> "Q When you rushed to the place where Juanito Bibat, Julio Ocumen and Alex Espanto were, were they already exchanging hot words?
>
> A
>
> Yes, sir.
>
> x x x x x x x x x
>
> Q
>
> Who were exchanging words?
>
> A Julio Ocumen and Alex Espanto, sir.
>
> Q What were they saying?
>
> A When I arrived at their place they already stopped, sir.
>
> Q When they already stopped, the dance went on is that right?
>
> A Not yet because that was the time when Julio Ocumen rushed, sir.
>
> Q And when he made the rush Juanito Bibat and Alex Espanto also ran away, is that right?
>
> A Yes, sir.
>
> Q
>
> What direction did they go?
>
> A They ran away at the back of the house, sir.
>
> Q Whose house did they run?
>
> A They did not run in a house but they just ran, sir.
>
> Q That was the last time you saw the two?
>
> A Yes, sir.

Q And when the two ran away accused Julio Ocumen also went to a house, is that right?

A Yes, sir.

Q Whose house?

A Our house, sir.

Q

The place where the dance was being held?

A Yes, sir.

Q

How far is that house to the place where the 3 were when you rushed to stop them?

A Around 5 meters, sir.

x x x x x x x x x

Q Where was that cloth curtain placed in the dance hall?

A In front of our house, sir.

Q In front of the house facing the dance hall?

A Yes, sir.

Q What was the purpose of the cloth curtain?

A The word “wedlock” was placed there, sir.

Q

What was the width and length of the cloth curtain?

A The width is 2 yards and the length is 2 and ½ yards, sir.

Q What is the kind of that cloth?

A Plain white, sir.

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Q Is it thick?

A It is thin, sir.

Q And in relation to the cloth curtain where was then your daughter who was allegedly stabbed at her back shoulder?

A My daughter was at the edge of the curtain, sir.

Q If you were at the back of that cloth curtain, can you see your daughter?

A Yes, sir.

Q

In relation to that cloth curtain, where were the 3, Juanito, Alex and Julio when you told Alex to stop?

A They were near the cloth curtain. (Witness is pointing to a distance of about 2 meters.)

Q You mean your daughter was also near the 3 persons?

A No, sir. My daughter was here (witness pointing to the place where she is seated? (sic) and the 3 were there, sir. (witness pointing to a distance of 3 ½ meters).

Q How far was your daughter to (sic) the 3 persons?

A About 5 meters, sir.

Q When Julio Ocumen ran under your house, did he pass at the back of the cloth curtain and then went under your house?

A Yes, sir. When he ran under our house that was the time he stabbed “nabagsul” my daughter, sir.

Q Did your daughter meet Julio Ocumen while running under your house?

PROSECUTOR:

The witness is incompetent.

COURT:

According to him the daughter can be seen. Let her answer.

A He was the one who bumped “nakadalapus” my daughter, sir.

ATTY. RUPISAN:

Q Why (sic) did Julio Ocumen run behind your daughter swinging a weapon?

A Yes, sir. He was holding a knife.

Q So your daughter when Julio Ocumen ran(sic) towards your house were facing each other when he bumped your daughter?

A No, sir. They were not facing each other.

Q

Was the back of your daughter towards Julio Ocumen while he is running to go under your house?

A Yes, sir.

Q You mean to say that when Julio Ocumen ran under your house he accidentally hit with a knife the back shoulder of your daughter?

A Yes, sir, he stabbed.

COURT:

You clarify that. Was it intentional on the part of Julio Ocumen to stab your daughter or was it merely a matter of accident when he accidentally hit the back portion of the shoulder of your daughter?

A I do not know if he stabbed her intentionally or not, sir.

ATTY. RUPISAN:

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Q What was the position of your daughter when Julio Ocumen ran under your house . . . towards your house?

A She was standing with her back towards the cloth curtain, sir.

Q

What was your daughter doing when Julio Ocumen ran under your house?

A She was watching staying at the edge of the cloth curtain, sir.

Q Now about Julio Ocumen, how was he holding the weapon which you stated he was holding when he was running towards the direction of your daughter?

A Like this, sir. (witness demonstrating by holding the knife stretching and swinging her right hand upward).

Q If that is true, and your daughter had her back towards Julio Ocumen, your daughter could have been hit by the knife at the lower portion of her body and not her back shoulder, is that not correct?

A My daughter was still small and he swung the knife in this manner, sir.

(witness is swinging the knife from her side upward with her right hand.)

Q How old was your daughter? What is her height?

A Fourteen years old and her height is like this, sir. (witness pointing just above her shoulder with a height of 4 feet tall).

x x x x x x x x x

Q

How far is the mini park from your house?

A From here up to that open window (witness pointing to the third window from the second post of the court room, a distance of 5 to 6 meters, more or less.)

Q And according to you in your direct examination, "[W]hat happened next?" – when Julio Ocumen ran to the park as that Jesus Ilasin was stabbed?

A Yes, sir.

Q Did you see how Jesus Ilasin was stabbed?

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A Ye[s], sir. He was stabbed frontally.

x x x x x x x x x

Q Where was Jesus Ilasin stabbed?

A He was stabbed near the mini park leaning on the post, sir.

Q

Post of what?

A The mini park, sir.

Q Was there a light of (sic) the mini park?

A Yes, sir, it was bright.

Q What kind of light?

A Fluorescent light, sir.

COURT:

Q Where could the light be found in relation to the position of Jesus Ilasin, was it near or was it far?

A It was near because the light was placed in a post where Jesus Ilasin was leaning, sir.

ATTY. RUPISAN:

Q

You mean the fluorescent lamp was attached to the post where Jesus Ilasin was leaning?

A No, sir because the light was connected to the shed of the dancing hall and the mini park was near the shed or the dancing hall.

Q The fluorescent light of the dancing hall and not the mini park, is that right?

A The premises could be lighted because there was no obstruction.

Q My question is that the fluorescent lamp is the light of the mini park, is that what you mean?

A Light of the shed, sir.

Q The shed or the dancing hall is made of coconut leaves, is that right?

A No, sir, it is made of canvass (sic).

Q

And the fluorescent lamp is below the canvass (sic), is that right?

A Yes, sir.

Q How many fluorescent lights were there in the dancing hall?

A Four, sir."[36]

Camila Bueno, however, was not a "lone eyewitness," contrary to the claim of accused-appellant, considering that he was identified by no less than Mary Jane Bueno herself who testified thus on direct examination:

"Q Madam witness, you stated that you are a resident of Brgy. Aggub, Solano, Nueva Vizcaya, do you recall where you were in the evening of October 28, 1989 at night?

A Yes, sir.

Q

Where were you Madam witness?

A I was infront (sic) of our house, sir.

Q Why were you infront (sic) of your house in that particular time of October 28, 1989?

A I wanted to give water to m y sister, sir.

Q Why did you give water to your sister?

A She requested me to get water, sir.

Q What is the name of your sister?

A
Lourdes Bueno, sir.

Q Do you recall Madam witness if there was an occasion on that time when your sister Lourdes requested you to give water?

x x x x x x x x x

A Yes, sir because she is going to get married.

x x x x x x x x x

Q Now on that particular time, date and year Madam witness while you were there infront (sic) of your house, as you have stated; do you recall of any unusual incident that happened?

A There was, sir. At that time, I was about to hand the water to my sister I felt somebody stabbed me.

Q And who was that person who stabbed you, if you know?

A

I know, sir it is Julio Ocumen.

x x x x x x x x x

Q

And what part of your body were (sic) hit?

A Here, sir. (Witness showing the scarse (sic) in the right upper buttock of her body above the waist line.)

Q In relation to where you were standing then Madam witness, where was Julio Ocumen when he stabbed you?

A He was right behind me, sir.

x x x x x x x x x

COURT:

Q Since you were stabbed at the back, how did you know that the accused, Julio Ocumen stabbed you?

A Yes, sir because he ran infront (sic) of me and there was a bright light infront (sic) of us.

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Proceed.

PROS. ORDONEZ:

Q

Aside from the fact that you came to know the accused, Julio Ocumen because you studied at the same school at Bintawan, Villaverde, Nueva Vizcaya; are there other reasons why you personally came to know him?

A Yes, sir because he is the cousin of the husband of my sister.

Q Now, what is the name of your sister?

A Lourdes, sir.

Q Now if Julio Ocumen is around in Court, can you identify him?

A Yes, sir.

Q Will you please point at him, this Julio Ocumen.

A (Witness is pointing to the person seated at the second bench in between an old woman and mean (sic) wearing a green t-shirt and when asked to give his name, he gave his name, Julio Ocumen.)"[37]

[57] People v. Antonio V. Eribal, supra.

Like Camila, Mary Jane remained unyielding and resolute that it was accused-appellant who stabbed her at the back despite persistent efforts of defense counsel to throw her off track:

"Q From where did Julio Ocumen come from before you were stabbed?

COURT:

If she knows?

ATTY. RUPISAN:

If you know?

A At my back, right side, sir.

Q You mean, when you were allegedly stabbed the accused was already behind you at your right side?

A Yes, sir.

Q You did not see where he came from?

A All I know, [is that] he came from behind, sir.

x x x x x x x x x

Q

You mean, you were instantaneously stabbed by the accused?

A Yes, sir. When I was about to hand the water to my sister, suddenly I was stabbed.

Q And that was the time when you say (sic) to your mother, “I was stabbed, help me”, is that right?

A Yes, sir.

Q Do you know if there was any reason why the accused stabbed you?

A None, sir.

Q And do you have any misunderstanding to (sic) Julio Ocumen previous to the incident?

A None, sir.

Q Have you seen Julio Ocumen the day before the incident?

A Yes, sir.

Q

Where did you see him?

A At the same place, sir.

Q Right at the place where the wedding took place?

A Yes, sir.

Q Did you talk to each other?

A No, sir.

COURT:

Q What was he doing at the time, at that occasion when you saw him at that time?

A I just saw him sitting down together with his barkadas (companions), sir.

ATTY. RUPISAN:

Q

Who were his barkadas?

A I don't know them, sir.

Q

When you were stabbed, did you look back?

A No, sir because he ran infront (sic) of me that's the time I recognized him.

COURT:

Q Was he carrying anything when he ran infront (sic) of you?

A I did not notice it, sir because he ran so fast infront (sic) of me.

ATTY. RUPISAN:

x x x x x x x x x

Q So when you looked at the accused after you were stabbed, you only saw the back of the accused, is that right?

A I saw his side view and his back, sir.

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x x x x x x x x x

Q

When the accused ran away, you only glance[d] or had a fleeting glance at him, is that correct?

A Yes, sir because I am concentrating on my wounds because they were painful.

Q How far was Julio Ocumen when you had a fleeting glance at him when he was running away?

COURT:

The first time or what (sic) because he was running continuously?

ATTY. RUPISAN:

There's only one time that she saw him, your Honor.

COURT:

Alright.

A

From here, sir. (Witness pointing from here up to the door of this Court about 20 meters more or less..)

Q That was all the time that you were able to glance at Julio Ocumen?

A Yes, sir.

x x x x x x x x x

Q At that distance of 20 meters, was it very dark?

COURT:

Which portion was dark? Where was [she] situated or where [was] Julio Ocumen situated?

ATTY. RUPISAN:

Q Was that place with the distance of twenty (20) meters already dark?

A It was bright, sir.

Q Why?

A

Because at the side of the road, there is an electric post, sir.

Q How high is that electric post?

A It is higher than the ceiling of this Court, sir. (Witness pointing to the ceiling of this Court room which is more or less 4 meters.)

Q That saloon where the wedding will take place, was it covered with leave[s] of coconut trees or canvas?

A It is a (sic) canvas (tolda), sir.

Q And you were below the canvas or luna?

A Yes, sir I was placed at the side where the word “Wedlock” was placed or written.

Q You mean, you were right in the center of the saloon?

A At the side of the center of the saloon, sir.”[38]

To reiterate, accused-appellant’s defense of alibi is the weakest of all defenses for it is easy to contrive and difficult to prove.[39] A positive identification of the accused made by an eyewitness prevails over such a defense.[40] In this case, not one but two (2) eyewitnesses identified accused-appellant as the assailant of the victims. Furthermore, accused-apellant’s alibi, though corroborated, dovetails too neatly to deserve credence. It becomes even less plausible when it is invoked and sought to be crafted mainly by the accused himself and his immediate relatives. [41] Indeed -

“...[w]e have consistently ruled that where an accused’s alibi can only be confirmed by his relatives, his denial of culpability deserves scant consideration, especially in the face of affirmative testimonies of credible

> prosecution witnesses as to his presence in the crime scene."[42]

All told, an overall scrutiny of the records of this case leads us to no other conclusion but the correctness of the trial court's findings that accused-appellant committed the acts imputed to him. What remains to be determined is whether the elements of the crimes charged justify accused-appellant's conviction for the said offenses.

While we agree that accused-appellant assaulted the victims we, nonetheless, are unable to agree with the trial court that the crimes committed by accused-appellant were murder and frustrated murder. The charges in Criminal Cases Nos. 1774 and 1778 alleged treachery as a qualifying circumstance. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[43] Two elements are, therefore, necessary, namely: 1.] that the malefactor employed means of execution that affords the person attacked no opportunity to defend himself or to retaliate; and 2.] the said means of execution was deliberately or consciously adopted.[44]

We find no treachery in both cases. An altercation preceded the stabbing incidents. The time between the altercation and the stabbing was not significant as to create a break in the series of events. In fact, immediately after the argument with Alex Espanto and Juanito Bibat, accused-appellant pulled out a knife and immediately rushed at the two who fled. The records clearly show that the two victims unfortunately happened to be in the path of accused as he pursued the fleeing Espanto and Bibat. That both victims were unarmed and defenseless does not by itself make the attack treacherous. Treachery can not be presumed. Indeed –

> "... Deeply ingrained in our jurisprudence is the rule that where no particulars are known as to the manner in which the aggression commenced and how the act which resulted in the death of the victim unfolded, we cannot surmise from the circumstances that the accused perpetrated the killing with treachery.[45] Treachery cannot be presumed, it must be proved as clearly and as convincingly as the killing itself.[46] Any doubt as to the existence of treachery must be resolved in favor of the accused."[47]

With the absence of alevosia, accused-appellant can only be convicted of homicide for the death of Jesus Ilasin. In the same manner, he can only be convicted of frustrated homicide for stabbing Mary Jane Bueno considering that the wound inflicted which punctured the right lung, lacerated the liver and transverse colon, was life-threatening.[48]

The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal while the penalty for frustrated homicide pursuant to Article 50 of the same Code is prision mayor. In the computation of the proper penalties to be imposed, it needs be determined whether or not modifying circumstances attended the commission of the offenses.

With regard to Criminal Case No. 1778 taking advantage of superior strength has been alleged together with alevosia. To take advantage of superior strength means to use purposely excessive force out of proportion to the means of defense available to the person attacked.[49] There has been no showing in this case that accused-appellant purposely employed superior strength to consummate his nefarious deed, hence, it can not be appreciated as a generic aggravating circumstance against him.

With the absence of any modifying circumstance, the penalty shall be imposed in the medium period. Since accused-appellant is entitled to the benefits of the Indeterminate Sentence Law, he should be sentenced to an indeterminate penalty whose minimum shall be within the range of prision mayor, the penalty next lower in degree to that provided in Article 249, and whose maximum shall be within the range of reclusion temporal in its medium period for the homicide charge. Taken in the light of the prevailing facts of the case, the Court deems it proper to impose upon the accused-appellant an indeterminate penalty of eight (8) years and one (1) day of prision

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mayor as minimum, to seventeen (17) years and four (4) months of reclusion temporal as maximum, with all the accessory penalties prescribed by law.[50]

Abuse of superior strength must, however, be appreciated in Criminal Case No. 1774. An attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and weapon used in the act afforded him, and from which the woman was unable to defend herself.[51] Thus, this circumstance was appreciated in a case where the accused attacked and killed an unarmed four (4) feet, eleven (11) inch girl.[52]

There being one aggravating circumstance and no mitigating circumstance, the penalty shall be imposed in its maximum period.[53] Considering that the penalty next lower in degree than that prescribed by law for a consummated felony shall be imposed upon principals of a frustrated felony[54] is prision mayor which ranges from six (6) years and one (1) day to twelve (12) years, the minimum of the imposable penalty, applying the Indeterminate Sentence Law, shall be taken from prision correccional, which has a range of six (6) months and one (1) day to six (6) years.

Taking into consideration the manner and circumstances in which the crime was committed as well as the gravity of the offense, which are factors to be considered in the determination of the imposable penalty's minimum term,[55] the court deems it proper to impose upon accused-appellant an indeterminate prison term ranging from six (6) years of prision correccional, as minimum, to twelve (12) years of prision mayor, as maximum likewise with all the accessory prescribed by law.

The civil indemnity of P50,000.00 awarded by the trial court is sustained as this is in accord with prevailing jurisprudence.[56] However, for lack of sufficient evidence, the awards of moral and exemplary damages have to be deleted.[57]

WHEREFORE, with the following modifications that:

> 1.] The penalty imposed in Criminal Case No. 1774 is hereby reduced from reclusion temporal to an indeterminate penalty of imprisonment ranging from six (6) years of prision correccional, as minimum, to twelve (12) years of prision mayor, as maximum.
>
> 2.] The penalty imposed in Criminal Case No. 1778 is hereby reduced from reclusion perpetua to an indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.
>
> 3.] The awards of moral and exemplary damages made in both cases are set aside.

The appealed Joint Decision of the Regional Trial Court of Nueva Vizcaya, Branch 27 (Bayombong) in Criminal Cases Nos. 1774 and 1778 is AFFIRMED in all other respects.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Rollo, G.R. Nos. 120493-94, p. 9.

[2] Rollo, G.R. No. 117692, p. 4.

[3] Record, pp. 33, 38.

[4] Cf. Section 14, Rule 119, Revised Rules on Criminal Procedure. Which provides:

> SEC. 14. Consolidation of trials of related offenses. – Charges for offenses founded on the same facts, or forming part of a series of offenses of similar character may be tried jointly at the court's discretion."

[5] Record, pp. 108-111.

[6] Ibid., p. 111.

[7] Appellant's brief, p. 4; Rollo, G.R. No. 117692, p. 52.

[8] TSN, 21 January 1993, pp. 3-7.

[9] TSN, 8 July 1993, pp. 3-7; 21 January 1993, pp. 7-10.

[10] TSN, 21 January 1993, pp. 10-12.

[11] Ibid., pp. 12-15.

[12] TSN, 3 February 1993, pp. 3-5.

[13] Record, p. 3.

[14] Order dated 10 February 1993; Record, p. 54.

[15] TSN, 24 November 1993, p. 2.

[16] Ibid.

[17]TSN, 13 October 1993, pp. 3-4, 6.

[18] Ibid., p. 4.

[19] Id., p. 9.

[20] Id., pp. 4, 8.

[21] TSN, 30 October 1993, pp. 2, 4.

[22] Ibid., pp. 2-3.

[23] Id., p. 4.

[24] Appellant's brief, p. 4; Rollo, G.R. No. 117692, p. 52.

[25] Appellant's brief, p. 5; Rollo, G.R. No. 117692, p. 53.

[26] Ibid., pp. 4; 52.

[27] People v. Jimmy Mijano y Tamora, G.R. No. 129112, 23 July 1999, citing People v. Sancholes, 271 SCRA 527 [1997].

[28] People v. Nomer Velasco y Pangilinan, G.R. No. 125016, 28 May 1999, citing Arjeno v. People, 256 SCRA 569 [1996].

[29] People v. Erick Macahia, et al., G.R. No. 130931, 19 May 1999, citing People v. Batidor, G.R. No. 126027, 18 February 1999; People v. Navarro, G.R. No. 129566, 7 October 1998, 297 SCRA 331; People v. Daranan, 294 SCRA 27 [1998]; People v. Tulop, et al., 289 SCRA 316 [1998]; People v. Obello, 284 SCRA 79 [1998]; People v. Salcedo, 273 SCRA 473 [1997].

[30] G.R. No. 122838, 24 May 1999.

[31] People v. Navarro, supra; People v. Villanueva, 284 SCRA 501 [1998]; People v. Hayahay, 279 SCRA 567 [1997].

[32] People v. Tulop, supra.

[33] People v. Villanueva, supra, citing People v. de Roxas, 241 SCRA 369 [1995].

[34] People v. Tulop, supra, citing People v. Dela Cruz, 207 SCRA 632 [1992].

[35] TSN, 21 January 1993, pp. 3-11; italics supplied.

[36] TSN, 27 January 1993, pp. 2, 3-4, 5-11; Italics supplied.

[37] TSN, 8 July 1993, pp. 3, 4-5, 6-7; italics supplied.

[38] TSN, 8 July 1993, pp. 8-14; italics supplied.

[39] People v. Godofredo Marfil, G.R. No. 122101, 30 April 1999, p. 5, citing People v. Realin, G.R. No. 126051, 21 January 1999, p. 13.

[40] People v. Pepito Tejero y Caranzo, G.R. No. 128892, 21 June 1999, p. 15, citing People v. Nialda, 289 SCRA 521 [1998].

[41] People v. Crisostomo, 293 SCRA 65 [1998], citing People v. Danao, 253 SCRA 146[1996] and People v. Quinevista, 244 SCRA 586 [1995].

[42] People v. Mendoza, 292 SCRA 168 [1998], citing People v. Corpuz, 240 SCRA 203 [1995].

[43] Article 14, Revised Penal Code; People v. Ybeas, 213 SCRA 793 [1992]; People v. Compendido, Jr., 258 SCRA 254 [1996]; People v. Tabag, 268 SCRA 115 [1997].

[44] People v. Hipolito Bermudez y Villacorta, et al., G.R. No. 129033, 25 June 1999, p. 11, citing People v. Hubill A, Jr., 252 SCRA 471 [1996]; People v. Landicho, 258 SCRA 1 [1996]; People v. Cabodoc, 283 SCRA 183 [1997].

[45] People v. Sumaoy, 263 SCRA 460 [1996]; People v. Obzunar, 265 SCRA 547 [1996]; People v. Asis, 286 SCRA 64 [1998].

[46] People v. Albao, 287 SCRA 129 [1998]; People v. Demonteverde, 290 SCRA 175 [1998].

[47] People v. Antonio v. Eribal, G.R. No. 127662, 25 March 1999, p. 10, citing People v. Ballare, 264 SCRA 350 [1996].

[48] TSN, 23 August 1993, pp. 4, 9.

[49] Reyes L.B., Revised Penal Code, Book One, 14th ed. [1998], pp. 395-396, citing People v. Cabiling, 74 SCRA 285 [1976], citing Albert's Commentaries on the Revised Penal Code; People v. Sarabia, 96 SCRA 714 [1980]; People v. Cabato, 160 SCRA 98 [1988]; People v. Carpio, 191 SCRA 108 [1990]; People v. Moka, 196 SCRA 378 [1991].

[50] See People v. Pedro Academia, Jr. y Baldado @ Jun, G.R. No. 129251, 18 May 1999, p. 7; People v. Rodrigo Mangahas, G.R. No. 118777, 28 July 1999, citing People v. Albao, 287 SCRA 129 [1998].

[51] Reyes, Revised Penal Code, supra., citing People v. Guzman, 107 Phil. 1122 [1960]; People v. Quesada, 62 Phil. 446 [1935]; U.S. v. Camiloy, 36 Phil. 757 [1917]; U.S. v. Consuelo, 13 Phil. 612 [1909].

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[52] People v. Brana, 30 SCRA 307 [1969]; see also People v. Clementer, 58 SCRA 742 [1974] and People v. Patinga, 111 SCRA 52 [1982].

[53] Article 64 (3), Revised Penal Code.

[54] Article 50, Revised Penal Code.

[55] People v. Hector Domingo, et al., G.R. No. 104955, 17 August 1999, p. 13.

[56] People v. Elmer Heredia @ Boll Jack, et al., G.R. No. 110001, 28 July 1999, p. 16, citing People v. Verde, G.R. No. 119077, 10 February 1999, p. 17.

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